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*Attorneys for the Idaho Water Resource Board and the Idaho Department of Fish and Game*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

The IDAHO WATER RESOURCE BOARD,  
and the IDAHO DEPARTMENT OF FISH  
AND GAME,

Petitioners,

v.

The IDAHO DEPARTMENT OF WATER  
RESOURCES,

Respondent,

v.

KURT W. BIRD and JANET E. BIRD,

Cross-Petitioners.

Case No. CV01-20-9661

**PETITIONERS' OBJECTION TO THE  
RECORD LODGED WITH THE  
AGENCY**

IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 74-16187 IN THE NAME OF  
KURT W. BIRD OR JANET E. BIRD

PETITIONERS, the Idaho Water Resource Board and the Idaho Department Fish and Game, by and through their attorneys of record, and pursuant to Rule 84(j)(1)(C) of the Idaho Rules of Civil Procedure and the *Notice of Lodging Agency Transcript and Record with the Agency* (July 21, 2020), hereby file this objection to the record lodged with the Idaho Department of Water Resources (“Department”), and request that the record be corrected, as discussed below.

1. The electronic record lodged with the Department includes three sub-directories, entitled “Agency Record PDF OCR,” “Hearing Exhibits,” and “Hearing Transcript.” The Petitioners object to the file in the “Hearing Exhibits” sub-directory entitled “Bird Exhibit 13.” This file should be “[l]imited to Figures 9 & 10 and Attachment B” of Exhibit 13 as originally offered by the Applicants, Agency Record at 01169,<sup>1</sup> but incorrectly includes the entire exhibit as offered.

During the hearing, the Petitioners objected to Exhibit 13 as offered by the Applicants with the exception of Figures 9, 10, and Attachment B, and the Hearing Officer limited admission of Exhibit 13 to Figures 9 and 10, and Attachment B. Tr., Vol. I, pp. 79–83; Agency Record at 01169. Figures 9, 10, and Attachment B are the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup>–29<sup>th</sup> pages of “Bird Exhibit 13.”<sup>2</sup> The remaining portions of “Bird Exhibit 13” as lodged with the Department (*i.e.*, pdf pages 1–12 and 30–41) should not be included in “Bird Exhibit 13.” Petitioners therefore

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<sup>1</sup> “Agency Record at 01169” refers to the first page of the file entitled “20190828\_IDWR’s Admitted Hearing Exhibit List & Attendance Rosters Aug 28-29,” which is in the “Agency Record PDF OCR” sub-directory of the electronic record lodged with the Department.

<sup>2</sup> These page numbers refer to the pages of the pdf file entitled “Bird Exhibit 13.” The pages of the document itself are not numbered.

request that the record as lodged with the Department be corrected so that “Bird Exhibit 13” consists of only Figures 9 and 10, and Attachment B.<sup>3</sup>

2. The “Agency Record PDF OCR” sub-directory includes copies of all protests to application 74-16187, with the exception of the protest filed by Lemhi Irrigation District on January 17, 2019. The Petitioners request that the record as lodged with the Department be corrected to include a copy of Lemhi Irrigation District’s protest in the “Agency Record PDF OCR” sub-directory.<sup>4</sup>

3. In the “Agency Record PDF OCR” sub-directory, the file entitled “20200618\_Notice of Appeal and Petition for Judicial Review of Final Order Approving Application” was saved as a “.p” file rather than as a “.pdf” file, and cannot be opened unless it is re-saved as a “.pdf” file. Petitioners therefore request that the record as lodged with the Department be corrected to re-save the file entitled “20200618\_Notice of Appeal and Petition for Judicial Review of Final Order Approving Application” as a “.pdf” file.

Respectfully submitted this 4<sup>th</sup> day of August 2020.

LAWRENCE G. WAsDEN  
Attorney General

DARRELL G. EARLY  
Deputy Attorney General  
Chief, Natural Resources Division

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<sup>3</sup> The Petitioners note that certain exhibits they offered were also limited to only certain portions of the original document, and the files for these exhibits in the record lodged with the Department include only the pages that the Hearing Officer admitted. Agency Record at 01172; IDFG IWRB Exhibit 199; IDFG IWRB Exhibit 203; IDFG IWRB Exhibit 204.

<sup>4</sup> The protest filed by Lemhi Irrigation District is one of the documents in the Department’s online “Document Search Results” for application 74-16187.  
<https://idwr.idaho.gov/apps/ExtSearch/RelatedDocs.asp?Basin=74&Sequence=16187&SplitSuffiX=>



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MICHAEL C. ORR  
Deputy Attorney General  
Natural Resources Division

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of August 2020, I caused the original of the foregoing to be filed with the Court, and true and correct copies to be served on the parties, by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT SNAKE RIVER BASIN ADJUDICATION 253 3rd AVENUE NORTH PO BOX 2707 TWIN FALLS, ID 83303-2707	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Facsimile 208-736-2121
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2. Copies to the following:

GARRICK BAXTER IDAHO DEPARTMENT OF WATER RESOURCES 322 E. FRONT STREET, SUITE 648 BOISE, ID 83720-0098	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery (Attn: Kimberle English) <input checked="" type="checkbox"/> Email: <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a>
ROBERT L HARRIS HOLDEN, KIDWELL, HAHN & CRAPO PLLC 1000 RIVERWALK DR., STE 200 P.O. BOX 50130 IDAHO FALLS, ID 83405	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a>
TRAVIS L THOMPSON BARKER ROSHOLT & SIMPSON LLP 163 SECOND AVE WEST P.O BOX 63 TWIN FALLS, ID 83303-0063	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a>
MARIE CALLAWAY KELLNER MATTHEW A NYKIEL IDAHO CONSERVATION LEAGUE P.O. BOX 884	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: <a href="mailto:mkellner@idahoconservation.org">mkellner@idahoconservation.org</a> <a href="mailto:mnykiel@idahoconservation.org">mnykiel@idahoconservation.org</a>

BOISE, ID 83701	
PURCELL RANCH PARTNERSHIP KERRY PURCELL 98 PURCELL LAND LEADORE, ID 83464	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
KERRY PURCELL 1774 LEE CREEK ROAD LEADORE, ID 83464	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
PENNY JANE OGDEN-EDWARDS 2330 S 350 W PERRY, UT 84302	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid

  
 MICHAEL C. ORR