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Attorneys for Respondents

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME**

IDAHO GROUND WATER APPROPRIATORS, INC.,

Petitioner,

v.

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

Respondents.

Case No. CV27-22-00945

**RESPONDENTS'
OPPOSITION TO
MOTION TO
EXPEDITE BRIEFING
SCHEDULE**

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

IN THE MATTER OF IGWA'S SETTLEMENT
AGREEMENT MITIGATION PLAN

Respondents, the Idaho Department of Water Resources and its Director, Gary Spackman (collectively, “Department”), oppose IGWA’s November 1, 2022 Motion to Expedite Briefing Schedule (“Motion”). The Motion seeks an unspecified but expedited briefing schedule in connection with the Petition for Judicial Review IGWA filed on October 24, 2022 (“Petition”). The Court should deny the Motion for the following reasons.

First, the underlying administrative proceedings are not complete. In accordance with Idaho Code § 42-1701A(3), IGWA requested, and the Director granted, a hearing in the ongoing administrative contested case.¹ The Director scheduled a prehearing conference on November 10, 2022, and the Department expects the hearing process to resolve in due course. Until it does, judicial review is premature and not available to IGWA. Accordingly, the Department is concurrently filing a motion to dismiss IGWA’s Petition because IGWA has not exhausted its administrative remedies.

Second, IGWA has not identified a valid legal basis for its request. Although the Motion cites I.R.C.P. 84(o), (p), and (r) and I.A.R. 34(c), none of those provisions mention or authorize a motion to expedite or shorten the briefing schedule prescribed in the Court’s Procedural Order. In fact, I.A.R. 34(c) prescribes the same briefing schedule as the Procedural Order, and no other Appellate Rule provides for shortening or expediting the prescribed schedule. *See* I.R.C.P. 84(r). Where, as here, a statute or the Appellate Rules do

¹ A copy of the Director’s October 13, 2022 Order Granting Request for Hearing; Notice of Prehearing Conference (“Hearing Order”) is available at: <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/CM-MP-2016-001/CM-MP-2016-001-20221013-Order-Granting-Request-for-Hearing-Notice-of-Prehearing-Conference.pdf>. IGWA has chosen to refer to the Hearing Order as the “Reconsideration Order.” *Petition* ¶ 1. But, as its title amply demonstrates, the October 13 order grants IGWA’s request for a hearing under Idaho Code § 42-1701A(3). Because the Director granted IGWA’s hearing request, he deemed IGWA’s request for reconsideration moot pending the hearing—in which IGWA may raise all its alleged grounds for reconsideration. *Hearing Order* at 2.

not specifically address a point of procedure, the procedure “shall be in accordance with the practice usually followed in such or similar cases,” or as directed by the Court. I.A.R. 48. The Idaho Supreme Court holds that “good cause” is the standard for a motion shorten the time for summary judgment briefing in civil suits. *Gordon v. U.S. Bank Nat’l Ass’n*, 166 Idaho 105, 112–13, 455 P.3d 374, 381–82 (2019). Similarly, I.A.R. 34(d) requires a “clear showing of good cause” to extend an appellate briefing schedule. Although the Motion fails to say so, it should be reviewed under the good cause standard because that is the standard for similar cases.

Third, IGWA has not made a clear showing of good cause for shortening the briefing schedule in the Court’s Procedural Order. IGWA’s only reason for expediting this proceeding is the alleged need to “definitively adjudicate IGWA’s obligations” under an approved mitigation plan “prior to commencement of the 2023 irrigation season so that IGWA’s members know the extent of their mitigation obligations in 2023.” IGWA’s Br. Supp. Motion at 2. This is insufficient.

IGWA’s urgency in this Court cannot be reconciled with the fact that it requested, and the Director granted, an administrative hearing under Idaho Code § 42-1701A(3). As the Department’s motion to dismiss explains, that hearing is a mandatory precondition for judicial review. And, as a practical matter, the hearing will assist the Court with judicial review by further developing the administrative record. That said, it is possible to expedite the remaining steps of the administrative process, and the Department will consider doing so if requested *in the administrative process*. See, e.g., IDAPA 37.01.01.510, .550. In this Court, however, the purpose of the prescribed briefing schedule is to give all parties an adequate and fair opportunity to respond to IGWA’s arguments once the administrative


record has been developed fully. *See Gordon*, 166 Idaho at 113, 455 P.3d at 382. Because the administrative record will continue to develop, expediting this premature judicial review proceeding would prejudice the Department and is inconsistent with the efficient use of scarce judicial resources.

The Department respectfully requests that the Court deny IGWA's Motion.

DATED this 9th day of November 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November 2022, I caused to be served a true and correct copy of the foregoing *Respondents' Opposition to Motion to Expedite Briefing Schedule* via iCourt E-File and Serve, upon the following:

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