

COME NOW, the IDAHO GROUND WATER APPROPRIATORS, INC., acting for and on behalf of their members (collectively the “Ground Water Users”), through counsel, and respectfully object, pursuant to Rule 84(j) of the Idaho Rules of Civil Procedure and paragraph 6 of the Court’s Procedural Order, to the agency record filed by the Idaho Department of Water Resources (“Department”) in this matter. There are three main reasons for this objection: (1) certain documents are missing from the record, (2) certain documents need to be corrected in the record, and (3) certain exhibits were not included with the exhibits in the record.

DOCUMENTS THAT ARE MISSING FROM THE RECORD

The agency record filed by the Department did not include the following documents that should have been included. Copies of these documents are included on a disc filed contemporaneously with this objection and are numbered as follows below:

1. Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area dated January 14, 2005 (in addition to the letter dated January 14, 2005).
2. Notice of Application for Approval of Mitigation Plan from Karl Dreher.
3. Application for Approval of Mitigation Plan (AFR) dated February 8, 2005.
4. Idaho Power Company’s Petition to Intervene (GWMA Administration) dated February 14, 2005.
5. Petition Requesting Hearing on Director’s February 14, 2005 Order Denying Request to Designate Eastern Snake Plain Aquifer as a Ground Water Management Area dated March 7, 2005.
6. Order Continuing Hearing dated March 18, 2005.

7. Ground Water Districts' Motion for Continuance of Mitigation Plan Hearing dated March 18, 2005.
8. Surface Water Coalition's Motion to Dismiss the Ground Water Districts' Application dated March 21, 2005.
9. Reclamations' Protest dated March 21, 2005.
10. Notice of Protest dated March 21, 2005.
11. Surface Water Coalition's Protest Against Approval of Proposed Mitigation Plan dated March 21, 2005.
12. Protest and Request for Independent Hearing Officer dated March 21, 2005.
13. Reclamation's Motion to Dismiss Mitigation Application or in the Alternative to Request Hearing to be Reset dated March 21, 2005.
14. Motion to Dismiss Petition and Brief in Support Thereof dated March 21, 2005.
15. Ground Water Districts' Response to Motions to Dismiss dated April 4, 2005.
16. Water Resource Coalition's Amicus Brief: Pursuit of Delivery Call Against Nonparties to Prior Decrees dated April 13, 2005.
17. Protest, Objection, and Motion to Dismiss "Replacement Water Plans" dated May 5, 2005.
18. Water Resource Coalition Amended Application for Approval of a Mitigation Plan dated May 5, 2005.
19. IGWA Information Submittal Responding to May 6, 2005 Order Regarding IGWA Replacement Water Plan dated May 23, 2005.
20. Reclamation's Response to Petitions for Reconsideration dated May 31, 2005.
21. Notice of Status and Scheduling Conference dated June 3, 2005.

22. Objection to Motion to Consolidate Formal Proceedings on Amended Order of May 2, 2005 with Proceedings for Approval of Mitigation Plan dated June 27, 2005.
23. Reclamation's Opposition to IGWA's Motion to Consolidate dated June 29, 2005.
24. Idaho Power Company's Opposition to IGWA's Motion to Consolidate the Contested Matter on the Director's May 2, 2005 Amended Order with the Contested Matter on the Mitigation Plan Approval dated June 29, 2005.
25. IGWA's Reply Brief on the Mitigation Plan Delivery Call Consolidation Issue dated July 6, 2005.
26. IGWA's Initial Disclosures dated August 5, 2005.
27. Surface Water Coalition's Petition for Hearing on Director's July 22, 2005 Supplemental Order and Director's Amended Order of May 2, 2005 as Amended and Supplemented dated August 5, 2005.
28. Report on Expected Lay Witnesses dated August 18, 2005.
29. IGWA's Initial List of Issues of Fact and Law for Hearing dated August 18, 2005.
30. Surface Water Coalition's List of Issues of Fact and Law for Hearing on Director's May 2, 2005 Amended Order dated August 18, 2005.
31. State Agency Ground Water Users' Issues of Fact and Law Report of Basis for Witnesses' Testimony dated August 19, 2005.
32. Second Disclosure and Issues of Law and Fact Submitted by Minidoka Irrigation District dated August 19, 2005.
33. Report of General Basis of Witness Testimony for Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company dated August 19, 2005.

34. Pocatello's List of Issues of Fact and Law and Summary of Witness Testimony dated August 19, 2005.
35. Reclamation's List of Issues and General Basis of Lay Witness Testimony dated August 19, 2005.
36. Idaho Dairymen's Association List of Issues of Fact and Law dated August 19, 2005.
37. Report on the General Basis of Witnesses' Testimony dated August 19, 2005.
38. IGWA's, Pocatello's and State Agency Ground Water Users' Joint Written Request to Depose Idaho Department of Water Resources Employees dated August 23, 2005.
39. Surface Water Coalition's Objection to Proposed Deposition Schedule of IDWR Employees Submitted by IGWA Pocatello State Agency Ground Water Users dated August 24, 2005.
40. Joint Supplemental Disclosure of Expert Witnesses dated September 1, 2005.
41. Reclamation's Disclosure of Expert Witnesses dated September 1, 2005.
42. IGWA Supplemental Expert Witness Disclosure dated September 2, 2005.
43. City of Pocatello's Disclosure of Expert Witnesses dated September 2, 2005.
44. Order Regarding Protests and Motions to Dismiss Mitigation Plan, Appointment of Independent Hearing Officer, Motion to Consolidate Mitigation Plan Proceeding with Delivery call Proceeding, and Motion to Amend Mitigation Plan dated September 13, 2005.
45. IGWA and the City of Pocatello's Joint Request for Deposition of Additional IDWR Employees dated September 20, 2005.
46. Affidavit of Charles M. Brendecke in Support of IGWA's and Pocatello's Response to Motion for Partial Summary Judgment dated April 26, 2006.

47. Letter from Lynn Tominaga to Karl Dreher dated July 10, 2006.
48. Letter from Josephine Beeman to John Simpson dated March 28, 2007.
49. Ground Water Districts' Joint Replacement Water Plan for 2007 dated May 8, 2007.
50. Affidavit of Charles M. Brendecke in Support of Ground Water Districts' Joint Replacement Water Plan for 2007 dated May 8, 2007.
51. IGWA's Second Supplemental Expert Witness Disclosure dated August 10, 2007.
52. Order Re Pocatello's Motion to Compel dated September 14, 2007.
53. Affidavit of Norman Young.
54. Direct Testimony of Steven M. Thurin.
55. Direct Testimony of David B. Shaw.
56. Expert Testimony of Charles E. Brockway, P.E. Ph.D.
57. Direct Testimony of John Koreny.
58. Response to IGWA's Motion for Reconsideration of Order Denying IGWA's Motion to Participate dated November 1, 2007.
59. Rebuttal Report of Charles M. Brendecke dated November 7, 2007.
60. Rebuttal Testimony of Ronald Dean Carlson dated November 7, 2007.
61. Reclamation's Lay Witness and Exhibit List dated November 14, 2007.
62. IGWA's Lay Witness Disclosure dated November 14, 2007.
63. Joint Response to Stipulated Motion to Amend Schedule dated November 30, 2007.
64. Joint Motion to Compel Discovery Responses and Notice of Hearing dated December 14, 2007.

65. City of Pocatello's Supplemental Disclosures of Witness Testimony and Errata dated December 26, 2007.

66. Direct Testimony of Dan Shewmaker

67. Joint Motion to Strike Prefiled Lay Testimony of Surface Water Coalition and Memorandum in Support dated January 11, 2008.

DOCUMENTS THAT NEED TO BE CORRECTED IN THE AGENCY RECORD

The following is a list of documents that need to be corrected in the agency record:

1. Agency Record Page 5369 should be corrected to be "Direct Testimony of Albert Lockwood dated January 4, 2008."

2. Agency Record Page 5505 is a repeat of Agency Record Page 5215.

3. Agency Record Page 5521 should be corrected to be "Direct Testimony of Dean Stevenson, Dated January 8, 2008."

4. Agency Record Page 5588 is a repeat of Agency Record Page 5349.

5. Agency Record Page 5659 is a repeat of Agency Record Page 2580.

EXHIBITS THAT ARE NOT IN THE RECORD

The following exhibits were not included in the agency record and should be added:

1000 to 1023, 3034, 3036, 3046, 3062, 4154A, 4154B, 4155A, 4156A, 4168 to 4183, 4212 to 4213, 4300, 4402, 4500 to 4505, 4600 to 4603, 4611, 7000 to 7006, 7018, 8000 to 8044, 8046 to 8059, 8061 to 8070, 8072 to 8078, 8081 to 8119, 8121, 8125 to 8149, 8190, 8193 to 8194, 8200 to 8204, 8211 to 8231, 9000, 9100, 9103, 9200, 9300, 9400, 9500, 9600, 9700, and 9707 to 9713. IGWA is providing an electronic copy of the missing exhibits its witnesses sponsored at the hearing which are those exhibits in the 4000 series listed above.

In addition, pages 5215 to 5223 of the record were not produced and were not reserved in the index. IGWA would like for the Department to clarify what these pages consist of and produce them or in the alternative, declare these pages reserved.

Respectfully submitted this 20th day of January 2009.

RACINE OLSON NYE BUDGE &
BAILEY

By: 
CANDICE M. MCHUGH
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January 2009, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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