LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

GARRICK L. BAXTER, ISB #6301
EMMI L. BLADES, ISB #8682
Deputy Attorneys General
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
emmi.blades@idwr.idaho.gov

Attorneys for Respondents

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

IDAHO GROUND WATER APPROPRIATORS, INC., Petitioner, vs. CITY OF POCATELLO, Petitioner, vs. TWIN FALLS CANAL COMPANY, NORTH SIDE CANAL COMPANY, A&B IRRIGATION DISTRICT, A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, and MINIDOKA IRRIGATION DISTRICT, Petitioners,	**Case No. CV-2010-382** (consolidated Gooding County Cases CV-2010-382, CV-2010-383, CV-2010-384, CV-2010-387, CV-2010-388, Twin Falls County Cases CV-2010-3403, CV-2010-5520, CV-2010-5946, CV-2012-2096, CV-2013-2305, CV-2013-4417, and Lincoln County Case CV-2013-155) **ORDER SETTLING THE AGENCY RECORD AND TRANSCRIPT**

vs.

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

Respondents.

IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR 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

On December 13, 2010, this proceeding was stayed by order of the District Court until the issuance of a decision by the Idaho Supreme Court in the Surface Water Coalition Appeal, Case No. 38193-2010 ("SWC Supreme Court Appeal"). On December 17, 2010, the Idaho Department of Water Resources ("Department") filed the *Order Settling the Agency Transcript and Record* with the Court. The decision in the SWC Supreme Court Appeal was issued on December 17, 2013. On February 24, 2014, the Court issued the *Order Amending In Part Procedural Order Governing Judicial Review of Final Orders of Director of Idaho Department of Water Resources*, thereby lifting the stay and amending the procedural deadlines in this proceeding.

The Department served its *Notice of Lodging Supplemental Agency Record with the Agency* ("Notice") in this matter on March 10, 2014, pursuant to I.R.C.P. 84(f)(5). No additional transcripts were added to the agency record. The Notice gave the parties fourteen (14) days from the date of the Notice to file any objection to the agency record.

On March 12, 2014, the Department informed the parties that transcript of the "Hearing on IGWA's and City of Pocatello's Petitions for Rehearing on July 24, 2009 Order on Petition for Judicial Review," held on February 22, 2010, in the Gooding County Case No. CV-2008-551, will be included in the record at the time of filing with the District Court. No objections to the inclusion of this transcript have been made by the Parties.

On March 21, 2014, the City of Pocatello ("Pocatello") and the Surface Water Coalition ("SWC") filed objections to the Agency Record.

Pocatello's Objection requested the addition of five (5) documents from the record in the Gooding County Case No. CV-2008-551, and two (2) documents filed in the Idaho Supreme Court consolidated appeal, Docket No. 38191-2010, 38192-2010, and 38193-2010. Pocatello's Objection also informed the Department of a clerical error in the record.

The Department has no objection to the inclusion of the documents requested by Pocatello and the record at the time of filing with the District Court will reflect the inclusion of these documents. The Department will also address the clerical error.

The SWC's Objection requested the inclusion of the background calculation data to the Agency Record DVD for the following orders issued by the Department in this contested case on appeal, Docket No. CM-DC-2010-001:

1) *Order Revising April 2010 Forecast Supply (Methodology Step 6)*, dated August 10, 2010;
2) *Order Revising April 2010 Forecast Supply (Methodology Step 7)*, dated September 17, 2010; and
3) *Final Order Establishing 2010 Reasonable Carryover (Methodology Step 9)*, dated December 23, 2010.

The Department has no objection to the inclusion of the background calculation data to the Agency Record DVD with the exception of the request No. 3. The *Final Order Establishing 2010 Reasonable Carryover (Methodology Step 9)* was issued by the Department on November 30, 2010, not December 23, 2010. The background calculation data from the November 30, 2010 Final Order will be added to the Agency Record DVD.

The SWC's Objection requested the addition of the following documents and supporting data from the record in this contested case on appeal, Docket No. CM-DC-2010-001:

1) *Notice of Change of Name of Firm*, dated January 4, 2013; and
2) *Travis L. Thompson Letter to Director Gary Spackman, CD with irrigated acreage information attachment*, dated March 29, 2013.

The Department has no objection to the inclusion of these documents and supporting data requested by the SWC and the record at the time of filing with the District Court will reflect their inclusion.

The SWC's Objection requested the addition of the following documents and supporting data from the record in this contested case on appeal, Docket No. CM-DC-2010-001:

1) *AFRD #2 Letters to Director Gary Spackman* (2012, 2013); and
2) *Minidoka Irrigation District Emails and/or Letter to IDWR, irrigated acreage information attachment* (2012, 2013).

While these two requests do not specifically identify what documents the SWC is requesting, the Department has reviewed its files and located responsive documents. Specifically, with respect

to the first request, the Department located two letters to Director Spackman regarding shape files from AFRD #2 signed by Lynn Harmon dated February 23, 2012, and March 7, 2013. With respect to the second request, the Department located an email from Minidoka Irrigation District to Victoria Wigle dated March 16, 2012, with Minidoka Irrigation District's shape file attached. The Department also located a letter sent by email to Director Spackman signed by Kent Fletcher dated March 26, 2013, with Minidoka Irrigation District's shape file showing total irrigated acres attached.

The Department has no objection to the inclusion of these documents and supporting data requested by the SWC and the record at the time of filing with the District Court will reflect their inclusion.

The SWC's Objection requested the addition of the following documents and supporting data from the record in this contested case on appeal, Docket No. CM-DC-2010-001:

1) Water District 01 June 11, 2013 Storage Allocation, and any data regarding the calculation of AFRD #2's 2013 storage allocation, referenced in the Director's *Order Releasing IGWA from 2012 Reasonable Carryover Shortfall Obligation (Methodology Step 5)*, dated June 17, 2013.

In response to this request, the Department obtained a copy of the 2013 Storage Report dated June 11, 2013, that was used for the 2013 preliminary storage allocations.

The Department has no objection to the inclusion of this document and the record at the time of filing with the District Court will reflect its inclusion.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that timely objections to the agency record having been made, and with the additions or changes to the record, the transcripts and record are deemed settled.

IT IS FURTHER ORDERED that pursuant to Idaho Rule of Civil Procedure 84(j), the City of Pocatello and Surface Water Coalitions' Objections, and this Order shall be included in the record on the petition for judicial review. The Department shall provide the parties with copies of the agency record on two (2) DVDs consistent with the modifications made in this order.

DATED this 3rd day of April, 2014.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of April, 2014, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the methods indicated:

Original to:
SRBA Court
253 3rd Ave. North
P.O. Box 2707
Twin Falls, ID 83303-2707
Facsimile: (208) 736-2121

- [x] U.S. Mail, postage prepaid
- [ ] Hand Delivery
- [ ] Overnight Mail
- [ ] Facsimile

John A. Rosholt
John K. Simpson
Travis L. Thompson
Paul L. Arrington
BARKER ROSHOLT & SIMPSON, LLP
196 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
jks@idahowaters.com
tlt@idahowaters.com
pla@idahowaters.com

- [x] U.S. Mail, postage prepaid
- [ ] Hand Delivery
- [ ] Overnight Mail
- [ ] Facsimile
- [x] Email

C. Thomas Arkoosh
ARKOOSH LAW OFFICES
P.O. Box 2900
Boise, ID 83701-2900
tom.arkoosh@arkoosh.com

- [x] U.S. Mail, postage prepaid
- [ ] Hand Delivery
- [ ] Overnight Mail
- [ ] Facsimile
- [x] Email

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, ID 83318
wkf@pmt.org

- [x] U.S. Mail, postage prepaid
- [ ] Hand Delivery
- [ ] Overnight Mail
- [ ] Facsimile
- [x] Email

Randall C. Budge
Thomas J. Budge
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

- [x] U.S. Mail, postage prepaid
- [ ] Hand Delivery
- [ ] Overnight Mail
- [ ] Facsimile
- [x] Email

A. Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, ID 83201
dtranmer@pocatello.us

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Sarah A. Klahn
Mitra Pemberton
WHITE & JANKOWSKI LLP
511 Sixteenth Street, Suite 500
Denver, CO 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

GARRICK L. BAXTER
Deputy Attorney General