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Attorney for City of Pocatello

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

IN THE MATTER OF RIVERSIDE’S PETITION)	
FOR DECLARATORY RULING REGARDING)	DOCKET NO. P-DR-2020-01
NEED FOR A WATER RIGHT UNDER REUSE)	PETITION TO INTERVENE
PERMIT NO. M-255-01)	
_____)	Fee Category: Exempt
	Idaho Code § 67-2301

CITY OF POCATELLO (the “City”), by and through its attorneys of record, files this *Petition to Intervene* in the captioned matter.

INTRODUCTION

The City seeks to intervene in this matter as a municipal water user interested in the legal availability of the city’s wastewater effluent for reuse in a manner similar to that described by the City of Nampa Reuse Permit No. M-255-01. On this basis, as explained fully herein, the City requests that its Petition to Intervene be granted.

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

BACKGROUND

Riverside filed its Petition for Declaratory Ruling on February 24, 2020 seeking a determination whether a water right is required in order to discharge the City of Nampa's wastewater effluent into the Phyllis Canal for use by the Pioneer Irrigation District under the City of Nampa's Reuse Permit M-255-01. On March 16, 2020, the Director issued the "Notice of Prehearing Conference; Order Setting Deadlines for Petitions to Intervene" which included a deadline of April 23, 2020, for petitions to intervene.

ARGUMENT

1. Persons who are not currently a party "to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party." IDWR Rule 350. The Department's Procedural Rules, IDAPA 37.01.01 *et. seq.*, provide the standard for evaluating intervention at IDAPA 37.01.01.350-354.
2. First, a petitioner seeking to intervene under the IDAPA Procedural Rules must demonstrate the petition is "timely" filed, IDAPA 37.01.01.352.
3. The Director's deadline for filings petitions to intervene is April 23, and thus Pocatello's Petition is timely.
4. Second, a petitioner must demonstrate 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.

- a. In its Petition, Riverside alleges that: “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.”
Petition at 13.a.
 - b. Riverside also alleges that the Pioneer Irrigation District’s use of the City of Nampa’s wastewater under Reuse Permit No. M-255-01 will result in injury to Riverside. Petition at 6.
 - c. The City of Pocatello holds NPDES Permit No. ID0021784 for wastewater discharge into the Portneuf River.
 - d. The City of Pocatello, like the City of Nampa, is eligible to apply for a reuse permit with the Idaho Department of Environmental Quality.
 - e. The City of Pocatello has a direct and substantial interest in whether or not the wastewater effluent associated with the discharge under the City’s NPDES permit can be reused without obtaining a water right, as alleged by Riverside Irrigation District.
 - f. The City of Pocatello also has a direct and substantial interest in whether or not reuse of wastewater in the manner allowed by Reuse Permit No. M-255-01 results in injury to senior water rights that would have otherwise received the effluent as a part of water diversions made in priority.
5. The City of Pocatello has direct and substantial interests in the outcome of this matter, and its participation will not unduly broaden the issues.

CONCLUSION

The City therefore satisfies the requirements for intervention and respectfully requests that its petition to intervene be granted.

Respectfully submitted this 20th of April.

SOMACH SIMMONS & DUNN

By _____

Sarah A. Klahn

#82379

CERTIFICATE OF SERVICE

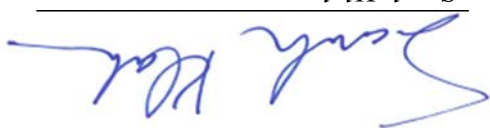
I hereby certify that on this 20th day of January, 2019, I caused to be served a true and correct copy of the foregoing **CITY OF POCA TELLO’S MOTION TO INTERVENE**, by the method indicated below and addressed to the following:

<p>Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 East Front Street, Suite 648 Boise, ID 83702 Gary.Spackman@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Chris Meyer Givens Pursley LLP P.O. Box 2720 601 W Bannock St. Boise, ID 83702 chrismeyer@givenspursley.com mpl@givenspursley.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile (208) 388-1300 <input checked="" type="checkbox"/> Email</p>
<p>City of Nampa 411 3rd St. South Nampa, ID 83651</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>Riverside Irrigation District c/o Albert P. Barker BARKER, ROSHOLT & SIMPSON LLP 1010 W. Jefferson, Suite 102 PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile (208) 344-6034 <input checked="" type="checkbox"/> Email</p>

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POCATELLO'S PETITION TO INTERVENE
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 REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01

Courtesy copies to:	
U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile (208) 287-6700 <input checked="" type="checkbox"/> Email	Garrick L. Baxter, Esq. Deputy Attorney General Idaho Department of Water Resources P. O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 E. Front Street Boise, ID 83702 Garrick.baxter@idwr.idaho.gov
U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email	Pioneer Irrigation District Andrew J. Waldera SAWTOOTH LAW OFFICES, PLLC P. O. Box 7985 Boise, Idaho 83707 Hand delivery or overnight mail: 1101 W. River St., Suite 110 Boise, ID 83702 andy@sawtoothlaw.com bryce@sawtoothlaw.com


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