

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

RICHARD PARROTT,
Petitioner,

vs.

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

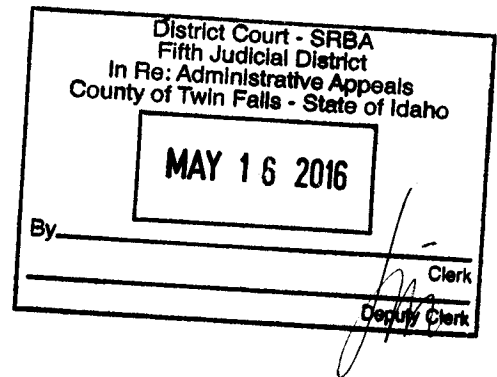
Respondents,

and

CEDAR RIDGE DAIRY LLC,

Intervenor.

) Case No. CV-42-2015-4552
)
) **ORDER DENYING MOTION TO**
) **COMPEL IDWR**
)
)
)
)



I.

BACKGROUND

1. On December 9, 2015, the Petitioner filed a *Petition for Judicial Review* in the above-captioned matter. On February 17, 2016, the agency record was filed with the Court.
2. On May 13, 2016, the Petitioner filed a *Motion to Compel IDWR*, asking this Court to compel the Idaho Department of Water Resources to include a 47-page document pertaining to a prior transfer in the agency record. Pursuant to Idaho Rule of Civil Procedure 84(o), no oral argument on the *Motion* is ordered by the Court.

II.

ANALYSIS

The Petitioner's *Motion* is denied on the grounds that it is untimely. Although styled as a "Motion to Compel," the Petitioner's *Motion* is a request that certain documents not included in

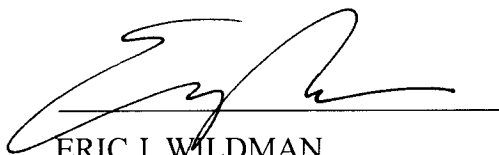
the settled agency record be added to that record. In this respect, the document is properly treated and considered as a “Motion to Augment” the agency record. Idaho Rule of Civil Procedure 84(l) requires a motion to augment the agency record to be filed within twenty-one (21) days of the filing of the record with the district court. The agency record in this case was filed with the Court on February 17, 2016. The Petitioner failed to file his *Motion* within twenty-one (21) days of February 17, 2016. Therefore, the agency record cannot be augmented to include the 47-page document identified by the Petitioner at this time. It follows that the Petitioner’s *Motion* is untimely and must be denied.

The Court additionally notes that on April 22, 2016, the Department denied a similar request by the Petitioner. Although the Petitioner now complains of the denial, the Department did not error in its denial. On January 20, 2016, the Department served its *Notice of Lodging Agency Record with the Agency* (“*Notice*”) pursuant to Idaho Rule of Civil Procedure 84(j). The record lodged with the Department did not include the subject 47-page document. If the Petitioner believed the 47-page document should have been included in the agency record, he was required to file an objection to that effect with the Department within fourteen days of the date of the mailing of the *Notice*. I.R.C.P. 84(j). He did not. In fact, he did not move the Department to include the 47-page document in the agency record until April 7, 2016. At that time, the agency record had been settled and filed with this Court. As a result, jurisdiction over the record rested with this Court on April 7, 2016, not the Department. I.R.C.P. 84(l). It follows that the Petitioner erred in moving the Department to include the document in the agency record. Therefore, the Department did not error in denying the Petitioner’s request that it include the 47-page document in the agency record, and the Petitioner’s *Motion to Compel* must be denied.

III.
ORDER

Therefore, IT IS ORDERED that the Petitioner’s *Motion to Compel IDWR* is hereby denied.

Dated May 16, 2016


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO COMPEL IDWR was mailed on May 16, 2016, with sufficient first-class postage to the following:

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