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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JERRY D. BINGHAM and VALERIE H. BINGHAM, Petitioners, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Respondent, and IDAHO GROUND WATER APPROPRIATORS, INC., CITY OF 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.	Case No. CV06-26-1801 **AGENCY DECISION ON OBJECTION AND ORDER SETTLING THE AGENCY RECORD AND TRANSCRIPT**

On October 7, 2026, the Idaho Department of Water Resources ("Department") served its *Notice of Lodging the Agency Record and Transcript with the Agency* ("*Notice*") in this matter pursuant to I.R.C.P. 84(j)(1). The *Notice* gave the parties fourteen (14) days from the date of the

Notice to file any objection to the agency record or transcript. On October 21, 2026, Jerry and Valerie Bingham (the "Binghams") filed *Petitioners' Objections to the Lodged Agency Record* ("*Objection*"). No other objections were filed. In accordance with I.R.C.P. 84(j) and the Court's September 23, 2026 *Procedural Order*, the following constitutes the Department's decision on objections to the agency record and order settling the agency record and transcript.

In considering the *Objection*, the Department refers to Idaho Code § 67-5249(3), which governs the contents of an agency record on appeal; it states:

> The record shall include:
> (a) The recording of the hearing;
> (b) All notices of the hearing and other conferences conducted by the presiding officer;
> (c) All prehearing orders;
> (d) All motions, pleadings, briefs, petitions, requests, and intermediate rulings;
> (e) All evidence received or considered;
> (f) A statement of all matters officially noticed and any related notices;
> (g) All offers of proof and objections and rulings thereon;
> (h) All proposed findings and requested orders;
> (i) Any transcript of the hearing, if prepared;
> (j) Staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding;
> (k) Any recommended order, preliminary order, final order, or order on reconsideration; and
> (l) All matters placed on the record after an ex parte communication pursuant to section 67-5253, Idaho Code.

BACKGROUND

The agency record was prepared in connection with a request for judicial review of the Director's August 24, 2026 *Order Denying Jerry D. and Valerie H. Binghams' Petition for Reconsideration and Request for Hearing* and July 21, 2026 *Order Revising April 2026 Forecast Supply and Continuing May 14, 2026 Curtailment Order (Methodology Steps 5 & 6)*. *Pet. for Jud. Rev.* ¶ 3. Additionally, judicial review, "to the extent that such review is necessary and

collateral to review of the above-referenced orders," was also requested in connection with the following orders:

1. *Order Amending Curtailment List to Include Unmitigated Ground Water Rights*, issued June 17, 2026;
2. *Final Order Curtailing Ground Water Rights Junior to October 11, 1900*, issued May 14, 2026;
3. *Final Order Regarding April 2026 Forecast Supply (Methodology Steps 1–3)*, issued April 16, 2026;
4. *Final Order Curtailing Ground Water Rights Junior to August 15, 1952*, issued December 8, 2025;
5. *Final Order Establishing 2025 Reasonable Carryover (Methodology Step 9)*, issued November 21, 2025;
6. *Order Revising July 2025 Forecast Supply (Methodology Steps 7–8)*, issued September 11, 2025;
7. *Final Order Curtailing Ground Water Rights Junior to October 11, 1900*, issued July 25, 2025; and
8. *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("*Sixth Methodology Order*"), issued July 19, 2023.

Id. ¶ 4.

ANALYSIS

The *Objection* is broken into two requests. First, the Binghams object to the omission of several hundred documents from the agency record related to the issuance of the *Sixth Methodology Order*. *Objection*, at 2. The Binghams specifically seek the inclusion of all documents listed on pages iv through xiii of the table of contents of the *Settled Agency Record on Appeal* filed in *Idaho Ground Water Appropriators, Inc. v. Idaho Department of Water Resources*, Ada County Case No. CV01-23-13173. *Id.* The Director finds that all independently listed documents on pages iv through xiii of the *Settled Agency Record on Appeal* relate to the issuance of the *Sixth Methodology Order*. In the interest of ensuring a complete record that

encompasses all evidence considered, this objection is sustained. These documents will be added to the record.

Second, the Binghams object to the omission of a December 30, 2025 Department staff memorandum from the agency record. *Objection*, at 3. The Binghams rely on Idaho Code § 67-5249(3)(j), which requires the agency record to include "[s]taff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding." The Binghams' reliance on this provision is misplaced. The December 30, 2025 staff memorandum was requested by and submitted to Hearing Officer Gerald F. Schroeder, not to the Director. The Director issued all of the orders the Binghams seek to challenge in this judicial review proceeding, not Hearing Officer Schroeder. The memorandum was not submitted to or considered by the Director in connection with any of the orders the Binghams seek to challenge. Because the December 30, 2025 staff memorandum was submitted to Hearing Officer Schroeder and was not considered by the Director in issuing the orders challenged by the Binghams, it does not fall within the statutory requirement. Accordingly, the Binghams' objection to the omission of the December 30, 2025 Department staff memorandum is overruled and their request to augment the agency record with the memorandum is denied.

ORDER

IT IS HEREBY ORDERED that *Petitioners' Objections to the Lodged Agency Record* is sustained in part and overruled in part, consistent with the foregoing. The Department shall include in the agency record on appeal the documents for which the objection was sustained.

IT IS FURTHER ORDERED that pursuant to I.R.C.P. 84(j)(3), *Petitioners' Objections to the Lodged Agency Record* and this order shall be included in the agency record.

IT IS FURTHER ORDERED that with the additions to the record ordered above, the agency record and transcript are now deemed settled. In accordance with the Court's September 23, 2026 *Procedural Order*, the Department shall lodge the settled agency record and transcript on appeal with the Court no later than November 4, 2026.

DATED this 4th day of November 2026.



MATHEW WEAVER, Director
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of November 2026, I caused to be served a true and correct copy of the foregoing *Agency Decision on Objection and Order Settling the Agency Record and Transcript*, via iCourt E-File and Serve, upon the following:

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