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Vol. **80** **85** IN THE

**SUPREME COURT
OF THE
STATE OF IDAHO**

ISC #44583, 44584, 44585
Bonner #CV2009-1810

Valiant Idaho, LLC
Cross-Claimant/Respondent

vs.

**North Idaho Resorts
JV, LLC
VP Incorporated**
Cross-Defendants/Appellants

CLERK'S RECORD ON APPEAL

*Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Bonner*

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Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

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Writ of Execution (Continued) – filed 10/05/2016	Vol. LVI - 6801
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2017 JUL 10 AM 10:32

CLERK DISTRICT COURT

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
DISTRICT DIVISION**

MINUTE ENTRY

CASE NOS.: Bonner County CV2009-1810
ISC 44583, 44584, 44585

CASE NAME: Valiant Idaho LLC vs. North Idaho Resorts; JV, LLC; and VP
Incorporated

DATE: July 10, 2017

RE: Requested Documents for Amended Clerk's Record on Appeal

Between September 9, 2016 and May 25, 2017, the Court received a number of Appeals, Amended Appeals, and Requests for Additions to the Clerk's Record for the above case.

The following list of requested documents were not found and will not be included in the Amended Clerk's Record that will be presented to Parties on or before July 21, 2017:

September 9, 2016: Notice of Appeal by North Idaho Resorts, LLC (Attorney S. Weeks)

1. 08/19/2014 Defendant: Valiant Idaho LLC, Appearance by Richard L. Stacey
 - This is an action/clerical entry – no document exists
2. 08/04/2015: Objection to Motion for an Order of Sale of Real Property
 - This is a duplicate of a previous entry
 - Entered by Deputy Clerk L. Oppelt 08/04/2015 at 4:46pm
 - Entered by Deputy Clerk T. Bowers 08/04/2015 at 4:46pm

September 20, 2016: Notice of Appeal by JV L.L.C. (Attorney G. Finney)

1. 10/19/2015 Continued (Motion 10/23/2015 1:00PM) JV L.L.C's Motion to Strike Valiant's Third Motion for Summary Judgment
 - This is a clerical entry indicating the hearing was continued – no document exists

October 6, 2016: Notice of Amended Appeal by North Idaho Resorts, LLC (Attorney S. Weeks)

1. 08/19/2014 Defendant: Valiant Idaho LLC, Appearance by Richard L. Stacey

- This is an action/clerical entry – no document exists
- 2. 07/20/2016 VP Inc.'s and NIR's Objection and Motion to Disallow Memorandum of Costs and Attorney Fees
 - This document is not listed on the ROA or found in the file
 - A similarly-named document, "VP Inc.'s Opposition to Valiant Idaho's Memorandum of Costs and Attorney Fees" is included in the Clerk's Record

April 26, 2017: Objection to Lodged Record and Objection to Certificate of Mailing of Clerk's Record (Attorney S. Weeks)

1. 08/19/2014 Defendant: Valiant Idaho LLC, Appearance Richard L. Stacey
 - This is an action/clerical entry – no document exists
2. 07/20/2016 VP Inc.'s and NIR's Objection and Motion to Disallow Memorandum of Costs and Attorney Fees
 - This document is not listed on the ROA or found in the file
 - A similarly-named document, "VP Inc.'s Opposition to Valiant Idaho's Memorandum of Costs and Attorney Fees" is included in the Clerk's Record

Other

1. 01/14/2015 Valiant Idaho, LLC's Identification of Trial Exhibits
 - Clerical error on date
 - Correct date is 01/14/2016 and document can be located in Clerk's Record on correct date

C. Flowers
Deputy Clerk
Bonner County

cc: file

2017 JUL 27 11 09:56
CLERK OF DISTRICT COURT
DEPUTY

Susan P. Weeks, ISB. No. 4255
Daniel M. Keyes, ISB No. 9492
JAMES, VERNON & WEEKS, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
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sweeks@jvwlaw.net

Supreme Court No. 44583

Attorneys for Defendants VP and NIR.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

VALIANT IDAHO, LLC, an Idaho limited liability company,

Cross-Claimant/Third Party Plaintiff/Respondent,

vs,

VP, INCORPORATED, an Idaho corporation,

Cross-Defendant/Appellant,

and

GENESIS GOLF BUILDERS, INC., formerly known as National Golf Builders, Inc., a Nevada corporation,

Plaintiff,

vs.

PEND OREILLE BONNER DEVELOPMENT, LLC, a Nevada limited liability company; R.E. LOANS, LLC, a California limited liability company; DAN S.

Case No. CV-2009-01810

VP AND NIR'S OBJECTION TO LODGED RECORD ON APPEAL

OBJECTION TO LODGED RECORD: 1

FILED - COPY
JUL 28 2017
Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

78

JACOBSON, an individual; SAGE HOLDINGS LLC, an Idaho limited liability company; STEVEN G. LAZAR, an individual; PENSCO TRUST CO. CUSTODIAN FBO BARNEY NG; MORTGAGE FUND '08 LLC, a Delaware limited liability company; NORTH IDAHO RESORTS, LLC, an Idaho limited liability company; JV L.L.C., an Idaho limited liability company; WELLS FARGO FOOTHILL, LLC, a Delaware limited liability company; INTERSTATE CONCRETE AND ASPHALT COMPANY, an Idaho corporation; T-O ENGINEERS, INC., fka Toothman-Orton Engineering Company, an Idaho corporation; PUCCI CONSTRUCTION INC., an Idaho corporation; ACI NORTHWEST, INC., an Idaho corporation; LUMBERMENS, INC., dba Probuild, a Washington corporation; ROBERT PLASTER dba Cedar Etc.; R.C. WORST & COMPANY, INC., an Idaho corporation; DOES I through X,

Defendants, Cross-Defendants,

and

PEND OREILLE BONNER DEVELOPMENT, LLC, a Nevada limited liability company; BAR K, INC., a California corporation, TIMBERLINE INVESTMENTS, LLC, an Idaho limited liability company; AMY KORENGUT, a married woman; HLT REAL ESTATE, LLC, an Idaho limited liability company; INDEPENDENT MORTGAGE LTD. CO., an Idaho limited liability company; PANHANDLE MANAGEMENT INCORPORATED, an Idaho corporation; FREDERICK GRANT, an individual; CHRISTGIEN GRANT, an individual; RUSS CAPITAL GROUP, LLC, an Arizona limited liability company; Mountain West Bank, a division of GLACIER BANK, A Montana corporation; FIRST AMERICAN TITLE COMPANY, a California corporation, NETTA SOURCE LLC, a Missouri limited liability company; MONTAHEHO INVESTMENTS, LLC, a Nevada limited liability company; CHARLES REEVES and ANN B. REEVES, husband and wife; and C.E. KRAMER CRANE & CONTRACTING, INC., an Idaho corporation,

Third Party Defendants.

OBJECTION TO LODGED RECORD: 2

COMES NOW, Appellants VP Incorporated ("VP") and North Idaho Resorts, LLC ("NIR"), by and through its undersigned counsel, and pursuant to Idaho Appellate Rule 29 hereby files this Objection to the "Clerk's Record" lodged July 12, 2017.

Appellants object to the record as lodged because it contains pleadings that are not part of the underlying case. Specifically, the record contains a Complaint for Judicial Foreclosure in Bonner County Case No. CV-2014-1861 (R. Vol. X, pp. 1242-1269).

DATED this 27th day of July, 2017.

JAMES, VERNON & WEEKS, P.A.

By *Daniel M. Keyes*
Daniel M. Keyes
Attorneys for Appellants VP and NIR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 27 day of July, 2017.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Facsimile: 208-263-8211

Gary A. Finney
Finney, Finney & Finney, P.A.
120 E Lake St., Ste. 317
Sandpoint, ID 83864

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile: 208-489-0110

Richard L. Stacey
McConnell Wagner Sykes Stacey
827 East Park Boulevard, Suite 201
Boise, Idaho 83712

Ady Palmer

Susan P. Weeks, ISB No. 4255
Daniel M. Keyes, ISB No. 9492
JAMES, VERNON & WEEKS, PA
1626 Lincoln Way
Coeur d'Alene, Idaho 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
sweeks@jvwlaw.net

RECEIVED
JUL 27 2017
CLERK OF DISTRICT COURT
BONNER COUNTY
IDAHO

Attorneys for Defendants North Idaho Resorts, LLC and VP, Incorporated

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

GENESIS GOLF BUILDERS, INC., formerly
known as National Golf Builders, Inc., a
Nevada corporation,

Plaintiff,

vs.

PEND OREILLE BONNER
DEVELOPMENT, LLC, a Nevada limited
liability company; et al.,

Defendants.

Case No. CV 2009-01810

NOTICE OF HEARING ON VP AND
NIR'S OBJECTION TO LODGED
RECORD

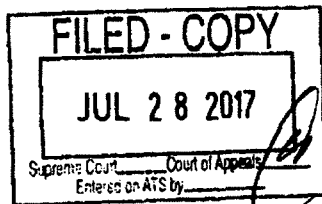
DATE: September 6, 2017.

TIME: 1:30 p.m.

AND RELATED COUNTER, CROSS AND
THIRD PARTY ACTIONS PREVIOUSLY
FILED HEREIN

PLEASE TAKE NOTICE that on September 6, 2017, at the hour of 1:30 p.m., or as soon thereafter as the matter may be heard, in the Bonner County Courthouse, the undersigned shall present for hearing their Objection to the Lodged Record on Appeal before the Honorable Barbara Buchanan.

DATED this 27th day of July, 2017.



JAMES, VERNON & WEEKS, P.A.

By [Signature]
Daniel M. Keyes

178

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 27 day of July, 2017:

U.S. Mail, Postage Prepaid
 Hand Delivered
 Facsimile: 208-263-8211

Gary A. Finney
FINNEY FINNEY & FINNEY, PA
120 E Lake St., Ste. 317
Sandpoint, ID 83864

U.S. Mail, Postage Prepaid
 Hand Delivered
 Facsimile: 208-489-0110

Richard Stacey
Jeff Sykes
McConnell Wagner Sykes & Stacey, PLLC
827 E. Park Blvd., Ste. 201
Boise, ID 83712



COPY

Susan P. Weeks, ISB. No. 4255
Daniel M. Keyes, ISB No. 9492
JAMES, VERNON & WEEKS, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
sweeks@jvwlaw.netp

cf

Attorneys for Defendants VP and NIR.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

VALIANT IDAHO, LLC, an Idaho limited liability company,

Cross-Claimant/Third Party Plaintiff/Respondent,

vs,

VP, INCORPORATED, an Idaho corporation,

Cross-Defendant/Appellant,

and

GENESIS GOLF BUILDERS, INC., formerly known as National Golf Builders, Inc., a Nevada corporation,

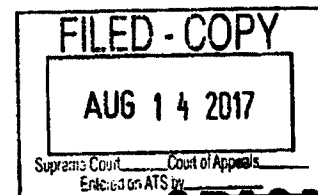
Plaintiff,

vs.

PEND OREILLE BONNER DEVELOPMENT, LLC, a Nevada limited liability company; R.E. LOANS, LLC, a California limited liability company; DAN S.

Case No. CV-2009-01810

VP AND NIR'S AMENDED OBJECTION TO LODGED RECORD ON APPEAL



AMENDED OBJECTION TO LODGED RECORD: 1

ORIGINAL

JACOBSON, an individual; SAGE HOLDINGS LLC, an Idaho limited liability company; STEVEN G. LAZAR, an individual; PENSCO TRUST CO. CUSTODIAN FBO BARNEY NG; MORTGAGE FUND '08 LLC, a Delaware limited liability company; NORTH IDAHO RESORTS, LLC, an Idaho limited liability company; JV L.L.C., an Idaho limited liability company; WELLS FARGO FOOTHILL, LLC, a Delaware limited liability company; INTERSTATE CONCRETE AND ASPHALT COMPANY, an Idaho corporation; T-O ENGINEERS, INC., fka Toothman-Orton Engineering Company, an Idaho corporation; PUCCI CONSTRUCTION INC., an Idaho corporation; ACI NORTHWEST, INC., an Idaho corporation; LUMBERMENS, INC., dba Probuild, a Washington corporation; ROBERT PLASTER dba Cedar Etc.; R.C. WORST & COMPANY, INC., an Idaho corporation; DOES I through X,

Defendants, Cross-Defendants,

and

PEND OREILLE BONNER DEVELOPMENT, LLC, a Nevada limited liability company; BAR K, INC., a California corporation, TIMBERLINE INVESTMENTS, LLC, an Idaho limited liability company; AMY KORENGUT, a married woman; HLT REAL ESTATE, LLC, an Idaho limited liability company; INDEPENDENT MORTGAGE LTD. CO., an Idaho limited liability company; PANHANDLE MANAGEMENT INCORPORATED, an Idaho corporation; FREDERICK GRANT, an individual; CHRISTGIEN GRANT, an individual; RUSS CAPITAL GROUP, LLC, an Arizona limited liability company; Mountain West Bank, a division of GLACIER BANK, A Montana corporation; FIRST AMERICAN TITLE COMPANY, a California corporation, NETTA SOURCE LLC, a Missouri limited liability company; MONTAHEHO INVESTMENTS, LLC, a Nevada limited liability company; CHARLES REEVES and ANN B. REEVES, husband and wife; and C.E. KRAMER CRANE & CONTRACTING, INC., an Idaho corporation,

Third Party Defendants.

COMES NOW, Appellants VP Incorporated ("VP") and North Idaho Resorts, LLC ("NIR"), by and through their undersigned counsel, and pursuant to Idaho Appellate Rule 29 hereby files this Amended Objection to the "Clerk's Record" lodged July 12, 2017.

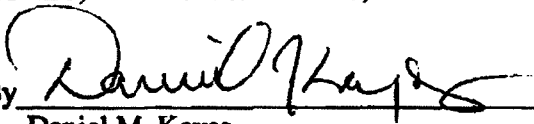
Appellants maintain their objection to the record as lodged based on the record containing pleadings that are not part of the underlying case. Specifically, the record contains a Complaint for Judicial Foreclosure in Bonner County Case No. CV-2014-1861 (R. Vol. X, pp. 1242-1269).

In addition to the objection made above, VP and NIR object to the record as lodged because it is incomplete. Specifically, Exhibit A to the Declaration of Richard Vilelli in Opposition to Valiant Idaho, LLC's Motion for Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated (R Vol. XXI, pp. 2392-2451) is missing 13 pages, pages are out of order, and two pages have been reduced in size to the point where they are illegible as included in the record.

Attached here is the complete declaration, with exhibits, that was filed in person on February 4, 2015. The lodged record is missing 13 pages in between pages 2433 and 2434. Comparison of the lodged record and the declaration attached hereto show that the pages hand numbered 37 through 45, and the next four pages titled "Acceptance of Agreement" (unsigned), "Index of Exhibits," "Exhibit A Legal Descriptions," and "Exhibit B-1 Seller's Development Plan" are missing from the record as lodged. Additionally, pages 2450 and 2451 are out of order and should appear immediately after "Exhibit B-1 Seller's Development Plan," rather than at the end of the exhibits as currently situated in the lodged record. Finally, pages 2450 and 2451 of the lodged record have been shrunk from an 11x17 size to an 8.5x11 size that is illegible in the lodged record.

DATED this 6th day of August, 2017.

JAMES, VERNON & WEEKS, P.A.

By 
Daniel M. Keyes
Attorneys for Appellants VP and NIR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 8th day of August, 2017.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Facsimile: 208-263-8211

Gary A. Finney
Finney, Finney & Finney, P.A.
120 E Lake St., Ste. 317
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Richard L. Stacey
McConnell Wagner Sykes Stacey
827 East Park Boulevard, Suite 201
Boise, Idaho 83712

Christine Elmore

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2017 SEP -7 PM 1:30

CLERK DISTRICT COURT


DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNER

GENESIS GOLF BUILDERS, INC., formerly)
known as NATIONAL GOLF BUILDERS,)
INC., a Nevada corporation,)

Plaintiff,)

v.)

PEND OREILLE BONNER DEVELOPMENT,)
LLC, a Nevada limited liability company, *et al.*,)

Defendants.)

AND RELATED COUNTER, CROSS AND)
THIRD PARTY ACTIONS PREVIOUSLY)
FILED HEREIN)

) CASE NO. CV-2009-0001810

) ORDER GRANTING VP AND NIR'S)
) AMENDED OBJECTION TO)
) LODGED RECORD ON APPEAL)

THIS MATTER came before the Court on September 6, 2017, upon "VP and NIR's Amended Objection to Lodged Record on Appeal," filed August 9, 2017. Valiant Idaho, LLC ("Valiant") was represented at the hearing by Richard L. Stacey, of MCCONNELL WAGNER SYKES & STACEY, PLLC. JV, LLC was represented by John A. Finney (for Gary A. Finney), of FINNEY FINNEY & FINNEY, P.A. North Idaho Resorts, LLC ("NIR") and VP, Incorporated ("VP") were represented by Daniel M. Keyes, of JAMES, VERNON & WEEKS, P.A. Mr. Stacey and Mr. Keyes appeared telephonically. Mr. Finney was present in the courtroom.

I. DISCUSSION

A. VP and NIR's First Objection is Granted.

VP and NIR's first objection to the lodged record is that it contains the *Complaint for Judicial Foreclosure*, filed in Bonner County Case No. CV-2014-1861 ("Complaint"). The Complaint was included in the lodged record at the request of Valiant in *Valiant Idaho, LLC's Request for Additional Transcript and Record on Appeal*, filed October 20, 2016, at ¶ uu.

The Complaint was not filed in this case, and Valiant had not previously requested this Court to take judicial notice of the Complaint. If Valiant would like the Complaint in the lodged record, the Court believes the better course is to allow Valiant to move the Idaho Supreme Court to augment the settled clerk's record, pursuant to Idaho Appellate Rule 30(a).

Accordingly, the objection is granted, and the Clerk of Court is ordered to remove the Complaint for Judicial Foreclosure, filed in Bonner County Case No. CV-2014-1861, from the lodged record. In the lodged record's Table of Contents, the Clerk of Court shall indicate that the "Document was removed by order of the Court in the Order Granting VP and NIR's Amended Objection to Lodged Record on Appeal, entered September 7, 2017."

B. VP and NIR's Second Objection is Granted.

VP and NIR's second objection to the lodged record is that it is incomplete and has missing or illegible pages, as it relates to Exhibit A to the *Declaration of Richard Vilelli in Opposition to Valiant Idaho, L.L.C.'s Motion for Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC and VP Incorporated*, filed February 4, 2015 ("Vilelli Declaration").

With respect to the Vilelli Declaration, VP and NIR raise the following issues:

- a. "The lodged record is missing 13 pages in between 2433 and 2434." *Vilelli Declaration*, at. p. 3. Upon inquiry by the Court, the Clerk of Court has

acknowledged this error. Therefore, this objection is granted, and the Clerk of Court is ordered to add the 13 missing pages to the lodged record.

- b. “Pages 2450 and 2451 are out of order and should appear immediately after ‘Exhibit B-1 Seller’s Development Plan,’ rather than at the end of the exhibits as currently situated in the lodged record.” *Id.* An examination of the original Vilelli Declaration presently in the court file reveals that pages 2450 and 2451 are situated at the end of the document, just as they have been placed in the lodged record. In preparing the lodged record, the original Vilelli Declaration document was taken apart and photocopied by the Clerk of Court, such that it is now unclear to the Court whether pages 2450 and 2451 were out of order in the original filed document or were perhaps misordered by the Clerk. In any event, in the interest of a clear and accurate record, the objection is granted, and the Clerk of Court is ordered to reorder Pages 2450 and 2451 to appear immediately after “Exhibit B-1 Seller’s Development Plan” in both the lodged record and in the original document in the court file.
- c. “Pages 2450 and 2451 of the lodged record have been shrunk from an 11x17 size to an 8.5x11 size that is illegible in the lodged record.” *Id.* This objection is granted, and the Clerk of Court is ordered to replace the 8.5x11 size copies of pages 2450 and 2451 of the lodged record with 11x17 size copies.

II. CONCLUSION AND ORDER

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED THAT VP and NIR’s Amended Objection to Lodged Record on Appeal is GRANTED.

IT IS SO ORDERED.

DATED this 7 day of September, 2017.



Barbara Buchanan
District Judge

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing was delivered via facsimile transmission, this 7th day of September, 2017, to:

Gary A. Finney
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Clerk of the Idaho Supreme Court
& Court of Appeals
P.O. Box 83720
Boise, ID 83720
supremecourtdocuments@idcourts.net
[VIA E-MAIL]



Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
DISTRICT DIVISION

MINUTE ENTRY

CASE NO. ISC 44583, 44584, 44585
CV 2009-1810

CASE NAME: Valiant Idaho, LLC
vs.
North Idaho Resorts;
JV, LLC; and
VP Incorporated

DATE: September 8, 2017

RE: Clerk's Record on Appeal - Amendments

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT
2017 SEP - 8 PM 1:50
CLERK DISTRICT COURT
DEPUTY

Per the *Order Granting Objection...* filed September 7, 2017 (attached), the following amendments have been made to the Clerk's Record on Appeal:

1. An Amended Table of Contents and Index have been provided. Please refer to this henceforth. Parties may copy this document and insert it into each volume of the record if desired.
2. The *Complaint for Judicial Foreclosure* filed 11/19/2014 in case CV2014-1861 has been removed from the Clerk's Record.

done for you
Parties will please remove pages 1242 to 1269 (inclusive) from Volume X of the record and replace it with the enclosed packet.

3. The *Declaration of Richard Vilelli...* filed February 4, 2015 has been reproduced in its entirety, re-arranged, re-numbered, and exhibits enlarged per the Order.

done for you
Parties will please remove pages 2392 to 2451 (inclusive) from Volume XXI of the record and replace it with the enclosed packet.

Thank you,

Corinne Flowers
Deputy Clerk
Bonner County

cc: all Parties, Supreme Court, file