

EXHIBIT I

District Court - SRBA
 Fifth Judicial District
 In Re: Administrative Appeals
 County of Twin Falls - State of Idaho

JUN - 4 2018

By _____ Clerk
 _____ Deputy Clerk

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

CITY OF POCATELLO,
)
)
) Petitioner,
)
 vs.)
)
)
)
)
) GARY SPACKMAN in his official capacity
) as Director of the Idaho Department of Water
) Resources; and the IDAHO DEPARTMENT
) OF WATER RESOURCES,
)
) Respondents,
)
)
) and)
)
) SPARTAN PORTNEUF, LLC,
)
)
) Intervenor.
)
)
)

Case No. CV-01-17-23146

**ORDER DISMISSING
 PETITION FOR JUDICIAL
 REVIEW**

**I.
 BACKGROUND**

This matter concerns an application for transfer filed by the City of Pocatello with respect to water rights 29-2274, 29-2338, and 29-7375. R., 1. The subject water rights were decreed in the Snake River Basin Adjudication. They cumulatively authorize the City to divert 21.45 cfs of ground water for municipal purposes pursuant to 13 shared points of diversion. *Id.* Under the rights, the entire authorized diversion rate can be diverted from any one of the shared diversion points. *Id.* The City’s application seeks to change the location of one diversion point – well 39 – approximately 1/2 mile to the north. *Id.* In addition, the City’s application seeks 11 shared points of diversion as opposed to 13.¹ *Id.*

¹ The City asserts its omission of two decreed points of diversion in its transfer application was inadvertent. That said, it admits the two omitted points of diversion “are not (and have not been) among the City’s active points of

On September 26, 2016, Spartan Portneuf, LLC (“Spartan”) protested the proposed transfer. *Id.* at 21. Spartan owns water right 29-13425, which authorizes it to divert .676 cfs of ground water for irrigation and stock water purposes. The well Spartan uses is located approximately 300 feet north of one of the points of diversion authorized under the City’s rights – well 44. Spartan alleges the City’s operation of well 44 has been and continues to be injurious to its senior use. *Id.* at 21. It alleges further that the proposed transfer will exacerbate the injury. *Id.*

On June 27, 2017, the City moved to dismiss Spartan’s protest, arguing that it is not related to the changes being proposed. *Id.* The hearing officer agreed:

Spartan’s protest does not identify any issues related to the proposed change for Well 39. The protest does not even refer to Well 39 or the existing or proposed points of diversion for Well 39. Spartan’s protest focuses entirely on Well 44, which is located over 12 miles away from Well 39. Application 81155 does not propose to change the diversion rate authorized at Well 44 in any way. Pocatello is already authorized to divert the full quantity listed on water right 29-2274, 29-2338 and 29-7375 from Well 44. If Application 81155 were approved, the authorized diversion rate from Well 44 will not increase.

Id. at 114-115. Asserting that Idaho Code § 42-222(1) only provides for protest against “the proposed change,” the hearing officer issued a *Preliminary Order* dismissing Spartan’s protest as defective and approving the transfer.² *Id.* at 116. In so doing, he noted that “[i]f Pocatello’s operation of Well 44 is causing injury to Spartan’s water rights, the proper forum to address such injury is within a delivery call proceeding.” *Id.* at 114.

Spartan subsequently filed exceptions to the *Preliminary Order*, asserting that the hearing officer erred in dismissing its protest. *Id.* at 145. The Director agreed:

The Director disagrees with the hearing officer’s conclusion that “Spartan’s protest does not identify any issues related to the proposed change for Well 39.” As the hearing officer explained, Spartan argues “that eliminating points of diversion or changing the location of Well 39 may possibly increase the demand in Well 44” and “exacerbate the alleged injury to the Spartan Well.” In other words, Spartan asserts the changes proposed . . . will cause Pocatello to alter the way it operates its system to “shift more demand to Well 44 and exacerbate the alleged injury to the Spartan Well resulting from operation of Well 44.” While

diversion” under the water rights, and does not challenge “the abandonment of these points of diversion.” *Opening Br.*, 10-11.

² The protest was dismissed pursuant to IDAPA 37.01.01.304, which provides that “[d]effective, insufficient or late pleadings may be returned or dismissed.”

the hearing officer is correct that “Pocatello is already authorized to divert the full quantity listed on water rights 29-2274, 29-2338 and 29-7375 from Well 44” that does not necessarily mean “the expected operation of the system is of little consequence in an injury analysis.” It is conceivable that Spartan could present evidence at a hearing regarding Pocatello’s current operation of its system and evidence that the changes proposed . . . will cause Pocatello to shift operation of its system to demand more water from Well 44 and injure the Spartan Well.

Id. at 217-218 (internal citations omitted). The Director issued an *Order* remanding the matter to the hearing officer to conduct “a hearing including Spartan as a protestant.” (“*Remand Order*”).

Id. at 219. In the *Remand Order* the Director also denied the City’s request that all evidence regarding well 44 be excluded from the hearing. *Id.*

On December 15, 2017, the City filed a *Petition* seeking judicial review of the *Remand Order*. It asserts the *Remand Order* is contrary to law and requests that the Court set it aside. A hearing on the *Petition* was held before the Court on May 10, 2018.

II.

STANDARD OF REVIEW

Judicial review of a final decision of the director of IDWR is governed by the Idaho Administrative Procedure Act (“IDAPA”). Under IDAPA, the court reviews an appeal from an agency decision based upon the record created before the agency. I.C. § 67-5277. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. I.C. § 67-5279(1). The court shall affirm the agency decision unless it finds that the agency’s findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). Further, the petitioner must show that one of its substantial rights has been prejudiced. I.C. § 67-5279(4). Even if the evidence in the record is conflicting, the Court shall not overturn an agency’s decision that is based on substantial competent evidence in the record. *Barron v. IDWR*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). The petitioner bears the burden of documenting and proving that there was not substantial evidence in the record to support the agency’s decision. *Payette River Property Owners Assn. v. Board of Comm’rs.*, 132 Idaho 552, 976 P.2d 477 (1999).