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Attorney for the Association of Idaho Cities

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF RIVERSIDE’S
PETITION FOR DECLARATORY RULING
REGARDING NEED FOR A WATER
RIGHT UNDER REUSE PERMIT NO. M-
255-01

Docket No. P-DR-2020-01

PETITION TO INTERVENE

COMES NOW the Association of Idaho Cities (“AIC”), by and through its counsel of record McHugh Bromley, PLLC, and pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files this *Petition to Intervene* in the above-captioned matter.

I. BACKGROUND

On February 24, 2020, Riverside Irrigation District (“Riverside”) filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* (“Petition”) with the Director of the Idaho Department of Water Resources (“Director” or “IDWR”). The Petition was filed in response to a water reuse permit issued by the Idaho Department of Environmental Quality (“DEQ”) authorizing the City of Nampa (“Nampa”) to discharge some amount of treated wastewater into Pioneer Irrigation District’s (“Pioneer”)

Phyllis Canal, as opposed to Indian Creek. Riverside alleges the discharge of treated wastewater into Indian Creek must continue unless Nampa and/or Pioneer obtain a water right from IDWR:

Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department of a declaratory ruling as to the applicability of I.C. § 42-201(2) to Reuse Permit No. M-255-01. Specifically, and without limitation, Riverside seeks a declaratory ruling that:

- a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.
- b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention to Idaho Law.

Petition at 3.

The Petition was noticed by IDWR with a statement that petitions to intervene must be filed by April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (March 16, 2020). A prehearing conference is scheduled to occur on April 30, 2020.

II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is “timely” filed, IDAPA 37.01.01.352, and that it has a “direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues” IDAPA 37.01.01.353. AIC meets these requirements.

First, AIC’s petition to intervene is timely. A petition to intervene is timely if it is “filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier unless a different time is provided by order or notice.” IDAPA 37.01.01.352. Here, the Director has scheduled the prehearing conference to take place on April 30, 2020, with a deadline to intervene scheduled for April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene*. Because AIC is petitioning the

Director to intervene in the above-captioned proceeding prior to the April 23, 2020 deadline, AIC's petition to intervene is timely, and intervention should be granted.

Second, AIC has a direct and substantial interest in the outcome of this matter. AIC was founded in 1947 and is a non-partisan, non-profit Idaho corporation that is owned, organized, and operated by Idaho's city governments. Its membership stretches from the Canadian border to its intersection with Utah and Wyoming. Approximately 78 percent of AIC's member cities provide drinking water to their communities. The majority of Idaho's population is served drinking water by cities. Many of Idaho's cities have their wastewater discharge regulated pursuant to water quality regulations administered by DEQ for safe return to the environment.

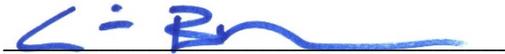
Riverside appears to base its Petition entirely off of its reading of I.C. § 42-201(2), but left unsaid in the Petition is the significance of I.C. § 42-201(8) and the century of common law regarding the law of wastewater and reuse, both of which allow Idaho's cities to develop wastewater/reuse projects without the need for a water right.

AIC understands individual cities may also petition to intervene in this proceeding and supports those efforts. AIC's intervention should in no way preclude individual cities from asserting their particularized interests. AIC's intervention, however, will not duplicate these efforts, as AIC's interest is in safeguarding and representing the rights of all cities, large or small to have the utmost flexibility of their water rights, while individual cities may have specific facts and circumstances that are also directly impacted by Riverside's petition. Thus, based on AIC's substantial interest and its broad membership, AIC should be granted intervention.

III. CONCLUSION

AIC's petition to intervene is timely and AIC has a direct and substantial interest in the outcome of this matter. Therefore, based on the foregoing, AIC's petition to intervene should be granted.

DATED this 20th day of April, 2020.



Chris M. Bromley
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Attorneys for Association of Idaho Cities

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April 2020, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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