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

IDAHO GROUND WATER
APPROPRIATORS, INC.,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, and MATHEW WEAVER
in his capacity as the Director of the Idaho
Department of Water Resources,

Respondents,

and

AMERICAN FALLS RESERVOIR
DISTRICT #2, MINIDOKA IRRIGATION
DISTRICT, A&B IRRIGATION
DISTRICT, BURLEY IRRIGATION
DISTRICT, MILNER IRRIGATION
DISTRICT, NORTH SIDE CANAL
COMPANY, TWIN FALLS CANAL
COMPANY, CITY OF POCA TELLO,
CITY OF BLISS, CITY OF BURLEY,
CITY OF CAREY, CITY OF DECLO,

Case No. CV01-23-13173

**MOTION TO STRIKE IGWA'S
REPLY TO SWC'S OPPOSITION TO
MOTION TO AUGMENT**

CITY OF DIETRICH, CITY OF GOODING, CITY OF HAZELTON, CITY OF HEYBURN, CITY OF JEROME, CITY OF PAUL, CITY OF RICHFIELD, CITY OF RUPERT, CITY OF SHOSHONE, AND CITY OF WENDELL, BONNEVILLE-JEFFERSON GROUND WATER DISTRICT, and BINGHAM GROUNDWATER DISTRICT,

Intervenors.

IN THE MATTER OF THE DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY AND FOR THE BENEFIT OF A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALLS CANAL COMPANY

Respondents the Idaho Department of Water Resources and Mathew Weaver, Director of the Idaho Department of Water Resources (collectively referred to as “Department”), by and through their attorneys of record, pursuant to I.R.C.P. 84(o), hereby move the Court to strike *IGWA's Reply to SWC's Opposition to Motion to Augment*.

On October 16, 2023, the Idaho Ground Water Appropriators, Inc. (“IGWA”), filed a *Motion to Augment Agency Record or Present Additional Evidence Record* (“*Motion to Augment*”) in this case. IGWA’s *Motion to Augment* seeks to augment the agency record in this administrative appeal with a brief and a supporting declaration that were filed in a different court case.

On October 30, 2023, the Department filed *Respondents' Memorandum in Opposition to IGWA's Motion to Augment Agency Record or Present Additional Evidence*

(“*Department’s Opposition to Motion to Augment*”). On October 30, 2023, the Surface Water Coalition filed *Surface Water Coalition’s Opposition to IGWA’s Motion to Augment Agency Record or Present Additional Evidence*.

On November 7, 2023, IGWA filed *IGWA’s Reply to SWC’s Opposition to IGWA’s Motion to Augment* (“*IGWA’s Reply*”). Attached to *IGWA’s Reply* were the documents that IGWA failed to include with its original motion.

ARGUMENT

This Court must strike *IGWA’s Reply* because neither Idaho Rule of Civil Procedure 84 nor the Idaho Appellate Rules authorize a moving party to file a reply brief and IGWA’s last-minute attempt to get the documents into the record prejudices the Department.

IGWA seeks to supplement the record in this proceeding pursuant to Idaho Appellate Rule (“I.A.R.”) 30(a) and Idaho Code § 67-5275(3). *Motion to Augment* at 2.

I.A.R. 30(a) states in relevant part:

At any time before the issuance of an opinion, any party may move the Supreme Court to augment or delete from the settled reporter's transcript or clerk's or agency's record. Such a motion shall be accompanied by a statement setting forth the specific grounds for the request and attaching a copy of any document sought to be augmented to the original motion which document must have a legible filing stamp of the clerk indicating the date of its filing, or the moving party must establish by citation to the record or transcript that the document was presented to the district court. . . . Any party may within fourteen (14) days after service of the motion, file a brief or memorandum in opposition thereto. Unless otherwise expressly ordered by the Supreme Court such motion shall be determined without oral argument.

As pointed out in the *Department’s Opposition to Motion to Augment*, IGWA failed to meet the standard in I.A.R. 30 because IGWA failed to attach a copy of the documents it

was seeking to augment the record with to its motion.¹ *Department's Opposition to Motion to Augment* at 4. Now IGWA tries to fix its oversight by attaching the documents to a reply brief. The problem is that I.A.R. 30 does not authorize the filing of a reply brief.² It only provides the opportunity for filing a motion to augment the record and then a "brief or memorandum in opposition thereto." I.A.R. 30(a). While Idaho Code § 67-5275(3) does not set forth a briefing schedule, allowing IGWA to supplement the record at this point in the proceeding unfairly prejudices the Department because the Department could not comment on the documents in the *Department's Opposition to Motion to Augment*. Allowing IGWA to use a reply brief filed less than 48 hours before the hearing on IGWA's motion to get the records before the Court prejudices the Department because the Department is left without opportunity to timely consider and respond in writing to the over 300 pages IGWA seeks to supplement the record with. The prejudice this creates to the Department plus the fact that IGWA failed to comply with I.A.R. 30(a) justifies the Court striking *IGWA's Reply to SWC's Opposition to Motion to Augment*.

REQUEST FOR ORAL ARGUMENT

The Department requests that oral argument be set on this motion. A *Motion to Shorten Time and Supporting Points* and *Notice of Hearing* have been concurrently filed.

¹ Even if IGWA had attached the documents to the motion, the motion still fails because IGWA failed to show or even allege that the documents were filed or otherwise presented to the Department in the administrative hearing for this matter. *Department's Opposition to Motion to Augment* at 4.

² In addition, I.R.C.P. 84(o) requires motions made under the procedural rules governing judicial review of agency actions to "be accompanied with a supporting memorandum or brief" and allows "[t]he opposing party [] 14 days from the service to file a response or reply brief." I.R.C.P. 84(o) (emphasis added). Also, note that I.A.R. 32 allows motions permitted under the appellate rules to be supported by a brief, statement, or affidavit and allows any party to "file a brief or statement in opposition to the motion within 14 days from service of the motion." As in I.A.R. 30, I.R.C.P. 84(o) and I.A.R. 32 contemplate the filing of a brief or statement in opposition but do not contemplate a reply from the moving party.

CONCLUSION

For the reasons provided above, the Department asks the Court to strike *IGWA's Reply to SWC's Opposition to IGWA's Motion to Augment*.

DATED this 8th day of November 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



GARRICK L. BAXTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of November 2023, I caused to be served a true and correct copy of the foregoing *Motion to Strike IGWA's Reply to SWC's Opposition to Motion to Augment*, via iCourt E-File and Serve, upon the following:

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