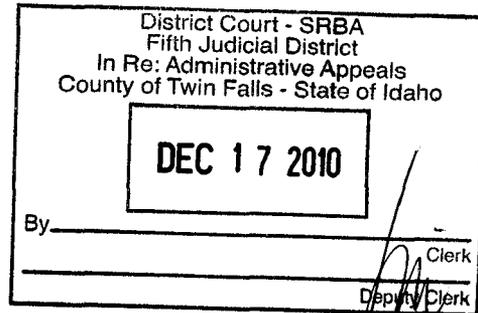


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Attorneys for Respondents



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

IDAHO GROUND WATER)
APPROPRIATORS, INC.,)
)
Petitioners,)
)
vs.)
)
CITY OF POCATELLO,)
)
Petitioner,)
)
vs.)
)
TWIN FALLS CANAL COMPANY, NORTH)
SIDE CANAL COMPANY, A&B IRRIGATION)
DISTRICT, AMERICAN FALLS RESERVOIR)
DISTRICT #2, BURLEY IRRIGATION)

Case No. CV-2010-382

(consolidated Gooding County
Cases CV-2010-382, CV-2010-383,
CV-2010-384, CV-2010-387,
CV-2010-388, and Twin Falls
County Case CV-2010-3403)

ORDER SETTLING THE
AGENCY TRANSCRIPT
AND RECORD

DISTRICT, MILNER IRRIGATION DISTRICT,)
and MINIDOKA IRRIGATION DISTRICT,)

Petitioners,)

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)

The Idaho Department of Water Resources (“Department” or “IDWR”) served its *Notice of Lodging of Transcript and Record* (“Notice”) in this matter upon the parties on October 1, 2010, pursuant to I.R.C.P. 84(f)(5). The *Notice* gave the parties fourteen (14) days from the date of the *Notice* to file any objections to the agency transcript and record.

On October 14, 2010, the City of Pocatello (“City”), and the Surface Water Coalition (“SWC”) filed objections to Agency Record. On October 15, 2010, the Ground Water Users (“IGWA”) timely filed their objections to the Agency Transcript & Record and requested an extension of time for filing a supplemental objection based on a corrected CD of the Record and Transcript as lodged with the Agency. On October 22, 2010, the Ground Water Users’ filed their *Supplement to Objection to Agency Transcript & Record*.

This Order will first address an identical objection filed by the parties to the Record. The Order will next address unique objections filed by IGWA and the SWC.

I.

IDENTICAL OBJECTIONS FILED BY THE PARTIES TO THE RECORD

The City, IGWA, and the SWC each objected that the Record, as lodged with the agency, is incomplete because it does not include the complete and settled record with exhibits and transcripts from *A&B Irr. Dist. et.al. v. IDWR et.al*, Case No. CV-2008-551 (Gooding County Dist. Court, Fifth Jud. Dist.).

The Department agrees that the complete and settled record with exhibits and transcripts from *A&B Irr. Dist. et.al. v. IDWR et.al*, Case No. CV-2008-551 (Gooding County Dist. Court, Fifth Jud. Dist.) should be lodged with the Court and incorporated with the present case. The record at the time of filing with the District Court will reflect inclusion of the record, exhibits and transcripts along with the remaining portion of the pleadings and orders as on record with the Gooding County Dist. Court, Fifth Judicial District in Case No. CV-2008-551, presently on appeal to the Supreme Court, Docket Nos. 38191-2010, 38192-2010, 38193-2010 and 38194-2010.

II.

IGWA'S OBJECTION TO THE RECORD

IGWA's initial objection addressed errors contained on a CD provided to them by the Department. This CD was replaced with an exact duplicate of the CDs provide to the other parties and accurately reflected the information as lodged with the Agency.

IGWA's Supplemental Objection to Agency Transcript & Record filed with the Court on October 22, 2010 identified another document that they object to that is referred to as *Mitigation Plan Hearing Transcript & Exhibits* and contained in the *20100624 Letter Enclosure* folder.

The Department agrees that the *Mitigation Plan Hearing Transcript & Exhibits* should be removed from the record as presently located in a folder titled *20100624 Letter Enclosure*. The record at the time of filing with the District Court will reflect this exclusion.

III.

SWC'S OBJECTION TO THE RECORD

The SWC requested that the following be included in the record:

Exhibit 4010 – Affidavit of Tim Deeg, IGWA et al. v. IDWR et al., Case No. CV-2010-550 (Jerome County Dist. Court, Fifth Jud. Dist.).

Exhibit 4010 was filed in *IGWA et al. v. IDWR et al.*, Case No. CV-2010-550, Jerome County District Court, Fifth Jud. Dist. was also introduced at the “As Applied” hearing held by IDWR on May 25, 2010. Counsel for the SWC introduced the exhibit, the exhibit was objected to by counsel for IGWA, and not admitted into evidence. Because Exhibit 4010 was not admitted into the record at the hearing, it will not be a part of this record before the District Court.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that a timely objection to the agency record and hearing transcript having been made, and with the additions or changes to the agency record, the transcripts and record are deemed settled.

IT IS FURTHER ORDERED that pursuant to Idaho Rule of Civil Procedure 84(j), the City of Pocatello, the Surface Water Coalition, and the Ground Water Users Objections, and this Order shall be included in the record on petition for judicial review. The Department shall provide the parties with replacement copies of the agency record on 1 compact disks consistent with the modifications made in this order.

DATED this 17th day of December 2010.



GARY SPACKMAN
Interim-Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of December, 2010, I caused a true and correct copy of the foregoing **ORDER SETTLING THE AGENCY TRANSCRIPT AND RECORD** to be filed with the Court and served on the following parties by the indicated methods:

<p><i>Original to:</i> SRBA Court 253 3rd Ave. North P.O. Box 2707 Twin Falls, ID 83303-2707 Facsimile: (208) 736-2121</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile</p>
<p>John A. Rosholt John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP P.O. Box 485 Twin Falls, ID 83303 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>C. Thomas Arkoosh CAPITOL LAW GROUP, PLLC P.O. Box 32 Gooding, ID 83330 tarkoosh@capitollawgroup.net</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>

<p>Randall C. Budge Candice M. McHugh Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>Sarah A. Klahn WHITE & JANKOWSKI LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>Garrick L. Baxter Chris M. Bromley Deputy Attorney General Idaho Department of Water Resources 322 East Front Street, 6th Floor P.O. Box 83720 Boise, Idaho 83720-0098</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile</p>


Deborah J. Gibson
Administrative Assistant