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**Pro hac vice pending*

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DISTRICT COURT OF THE STATE OF IDAHO

SEVENTH JUDICIAL DISTRICT

BINGHAM COUNTY

JERRY D. BINGHAM and VALERIE H. BINGHAM, Petitioners, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Respondent, and IDAHO GROUND WATER APPROPRIATORS, INC., CITY OF	Case No. CV06-26-1801 **PETITIONERS' OBJECTIONS TO THE LODGED AGENCY RECORD**

POCATELLO, AMERICAN FALLS RESERVOIR DISTRICT #2, MINIDOKA IRRIGATION DISTRICT, A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, TWIN FALLS CANAL COMPANY,

Intervenors.

Petitioners Jerry and Valerie Bingham, by and through their counsel of record, respectfully object, pursuant to Rule 84(j) of the Idaho Rules of Civil Procedure and paragraph 7 of the Court's Procedural Order, to the agency record lodged with Respondent Idaho Department of Water Resources ("Department") in this matter, as follows.

SPECIFIC GROUNDS FOR OBJECTION:
OMISSION OF REQUIRED EVIDENCE

Petitioners object to the omission from the lodged agency record in this case of the documents comprising the settled agency record for the Sixth Final Order Regarding Methodology, dated July 29, 2023—specifically, those documents listed at pages iv through xiii of the Settled Agency Record on Appeal, *Idaho Ground Water Appropriators, Inc. v. Idaho Dep't of Water Resources*, Case No. CV01-23-13173 (Fourth Judicial Dist. filed Sept. 27, 2023).[1] In the lodged record in this case, the Department included only the *Sixth Methodology Order* and the transcript of the associated administrative hearing, without including any of the record upon which the Department based the methodology order. The evidence considered and relied upon by the Department in reaching its findings of fact and conclusions of law in the *Sixth Methodology Order* is—as the Department itself has stated in its rejection of Petitioners' request for reconsideration, hearing, and stay—directly relevant to this Petition for Review. Under Idaho Code § 67-5249(3)(e), the agency record "shall include...[a]ll evidence received or considered" by the agency. As noted, the lodged record contains the *Sixth Methodology Order* itself and the related hearing transcript, but it omits the evidence the Department received or considered in issuing that order. This Court's review of the Department's *Sixth Methodology Order*, as it relates to Petitioners'

[1] The record is available at: https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/CV01-23-13173/CV01-23-13173-20230927-Settled-Agency-Record-on-Appeal.pdf.

challenge to the Department's curtailment order, should include the record that the Department relied upon to formulate the methodology order. This record would materially assist the Court in determining whether the Department's methodology, and in turn the curtailment orders issued pursuant to the methodology, violate the Idaho law of prior appropriation. Accordingly, Petitioners request that the lodged record be augmented to include the documents comprising the settled agency record for the *Sixth Methodology Order*.

Petitioners also object to the omission of the Department's Staff Memorandum, dated December 30, 2025, filed with the Department's Notice of Compliance with Order to Provide Staff Memo in *In the Matter of Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irrigation District*, No. CM-DC-2010-001.[2] Idaho Code § 67-5249(3)(j) mandates that "[s]taff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding" be included in the record. This Department staff memorandum outlines the calculation of curtailment priority dates relevant to the Department's curtailment orders issued pursuant to the delivery call of the Surface Water Coalition. The issues of how this calculation is determined, and the calculation's relationship to the law of prior appropriation, are central to Petitioners' challenge to the Department's curtailment order. Accordingly, Petitioners request that the lodged record be augmented to include the Department Staff Memorandum.

CONCLUSION

The lodged record is incomplete and insufficient under Idaho Code § 67-5249 without the evidence considered by the Department in adopting the governing *Sixth Methodology Order*, and the Departmental staff explanation as to which priority dates should be curtailed pursuant to the Surface Water Coalition's delivery call. Therefore, Petitioners respectfully object to the lodged record, and request that the Department include the foregoing documents in the settled agency record.

[2] The Department's Staff Memorandum is included within the appendix of documents filed in conjunction with Petitioners' motion to stay, *see* Decl. of Reed W. Larsen, Exh. C, and is available online at: https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/CM-DC-2010-001/CM-DC-2010-001-20251230-Notice-of-Compliance-With-Order-to-Provide-Staff-Memo.pdf.

DATED: October 21, 2026.

Respectfully submitted,

Reed W. Larsen
Bradley R. Cahoon
Damien M. Schiff

/s/
Reed W. Larsen
Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 2026, I caused a true and correct copy of the foregoing OBJECTION TO THE LODGED AGENCY RECORD to be served upon the following individuals via electronic mail and/or iCourt File & Serve:

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