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*Attorneys for Idaho Department
of Water Resources and Gary Spackman*

IN THE SUPREME COURT FOR THE STATE OF IDAHO

THE CITY OF BLACKFOOT,

Petitioner-Appellant,

v.

GARY SPACKMAN, in his capacity as
Director of the Idaho Department of Water
Resources, and THE IDAHO DEPARTMENT
OF WATER RESOURCES,

Respondents-Respondents,

and

A&B IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, and

Supreme Court Docket No. 44207-2016

Bingham County Case
No. CV-2015-1687

**MOTION TO AUGMENT
THE RECORD**

TWIN FALLS CANAL COMPANY,

Intervenors-Respondents.

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 27-12261, In the name of the
City of Blackfoot.

COME NOW the Idaho Department of Water Resources and Gary Spackman in his capacity as Director of the Department (collectively referred to as "IDWR"), by and through their counsel of record, and move the Court pursuant to Idaho Appellant Rule 30, for an order augmenting the record in the above captioned matter with the *Transfer Approval Notice*, Re: Transfer No. 72385, Water Right No. 01-181C (Feb. 15, 2007) attached to this motion.

The specific grounds for this request are that, while the document approving Transfer No. 72385 is included in the record as Exhibit 105, the *Transfer Approval Notice* that accompanied the document is not included in the record. The *Transfer Approval Notice* demonstrates that the document approving Transfer No. 72385 was issued by IDWR as a preliminary order pursuant to Idaho Code § 67-5243.

IDWR requests the Court enter an order granting this motion to augment the record.

RESPECTFULLY SUBMITTED this 3RD day of November 2016.

LAWRENCE G. WASDEN
Attorney General

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



GARRICK L. BAXTER
Deputy Attorney General
Idaho Department of Water Resources

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, unless otherwise noted, I served a true and correct copy of the following described document on the persons listed below by electronic mail and by United States mail, first class, with the correct postage affixed thereto on this 3RD day of November 2016.

Clerk of the Court
IDAHO SUPREME COURT
451 W. State Street
Boise, Idaho 83702


Hand Delivered

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GARRICK L. BAXTER
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State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

February 15, 2007

JAMES E. RISCH
Governor

KARL J. DREHER
Director

CITY OF BLACKFOOT
157 N BROADWAY
BLACKFOOT ID 83221

RE: Transfer No.: 72385
Water Right No.: 1-181c

Transfer Approval Notice

Dear Water Right Holder:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right. Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's homepage on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4947.

Sincerely,



for Shelley Keen, Acting Section Manager
Water Right Permits Section

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2007 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 72385
WATER RIGHTS NO. 1-181C

**CITY OF BLACKFOOT
157 N BROADWAY
BLACKFOOT ID 83221**

**DANIEL R ACEVEDO
ATTORNEY FOR CITY OF BLACKFOOT
282.5 W BRIDGE
BLACKFOOT ID 83221**

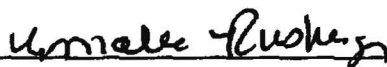
**ARKOOSH LAW OFFICES CHTD
AMERICAN FALLS RESEVOIR DIST #2
PO BOX 32
GOODING ID 83330**

**FLETCHER LAW OFFICE
MINIDOKA IRRIGATION DIST
PO BOX 248
BURLEY ID 83318**

**LING ROBINSON & WALKER
A&B IRRIGATION DIST
BURLEY IRRIGATION DIST
PO BOX 396
RUPURT ID 83350**

**BARKER ROSHOLT & SIMPSON LLP
MILNER IRRIGATION DIST
NORTH SIDE CANAL CO LTD
TWIN FALLS CANAL COMPANY
113 MAIN AVE WEST STE 303
TWIN FALLS ID 83303-6167**

**NEW SWEDEN IRRIGATION DIST
2350 W 1700 S
IDAHO FALLS ID 83402**



**Emalee Rushing
Technical Records Specialist**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of, or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.