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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

**MEMORANDUM IN SUPPORT OF  
OPPOSITION TO THE CITY OF  
BOISE'S MOTION TO DISMISS**

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

COMES NOW the Petitioner, BOISE RIVER OUTDOOR OPPORTUNITIES, LLC, through its agent ADAM BASS (“Adam” or “BROO”), by and through its attorney of record, C. Tom Arkoosh and Jeremy C. Rausch of Arkoosh Law Offices, and hereby requests this Court deny the City of Boise’s *Motion to Dismiss*, filed May 21, 2024.

### **INTRODUCTION**

This memorandum is submitted in opposition to the City of Boise’s Motion to Dismiss the Petition for Judicial Review filed by BROO. The City argues that the Court lacks jurisdiction on the grounds that BROO was not a party to the underlying application process and failed to exhaust its administrative remedies. For the reasons set forth below, the motion to dismiss should be denied. This briefing is provided for clarity on specific issues raised by the City of Boise as oral argument has been consolidated with both IDWR and the City of Boise’s Motion to Dismiss.

### **FACTUAL BACKGROUND**

On January 24, 2024, IDWR issued Permit No. S63-21092 to the City of Boise, allowing a stream channel alteration at the Boise Whitewater Park. BROO was in receipt of the memorandum and is listed as a recipient alongside the other state agencies and the applicant on the permits cc line. *Declaration of Adam Bass in Support of Opposition to IDWR’s Motion to Dismiss, dated May 30, 2024* (“*Bass Decl.*”), ¶ 6.

On February 1, 2024, the IDWR Stream Channel Alteration Secretary Manager, Aaron Golart, and Stream Channel Alteration Specialist, Cass Jones, met with BROO’s Designated Agent, Adam Bass, regarding the process after the permit was issued by IDWR. *Bass Decl.*, ¶ 7.

BROO, a limited liability company dedicated to promoting environmental stewardship and outdoor recreational activities along the Boise River, subsequently filed a Motion for Reconsideration with IDWR on February 7, 2024, which the department did not act upon, claiming

BROO was not a party to the original proceeding. IDWR's *Brief In Support of Motion to Dismiss*, at 7 (May 16, 2024); *Declaration of Jeremy C. Rausch In Support of Opposition to IDWR's Motion to Dismiss*, dated May 30, 2024 (*Rausch Decl.*"), ¶ 3. BROO filed the present Petition for Judicial Review on March 13, 2024. *Rausch Decl.*, ¶¶ 4-5.

### **LEGAL STANDARDS**

The standards for judicial review of agency actions in Idaho are primarily governed by the Idaho Administrative Procedure Act (IDAPA), Idaho Code § 67-5270, and the Idaho Rules of Civil Procedure (I.R.C.P.) Rule 84, and as permitted by statute. These provisions grant jurisdiction to district courts to review final agency actions, provided that certain criteria are met, including the exhaustion of administrative remedies. Under Idaho Code § 67-5273(3) a petition for judicial review must be filed within twenty-eight (28) days of an agency action, the time for filing shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies. However, Idaho Code § 42-1701A does not require the exhaustion of administrative remedies and allows an aggrieved party to seek judicial review once there is a final decision or order.

#### **1. BROO Is Entitled To Judicial Review.**

The Permit was signed and issued by Cass Jones, Stream Channel Alteration, not by the Director. Pursuant to Idaho Code 67-5243, a motion for reconsideration was an appropriate step in exhausting administrative remedies and in becoming a party. BROO was stonewalled from becoming a party by the Agency when its initial attempts to intervene were met with affirmative responses, and now the denial of BROO's inclusion as a party. BROO's name was issued on the permit alongside the other State Agencies as receiving copies. It now denies BROO as a party for its own convenience. After filing, BROO's Motion for Reconsideration was unfruitful, and the

Agency could have reconsidered through written decision and order or through holding a hearing. Instead, it chose to take no action. Dismissing the claim would be an unjust resolution preventing the Court from hearing the claims that IDWR is in violation of Idaho Law. BROO is entitled to Judicial Review as argued below and its previous response to IDWRs Motion to Dismiss.

**2. BROO Is Entitled To Judicial Review Under Idaho Code § 42-1701A(4).**

Under Idaho Code 42-1701A(4) “[a]ny person who is aggrieved by a final decision...is entitled to judicial review. The judicial review shall be had in accordance with the provisions and standards set forth in chapter 52, title 67, Idaho Code.” Under this section, it clearly states that a person who is aggrieved by a final decision is entitled to judicial review. There is no requirement that the aggrieved person was a party. BROO timely filed the judicial review and therefore the motion to dismiss should be denied and the case should be heard on the merits before this Court.

*Rausch Decl.*, ¶ 4.

**3. BROO Did Exhaust Administrative Remedies But Was Not Required To Do So To File A Petition For Judicial Review.**

As argued in Petitioner’s *Memorandum In Support of Opposition to the Idaho Department of Water Resources’ Motion to Dismiss*, BROO attempted to exhaust administrative remedies which were unfruitful, this included both informal resolution of the issues and through the formal process. For the same reasons this Court should deny the City of Boise’s Motion to Dismiss and find that Jurisdiction is proper and Petitioner’s case should be heard on the merits.

**CONCLUSION**

BROO has demonstrated its standing as an aggrieved person and has pursued all available administrative remedies in good faith. The issues raised are substantial and warrant judicial review. Consequently, both IDWR's and City of Boise’s motions to dismiss should be denied, allowing the Court to fully consider the merits of BROO’s petition. IDWR has admitted its failure to act on

previous attempts by BROO to resolve the matter through the processes prescribed in regulation; a remand for further proceedings would only further frustrate the process and unduly delay the resolution of this matter.

DATED this 4<sup>th</sup> day of June 2024.

ARKOOSH LAW OFFICES

/s/ Jeremy C. Rausch  
Jeremy C. Rausch  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of June 2024, I served a true and correct copy of the foregoing document(s) upon the following person(s), in the manner indicated:

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