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Attorneys for Respondents

**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 GARY SPACKMAN
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,
CITY OF DIETRICH, CITY OF

Case No. CV01-23-13173

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

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

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

On August 30, 2023, the Idaho Department of Water Resources (“Department”) served its *Notice of Lodging the Agency Transcript 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 transcript and record. On September 13, 2023, *IGWA’s Objection to the Agency Record and Transcript* (“*IGWA’s Objection*”) was filed.

RESPONSE TO OBJECTION

A. Agency Record

IGWA’s Objection requests that five documents be added to the record. These documents are:

1. *Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, issued by the Department on April 7, 2010.
2. *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, issued by the Department on June 23, 2010.
3. *Third Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, issued by the Department on April 16, 2015.
4. *Ground Water Districts' Brief in Support of Motion for Stay, Motion for Injunctive Relief, Motion to Compel, Motion for Expedited Decision, and Application to Show Cause*, filed May 19, 2023, in Ada County Case No. CV01-23-08187. This brief was incorporated by reference in section 4 of IGWA's Post-Hearing Brief.
5. *Declaration of Thomas J. Budge in Support of Ground Water Districts' Brief in Support of Motion for Stay, Motion for Injunctive Relief, Motion to Compel, Motion for Expedited Decision, and Application to Show Cause, filed May 19, 2023, in Ada County Case No. CV01-23-08187.*

IGWA states that the documents should be included in the record because “they are relevant to IGWA’s petition for judicial review.” *IGWA’s Objection* at 3.

Idaho Rule of Civil Procedure 84(f)(1)(A) states “When statute provides what must be contained in the official record of the agency on judicial review, the agency must prepare the record as provided by statute.”

Idaho Code § 67-5249(2) sets forth the scope of the agency record in this proceeding. It states:

- (2) The record shall include:
 - (a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;
 - (b) evidence received or considered;
 - (c) a statement of matters officially noticed;
 - (d) offers of proof and objections and rulings thereon;
 - (e) the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;
 - (f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and
 - (g) any recommended order, preliminary order, final order, or order on reconsideration.

While subsection (2)(a) states the record shall include “briefs” and (2)(g) states the record shall include “any . . . final order,” implicit in the statute is that the “briefs” and the “order” must have been submitted or issued as part of the administrative hearing.

Otherwise, *all* briefs and *any* order from *any or all* legal matters must be included in the record. That interpretation of the statute is absurd.

After reviewing all five of IGWA’s requested additions, the Director concludes that the documents identified by IGWA do not meet the criteria outlined in Idaho Code § 67-5249 because they were not briefs or final orders submitted as part of the administrative hearing. Accordingly, the Director finds the record should not include the documents.

B. Agency Transcript

IGWA’s Objection seeks clarification of the record through “correction” of two portions of the agency transcript. *IGWA’s Objection* at 5. *IGWA’s Objection* does not contain any allegations that the agency transcript inaccurately reflects the testimony given during the administrative hearing. After reviewing IGWA’s requested transcript

modifications, the Director concludes that the agency transcript accurately reflects the testimony given during the administrative hearing and finds that the agency transcript is accurate without modification. The concerns expressed by IGWA regarding exhibit numbers are best addressed in briefing, not by changing a transcript to something that does not accurately reflect the testimony.

ORDER

IT IS HEREBY ORDERED that the agency transcript and record are now deemed settled pursuant to I.R.C.P. 84(j).

IT IS FURTHER ORDERED that, pursuant to I.R.C.P. 84(j), *IGWA's Objection to the Agency Record and Transcript* 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 transcript and record.

DATED this 27th day of September 2023.



MATHEW WEAVER
Director
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September 2023, I caused to be served a true and correct copy of the foregoing *Response to Objection; Order Settling the Agency Transcript and Record*, via iCourt E-File and Serve, upon the following:

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