

Candice M. McHugh, ISB No. 5908
Chris M. Bromley, ISB No. 6530
MCHUGH BROMLEY, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

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WATER RESOURCES
WESTERN REGION

Attorneys for the City of Rupert

**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

Fee Category: Exempt (I.C. § 67-2301)

COMES NOW the City of Rupert ("Rupert"), 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 waste water into Pioneer Irrigation District's ("Pioneer")

Phyllis Canal, as opposed to Indian Creek. Riverside alleges the discharge of treated waste water 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. Rupert meets these requirements.

First, Rupert’ 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 Rupert is

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

Second, Rupert has a direct and substantial interest in the outcome of this matter. Rupert is located in the Magic Valley and pumps ground water from the regional Eastern Snake Plain Aquifer, as well as ground water from a shallow perched aquifer to meet the city's needs. Rupert holds DEQ Reuse Permit No. M-001-04 that allows it to safely treat and reuse waste water. Upon treatment, Rupert pipes the water approximately seven miles north of the city where the water is stored in lagoons during the winter and land applied during the growing season. In an emergency and pursuant to Consent No. 17-07-14-L0950, Rupert is authorized by the United States Bureau of Reclamation to temporarily discharge Class B reuse water into a federal facility in Minidoka County. In the future, Rupert may want to exercise the flexibility that is provided to cities under Idaho law for discharge of treated waste water into a canal system. Given its location, the terms of its Reuse Permit, its consent agreement, and its interest in maintaining the flexibility provided by Idaho law, only Rupert can represent its interests. Thus, based on Rupert' substantial interest, and the fact that it will not unduly broaden the issues, Rupert should be granted intervention.

III. CONCLUSION

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

DATED this 23rd day of April, 2020.



Chris M. Bromley
McHugh Bromley, PLLC
Attorneys for City of Rupert

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd 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:

Director Gary Spackman
Idaho Department Of Water Resources
PO Box 83720
Boise, ID 83720
gary.spackman@idwr.idaho.gov

Via US Mail, Postage Paid
 Via Facsimile
 Hand-Delivered
 Via Electronic Mail

Garrick L. Baxter
Deputy Attorney General
Idaho Department Of Water Resources
PO Box 83720
Boise, ID 83720-0098
garrick.baxter@idwr.idaho.gov
kimberle.english@idwr.idaho.gov

Via US Mail, Postage Paid
 Via Facsimile
 Hand-Delivered
 Via Electronic Mail

Albert P. Barker
Barker Rosholt & Simpson LLP
PO Box 2139
Boise, ID 83701-2139
apb@idahowaters.com

Via US Mail, Postage Paid
 Via Facsimile
 Hand-Delivered
 Via Electronic Mail

Christopher H. Meyer
Michael P. Lawrence
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720
chrismeyer@givenspursley.com
mpl@givenspursley.com

Via US Mail, Postage Paid
 Via Facsimile
 Hand-Delivered
 Via Electronic Mail

Andrew J. Waldera
Sawtooth Law Offices PLLC
PO Box 7985
Boise, ID 83707
andy@sawtoothlaw.com

Via US Mail, Postage Paid
 Via Facsimile
 Hand-Delivered
 Via Electronic Mail



CHRIS M. BROMLEY