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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

BOISE RIVER OUTDOOR
OPPORTUNITIES, LLC, an Idaho limited
liability company,

Petitioner,

v.

THE IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent,

and

CITY OF BOISE,

Intervenor.

Case No. CV01-24-04576

**RESPONSE TO OBJECTION; ORDER
SETTLING THE AGENCY RECORD**

IN THE MATTER OF APPLICATION
FOR PERMIT NO. S63-21092 IN THE
NAME OF BOISE RIVER OUTDOOR
OPPORTUNITIES

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

On April 1, 2024, the Idaho Department of Water Resources (“Department”) served its *Notice of Lodging the Agency Record with the Agency* (“*Notice*”) in this matter pursuant to I.R.C.P 84(j). The *Notice* gave the parties fourteen (14) days from the date of the *Notice* to file any objection to the agency record. On April 15, 2024, Boise River Outdoor Opportunities, LLC filed *Petitioner’s Objection to Agency Record* (“*Objection*”) and *Declaration of Jeremy C. Rausch in Support of Petitioner’s Objection to Agency Record* (“*Declaration in Support*”).

RESPONSE TO OBJECTION

In accordance with I.R.C.P. 84(j), the Director will address Petitioner’s request for inclusion of additional documents in the agency record as identified in Petitioner’s *Declaration in Support. See Objection at 2.*

Petitioner’s *Objection* states that the agency record “appears to omit numerous records that were provided to and considered in the decision complained of, . . . and fails to include documents relating to the Application as required by Idaho Rule of Civil Procedure Rule 84(j).” *Objection at 2.* While I.C.R.P. 84(j) sets forth the procedure to settle an agency transcript and record in a district court judicial review proceeding, it does not address the topic of what is required to be included in an agency record on appeal.

Idaho Rule of Civil Procedure 84(f)(1)(A) states: “When statute provides what must be contained in the official record of the agency on judicial review, the agency must prepare the record as provided by statute.” Idaho Code § 67-5249(2) sets forth the scope of the agency record in this proceeding. It states:

- (2) The record shall include:
- (a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;
 - (b) evidence received or considered;
 - (c) a statement of matters officially noticed;
 - (d) offers of proof and objections and rulings thereon;
 - (e) the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;
 - (f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and
 - (g) any recommended order, preliminary order, final order, or order on reconsideration.

I.C. § 67-5249(2). In addition, Idaho Code § 67-5242 outlines the procedures for conducting an administrative hearing in a contested case. No hearing was held in the underlying administrative contested case; therefore, the provisions of Idaho Code § 67-5242 do not apply.

A. Documents added to the agency record.

The Director agrees to include the following documents in the agency record:

1. McMillen Technical Memorandum Re: Drop 1 Hydraulic Analysis, September 27, 2023. Attached to *Declaration in Support* as Exhibit A.
2. Email Chain—Correspondence between Boise River Outdoor Opportunities and the Department, February 6, 2024 (date of lead email). Attached to *Declaration in Support* as Exhibit D.
3. Email Chain—Correspondence between Boise River Outdoor Opportunities and the Department, December 15, 2023 (date of lead email). Attached to *Declaration in Support* as Exhibit F.

B. Documents not added to the agency record.

In accordance with Idaho Code § 67-5249, the Director concludes that the below-listed correspondence documents do not meet the criteria for inclusion in the agency record. The correspondence documents are not addressed to any employee or legal representative of the Department and were not sent in relation to the administrative contested case referenced in the judicial review petition. They were not provided as evidence for the Department in relation to the underlying contested case, nor were they considered. For those reasons, the Director finds the agency record should not include the following documents:

1. City of Boise Parks and Recreation Department Memorandum Re: Performance + Expectations for Phase 2 Improvements, January 24, 2023. Attached to *Declaration in Support* as Exhibit B.
2. Email Chain—Correspondence between the City of Boise, Idaho River’s United, and Boise River Outdoor Opportunities, August 2, 2022 (date of lead email). Attached to *Declaration in Support* as Exhibit C.
3. Letter—Correspondence from Idaho Outfitters and Guides Association to the City of Boise, June 12, 2023. Attached to *Declaration in Support* as Exhibit E.

ORDER

IT IS HEREBY ORDERED that, upon the changes reflected above being made to the agency record, the agency record is now deemed settled pursuant to I.R.C.P. 84(j).

IT IS FURTHER ORDERED that, pursuant to I.R.C.P. 84(j), *Petitioner’s Objection to Agency Record*, *Petitioner’s Declaration of Jeremy C. Rausch in Support of Petitioner’s Objection to Agency Record*, and this order shall be included in the agency

record on the petition for judicial review. The Department shall provide the parties with a copy of the settled agency record.

DATED this 29th day of April 2024.



MATHEW WEAVER

Director

Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April 2024, I caused to be served a true and correct copy of the foregoing *Response to Objection; Order Settling the Agency Record*, via iCourt E-File and Serve, upon the following:

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