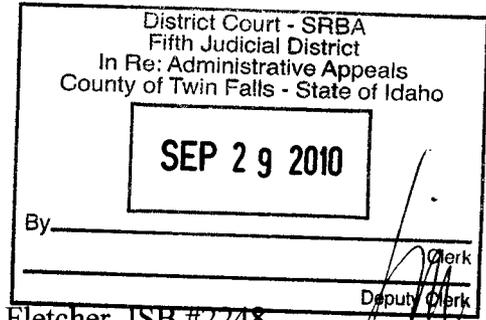


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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

TWIN FALLS CANAL COMPANY, NORTH)	Case No. CV-2010-382
SIDE CANAL COMPANY, A&B)	
IRRIGATION DISTRICT, AMERICAN FALLS)	(consolidated Gooding County Cases
RESERVOIR DISTRICT#2, BURLEY)	CV-2010-382, CV-2010-383, CV-2010-
IRRIGATION DISTRICT, MILNER)	384, CV-2010-387, CV-2010-388, and
IRRIGATION DISTRICT, and MINIDOKA)	Twin Falls County Case CV-2010-3403)
IRRIGATION DISTRICT,)	
)	SURFACE WATER COALITION'S
Petitioners,)	JOINT MOTIONS FOR
)	CONSOLIDATION AND FOR
vs.)	EXPEDITED HEARING
)	
IDAHO GROUND WATER)	
APPROPRIATORS, INC.;)	

Petitioner,)
)
 vs.)
)
 CITY OF POCA TELLO;)
)
 Petitioner,)
)
 vs.)
)
 GARY SPACKMAN, in his capacity as Interim)
 Director of the Idaho Department of Water)
 Resources, and THE IDAHO DEPARTMENT)
 OF WATER RESOURCES,)
)
 Respondents.)
)
 _____)
)
 IN THE MATTER OF DISTRIBUTION OF)
 WATER TO VARIOUS WATER RIGHTS)
 HELD BY OR FOR THE BENEFIT OF A&B)
 IRRIGATION DISTRICT, AMERICAN FALLS)
 RESERVOIR DISTRICT #2, BURLEY)
 IRRIGATION DISTRICT, MILNER)
 IRRIGATION DISTRICT, MINIDOKA)
 IRRIGATION DISTRICT, NORTH SIDE)
 CANAL COMPANY, AND TWIN FALLS)
 CANAL COMPANY)
)
 _____)

COME NOW, Petitioners, A&B Irrigation District (“A&B”), American Falls Reservoir District #2 (“AFRD#2”), Burley Irrigation District (“BID”), Milner Irrigation District (“Milner”), Minidoka Irrigation District (“MID”), North Side Canal Company (“NSCC”), and Twin Falls Canal Company (“TFCC”) (collectively hereafter referred to as the “Surface Water Coalition”, “Coalition”, or “SWC”), by and through their undersigned counsel, and hereby submit the following *Joint Motions for Consolidation and for Expedited Hearing* in the above-captioned matter. The reasons for these motions are set forth below.

PROCEDURAL HISTORY

This consolidated appeal involves two final orders issued by the Interim Director of the Idaho Department of Water Resources: the June 23, 2010 *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (the “*Methodology Order*”) and the June 24, 2010 *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3&4); Order on Reconsideration* (the “*As-Applied Order*”).

The *Methodology Order* was appealed to the Gooding County District Court by the Coalition (Case No. CV-2010-384), IGWA (Appeal No. CV-2010-383); and the City of Pocatello (Case No. CV-2010-388). The *As-Applied Order* was appealed to the Gooding County District Court by IGWA (Case No. CV-2010-382) and Pocatello (Case No. CV-2010-387). The Coalition appealed the *As-Applied Order* to the Twin Falls County District Court (Case No. CV-2010-3403). Pursuant to the Supreme Court’s December 9, 2009 *Administrative Order*, each of these appeals was reassigned to the SRBA District Court for further proceedings. On July 29, 2010 this Court entered its *Order Consolidating Proceedings Involving Petitions for Judicial Review of “Methodology Order” and “As-Applied Order”*. This Court concluded that “these *Petitions* involve similar issues, and that consolidation of these *Petitions* will expedite resolution of this matter.” *Order Consolidating Proceedings* at 5-6.

In addition to the above referenced proceedings on the Interim Director’s *Methodology* and *As Applied* orders, an administrative hearing in a related proceeding was held and the Interim Director issued a final order on IGWA’s Mitigation Plan on June 3, 2010. The Coalition appealed the final order to the Twin Falls County District Court (Case No. 2010-3075). The case was reassigned to the SRBA District Court and this Court entered its *Procedural Order*

Governing Judicial Review of Final Order of Director of Idaho Department of Water Resources
on July 13, 2010.

For the reasons set forth below, the Mitigation Plan appeal, Case No. 2010-3075, should be consolidated with the other appeals presently before the Court in Consolidated Case No. 2010-382.

ARGUMENT

I. Consolidation is Appropriate Because the Matters Involve Similar Parties, Facts and Legal Issues, and Will Promote Judicial Economy in These Matters.

Although no appellate rule provides a specific standard for district courts to apply, consolidation of separate judicial review proceedings is authorized under Idaho law. *See* I.R.C.P. 42(a), 83(x); I.A.R. 48. The Idaho Supreme Court has specifically authorized consolidation of appeals if similar issues and parties are involved. *See Alpine Villa Dev. Co. v. Young*, 99 Idaho 851 (1979) (“four actions were consolidated on appeal due to the similarity of facts and identity of legal issues”); *Ada County v. Schemm*, 96 Idaho 396 (1974) (“These cases were consolidated upon appeal since both involve the same real property and present essentially the same question”).

Under I.R.C.P. 42(a), cases may be consolidated if they involve “a common question of law or fact.” Moreover, whenever a district court is of the opinion that “consolidation will expedite matters and will minimize expense upon the public and the parties, an order of consolidation should be made.” *Harrison v. Taylor*, 115 Idaho 588, 597 (1989).

Consolidating the appeal of the *Final Order Approving Mitigation Plan* with the consolidated case concerning the *Methodology* and *As Applied* orders is appropriate because the two appeals involve similar parties, facts, and legal issues. First, IGWA, IDWR, and the

Coalition are all parties to both appeals.¹ Second, the Director's *Methodology Order* and *As Applied Order* prescribe procedures requiring storage water to be provided by affected junior ground water right holders (i.e. IGWA) for mitigation under certain circumstances. As such, the facts and legal issues underlying the approval of IGWA's Mitigation Plan for 2010 directly relate to the procedures and methods set forth under the Director's *Methodology* and *As Applied* orders. Whether the Director appropriately applied his "methodology" and approved the mitigation plan consistent with the standards under the conjunctive management rules and his own orders involves common issues that should be addressed in a consolidated appeal.

Consolidation will promote judicial economy and allow the appeals to be considered together on the same schedule. The Coalition proposes to have the consolidated appeals follow the schedule for the procedural order governing the appeals of the *Methodology* and *As Applied* orders. See August 3, 2010 *Procedural Order Governing Judicial Review of Final Order of Director of Idaho Department of Water Resources*. Having a single briefing and hearing schedule will provide for efficient resolution of the issues and will save the parties' time and expense. In addition, IDWR has already lodged a settled agency record in the mitigation plan appeal, and will submit the agency record in this proceeding by October 1, 2010. Since the cases are already proceeding on a near parallel track, consolidation will not prejudice any party and will avoid future multiple appeals on actions involving similar facts and legal issues.

For the reasons set forth above, the Coalition respectfully requests the Court order consolidation of this case (Case No. CV-2010-382) with the appeal of the final order on IGWA's Mitigation Plan (Case No. 2010-3075).

¹ The City of Pocatello is not a party to the judicial review proceeding regarding the order on IGWA's Mitigation Plan. See Case No. CV-2010-3075.

MOTION FOR EXPEDITED HEARING

IDWR recently lodged the settled transcript and record with the Court in IGWA's Mitigation Plan appeal (Case No. 2010-3075) on September 13, 2010. Pursuant to the Court's *Procedural Order*, the Coalition's opening brief on appeal is due on October 18, 2010. In addition, the Court recently amended the date for oral argument to December 13, 2010. *See Order Amending Date for Oral Argument on Petition for Judicial Review*. Since the Coalition's opening brief deadline is approximately three weeks away, and oral argument is scheduled for December, the Coalition requests the Court to consider the present motion to consolidate on an expedited basis.

Accordingly, the Coalition hereby moves the Court to shorten the time limit for filing and hearing the motion to consolidate pursuant to I.R.C.P. (7)(b)(3) ("unless otherwise ordered by the court . . ."). The Coalition requests the Court to hear the motion to consolidate on October 8, 2010 at 1:30 p.m. The Coalition is serving the motion to consolidate and motion for expedited hearing upon counsel for the other parties on this day by electronic mail, nine days prior to the proposed date for hearing on both motions, October 8, 2010.

RESPECTFULLY SUBMITTED this 29th day of September, 2010.

CAPITOL LAW GROUP, PLLC



Tom Arkoosh

*Attorneys for American Falls Reservoir
District #2*

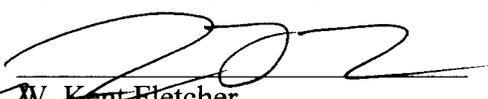
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of September, 2010, I served true and correct copies of the foregoing upon the following by the method indicated:

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Twin Falls, Idaho 83303-2707

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