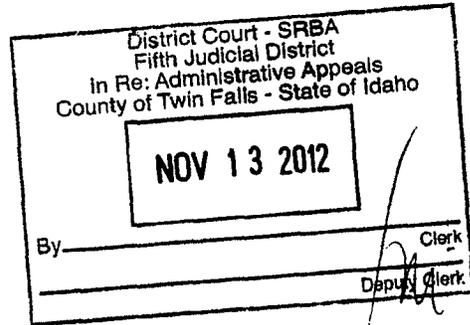


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Attorneys for Respondents

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

A&B IRRIGATION DISTRICT,)
)
Petitioner,)
)
vs.)
)
THE IDAHO DEPARTMENT OF WATER)
RESOURCES and GARY SPACKMAN in his)
official capacity as Interim Director of the)
Idaho Department of Water Resources,)
)
Respondents,)
)
and)
)
THE IDAHO GROUND WATER)
APPROPRIATORS, INC., and THE CITY)
OF POCA TELLO,)
)
Respondents-Intervenors.)

Case No. CV-2011-512

**IDWR RESPONSE TO A&B'S
SECOND AMENDED
PETITION FOR JUDICIAL
REVIEW AND MOTION TO
STRIKE AFFIDAVITS OF
CHRIS M. BROMLEY**

IN THE MATTER OF THE PETITION FOR)
DELIVERY CALL OF A&B IRRIGATION)
DISTRICT FOR THE DELIVERY OF)
GROUND WATER AND FOR THE)
CREATION OF A GROUND WATER)
MANAGEMENT AREA)

COME NOW the Idaho Department of Water Resources ("IDWR") and Gary Spackman, Director of IDWR ("Director"), and respond to A&B Irrigation District's ("A&B") October 30, 2012 *Second Amended Notice of Appeal and Petition for Judicial Review of Agency Action* ("Second Amended Petition for Judicial Review") and *Motion to Strike Affidavits of Chris M. Bromley / Supporting Points & Authorities* ("Motion to Strike Affidavits").¹

On October 29, 2012, IDWR filed a *Motion to Remand Proceeding to IDWR* ("Motion to Remand"). In the Motion to Remand, IDWR stated it no longer supports the April 27, 2011 final order upon which A&B seeks judicial review, and asked the Court to remand the proceeding in order to allow IDWR to issue a final order for judicial review. Subsequently, on October 30, 2012, A&B filed its Second Amended Petition for Judicial Review and Motion to Strike Affidavits. The Motion to Strike Affidavits and the Motion to Remand are set for argument on November 15, 2012.

IDWR supports A&B's right to seek judicial review of the Director's final order in the A&B delivery call. An issue currently before the Court is whether to grant or deny IDWR's Motion to Remand. IDWR respectfully asks this Court to first address the Motion to Remand before the parties are required to move forward on judicial review of the April 27, 2011 final order.

IDWR opposes A&B's Motion to Strike Affidavits. It is within this Court's discretion to grant or deny A&B's motion. *State v. Rubbermaid, Inc.*, 129 Idaho 353, 359, 924 P.2d 615, 621 (1996). On September 14, 2012, the Supreme Court reversed this Court's decision to review IDWR's June 30, 2011 final order, rather the April 27, 2011 final order. *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 2012 WL 4055353 (Idaho 2012). While A&B prevailed before the

¹ Also on October 30, 2012, A&B filed a *Motion to Dismiss Appeals / Supporting Points & Authorities* ("Motion to Dismiss Appeals") in case no. CV 2011-14409 (consolidated Minidoka County Case No. 2011-604). IDWR takes no position on A&B's Motion to Dismiss Appeals.

Supreme Court, it cannot now wipe the record of documents that show what occurred before the agency and this Court. The affidavits and their content are part of the history of this case and show what was considered by the Court and the parties. Therefore, A&B's Motion to Strike Affidavits should be denied.

DATED this 13th day of November, 2012.²



CHRIS M. BROMLEY
Deputy Attorney General
Idaho Department of Water Resources

² The undersigned counsel thought this responsive pleading was filed and served on November 7, 2012. The undersigned counsel discovered on November 13, 2012, shortly after 12:00 p.m., that he did not accomplish filing or service. This error is solely that of the undersigned counsel. The undersigned counsel contacted opposing counsel to inform them of his error and asked if this responsive pleading could be filed and served today, November 13, 2012. Opposing counsel did not oppose the request.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the State of Idaho, employed by the Attorney General of the State of Idaho and residing in Boise, Idaho; and that I served one (1) true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto, and by electronic mail, on this 13th day of November, 2012.

Document(s) served: **IDWR RESPONSE TO A&B'S SECOND AMENDED PETITION FOR JUDICIAL REVIEW AND MOTION TO STRIKE AFFIDAVITS OF CHRIS M. BROMLEY**

Person(s) served:

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