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Attorneys for the Respondents

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

| | | |
|---------------------------------|---|--|
| IDAHO GROUND WATER |) | Case No. CV-2010-382 |
| APPROPRIATORS, INC., |) | |
| |) | (consolidated Gooding County Cases CV- |
| Petitioners, |) | 2010-382, CV-2010-383, CV-2010-384, CV- |
| |) | 2010-387, CV-2010-388, and Twin Falls |
| vs. |) | County Cases CV-2010-3403, CV-2010-5520, |
| |) | CV-2010-5946) |
| CITY OF POCATELLO, |) | |
| |) | |
| Petitioner, |) | DEPARTMENT OF WATER |
| |) | RESOURCE'S RESPONSE TO |
| vs. |) | SURFACE WATER COALITION'S |
| |) | JOINT MOTION TO LIFT STAY |
| TWIN FALLS CANAL COMPANY, |) | |
| NORTH SIDE CANAL COMPANY, A&B |) | |
| IRRIGATION DISTRICT, AMERICAN |) | |
| FALLS RESERVOIR DISTRICT #2, |) | |
| BURLEY IRRIGATION DISTRICT, |) | |
| MILNER IRRIGATION DISTRICT, and |) | |
| MINIDOKA IRRIGATION DISTRICT, |) | |
| |) | |
| Petitioners, |) | |
| |) | |

vs.)
)
 GARY SPACKMAN, in his capacity as)
 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, MINDOKA IRRIGATION)
 DISTRICT, NORTH SIDE CANAL)
 COMPANY, AND TWIN FALLS CANAL)
 COMPANY)

Gary Spackman and the Idaho Department of Water Resources (“Department”), by and through their counsel of record, hereby submit their response to the *Surface Water Coalition’s Joint Motion To Lift Stay*, filed in this proceeding on October 25, 2013 (“*Motion*”).

In requesting these proceedings be stayed until the Idaho Supreme Court enters a decision on the Surface Water Coalition’s appeal, all parties (including the Surface Water Coalition) agreed that “[t]he issues on appeal in Consolidated 382 relate to the issues raised in the SWC Supreme Court Appeal,” that resolution of the Supreme Court appeal “may moot certain issues in the appeal pending in Consolidated 382,” and that “proceeding with the appeal in Consolidated 382 may result in inconsistent determinations by appellate courts on related issues in the context of the SWC Delivery Call.” *Motion For Stay* (Dec. 10, 2010), at 3. The parties also recognized that “judicial economy” supported a stay of the proceedings. *Id.* This Court in granting the parties’ request stated “[t]he parties agree that the outcome of the SWC Supreme

Court Appeal may affect the consideration and/or resolution of the *Petitions for Judicial Review.*” *Order Granting Motion For Stay* (Sep. 13, 2010), at 2.

These considerations are as valid today as they were in 2010; if anything they carry more weight because the Surface Water Coalition has initiated additional appeals of subsequent Director’s orders in the delivery call proceedings. *Motion* at 3-4. The additional appeals raise issues similar or related to the issues already raised in this consolidated proceeding. Lifting the stay under these circumstances would increase the risk of similar or related issues being addressed in multiple proceedings before this Court. It could also lead to more appeals to the Idaho Supreme Court, resulting in simultaneous proceedings on the same issues and/or orders, such as in the A&B delivery call. Until the Idaho Supreme Court has provided the guidance necessary for resolving the issues the Surface Water Coalition wishes to address, the stay should remain in place to avoid addressing issues that may be mooted, to avoid inconsistent determinations by appellate courts on related issues in the context of the Surface Water Coalition’s delivery call, and to avoid an unnecessary multiplicity of proceedings.

For the foregoing reasons and in the interest of judicial economy, the Department requests that this Court deny the *Motion*.

Respectfully submitted this 30TH day of October, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October 2013, I caused to be served a true and correct copy of the foregoing document by the method(s) indicated below, and addressed to the following:

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