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JUN 25 2020
DEPARTMENT OF
WATER RESOURCES

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

The IDAHO WATER RESOURCE BOARD, and the IDAHO DEPARTMENT OF FISH AND GAME, Petitioners, vs. THE IDAHO DEPARTMENT OF WATER RESOURCES, Respondent. IN THE MATTER OF APPLICATION FOR PERMIT NO. 74-16187 IN THE NAME OF KURT W. BIRD OR JANET E. BIRD	Case No. CV01-20-9661 **PROCEDURAL ORDER GOVERNING JUDICIAL REVIEW OF FINAL ORDER OF DIRECTOR OF IDAHO DEPARTMENT OF WATER RESOURCES**

District Court - SRBA
Fifth Judicial District
In Re: Administrative Appeals
County of Twin Falls - State of Idaho
JUN 23 2020
By
Clerk
Deputy Clerk

A *Petition for Judicial Review* was filed in the above-entitled district court seeking judicial review of a final order issued by the Director of the Idaho Department of Water Resources ("Department" or "agency"). This *Order*, together with Rule 84, Idaho Rules of Civil Procedure, (I.R.C.P.), applicable statutes and the *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order Dated December 9, 2009*[1] issued by this Court on July 1, 2010, govern all proceedings before the Court.

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. **Petition for Judicial Review and Reassignment of Case**: The *Petition for Judicial Review* was filed on June18, 2020. The case was reassigned by the clerk of the court to this Court on June 19, 2020.

2. **Cross Petitions, Filing Fees, and all Subsequent Filings**: All further documents, including cross petitions, filed, lodged or otherwise submitted, and all further filing fees filed or otherwise submitted, shall be filed with the Snake River Basin Adjudication District

[1] A copy is attached to this *Order*.

Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho 83303-2707, **provided** that checks representing further filing fees shall be made payable to the county where the original petition for judicial review or action for declaratory judgment was filed.

3. **Appearances by persons or entities who were a party to the underlying administrative proceeding but who were not made a named party in the *Petition for Judicial Review***: Where a person or entity who was a party to the underlying administrative proceeding is not made a named party in the *Petition for Judicial Review*, and is not otherwise a Petitioner, such person or entity may file a *Notice of Appearance* in this matter within fourteen (14) days from the issuance of this *Procedural Order*. This Court will treat the *Notice of Appearance* as a *Motion to Intervene* and will treat the party filing the *Notice of Appearance* as an Intervenor.[2] Under such circumstances, the Court will automatically issue an order granting the *Motion to Intervene* unless one or more parties to the action files an opposition to the *Motion* within 10 days of the filing of the *Notice of Appearance*. A person or entity not a party to the underlying administrative proceeding who desires to participate in this action, and is not otherwise a Petitioner, must proceed in accordance with Idaho Appellate Rule 7.1.

4. **Assigned Case Number and Document Footers**: All documents filed, lodged or submitted shall be under the above-captioned case number and county of origin appearing in caption. All documents filed, lodged or otherwise submitted, including attachments shall include a footer at the bottom of the document describing said document.

5. **Stays**: Unless provided for by statute, the filing of a petition or cross petition does not automatically stay the proceedings and enforcement of the action before the Department. I.C. § 67-5274. Any application or motion for stay must be made in accordance with I.R.C.P. 84(m).

6. **Form of Review**: Pursuant to I.R.C.P. 84(e)(1), when judicial review is authorized by statute, judicial review shall be based upon the record created before the Department rather than as a trial de novo, unless the statute or the law provides for the procedure or standard. If the statute provides that the district court may take additional evidence upon judicial review, it may order the same on its own motion or the motion of any party. If the statute provides that review is de novo, the appeal shall be tried in the district court on any and all issues, on a new record. Pursuant to I.R.C.P. 84(e)(2), the scope of review on petition from the Department to the district court shall be as provided by statute.

7. **Preparation of Agency Record; Payment of Fees**: Pursuant to I.R.C.P. 84(f), when the statute provides what shall be contained in the official record of the agency upon judicial review, the Department shall prepare the record as provided by statute. Otherwise, the documents listed in paragraph (3) of I.R.C.P. 84(f) shall constitute the agency record for review.

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[2] The parties should note that in such instances the Court will treat the *Notice of Appearance* as a *Motion to Intervene* for housekeeping purposes. In doing so, it is the Court's intent to have the record in this matter clearly reflect which persons and/or entities are participants in this action. It is also the Court's intent to have the caption of this matter properly reflect all those parties who are participating in this action and to identify in what capacity those parties are participating (i.e., Petitioner, Respondent, or Intervenor).

Petitioner (and cross-petitioner) shall pay all fees as required for preparation of the agency record in accordance with I.R.C.P. 84(f)(4). **The clerk of the Department shall lodge the record with the Department within 14 days of the entry of this *Order*, or no later than July 7, 2020.** Any extension in time for preparation of the agency record shall be applied for by the agency to the district court.

8. **Preparation of Transcript; Payment of Fee**: The Court requires the provision of a written transcript prepared from the recorded or reported proceedings. It is the responsibility of the petitioner (or cross-petitioner as the case may be) to timely arrange and pay for preparation of all portions of the transcript reasonably necessary for review. Pursuant to I.R.C.P. 84(g), the responsible party shall contact the agency clerk to determine the estimated cost of the transcript, and pay the estimated cost in accordance with I.R.C.P. 84(g)(1)(A) or (2)(A) as the case may be. **The transcript shall be lodged with the Department within 14 days of the entry of this *Order*, or no later than July 7, 2020.** The transcriber may apply to the district court for an extension of time, for good cause shown.

9. **Settlement of Transcript and Record**: Pursuant to I.R.C.P. 84(j), and unless otherwise provided by statute, upon receipt of the transcript and upon completion of the record, the Department shall mail or deliver notice of lodging of transcript and record to all attorneys of record or parties appearing in person and to the district court. The parties shall have 14 days from the date of mailing of the notice to pick up a copy of the transcript and agency record and to object to the transcript or record. All fees for the preparation of the transcript and record shall be paid by the responsible party at or before the pick-up of the agency record and transcript. Any objection to the record shall be determined by the Department within 14 days of the receipt of the objection and the decision on the objection shall be included in the record on petition for review. Upon the failure of the party to object within 14 days, the transcript and record shall be deemed settled. The settled record and transcript shall be lodged with the district court no later than **August 4, 2020.**

10. **Lodging of Transcript and Record in Electronic Format**: In addition to lodging the settled transcript and agency record in paper format, the Department shall also lodge the transcript and agency record in electronic format (pdf version ocr 8) on CD-ROM. (In the event of an appeal from the district court it is the intent that the electronic version of the transcript and clerk's record be provided to the Idaho Supreme Court in lieu of paper format).

11. **Augmentation of the Record – Additional Evidence Presented to District Court – Remand to Agency to Take Additional Evidence**: Pursuant to I.R.C.P. 84(l) the agency record and/or transcript on review may be augmented upon motion to this court by a party within 21 days of the filing of the settled transcript and record in the manner prescribed by Idaho Appellate Rule (I.A.R.) 30. The taking of additional evidence by the district court and/or agency on remand shall be governed by statute or I.R.C.P. 84(l).

12. **Briefs and Memoranda**: The petitioner's brief shall be filed with the clerk of the court within 35 days after lodging of the transcript and record. The respondent's (and cross-petitioner's brief) shall be filed within 28 days after service of petitioner's brief. Any reply brief shall be filed within 21 days after service of respondent's brief. The organization and content of

briefs shall be governed by I.A.R. 35 and 36. Pursuant to I.R.C.P. 84(p) only one (1) original signed brief may be filed with the court and copies shall be served on all parties.

13. **Extension of Time**: Motions to extend the time for filing a brief or modify order of briefing shall be submitted in conformity with I.A.R. 34(e). All other requests for extension of time shall be submitted in conformity with I.A.R. 46.

14. **Motions**: All motions shall be submitted in conformity with I.R.C.P. 84(o) and shall be heard without oral argument unless ordered by the Court.

15. **Oral Argument, Telephonic and Video Teleconferencing**: Oral argument will be heard **November 19, 2020, at 1:30 p.m. (Mountain Time)** at the Snake River Basin adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho. Oral argument will be conducted via Zoom with instructions to be provided to the parties at a later date. The form and order of argument shall be governed by I.A.R. 37.

16. **Judgment or Decision**: The Court's decision will be by written memorandum as required by I.R.C.P. 84(t)(1). In compliance with I.R.C.P. 54(a), as amended effective July 1, 2010, a separate judgment will also issue contemporaneously therewith. Pursuant to I.R.C.P. 84(t)(2), if no petition for rehearing is filed the time for appeal to the Idaho Supreme Court shall begin to run after the date of the filing stamp of the clerk of the court appearing on the judgment. If a petition for rehearing is filed, the time for appeal shall begin to run after the date of the filing stamp of the clerk of the court appearing on either an order denying rehearing or on any modified judgment.

17. **Petitions for Rehearing:** Petitions for rehearing shall be governed by the time standards and procedures of I.A.R. 42. If rehearing is granted, the Court will issue an order granting same and setting forth a briefing schedule for responsive briefing, a reply, and oral argument. Unless otherwise ordered, the brief filed in support of rehearing will be treated as the opening brief.

18. **Remittitur**: If no notice of appeal to the Idaho Supreme Court is filed within forty-two (42) days after filing of the Court's written decision, the clerk shall issue a *remittitur* remanding the matter to the agency as provided in I.R.C.P. 84(t)(4). The Court will then notify the clerk of the district court where the petition was originally filed regarding completion of the case.

19. **Failure to Comply**: Failure by either party to timely comply with the requirement of this ***Order*** or applicable provisions of the Idaho Rules of Civil Procedure or Idaho Appellate Rules, if applicable, shall be grounds for imposition of sanctions, including, but not limited to the allowance of attorney's fees, striking of briefs, or dismissal of the appeal pursuant to I.R.C.P. 11 and 84(n) and I.A.R. 11.1 and 21.

Dated June 23, 2020

ERIC J. WILDMAN
District Judge

RECEIVED
JUN 25 2010
DEPARTMENT OF
WATER RESOURCES

District Court - SRBA
Fifth Judicial District
In Re: Administrative Appeals
County of Twin Falls - State of Idaho
JUL - 1 2010
By
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS.

RE: RULES OF PROCEDURE GOVERNING PETITIONS FOR JUDICIAL REVIEW OR ACTIONS FOR DELCARATORY JUDGMENT OF DECISIONS FROM THE IDAHO DEPARTMENT OF WATER RESOURCES	**ADMINISTRATIVE ORDER ADOPTING PROCEDURES FOR THE IMPLEMENTATION OF THE IDAHO SUPREME COURT ADMINISTRATIVE ORDER DATED DECEMBER 9, 2009**

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to Idaho Code § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District, and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Snake River Basin Adjudication District Court of the Fifth Judicial District the authority to adopt procedural rules necessary to implement said Order.

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. Filing of Petition for Judicial Review or Declaratory Judgment Action. Pursuant to Idaho Code § 67-5272(1), any party filing a petition for judicial review pursuant to Idaho Code § 42-1701A, or an action for declaratory judgment, of any decision from the Department of Water Resources shall file the same, together with applicable filing fees, in the district court of the county in which:

(a) the hearing was held; or

(b) the final agency action was taken; or

(c) the aggrieved party resides or operates its principal place of business in Idaho; or

(d) the real property or personal property that was the subject of the agency decision is located.

The filing party shall also serve a courtesy copy of the petition for judicial review or action for declaratory judgment with the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho 83303-2707. Upon receipt by the Department of Water Resources of a petition for judicial review or action for declaratory

judgment, the Department shall review the certificate of mailing and in the event it does not show that a courtesy copy of the same was filed with the Snake River Basin Adjudication District Court, then the Department shall forthwith forward a copy of the petition or action for declaratory judgment to the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho 83303-2707.

2. **Reassignment.** Upon the filing of a petition for judicial review pursuant to Idaho Code § 42-1701A, or an action for declaratory judgment, of any decision from the Department of Water Resources, the clerk of the district court where the action is filed shall forthwith issue, file, and concurrently serve upon the Department of Water Resources and all other parties to the proceeding before the Department of Water Resources, an *Notice of Reassignment* (copy attached hereto), assigning the matter to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District for disposition and further proceedings.

Also upon issuance of the *Notice of Reassignment*, the clerk of the district court where the action is filed shall forward a copy of the file to the clerk of the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho 83303-2707.

3. **Case Number.** All cases assigned to the Snake River Basin Adjudication District Court of the Fifth Judicial District as described herein shall retain the case number and caption assigned to them by the district court where the petition for judicial review or action for declaratory judgment is originally filed.

4. **Subsequent Filings.** Following the issuance of the *Notice of Reassignment*, all further documents filed or otherwise submitted, and all further filing fees filed or otherwise submitted, shall be filed with the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho 83303-2707, provided that checks representing further filing fees shall be made payable to the county where the original petition for judicial review or action for declaratory judgment was filed.

5. **Lodging of Transcript and Record**. Following the preparation and settlement of the agency transcript and record, the Department of Water Resources shall transmit the settled transcript and record, in both paper and electronic form on CD ROM, to the clerk of the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin

Falls, Idaho 83303-2707 within forty-two (42) days of the service of the petition for judicial review or action for declaratory judgment.

6. Participation in Hearings by Telephone and Video Teleconferencing (VTC). Unless otherwise ordered by the Snake River Basin Adjudication District Court of the Fifth Judicial District, telephone participation and/or VTC will be allowed in all hearings, except as follows:

(a) The court may require in person or VTC attendance as circumstances may require.

(b) The court's notice setting hearing will specify participation restrictions, telephone conferencing numbers and participant codes and/or location of regional VTC facilities.

(c) Speakerphones and cell phones often pick up background noise and/or cause interference with sensitive courtroom equipment. Therefore, the use of speakerphones and cell phones are discouraged.

(d) Place your call to the court a few minutes prior to the scheduled start of your hearing so that the clerk of the court may identify who is participating by telephone.

7. Resolution. This court will notify the clerk of the district court where the petition for judicial review or action for declaratory judgment was originally filed of the completion of the case upon the happening of either:

(a) the expiration of the time to appeal any decision of this court if no appeal to the Idaho Supreme Court is filed; or

(b) the filing of the remittitur from the Idaho Supreme Court or Idaho Court of Appeals with this court in the event that an appeal to the Idaho Supreme Court is timely filed following a decision of this court.

8. Other Procedural Rules. Any procedure for judicial review not specified or covered by this Order shall be in accordance with Idaho Rule of Civil Procedure 84 to the extent the same is not contrary to this Order.

DATED this 1 day of July, 2010.

ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF _____.

RE: PETITIONS FOR JUDICIAL REVIEW OR ACTIONS FOR DECLARATORY RELIEF OF DECISIONS FROM THE IDAHO DEPARTMENT OF WATER RESOURCES	)	**CASE NO. _____**
	)	**NOTICE OF REASSIGNMENT**

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District, and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Snake River Basin Adjudication District Court the authority to adopt procedural rules necessary to implement said Order, and

WHEREAS on July 1, 2010, the Snake River Basin Adjudication District Court issued an Administrative Order regarding the Rule of Procedure Governing Petitions for Judicial Review or Actions for Declaratory Relief of Decisions from the Idaho Department of Water Resources.

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. The above-matter is hereby assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District for disposition and further proceedings.

2. All further documents filed or otherwise submitted in this matter, and all further filing fees filed or otherwise submitted in this matter, shall be filed with the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho

83303-2707, provided that checks representing further filing fees shall be made payable to the county where the original petition for judicial review or action for declaratory judgment was filed.

DATED this ___ day of _____, 2010.

CLERK OF THE DISTRICT COURT

By:_____
Deputy Clerk

In the Supreme Court of the State of Idaho

IN THE MATTER OF THE APPOINTMENT OF THE SRBA DISTRICT COURT TO HEAR ALL PETITIONS FOR JUDICIAL REVIEW FROM THE DEPARTMENT OF WATER RESOURCES INVOLVING ADMINISTRATION OF WATER RIGHTS	**ADMINISTRATIVE ORDER**

WHEREAS pursuant to I.C. § 42-1701A any person who is aggrieved by a final decision or order of the Director of the Department of Water Resources is entitled to judicial review, and

WHEREAS there is a need for consistency and uniformity in judicial decisions regarding the administration of water rights, and

WHEREAS the Idaho Supreme Court has a constitutional responsibility to administer and supervise the work of the district courts pursuant to Art. V, § 2 of the Idaho Constitution, and

WHEREAS the Snake River Basin Adjudication District Court of the Fifth Judicial District has particular expertise in the area of water right adjudication,

IT IS HEREBY ORDERED that all petitions for judicial review of any decision regarding the administration of water rights from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District. Review shall be held in accord with Title 67, Chapter 52 of the Idaho Code, except that, once filed, all petitions for judicial review shall be forwarded to the clerk of the Snake River Basin Adjudication District Court of the Fifth Judicial District.

IT IS FURTHER ORDERD that the Snake River Basin Adjudication District Court is authorized to develop the procedural rules necessary to implement this order.

IT IS FURTHER ORDERED that this order shall be effective the 1st day of July, 2010.

DATED this 9 day of December 2009.

By Order of the Supreme Court

Daniel T. Eismann, Chief Justice

ATTEST:

Stephen Kenyon

Stephen W. Kenyon, Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 12/10/09

STEPHEN W. KENYON Clerk

By: Kimberly Graves **Deputy**

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PROCEDURAL ORDER GOVERNING JUDICIAL REVIEW OF FINAL ORDER OF DIRECTOR OF IDAHO DEPARTMENT OF WATER RESOURCES was mailed on June 23, 2020, with sufficient first-class postage to the following:

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Julie Murphy
Deputy Clerk