

II. ANALYSIS

The Petitioner's *Motion to Compel* requested that certain documents not included in the settled agency record be added to that record by this Court. The Court denied the *Motion* as untimely under Idaho Rules of Civil Procedure 84(j) and 84(l). In his *Motion to Reconsider*, the Petitioner asserts that the Court's finding of untimeliness is erroneous. This Court disagrees.

If the Petitioner believed that additional documents should have been included in the settled agency record he had two opportunities to timely raise that issue. First, when the agency record was lodged with the Department on January 20, 2016, Rule 84(j) permitted him to file an objection requesting that the Department add documents within fourteen days of the date of the mailing of the *Notice of Lodging*. The Petitioner failed to so act within the timeframe prescribed. Second, when the settled agency record was filed with the Court on February 17, 2016, Rule 84(l) permitted the Petitioner to file a motion to augment the record to add documents within twenty-one days of filing. Again, the Petitioner failed to so act within the timeframe prescribed. Therefore, the Petitioner's *Motion to Compel* is properly denied as untimely.

Notwithstanding, the Petitioner asserts that since the settled agency transcript was filed with the Court on April 22, 2016, his *Motion to Compel* is timely. This argument is untenable. If the Petitioner were asking the Court to augment the agency transcript his argument would have merit. However, this is not the case. The Petitioner seeks the augmentation of the *agency record* to include additional documentation. It should be noted that the settled agency record and agency transcript were filed at different times as a result of the Petitioner's own making. When he filed his *Petition for Judicial Review*, he did not include therein a "designation as to whether a transcript is requested" as required by Idaho Rule of Civil Procedure 84(d)(6). Nor did he pay the estimated fee for the preparation of a transcript "prior to filing of the petitioner for judicial review" as required by Idaho Rule of Civil Procedure 84(g)(1)(A). Indeed, the Petitioner did not request nor pay the estimated fee for the preparation of the agency transcript until well after he filed his *Petition for Judicial Review*. Following a status conference held to discuss this issue, the Court in an exercise of its discretion permitted the Petitioner to request the preparation of and pay for the agency transcript even though the request and proffered payment was late. As a result of the untimely request and payment, the Court amended its standard procedural order to allow the agency transcript to be lodged with the Court at a later date than that required under

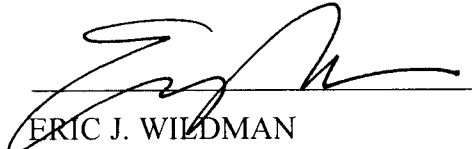
Idaho Rule of Civil Procedure 84(g)(1)(B). See *Order Amending Procedural Order*, p.2. (Jan. 14, 2016). That said, the Court's *Order Amending Procedural Order* clearly directs that the agency record was to be filed with the Court by February 17, 2016. *Id.* The agency record was filed with the Court on that date. Therefore, under Rule 84(l), the Petitioner had until March 9, 2016, in which to timely move this Court to augment the agency record with additional documentation. The Petitioner's *Motion to Compel* was not filed until May 13, 2016, and is therefore untimely.

III.

ORDER

Therefore, IT IS ORDERED that the Petitioner's *Motion to Reconsider* is **hereby denied**.

Dated June 6, 2016


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING PETITIONER'S MOTION TO RECONSIDER was mailed on June 06, 2016, with sufficient first-class postage to the following:

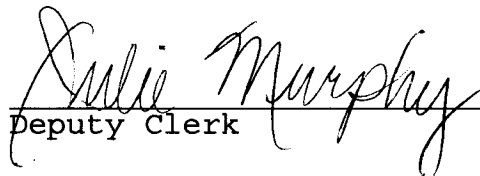
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Handwritten signature of Julie Murphy in cursive script, positioned above the printed text 'Deputy Clerk'.