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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 TO DIVERT WATER UNDER
RESUE PERMIT NO. M-225-01

Docket No. P-DR-2020-001

**PIONEER IRRIGATION DISTRICT'S
PETITION TO INTERVENE**

Petitioner Pioneer Irrigation District ("Pioneer" or the "District"), by and through undersigned counsel of record and pursuant to Rules 350 through 354 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.350 – 354) ("Procedure Rules") and the Department's *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (Mar. 16, 2020), hereby petitions the Department for an order granting the District full party status without condition given its direct, substantial, and unique interests in this matter.

**I.
BACKGROUND**

On March 7, 2018, Pioneer and the City of Nampa ("Nampa") entered into a *Recycled Water Discharge and Use Agreement* ("Agreement") concerning Nampa's proposed discharge of Class A recycled wastewater from the city's municipal wastewater treatment plant into Pioneer's Phyllis Canal. Absent the Agreement, Nampa's treated wastewater would discharge (as it does

currently) to Indian Creek. The Agreement embodies Nampa's preferred alternative for meeting Clean Water Act-based water quality regulatory requirements, while also providing it and project partner Pioneer the opportunity to recycle and reuse the city's wastewater for irrigation purposes. The Agreement resulted from the collaborative effort and vetting of Nampa and Pioneer officials, as well as Nampa citizens during the city's wastewater treatment facilities planning process.

The Agreement triggered the parties' pursuit and Nampa's receipt of Idaho Department of Environmental Quality ("DEQ") Reuse Permit No. M-255-01 ("Permit") on January 21, 2020. Riverside Irrigation District, Ltd. ("Riverside") objected to the Permit, alleging injury to its natural flow water rights in Indian Creek downstream of Nampa's wastewater treatment plant. Riverside lodged its objections in formal petitions filed both with DEQ and with the Department. While the DEQ proceeding has been dismissed with prejudice upon the stipulated agreement of Nampa, Pioneer, Riverside, its *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* (Feb. 24, 2020) ("Petition") remains pending before the Department. In short, Riverside contends that Pioneer and/or Nampa must apply for (and receive) a new water right authorizing Nampa's proposed discharge of its treated wastewater to Pioneer's Phyllis Canal for subsequent irrigation reuse within the Phyllis Canal system. Riverside believes that Nampa's redirection of wastewater for subsequent irrigation reuse absent a new water right (or water rights) constitutes the illegal diversion and use of water.

By removing its wastewater stream from Indian Creek during the irrigation season, Nampa is able to avoid several millions of dollars of capital improvement costs associated with meeting Phosphorus and Temperature discharge limits contained in its governing NPDES Permit (Permit No. ID0022063), while also gaining the benefit of re-using that wastewater within its municipal pressurized irrigation system, which system is supplied irrigation water by Pioneer.

Consequently, the Nampa-Pioneer partnership is born of Nampa's need to collect, treat, and dispose of effluent from its publicly owned treatment works in direct response to state and federal environmental regulatory requirements. The proposal also provides Pioneer (and Nampa) a valuable source of supplemental irrigation water within a portion of the District's Phyllis Canal system burdened by physical operational constraints upstream (lava rock pinch points and declining drain-based feeder canal inputs) allowing Pioneer greater operational flexibility within its larger water diversion and distribution system.

II. ARUGMENT

A. Legal Standards

Riverside's Petition seeking a declaratory ruling is somewhat unique in that it is a much broader proceeding than a traditional contested case with a better defined universe of parties (*i.e.*, applicants, complainants, or respondents). Recognizing that petitions for a declaratory ruling have broader scope and implication, Procedure Rule 401 provides the Department the opportunity to issue notice "in a manner designed to call [the petition's] attention to persons likely to be interested in the subject matter of the petition." IDAPA 37.01.01.401. The Department did so, via publication of notice of the Petition in various newspapers of regular circulation and by letter to association groups including the Idaho Water Users Association and the Association of Idaho Cities. The Department's notice set an intervention deadline of April 23, 2020, coinciding with the Director's *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (Mar. 16, 2020) ("Order").

Regarding intervention, Procedure Rule 350 provides that persons or entities not applicants, claimants, appellants, petitioners, complainants, protestants, or respondents to a contested case proceeding, but who have a "direct and substantial interest in the proceeding,"

may petition to intervene and become a party in the proceeding. IDAPA 37.01.01.350. Under Procedure Rule 353, a petition to intervene should be granted if: (a) it is timely; (b) the petitioner shows a direct and substantial interest in the matter; and (c) the petitioner does not seek to unduly broaden the issues in the proceeding. IDAPA 37.01.01.353. While the Department (or hearing officer) can deny or conditionally grant petitions upon determination that the petitioner's interests would be adequately represented by existing parties, the context and overlay of Procedure Rule 401's broad notice provisions in this declaratory proceeding suggest that intervention should be liberally granted in this matter.

B. Pioneer's Petition is Timely

Procedure Rule 352 prescribes various timeliness deadlines governing intervention petitions. In this instance, the Department provided a deadline of April 23, 2020 in its March 16, 2020 Order. Order, p. 3. Having filed its petition on April 22, 2020, Pioneer's petition to intervene is timely under Procedure Rule 352. IDAPA 37.01.01.352.

C. Pioneer Has a Direct and Substantial Interest in This Matter—One That Cannot be Adequately Represented by Others

Already acknowledging Pioneer's direct and substantial interest in this matter, the Department served Pioneer counsel with a courtesy copy of the Director's March 16, 2020 Order. Pioneer was one of only three direct recipients, Riverside and Nampa being the others.

As discussed above, while not the permittee under the Permit, Pioneer is a partner with Nampa in the Permit project. Pioneer and Nampa entered into a formal contract solidifying this partnership and Pioneer is the proposed recipient of the Class A recycled wastewater discharge governed by the Permit. Pioneer is the "recipient" of the Class A recycled wastewater predominantly in terms of physical infrastructure (*i.e.*, Pioneer's ownership, operation, and maintenance of the Phyllis Canal). End use of the recycled wastewater will largely remain with

Nampa via delivery of the same through Pioneer's 15.0 Lateral system to Nampa municipal pressurized irrigation system pump stations.

Though Nampa and its citizens will continue to be the primary end users of the recycled wastewater under the Permit, Pioneer will also benefit through the wastewater input operationally. Nampa is one of Pioneer's largest water delivery accounts. Reuse of Nampa's recycled water will lessen Nampa delivery demand from other sources/inputs to Pioneer's Phyllis Canal system which, in turn, will provide Pioneer greater operational flexibility in the redistribution and delivery of those other preexisting inputs/sources of water.

This is particularly beneficial to Pioneer because significant deliveries to Nampa pump stations and other Nampa citizens at large occur downstream of a lava rock pinch point in the Phyllis Canal constraining the maximum quantity of water that can safely pass through the area. The Nampa recycled wastewater will also serve as robust and reliable source of water offsetting and mitigating declining drain water sources Pioneer uses to supplement Phyllis Canal flows through a feeder canal and pump locations.

The relationship between Nampa and Pioneer, and the operational flexibility the Permit project will provide, are unique to Pioneer. They establish not only Pioneer's direct and substantial interest in this matter, but also the fact that Pioneer's interests cannot be adequately represented by any other parties to the proceeding. Likewise, should Riverside's Petition result in the need for Pioneer to secure a water right before exercise of the DEQ Permit, that water right application process (and assured contested case in light of Riverside's Petition) constitutes a regulatory and financial burden unique to Pioneer. Pioneer should be granted intervention as a party in this matter accordingly.

D. Pioneer's Interests and Intervention Will Not Broaden the Issues Before the Department


Pioneer's participation will not broaden the issues before the Department in this matter because Pioneer's issues and anticipated arguments are the issues pending before the Department under Riverside's Petition. Riverside contends that one or both of Nampa and Pioneer must obtain a new water right to discharge and use the Class A recycled wastewater contemplated in the DEQ Permit. Pioneer and Nampa disagree for a variety of reasons, including well-settled legal principles of wastewater recapture and reuse and application of Idaho Code Section 42-201(8), among others. The nature and scope of this proceeding are fixed by Riverside's Petition, and Pioneer intends to participate and proceed accordingly.

**III.
CONCLUSION**

For the foregoing, Pioneer respectfully requests that its intervention request be granted because its petition is timely, and Pioneer has shown a direct and substantial interest in the subject matter of Riverside's Petition—one that is unique to Pioneer and that cannot be adequately represented by any other parties (intervenor or otherwise) in this contested case proceeding.

DATED this 22nd day of April, 2020.

SAWTOOTH LAW OFFICES, PLLC

By 

Andrew J. Waldera
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2020, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S PETITION TO INTERVENE** to be served by the method indicated below, and addressed to the following:

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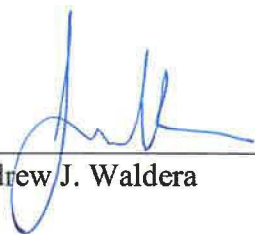
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