

I.
FACTS

On June 4, 2013, the Petitioner filed a *Notice of Appeal* in the above-captioned matter. In the *Notice of Appeal* the Petitioner requested that the Idaho Supreme Court's written opinion in Docket No. 39196-2011 ("*Supreme Court Opinion*") be included in the clerk's record on appeal in addition to those documents automatically included under Idaho Rule of Civil Procedure 28. The *Supreme Court Opinion* was issued by the Court on September 14, 2012, and filed in the above-captioned matter on September 17, 2012.

On June 17, 2013, the Respondents filed a *Response to A&B's Request to Add to the Record; IDWR Motion To Add To The Record* ("*Motion*"). In their *Motion*, the Respondents move the Court to include the following documents in the clerk's record on appeal:

1. Reporter's Transcript from the November 15, 2012 hearing on IDWR's *Motion to Remand Proceeding*,
2. *IDWR Respondent's Brief* (Feb. 15, 2013),
3. *Respondent-Intervenor Idaho Ground Water Appropriators, Inc.'s Response Brief* (Feb. 15, 2013), and
4. *Respondent-Intervenor City of Pocatello's Response Brief* (Feb. 15, 2013).

Additionally, the Respondents move the Court to exclude the *Supreme Court Opinion* from the clerk's record on appeal.

II.
ANALYSIS

A. Motion to add to the record.

Under Idaho Appellate Rule 19, leave of court is not required to request additional transcript or documents be added to the clerk's record on appeal. Rule 19(d) provides that once such a request is made in conformance with Rule 19, "[t]he additional transcript or record requested *shall* be incorporated into the original transcript or record and included in the index and table of contents by the reporter or clerk" (emphasis added). Likewise, Idaho Appellate 28(c) provides that "[t]he clerk's . . . record *shall* also include all additional documents requested by any party in . . . requests for additional documents in the record." (emphasis added).

B. Motion to exclude the *Supreme Court Opinion* from the clerk's record on appeal.

The Respondents do not cite any rule in support of their *Motion* to exclude the *Supreme Court Opinion* from the clerk's record on appeal. Idaho Appellate Rule 29 provides that the reporter's transcript and clerk's record on appeal shall be served on the parties upon completion. Once served, "the parties shall have 28 days from the date of the service . . . within which to file objections to the transcript or the record, including requests for corrections, additions or deletions." Since the clerk's record on appeal has not been completed or served on the parties, the Respondents' *Motion* to exclude the *Supreme Court Opinion* is premature. That said, the Court in an exercise of its discretion will take up the *Motion* at the appropriate time under I.A.R. 28 following the completion and service of the clerk's record on appeal on the parties.

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. Pursuant to Idaho Appellate Rule 19, leave of court is not required to request additional transcript or documents be added to the record on appeal.
2. The Respondents' *Motion* to exclude the *Supreme Court Opinion* is premature and will be taken up by the Court at the appropriate time under I.A.R. 28 following the completion and service of the clerk's record on appeal on the parties.

Dated June 26, 2013.


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON IDWR RESPONSE TO A&B'S REQUEST TO ADD TO THE RECORD; IDWR MOTION TO ADD TO THE RECORD was mailed on June 26, 2013, with sufficient first-class postage to the following:

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