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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

JOHN HASTINGS, JR., Petitioner, vs. IDAHO DEPARTMENT OF WATER RESOURCES, a Political Subdivision of the STATE OF IDAHO; MATHEW WEAVER, Director, and the IDAHO WATER RESOURCE BOARD; JEFF RAYBOULD, Chairman, Respondents.	Case No. CV07-26-00378 **RESPONDENTS' OPPOSITION TO MOTION TO AUGMENT THE RECORD**

COMES NOW, Respondents, the Idaho Water Resource Board ("IWRB"), Mathew Weaver, in his capacity as the Director of the Idaho Department of Water Resources ("IDWR"), and Jeff Raybould, in his capacity as the Chairman of the IWRB (collectively "Respondents"), by and through their attorneys of record and pursuant to Idaho Appellate Rule 30 and Idaho Rule of Civil Procedure 84(l) and I.C. § 67-5276, here files this opposition to the *Petitioner's Motion*

to Augment Record, filed September 3, 2026. Respondents oppose the *Motion to Augment* on the basis that it was not timely filed, pursuant to I.R.C.P 84(l). In addition, the issue of the swimming hole is already well documented in the agency record and the addition of the new article and google map do not add any meaningful evidence to what was already before the hearing officer on this topic. For the same reason, IDWR further opposes the request to remand the matter to IDWR for the taking of additional evidence regarding the swimming hole.

1. The *Motion to Augment* Should be Denied Because it Was Not Timely Filed.

Petitioner's *Motion to Augment* was not timely filed, and therefore should be denied. Idaho Rule of Civil Procedure 84(l) provides that a motion to augment the record must be filed "within 21 days of the filing of the settled transcript and record." The settled agency record and transcript in this case were filed with the court on August 12, 2026. The 21-day deadline ran on September 2, 2026. Petitioners filed their *Motion to Augment* on September 3, 2026, after the deadline had run. Because Petitioner failed to meet the deadline required to file a motion to augment the record, their *Motion to Augment* should be denied.

2. Evidence Regarding the Swimming Hole is Already in the Agency Record Before this Court, and Further Evidence on that Topic Adds Nothing to the Existing Record.

Even if this court chooses to ignore the failure to comply with the filing deadline, the *Motion to Augment* should still be denied because it fails to add any evidence that is not already contained in the agency record. The existence of the "swimming hole," which is the subject of the *Motion to Augment*, is documented, discussed, and analyzed in the agency record in at least nineteen separate instances.[1] Thus, the existence of the swimming hole, and the Petitioner's arguments that the restoration work was incompatible with the swimming hole, was squarely

[1] *See* Settled Agency Record at 107, 345, 409, 443, 599, 600, 620, 733, 743, 753, 754, 755, 762, 763, 771, 772, 778, 779, 782.

before the Hearing Officer. The addition of the newspaper article and google map requested by Petitioners adds no new or different information that is not already contained in the settled agency record and it unnecessary.

The Hearing Officer analyzed the existence of the swimming hole in making his response to the motion for reconsideration stating: "Again , Hastings is arguing that some hypothetical Big Wood River swimmer getting injured by swimming into any root wads he is required to install to satisfy the *Consent Order* and Permit is grounds to vitiate the Permit. It is conjecture and certainly not the burden of the Department to prove this negative. There is no evidence to support this conjecture." R. 733. It is clear that the swimming hole was front and center at the administrative hearing in this matter, that the Hearing Officer received evidence regarding it, and made his decision accordingly. The "new" evidence of the newspaper article and google map requested by Petitioners adds nothing to what is already in the record. Idaho Code § 67-5276 requires Petitioners to show that the additional evidence is material and that good reasons existed for failing to present it at the agency hearing. Petitioners have failed to make this showing. More than adequate evidence regarding the "swimming hole" already exists in the agency record and a remand to IDWR for evidence on that issue is not warranted. Therefore, the Court should deny Petitioners' request to augment the agency record.

Conclusion

The *Motion to Augment* should be denied because: 1) it was not timely filed and 2) the evidence requested by the augmentation is already clearly within the settled agency record.

DATED this 16th day of November 2026.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



ANN N. YRIBAR
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November 2026, I caused to be served a true and correct copy of the foregoing *Respondents Opposition to Motion to Augment the Record*, via iCourt E-File and Serve, upon the following:

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