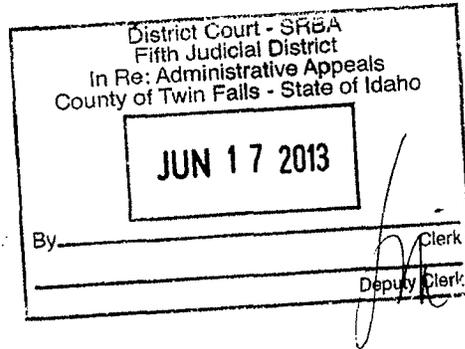


LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

GARRICK L. BAXTER, ISB #6301
CHRIS M. BROMLEY, ISB #6530
Deputy Attorneys General
P.O. Box 83720
Boise, ID 83720-0098
Telephone: (208) 287-4800
garrick.baxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

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.)
)
IDAHO DEPARTMENT OF WATER)
RESOURCES and GARY SPACKMAN)
in his official capacity as Director of)
the Idaho Department of Water Resources,)
)
Respondents,)
)
and)
)
THE CITY OF POCA TELLO, IDAHO)
GROUND WATER APPROPRIATORS,)
INC.)
)
Intervenors.)
_____)

CASE NO. CV 2011-000512
SUPREME COURT DOCKET NO. 41069

**IDWR RESPONSE TO A&B'S
REQUEST TO ADD TO THE RECORD;
IDWR MOTION TO ADD TO THE
RECORD**

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 Respondents, the Idaho Department of Water Resources and Gary Spackman, Director of the Department of Water Resources (collectively referred to herein as “IDWR”), and move this Court, pursuant to Idaho Appellate Rule 19, to add to the record requested by A&B Irrigation District (“A&B”) in its June 4, 2013 *Notice of Appeal* (“Notice”), and to object to one document A&B seeks to add to the record.

The one document IDWR objects being made part of the record is the Idaho Supreme Court’s decision in *A&B Irrig. Dist. v. Idaho Dept. of Water Resources*, 2012 WL 4055353 (hereinafter “Disposed of Appeal”). The basis for the objection is two-fold. First, according to Westlaw, the *Disposed of Appeal* “has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal.” 2012 WL 4055353 * 1. Because the *Disposed of Appeal* has not been released and is subject to change, the record will be confused by its inclusion if the decision is revised. Second, because the *Disposed of Appeal* is a decision of the Idaho Supreme Court, it can and should be cited to, instead of being made a document in the record.

In its *Notice*, A&B stated it did not request a reporter’s transcript. IDWR hereby moves the Court to include in the record the reporter’s transcript from the November 15, 2012 hearing on IDWR’s *Motion to Remand Proceeding*. The transcript is necessary to include in the record because this Court’s November 16, 2012 *Order Denying Motion to Remand* states, “the Court set forth its ruling . . . and the supporting rationale from the bench” *Order Denying Motion to Remand* at 2. Without the transcript from the November 15, 2012 hearing, the record on this

issue will be incomplete. Pursuant to IAR 19(b), IDWR requests that its copy of the transcript be provided in hard copy and electronic format.

In its *Notice*, A&B seeks to include its January 18, 2013 *Opening Brief* and March 8, 2013 *Reply Brief*, yet did not request the response briefing be made part of the record. IDWR hereby moves the Court to include the following documents in the record:

- *IDWR Respondent's Brief* (Feb. 15, 2013)
- *Respondent-Intervenor Idaho Ground Water Appropriators, Inc.'s Response Brief* (Feb. 15, 2013)
- *Respondent-Intervenor City of Pocatello's Response Brief* (Feb. 15, 2013)

Based on the foregoing, IDWR respectfully moves the Court to deny A&B's request to add the *Disposed of Appeal* to the record. IDWR respectfully moves the Court to add the November 15, 2012 transcript to the record, as well as the response briefing submitted by IDWR, IGWA, and the City of Pocatello.

DATED this 14th day of June, 2013.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Chief, Natural Resources Division
Deputy Attorney General



CHRIS M. BROMLEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June, 2013, I caused to be served a true and correct copy of the foregoing document to the following parties by United States mail and electronic email as indicated by the below email addresses:

SRBA District Court 253 3 rd Ave. North P.O. Box 2707 Twin Falls, ID 83303-2707	<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
John K. Simpson Travis Thompson Paul L. Arrington Sarah W. Higer BARKER ROSHOLT & SIMPSON LLP 113 Main Avenue West, Suite 303 P.O. Box 485 Twin Falls, ID 83303-0485 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	Randy C. Budge T.J. Budge Candice M. McHugh RACINE OLSON NYE BUDGE BAILEY P.O. Box 1391 Pocatello, ID 83201 rcb@racinelaw.net tjb@racinelaw.net cmm@racinelaw.net
A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us	Sarah A. Klahn Mitra M. Pemberton WHITE & JANKOWSKI LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com



CHRIS M. BROMLEY
 Deputy Attorney General