

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF WATER)
TO WATER RIGHTS NOS. 36-02356A, 36-07210,)
AND 36-07427.)

(Blue Lakes Delivery Call))

IN THE MATTER OF DISTRIBUTION OF WATER)
TO WATER RIGHTS NOS. 36-04013A, 36-04013B,)
AND 36-07148.)

(Clear Springs Delivery Call))

**ORDER SETTLING
AGENCY TRANSCRIPT
AND RECORD**

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 September 17, 2008, pursuant to I.R.C.P. 84(j). 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 1, 2008, the Idaho Ground Water Appropriators, Inc., North Snake Ground Water District, and Magic Valley Ground Water District (“Ground Water Users”) timely filed *Ground Water Users’ Objection to Agency Record (Objection)*. On October 2, 2008, Clear Springs Foods, Inc. and Blue Lakes Trout Farm, Inc. (collectively “Spring Users”) filed *Spring Users Joinder in Ground Water Users’ Objection to Agency Record.*” No objection was made to the transcript of the agency hearing.

The Ground Water Users in their *Objection* identified three bases for objection to the agency record as lodged on September 17, 2008: 1) pleadings missing from the agency record; 2) exhibits that should be pleadings; and 3) exhibits that should be removed from the record. Each of the objections raised by the Ground Water Users is set forth below followed by the Department's response identifying the location of the document in the record or stating the corrective action taken:

Pleadings Missing from the Agency Record

1. Order Approving IGWA Substitute Curtailment Plan (Blue Lakes Delivery Call) dated July 6, 2005. **IDWR Response:** Document located at Vol. 3, page 441.
2. IGWA's Petition for Reconsideration of July 8, 2005 Order and Request for Stay (Clear Springs) dated July 19, 2005. **IDWR Response:** Document located at Vol. 3, page 547.
3. Order Denying Request for Stay and Scheduling Hearing on petition for Reconsideration of Order Approving IGWA's 2005 Substitute Curtailments (Clear Springs Delivery Call, Snake River Farm) dated May 19, 2006. **IDWR Response:** Document located at Vol. 5, page 836.
4. North Snake Ground Water District and Magic Valley Ground Water District Joint Replacement Water Plan for 2007 and transmittal letter by Randall Budge dated April 16, 2007. **IDWR Response:** Document located at Vol. 7, page 1375; transmittal letter is included in Supplemental Vol. 2, page 4177.
5. Order Approving Dairymen's and IGWA's 2007 Replacement Water Plans, Rescinding 2007 Curtailment, and Setting Hearing and Prehearing Schedule (Clear Springs, Snake River Farm Delivery Call). In the documents provided as the Department's record in this matter, they have indicated that this order is included on page 1903. However, when you look at

the attached documents, the Order that is provided is for the Blue Lakes Delivery Call.

IDWR Response: The objection is correct that the document located at Vol. 9, page 1903 is the order for the Blues Lakes delivery call. The order approving the Replacement Plan for the Snake River Farm delivery call is included in Supplemental Vol. 2, page 4178.

6. IGWA's First Set of Interrogatories and Requests for Production to Blue Lakes and Clear Springs/Snake River Farms dated August 24, 2007. **IDWR Response:**

Discovery normally is not included in the agency record. This document, however, is included as an attachment to IGWA's motion identified in item no. 7 below.

7. IGWA's Motion to Compel Discovery Responses, Motion for Sanctions, and Notice of Hearing dated August 24, 2007. **IDWR Response:** This document with attachment is included in Supplemental Vol. 2, page 4192.

8. IGWA's Brief in Opposition to Blue Lakes' and Clear Springs' Joint Motion for Protective Order and in Support of IGWA's Motion to Compel Discovery dated August 24, 2007. **IDWR Response:** This document is included in Supplemental Vol. 2, page 4224.

9. Order Re Discovery dated September 10, 2007. **IDWR Response:** This document is included in Supplemental Vol. 3, page 4401.

10. IGWA's Disclosure of Lay Witnesses dated October 17, 2007. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4634.

11. Prefiled Lay Testimony of Richard Rau Submitted on Behalf of the City of Paul. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4646.

12. Prefiled Lay Testimony of Travis Rothweiler Submitted on Behalf of the City of Jerome. **IDWR Response:** This document is included in Supplemental Vol. 5 page 4652.

13. Prefiled Lay Testimony of Ralph Martini Submitted on Behalf of the City of Heyburn. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4658.
14. Prefiled Lay Testimony of Wilson F. (Jr.) Churchman Submitted on Behalf of the City of Shoshone. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4664.
15. Prefiled Lay Testimony of Rex L. Strickland Submitted on Behalf of the City of Wendell. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4670.
16. Prefiled Lay Testimony of Darrel Dalrymple Submitted on Behalf of the City of Hazelton. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4676.
17. Disclosure of Lay Witnesses of Intervenors, City of Jerome, Wendell, Shoshone, Hazelton, Heyburn and Paul dated October 17, 2007. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4685.
18. List of Sponsored Exhibits for Cities Hazelton, Heyburn, Jerome, Paul, Shoshone and Wendell (with exhibits attached). **IDWR Response:** This document is included in Supplemental Vol. 5 page 4692.
19. IGWA's Amended Disclosure of Lay Witnesses and Exhibits dated October 18, 2007. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4725.
20. Memorandum in Support of Ground Water Users' Motion for Partial Summary Judgment dated October 19, 2007. **IDWR Response:** This document is included in Supplemental Vol. 5, page 4689.
21. IGWA's Notice of Intent to Provide Rebuttal Testimony from John Church dated November 2, 2007. **IDWR Response:** This document is included in Supplemental Vol. 6, page 4739.

22. Clear Springs Foods, Inc.'s First Supplement to Answers to IGWA's First Set of Interrogatories & Requests for Production to Clear Springs Foods dated November 21, 2007.

IDWR Response: This is a discovery document that would not normally be included in the agency record. The document has been added in Supplemental Vol. 6, page 4781.

23. IGWA's Response to Spring Users' Joint Memorandum Regarding Exceptions to the Hearing Officer's Recommended Order dated April 24, 2008. **IDWR Response:** This document is included in Supplemental Vol. 8, page 5187.

EXHIBITS THAT SHOULD BE PLEADINGS

The following documents were identified as exhibits in the agency record but should be properly identified as pleadings in the agency record: **IDWR Combined Response:** The documents identified below are included in the agency record beginning at Supplemental Vol. 7, page 4646, and have been removed from the compilation of exhibits.

1. IGWA's Third Supplemental Response to Director's June 7, 2005 Order Regarding Replacement Water Plan (Blue Lakes Delivery Call).
2. Direct Testimony of A. Kenneth Dunn.
3. Direct Testimony of Charles M. Brendecke.
4. Direct Testimony of Dean F. Stevenson.
5. Direct Testimony of R. Lynn Carlquist.
6. Direct Testimony of Ronald Dean Carlson.
7. Affidavit of Chuck Brendecke (re: exhibit 429).
8. Economic Importance of ESPRA-Dependant Springflow to the Economy of Idaho (Expert Rebuttal Report of Joel R. Hamilton).

9. Eric J. Harmon, P.E. CV.
10. Evaluation of Localized Spring Flow Source Areas from Crystal Spring to Box Canyon Spring (Eric J. Harmon expert report).
11. Briefing Paper for Surface and Spring Water Participants in the Idaho Governor's Water Summit (Hamilton expert report).
12. Rebuttal Report In the Matter of Distribution of Water to Water Right Nos. 36-04013A, 36-04013B, 36-07148 (Snake River Farm) and Water Right Nos. 36-07568 (Crystal Spring Farm IDWR) (Charles Brockway Expert Rebuttal Report) listed by the Department as files RE6479~1 and REBUTT~1.
13. Rebuttal Testimony and Report of John S. Church.
14. Rebuttal Testimony and Report of John S. Church – November 14, 2007.
15. Rebuttal Testimony of Charles M. Brendecke.
16. Rebuttal Testimony of Ronald Dean Carlson.
17. Affidavit of Daniel V. Steenson in Support of Joint Motion for Partial Summary Judgment.
18. Amended Status Conference Minutes.
19. Certificate of Service.
20. Certificate of Service, Revised Index, and New Pages 936-944 of the Partial Agency Record.
21. Change Sheets to the Depo. of Karl Dreher.
22. Combined Notice of Deposition – Deces Tecum for Timothy Luke, Allen Wyle, Larry Land, Charles Brockway, Eric Harmon and Karl Dreher.

23. Combined Revised Notice of Taking Rule 30 (b)(6) Deposition Duces Tecum of Clear Springs Foods, Inc. & Snake River Farms.

24. IGWA's Brief in Opposition to Blue Lakes' and Clear Springs' Joint Motion for Protective Order and in Support of IGWA's Motion (Volume 2, page 42240 Motion to Compel Discovery filed August 24, 2007).

EXHIBITS THAT SHOULD BE REMOVED FROM RECORD

The following documents were improperly included in the exhibits in the agency record:

1. Affidavit of Norman C. Young (hearing exhibit 316). This affidavit was withdrawn at the hearing and should therefore be excluded from the agency record.


IDWR Response: This document is removed from the agency record based on its having been withdrawn.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that no objection having been made to the agency transcript in this matter, the transcript is deemed settled. Timely objections having been made to the agency record, the record is settled with the changes identified above.

IT IS FURTHER ORDERED that pursuant to Idaho Rule of Civil Procedure 84(j), the Ground Water Users' *Objection*, 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 compact disks consistent with the modifications made in this order.

DATED this 16 day of October 2008.


DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October 2008, the above and foregoing, was served by the method indicated below, and addressed to the following:

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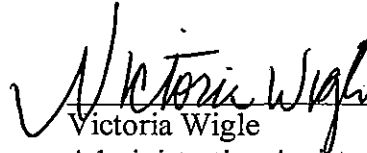
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