

Christopher H. Meyer [ISB No. 4461]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
chrismeyer@givenspursley.com
mpl@givenspursley.com

Attorneys for City of Nampa

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

**CITY OF NAMPA'S OPPOSITION TO
IDAHO POWER COMPANY'S PETITION
TO INTERVENE**

The City of Nampa ("City"), by and through its counsel of record, hereby opposes the April 22, 2020 *Petition to Intervene* ("Petition") filed by Idaho Power Company ("Idaho Power") in the above-captioned proceeding. The ground for this opposition are stated below.

1. On March 16, 2020, the City filed its *Petition to Intervene* in the above-captioned matter. On the same day, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") designated the City a respondent in this proceeding. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* ("Notice") at 1 n.1 (Mar. 16, 2020).

2. Department Rule of Procedure 350 provides that “Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents 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, if a formal hearing is required by statute to be held in the proceeding.” IDAPA 37.01.01.350.

3. Department Rule of Procedure 354 provides that any party opposing a petition to intervene by motion must file the motion within seven days after receipt of the petition to intervene. IDAPA 37.01.01.354. The City received Idaho Power’s *Petition* by email on April 22, 2020.

4. Department Rule of Procedure 353 provides that a petition to intervene may be granted where the petitioner has demonstrated a direct and substantial interest and intervention will not unduly broaden the issues, unless the petitioner’s interests are adequately represented by existing parties. IDAPA 37.01.01.353.

5. Idaho Power has not demonstrated a direct and substantial interest in this proceeding. As Idaho Power acknowledges, the water rights at its hydroelectric facilities are subordinated. *Petition* at 3. This means that Idaho Power cannot seek curtailment or otherwise limit the exercise of other water rights or uses, such as the City’s proposed use of its water rights. Accordingly, Idaho Power has no direct and substantial interest in this proceeding, which involves only the City’s use of water and the exercise of its water rights.

6. If allowed to intervene, Idaho Power would unduly broaden the issues. This proceeding is not about whether Idaho Power has standing to challenge other water uses that Idaho Power alleges are injurious to its subordinated water rights. But that is exactly the issue that will have to be addressed if Idaho Power is granted intervention. Also, this case is not about

any “analysis of the minimum flows pursuant to the Swan Falls Settlement,” as proposed by Idaho Power. *Petition* at 3. As the Director has stated, this proceeding is about whether Pioneer Irrigation District can “divert or accept reuse water from the City or apply the City’s reuse water to land in the Pioneer boundaries under the [City’s] reuse permit without first obtaining a water right” and whether “[a]ny attempt by Pioneer or the City to divert water under the permit to Pioneer without first applying for a water right is in contravention to [sic] Idaho law.” *Notice* at 1. Idaho Power’s *Petition* clearly demonstrates it would expand the proceeding beyond these issues, and it made no effort to explain how it would not. It is too late now for Idaho Power to make that argument.

For these reasons, the City requests the Department to deny Idaho Power’s request for intervention. If intervention is granted, the City requests the Department impose conditions on Idaho Power’s intervention to prevent the broadening of issues raised in the original petition for declaratory ruling.

Respectfully submitted this 29th day of April, 2020.

GIVENS PURSLEY LLP



Michael P. Lawrence

Attorneys for City of Nampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2020, the foregoing was filed, served, and copied as shown below.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES	<input checked="" type="checkbox"/>	U. S. Mail
P.O. Box 83720	<input type="checkbox"/>	Hand Delivered
Boise, ID 83720-0098	<input type="checkbox"/>	Overnight Mail
Hand delivery or overnight mail:	<input checked="" type="checkbox"/>	Fax
322 East Front Street	<input checked="" type="checkbox"/>	E-mail
Boise, ID 83702		
Fax: 208.287.6700		
Email: Gary.Spackman@idwr.idaho.gov		

SERVICE COPIES TO:

Albert P. Barker, Esq.	<input checked="" type="checkbox"/>	U. S. Mail
BARKER ROSHOLT & SIMPSON LLP	<input type="checkbox"/>	Hand Delivered
PO Box 2139	<input type="checkbox"/>	Overnight Mail
Boise, ID 83701-2139	<input type="checkbox"/>	Fax
Email: apb@idahowaters.com	<input checked="" type="checkbox"/>	E-mail
Fax: (208) 344-6034		
Hand delivery or overnight mail:		
1010 W Jefferson St, Ste 102		
Boise, ID 83702		
<i>(For Petitioner Riverside Irrigation District Ltd.)</i>		

COURTESY COPIES:

Garrick L. Baxter, Esq.	<input type="checkbox"/>	U. S. Mail
Deputy Attorney General	<input type="checkbox"/>	Hand Delivered
IDAHO DEPARTMENT OF WATER RESOURCES	<input type="checkbox"/>	Overnight Mail
PO Box 83720	<input type="checkbox"/>	Fax
Boise, ID 83720-0098	<input checked="" type="checkbox"/>	E-mail
Fax: (208) 287-6700		
garrick.baxter@idwr.idaho.gov		
Hand delivery or overnight mail:		
322 E Front St		
Boise, ID 83702		

Andrew J. Waldera, Esq.
SAWTOOTH LAW OFFICES, PLLC
PO Box 7985
Boise ID 83707
Fax: 208-629-7559
bryce@sawtoothlaw.com
andy@sawtoothlaw.com

Hand delivery or overnight mail:
1101 W River St, Ste 110
Boise ID 83702
(For Pioneer Irrigation District)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Fax
- E-mail



Michael P. Lawrence