

LAWRENCE G. WASDEN
ATTORNEY GENERAL

DARRELL G. EARLY
Chief of Natural Resources Division

GARRICK L. BAXTER, ISB No. 6301
MICHAEL C. ORR, ISB No. 6720
MEGHAN M. CARTER, ISB No. 8863
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
michael.orr@ag.idaho.gov
meghan.carter@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 BLAINE**

SOUTH VALLEY GROUND WATER
DISTRICT and GALENA GROUND
WATER DISTRICT,

Petitioners,

vs.

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

Respondents.

Case No. CV07-21-00243

**RESPONSE TO OBJECTION;
ORDER SETTLING THE AGENCY
TRANSCRIPTS AND RECORD**

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

On August 20, 2021, the Idaho Department of Water Resources (“Department”) served its *Notice of Lodging the Agency Transcripts and Record with the Agency* (“*Notice*”) in this matter 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 objection to the agency transcripts and record. On September 2, 2021, South Valley Ground Water District and Galena Ground Water District timely filed their *Petitioners’ Objection to Agency Record* (“*Objection*”).

RESPONSE TO OBJECTION

The following addresses Petitioners’ requests for inclusion of additional documents in the agency record and corrections, as identified in their *Objection*.

I. OMISSIONS

A. Added to the Agency Record

The Department agrees to include the following documents in the agency record, at the time of filing with the District Court:

- **Idaho Department of Water Resources documents:**
 2. May 17 – Sukow Response to Staff Memorandum
 5. June 28- SVGWD Petition to Stay Curtailment/Request for Expedited Decision/Request for Hearing on Mitigation Plan
 6. June 29- Final Order Denying Mitigation Plan
 7. June 29- Final Order Denying Petition to Stay Curtailment & Granting request for expedited decision and request for hearing
 8. July 1- Notice of hearing re proposed mitigation plan
 9. July 7- SVGWD Amended Proposed Mitigation Plan
 10. July 8- Final Order Approving Mitigation Plan and Staying Curtailment

11. July 9- IGWA Response to Amended Mitigation Plan
12. August 15- Final Order approving amendment to mitigation plan
13. August 20- Amended Certificate of Service
14. August 20- Notice of Amended Certificate of Service

- **SVGWD / GGWD documents:**

2. June 3 – Supplemental Disclosure of Exhibits
3. June 25 – Reply in Support of Objection and Motion to Strike

- **Idaho Fish and Game document:**

9. June 29- IDFG Notice of Response Regarding Request for Agency Action re Beavers

- **Big Wood & Little Wood River Users Association documents:**

1. June 2 - Revised Exhibit List
2. June 3 – Addendum to Revised Exhibit List

- **Coalition of Cities document:**

1. May 19- Notice of Intent to Participate

- **Misc. / Correspondence:**

11. July 3- IDWR letter to Governor Little and Speaker Bedke re Curtailment
12. July 8- IDWR letter to Curtailed users Staying curtailment

B. Not Added to the Agency Record

For the reasons stated below, the Department does not agree to include the following documents in the agency record, at the time of filing with the District Court:

- **Idaho Department of Water Resources documents:**

1. Apr 16 – Tim Luke email to the BWRGWMA Advisory Committee

The email identified above was from a Department employee and was not sent in relation to the administrative agency case referenced in the petition for judicial review, nor was it admitted into evidence at the agency hearing related to this matter. In accordance with I.R.C.P. Rule 84(f), inclusion of the email in the agency record is not required.

3. May 17 – Luke Response to Staff Memorandum

The memorandum identified above was included as bates numbered document 2089, titled “IDWR Exhibit 4—Tim Luke Staff Memorandum (dated 5/17/2021), June 8, 2021,” in the agency record produced for the parties, in connection with the Notice. Document 2089 was admitted as an exhibit in the agency hearing related to this matter. Document 2089 includes Tim Luke’s hand-written corrections and strikethroughs that do not impair a reader’s ability to read the original, printed text. Complying with Petitioners’ request would result in an unnecessary duplicate copy of the memorandum in the agency record.

4. June 8 – Corrected Sukow Response to Staff Memorandum

The corrected memorandum identified above was included as bates numbered document 1819–1905, titled “IDWR Exhibit 2—Jennifer Sukow’s Staff Memo (dated 5/17/2021[, corrected 6/8/2021]), June 7, 2021,” in the agency record produced for the parties, in connection with the *Notice*. Complying with Petitioners’ request would result in an unnecessary duplicate copy of the corrected memorandum in the agency record.

- **SVGWD / GGWD documents:**

- 1. May 13 – Declaration of Travis L. Thompson in Support of Motion for Continuance

The declaration identified above was never filed with the Department and was not admitted into evidence at the agency hearing related to this matter.¹ Since the declaration was not formally filed with the Department or admitted at hearing, it is not related to the administrative agency case referenced in the petition for judicial review. In accordance with I.R.C.P. Rule 84(f), inclusion of the declaration in the agency record is not required.

- **City of Hailey et al. document:**

1. June 2 – Exhibits to Motion in Limine

The exhibits identified above were included as part of bates numbered document 1189–1264, titled “Joint Motion to Strike, Motion in Limine, and Motion to Limit the Scope of Evidence, and Request for Expedited Decision—Cities of Bellevue, Hailey, and Ketchum and Sun Valley Company, June 8, 2021,” in the agency record documents produced for the parties, in connection with the *Notice*. Complying with Petitioners’ request would result in an unnecessary duplicate copy of the exhibits in the agency record.

- **Misc. / Correspondence:**

10. Sept 6, 2017 – Analysis of the Nature and Extent of Hydraulic Separation Between the Lower Basalt Aquifer and the Upper Alluvial Aquifer in the vicinity of Picabo, Idaho (Charles G. Brockway)

The expert report identified above was not filed with the Department in relation to the administrative agency case referenced in the petition for judicial review, nor was it admitted into evidence at the agency hearing related to this matter. In accordance with I.R.C.P. Rule 84(f), inclusion of the expert report in the agency record is not required.

¹ The corresponding bates numbered document 236–239, titled “Corrected Declaration of Travis L. Thompson in Support of Motion for Continuance—South Valley Ground Water District, May 18, 2021,” was filed with the Department and included in the agency record documents produced for the parties, in connection with the Notice.

13. Final Executed Term Sheet

The term sheet identified above is a part of the previously identified, “July 8- Final Order Approving Mitigation Plan and Staying Curtailment” document. The Department already agreed to include the “July 8- Final Order Approving Mitigation Plan and Staying Curtailment” document. Complying with Petitioners’ request would result in an unnecessary duplicate copy of the term sheet in the agency record.

II. ERRORS

Petitioners’ *Objection* identified document “Bates 2875” as missing in the agency record documents produced for the parties, in connection with the *Notice*. The Department realized its error and uploaded bates numbered document 2875 in the same manner as the other agency record documents produced for the parties, in connection with the *Notice*. Document 2875 will be included in the agency record, at the time of filing with the District Court

Petitioners’ *Objection* identified document “Bates 2684-2707 (Miller Exhibit 1)” as “missing the exhibits to the report,” in the agency record documents produced for the parties, in connection with the *Notice*. The Department reviewed Miller Exhibit 1 (that was officially admitted during the agency hearing related to this matter) and found it contains no “exhibits to the report.” Miller Exhibit 1 consists of a cover page, an eight-page report, and fifteen pages of appendices (i.e., Appendix A–D). The Department does not agree that an error occurred regarding the inclusion of Miller Exhibit 1 in the agency record. In accordance with I.R.C.P. Rule 84(f), inclusion of unknown “exhibits to the report” in the agency record is not required. Miller Exhibit 1 will be included in the settled agency record as it was already produced for the parties, in connection with the *Notice*.

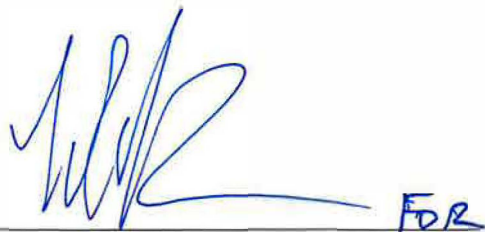
ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that, upon the changes reflected above being made to the agency record, the agency transcripts and record are deemed settled pursuant to I.R.C.P. 84(j).

IT IS FURTHER ORDERED that, pursuant to I.R.C.P. 84(j), *Petitioners' Objection to Agency Record* and this Order shall be included in the agency record on the petition for judicial review. The Department shall provide the parties with a copy of the settled agency transcripts and record.

A copy of the settled agency transcripts and record filed with the District Court have been uploaded to the Department's website. The parties may visit <https://idwr.idaho.gov/legal-actions/district-court-actions/svgwd-and-ggwd-v-idwr/> and follow their browser's document download procedure to obtain a copy of the settled agency transcripts and record after expanding the accordion labeled "Settled Agency Transcripts and Record Documents" and clicking on the PDF titled "Agency Record Documents," the PDF titled "Transcripts," and the zipped folder titled "318, 1465, and 1466."

DATED this 16 day of September 2021.



GARY SPACKMAN
Director
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September 2021, I caused to be served a true and correct copy of the foregoing by iCourt e-filing to:

Albert P. Barker
Travis L. Thompson
Michael A. Short
BARKER ROSHOLT & SIMPSON LLP
apb@idahowaters.com
tlt@idahowaters.com
mas@idahowaters.com

James R. Laski
Heather E. O'Leary
LAWSON LASKI CLARK, PLLC
jrl@lawsonlaski.com
heo@lawsonlaski.com
efiling@lawsonlaski.com

Jerry R. Rigby
Chase Hendricks
RIGBY, ANDRUS
& RIGBY LAW, PLLC
jrigby@rex-law.com
chendricks@rex-law.com

W. Kent Fletcher
FLETCHER LAW OFFICE
wkf@pmt.org

Joseph F. James
JAMES LAW OFFICE, PLLC
efile@jamesmvlaw.com

Candice McHugh
Christopher Bromley
McHUGH BROMLEY, PLLC
cmchugh@mchughbromley.com
cbromley@mchughbromley.com

Sarah Klahn
SOMACH SIMMONS & DUNN
sklahn@somachlaw.com

Michael P. Lawrence
GIVENS PURSLEY LLP
mpl@givenspursley.com

Matthew Johnson
Brian O'Bannon
WHITE PETERSON
icourt@whitepeterson.com



MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources