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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 UNDER REUSE PERMIT NO.
M-255-01

Docket No. P-DR-2020-01

**STIPULATION OF FACTS BY ALL
PARTIES**

Pursuant to the Idaho Department of Water Resource's ("Department" or "IDWR") Rule 557 (IDAPA 37.01.01.557), this Stipulation of Facts ("Stipulation") is submitted jointly by Riverside Irrigation District ("Riverside"), Pioneer Irrigation District ("Pioneer"), City of Nampa ("Nampa"), City of Boise, City of Caldwell, City of Idaho Falls, City of Jerome, City of Meridian, City of Pocatello, City of Post Falls, City of Rupert, the Association of Idaho Cities, Hayden Area Regional Sewer Board, and Idaho Power Company (collectively, "Parties").

I. EXHIBITS

The Parties have entered into a separate stipulation with respect to the following exhibits, which exhibits are referenced in the stipulated facts below:

- Exhibit A Map showing Canyon County irrigation districts (Reuse Application, Figure 5)
- Exhibit B Map showing Nampa's area of city impact and the district boundaries of irrigation districts
- Exhibit C Map showing proposed alternatives for discharge of recycled water to Phyllis Canal (Attachment to Reuse Agreement)
- Exhibit D Map of Recycled Water Flow through Pioneer (Reuse Application, Figure 8)
- Exhibit E Map of Recycled Water Flow through Pioneer: Focus on Upper Portion of Area of Analysis (Reuse Application, Figure 9)
- Exhibit F Reuse Agreement (3/7/2018)
- Exhibit G Reuse Permit (1/21/2020)
- Exhibit H IDEQ's Staff Analysis of Nampa's Reuse Permit Application (10/10/2019)
- Exhibit I EPA Fact sheet: Nampa's NPDES Permit (2015)
- Exhibit J Application for Reuse Permit (including cover letter, Preliminary Technical Report, Plan of Operations, Figures 1-13, and Appendices A-F) (3/19/2019)

- Exhibit K Map Showing Irrigation Districts within Nampa’s Area of City Impact
- Exhibit L Current Agreement between Pioneer Irrigation District and City of Nampa for Municipal Irrigation System (Sept. 9, 1974)
- Exhibit M 2019 Billing from Pioneer Irrigation District to City of Nampa for 2,984.77 Acres
- Exhibit N 2019 Billing from Boise-Kuna Irrigation District to City of Nampa for 436.90 acres
- Exhibit O 2019 Billing from Nampa & Meridian Irrigation District to City of Nampa for 4,077.93 Acres
- Exhibit P Spreadsheet of Pioneer Irrigation District Water Rights
- Exhibit Q Riverside Comments on Reuse Permit
- Exhibit R IDEQ’s Response to Riverside’s Comments
- Exhibit S Wastewater Re-use Partnership: City of Nampa and Pioneer Irrigation District – Different Source But Hardly Revolutionary (presentation by Andy Waldera)
- Exhibit T Minutes – Nampa City Council (Feb. 20, 2018) (agenda item #29 – Nampa Wastewater Treatment Plant Facility Plan) (pages 1, 31-47)

II. STIPULATED FACTS

Pursuant to Rule 557, all Parties except Idaho Power Company stipulate to the facts set out in the numbered paragraphs below. Idaho Power Company is not in a position of knowledge with respect to these facts to enable it to stipulate to their accuracy. However, Idaho Power Company stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to the facts set out below.

1. Pioneer is a duly organized and operating Idaho irrigation district with water rights authorizing irrigation of up to 34,204.16 acres of land within its authorized water right place of use. Pioneer’s apportioned benefit under Idaho Code § 43-404 (delivery obligation) is one miner’s inch (0.02 cfs) per acre. Pioneer’s place of use is described by a general description

in the manner set forth in Idaho Code § 42-219, using a digital boundary as defined in Idaho Code § 42-202B.

2. The land served by Pioneer includes north and northwest Nampa and much of the City of Caldwell.

3. A map showing the overlap of the district boundaries of Pioneer and other irrigation districts within Nampa's area of city impact is submitted separately as Exhibit B.

4. Pioneer is the owner of those water rights listed in Exhibit P, showing the water right numbers, priority date, rate of diversion, source, and use. The sources of water for Pioneer's water rights include Boise River, Indian Creek, Wilson Drain, Mason Creek Drain, Five Mile Creek Drain, Pipe Gulch Draw Creek Drain, Elijah Drain, and groundwater wells.

5. Riverside is a duly organized and operating non-profit corporation with water rights authorizing irrigation up to 10,158 acres within its authorized water right place of use located primarily west of Greenleaf, Idaho. Riverside's place of use is described by a general description in the manner set forth in Idaho Code § 42-219, using a digital boundary as defined in Idaho Code § 42-202B.

6. Nampa is a duly organized and operating Idaho municipal corporation with a population of approximately 100,000.

7. Nampa is a "municipality" within the definition of Idaho Code § 42-202B(4) and is a "municipal water provider" within the meaning of Idaho Code § 42-202B(5).

8. Nampa owns and operates two historically separate municipal water delivery systems, one for potable water ("Potable System") and one for non-potable pressurized irrigation water ("Non-Potable System").

9. Nampa’s Potable System relies on a system of municipal wells, owned and operated by Nampa, from which it diverts ground water under the municipal water rights shown in Table 1 below. Nampa’s Potable System is served exclusively by groundwater.

Table 1: Ground water rights associated with Nampa's Potable System

| Water Right No. | Nominal Diversion Rate (cfs) | Priority | Authorized Purpose | Basis |
|-----------------|------------------------------|------------|--------------------|---------------------|
| 63-02779 | 2.00 | 9/2/1949 | Municipal | Decree (SRBA) |
| 63-02781 | 3.00 | 9/2/1949 | Municipal | Decree (SRBA) |
| 63-05258 | 2.10 | 7/20/1954 | Municipal | Decree (SRBA) |
| 63-07567 | 2.79 | 3/6/1972 | Municipal | Decree (SRBA) |
| 63-08324 | 3.00 | 6/1/1976 | Municipal | Decree (SRBA) |
| 63-09180 | 4.00 | 9/27/1978 | Municipal | Decree (SRBA) |
| 63-10212 | 2.23 | 6/28/1983 | Municipal | Decree (SRBA) |
| 63-11729 | 2.68 | 3/6/1992 | Municipal | License (Post-SRBA) |
| 63-12463 | 3.00 | 6/25/1998 | Municipal | License (Post-SRBA) |
| 63-12474 | 3.50 | 10/1/1998 | Municipal | License (Post-SRBA) |
| 63-12506 | 3.50 | 2/2/1999 | Municipal | License (Post-SRBA) |
| 63-12543 | 4.00 | 7/30/1999 | Municipal | License (Post-SRBA) |
| 63-12591 | 3.50 | 8/21/2000 | Municipal | License (Post-SRBA) |
| 63-28219 | 1.22 | 12/24/1937 | Municipal | Decree (SRBA) |
| 63-28220 | 1.93 | 12/1/1949 | Municipal | Decree (SRBA) |
| 63-31243 | 2.60 | 5/14/2001 | Municipal | License (Post-SRBA) |
| 63-33022 | 4.50 | 3/31/2008 | Municipal | License (Post-SRBA) |
| 63-32835 | 5.00 | 6/15/2018 | Municipal | License (Post-SRBA) |

10. Each of the water rights set out in Table 1 above is authorized for “municipal purposes” in accordance with Idaho Code § 42-202B(6).

11. Each of the water rights set out in Table 1 above has a place of use corresponding to Nampa’s expanding service area, in accordance with Idaho Code § 42-202B(9).

12. Each of the water rights set out in Table 1 above is subject to the conditions set forth in the water rights.

13. Nampa’s Non-Potable System relies on a combination of ground water and surface water. Nampa receives a majority of its irrigation water from surface water supplied by irrigation districts.

14. Nampa obtains surface water for its Non-Potable System from three irrigation districts: Pioneer, NMID, and Boise-Kuna. Exhibit A is a map showing the place of use of these and other irrigation districts serving Canyon County. See also Exhibit K showing irrigation districts within Nampa' area of city impact.

15. Nampa relies on surface water from Pioneer, NMID, and Boise-Kuna for roughly 60 percent of the irrigation water delivered to municipal customers by its Non-Potable System. This percentage is based on the number of acres falling within the three irrigation districts (2,985.00 + 436.90 + 4,077.93 = 7,499.83, as provided in paragraphs 20 and 21) compared to the number of acres currently served by Nampa's Non-Potable System (12,590.58 acres within city limits).

16. Nampa holds one surface water right (no. 63-7954) from the Elijah Drain for use in its Non-Potable System. Nampa has groundwater rights for its Non-Potable System shown in Table 2 below.

| Water Right No. | Nominal Diversion Rate (cfs) | Priority | Basis |
|------------------------|-------------------------------------|-----------------|---------------|
| 63-02449 | 0.80 | 8/13/1931 | Decree (SRBA) |
| 63-02450 | 1.00 | 8/13/1931 | Decree (SRBA) |
| 63-02484 | 1.62 | 8/22/1933 | Decree (SRBA) |
| 63-02780 | 2.50 | 9/2/1949 | Decree (SRBA) |
| 63-02787 | 30.00 | 9/2/1949 | Decree (SRBA) |
| 63-02943 | 1.74 | 6/13/1953 | Decree (SRBA) |
| 63-03257 | 0.58 | 8/29/1961 | Decree (SRBA) |
| 63-05257 | 0.30 | 1/1/1905 | Decree (SRBA) |
| 63-07003 | 7.68 | 6/9/1967 | Decree (SRBA) |
| 63-07708 | 0.40 | 2/14/1973 | Decree (SRBA) |
| 63-08312 | 0.50 | 5/24/1976 | Decree (SRBA) |
| 63-08539 | 0.78 | 3/14/1977 | Decree (SRBA) |
| 63-09853 | 1.00 | 1/17/1982 | Decree (SRBA) |
| 63-09889 | 1.50 | 3/30/1982 | Decree (SRBA) |
| 63-10211 | 7.71 | 3/9/1984 | License |
| 63-10319 | 2.05 | 8/28/1985 | License |
| 63-11511 | 1.50 | 3/28/1990 | License |
| 63-11894 | 0.51 | 1/24/1997 | License |
| 63-12322 | 0.84 | 2/20/1996 | License |

| | | | |
|----------|------|------------|------------------------|
| 63-31504 | 3.73 | 5/28/2002 | License |
| 63-31598 | 0.20 | 10/29/2002 | License |
| 63-31949 | 3.40 | 6/14/2004 | License |
| 63-31961 | 1.46 | 3/1/1991 | License |
| 63-32179 | 0.24 | 4/20/1987 | License |
| 63-32337 | 5.00 | 12/12/2005 | License |
| 63-33968 | 4.00 | 7/15/2014 | Application for Permit |
| 63-34229 | 7.00 | 4/29/2016 | Application for Permit |
| 63-34742 | 4.00 | 6/10/2019 | Application for Permit |

17. Nampa represents that it currently diverts less than the inch-per-acre made available by Pioneer for diversion from Phyllis Canal laterals to Nampa’s Non-Potable System. Nampa pumped a total of 1,144,730,400 gallons (3,513.05 acre-feet) during the 2019 irrigation season from Pioneer’s system to the Non-Potable System. This equates to an average of 9.57 cfs (based on an irrigation season of 185 days, per paragraph 29). Multiplying this average by Nampa’s peaking factor of 2.26 yields a peak hour pumping rate of 21.64 cfs. This peaking factor (2.26) is found in Nampa’s 2014 Irrigation System Master Plan, page 5-3. This peaking rate is less than the peak hour “default peaking factor” of 3.0 contained in IDWR’s RAFN Handbook, page 15 (Mar. 16, 2015). Nampa’s current installed capacity for pumping from the Phyllis Canal to the Non-Potable System is 33.3 cfs. Riverside does not have sufficient knowledge to confirm or deny these representations, but stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to the facts set out in this paragraph.

18. Nampa’s Water right 63-7954 and its water rights in Table 2 above are subject to the purpose of use, place of use and other conditions set forth in the water rights.

19. Nampa has established a municipal irrigation system under Idaho Code Title 50, Chapter 18 to deliver non-potable water. A map of Nampa’s municipal irrigation system is attached as Exhibit K. Nampa has entered into contracts with Pioneer, NMID and Boise-Kuna

for delivery of water to the municipal irrigation system. A copy of the Nampa-Pioneer contract now in effect (dated September 9, 1974) is set out in Exhibit L.

20. Pioneer delivers surface water to Nampa's Non-Potable System from its Phyllis Canal and laterals. These deliveries from Pioneer serve 2,985 acres within Nampa's Non-Potable system (as documented in Pioneer's "2019 Irrigation Assessments – Pioneer Account #7777" dated October 10, 2019) (copy set out in Exhibit M). Pioneer also makes additional, non-pressurized deliveries to Pioneer's land owners who are also Nampa residents and businesses who do not receive water from Nampa's Non-Potable System. Some of these additional, non-pressurized deliveries include Nampa itself. Pioneer's non-pressurized deliveries to Nampa are as follows (by Pioneer account number):

- #0571-1 – City of Nampa – W Railroad St – 8.34 acres;
- #0280-107 – City of Nampa (Nampa Parks & Forestry) – N. Black Butte Ct. – 5.42 acres;
- #0495 – City of Nampa (Nampa Parks & Forestry) – Madison Ave. – 2.74 acres;
- #0744-1 – City of Nampa – N. Middleton Rd. - 0.91 acres;
- #0514 – City of Nampa (Nampa Parks & Forestry) – 654 Carol Ave. – 1.24 acres;
- #0515 – City of Nampa (Nampa Parks & Forestry) – Carol Ave. – 2.09 acres;
- #0443-28 – City of Nampa (Nampa Parks & Forestry) – 16409 11th Ave North – 1.33 acres;
- #0411-3 – City of Nampa (Nampa Parks & Forestry) – N. Franklin Blvd. – 30.51 acres;
- #0818-2 – City of Nampa (Waterworks Division) – 0 W. Orchard Ave. – 0.55 acres;
- #1093-3 – City of Nampa (Public Works Department) – 0 Northside Blvd. – 0.49 acres;

- #1091-6 – City of Nampa (Waterworks Division) – N. Franklin Blvd. – 0.41 acres;
- #1371 – City of Nampa – 14255 Midway Rd. – 51.87 acres;
- #1371-1 – City of Nampa – 14309 Midway Rd. – 0.59 acres;
- #0764 1 – City of Nampa (Nampa Parks & Forestry) – 11370 Smith Ave. – 9.36 acres; and
- #0298-6 – City of Nampa – 2030 Caldwell Blvd. – 0.38 acres.

21. Boise-Kuna delivers water to Nampa’s Non-Potable System for 436.90 acres (Exhibit N). NMID delivers water to Nampa’s Non-Potable System for 4,077.93 acres. (Exhibit O).

22. Nampa supplements its surface water supply for its Non-Potable System with ground water pumped from a number of municipal wells, owned and operated by Nampa, under a number of municipal water rights, shown on Table 2 above.

23. Municipal water that is delivered by Nampa to its municipal customers via Nampa’s Potable System generates sewage that is collected from residents, businesses, and institutions in Nampa by Nampa’s sewage system. This “influent” is delivered to Nampa’s Wastewater Treatment Plant (“WWTP”). The treated water leaving the WWTP is known as “effluent.”

24. The terms “effluent” and “wastewater” (without a space) are used interchangeably in this Stipulation.

25. Effluent leaving the WWTP is composed primarily of treated sewage deriving from municipal water delivered to Nampa’s customers via Nampa’s Potable System, but also includes relatively small amounts of treated sewage from properties within Nampa served by private wells, operational water introduced at the WWTP, and infiltration/inflow (groundwater and surface inputs, e.g., through manhole covers). Specifically, of the roughly 18.6 cfs in

Nampa’s current wastewater stream (see paragraph 29), 0.77 cfs comes from properties within Nampa served by private wells, 0.70 cfs is operational water introduced at the WWTP, and 2.62 cfs is infiltration/inflow water.

26. Nampa represents that the relative size of the operational water and infiltration/inflow components of its wastewater stream is within the normal or typical range for municipal sewage systems. Riverside does not have sufficient knowledge to confirm or deny this representation, but stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to this statement.

27. At this time, the wastewater collected by Nampa is treated and then discharged from Nampa’s WWTP to Indian Creek at a point just north of the Union Pacific Railroad tracks and just west of Northside Boulevard.

28. The WWTP discharge point is upstream of Riverside’s point of diversion on Indian Creek.

29. Currently, Nampa discharges approximately 18.6 cfs (6,825 acre-feet) of wastewater to Indian Creek during the 185-day irrigation season and 17.0 cfs (6,069 acre-feet) during the 180-day non-irrigation season. These numbers are based on recent Discharge Monitoring Reports (“DMRs”) submitted by Nampa to IDEQ. Monthly data for the years 2017-2019 is presented in Table 3 below.

TABLE 3: EFFLUENT DATA - Based on DMR reports submitted by Nampa to IDEQ
 (Available at <https://www.cityofnampa.us/1021/Monthly-Reporting>)
 (See DRM line labeled “flow, in conduit or thru treatment plant”)

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| 2017 Effluent Flow - Average (GPD) | 11.406 | 11.895 | 10.869 | 10.985 | 11.339 | 11.754 | 11.638 | 12.000 | 12.095 | 11.571 | 10.502 | 10.028 |
| 2017 Effluent Flow - Average (cfs) | 17.648 | 18.405 | 16.817 | 16.997 | 17.544 | 18.187 | 18.007 | 18.567 | 18.714 | 17.903 | 16.249 | 15.516 |
| 2018 Effluent Flow - Average (GPD) | 9.833 | 9.525 | 9.505 | 9.682 | 10.154 | 11.084 | 11.275 | 11.148 | 11.122 | 10.927 | 10.416 | 10.489 |
| 2018 Effluent Flow - Average (cfs) | 15.214 | 14.738 | 14.707 | 14.981 | 15.711 | 17.150 | 17.445 | 17.249 | 17.209 | 16.907 | 16.116 | 16.229 |
| 2019 Effluent Flow - Average (GPD) | 10.470 | 10.764 | 10.589 | 10.636 | 12.037 | 12.224 | 11.840 | 11.555 | 12.047 | 11.434 | 11.039 | 10.632 |
| 2019 Effluent Flow - Average (cfs) | 16.200 | 16.655 | 16.384 | 16.457 | 18.624 | 18.914 | 18.320 | 17,879 | 18.640 | 17.691 | 17.080 | 16.451 |

30. Wastewater currently discharged by Nampa to Indian Creek is comingled in Indian Creek with waste water from other water users and other waters of the State. The water in Indian Creek has historically been diverted and put to use by downstream water right holders, including Riverside.

31. During the irrigation season, Riverside typically diverts most, if not all, of the flow of Indian Creek into the Riverside Canal where the canal and the creek intersect. See Exhibit H at page 30 (page 22 of IDEQ's Staff Analysis of Nampa's Reuse Permit Application). Riverside estimates that more than 50 percent of its supply comes from Indian Creek. The other Parties do not have sufficient knowledge to confirm or deny these representations, but they stipulate that they do not currently intend to challenge or to offer contrary evidence with respect to the facts set out in this paragraph.

32. Riverside water right sources also include the Boise River, Mammen Gulch Creek/Drain, West End Drain, East Arena Drain, Christian Gulch Wasteway, Guess Gulch Creek, and Meadows Gulch Drain.

33. Riverside diverts water from Indian Creek at the Riverside Canal west of the City of Caldwell. Riverside has the right to divert approximately 180 cfs of water from Indian Creek under Water Right Nos. 63-2279 and 63-2374 with 1915 and 1922 priority dates.

34. As a result of the *Reuse Permit*, Nampa intends to eliminate all of its WWTP wastewater discharge to Indian Creek during the irrigation season, and intends to continue to discharge to Indian Creek during the non-irrigation season.

35. Pioneer does not hold a water right, nor has it sought a water right, that expressly authorizes it to accept wastewater from Nampa pursuant to its Reuse Agreement with Nampa.

36. The effluent limitations (aka discharge limits) applicable to Nampa's WWTP effluent are governed by NPDES Permit No. ID0022063 issued to Nampa pursuant to the Clean Water Act by EPA on September 20, 2016 (effective November 1, 2016). A copy of this permit appears as Appendix A to Nampa's Application for Reuse Permit, see Exhibit J, pp. 129-184. The NPDES Permit requires Nampa to provide pollution control and treatment of its wastewater stream based on discharge limits (numeric standards applicable to the discharge) prior to discharge to Indian Creek. These discharge limits are aimed at meeting water quality standards set by the State of Idaho (ambient standards applicable to the receiving waters). Among others, the NPDES Permit contains discharge limits for nutrients (total phosphorus, aka TP) and temperature.

37. Recognizing that compliance with these TP and temperature effluent limits was not immediately achievable (Fact Sheet for Nampa's NPDES Permit, Exhibit I, p. 15), EPA established interim effluent limitations and a compliance schedule. The interim effluent limitations for TP are set out in Table 4 on page 12 of the NPDES Permit (Exhibit J, p. 143). The compliance schedule is set out in Table 3 on pages 12-13 of the NPDES Permit (Exhibit J, pp. 142-143).

38. Under the compliance schedule, Nampa must meet the final effluent limitations for phosphorus on September 30, 2026 and for temperature on September 30, 2031. See tasks 6-8 on Table 3 at page 12 of the permit (Exhibit J, p. 143). The final effluent limitations that must be met are found in Table 1 for phosphorus (Exhibit J, p. 136-137) and Table 2 for temperature (Exhibit J, p. 139). To meet these standards, Nampa estimates that it will have to spend approximately \$210 million on pollution control system upgrades.

39. Under the NPDES Permit, Nampa is required to evaluate options and provide deliverables to EPA before 2026 or 2031, advising the steps it is taking to achieve these stricter limitations. Tasks 5, 5A, and 5B of the compliance schedule (Exhibit J, p. 142) require action by Nampa, including evaluation of options to achieve compliance with the final effluent limits, such as “seasonal re-use” (which Nampa has pursued in the form of the Reuse Project) and reporting of the methods selected to reach compliance. These schedules reflect the fact that WWTP-related projects take years to plan and implement.

40. In contrast to the \$210 million cost to comply with the final effluent limits in the NPDES permit for discharge to Indian Creek, Nampa estimates that pollution control upgrades based on irrigation season delivery of water to the Phyllis Canal (generally April 1 through November 1) under the *Reuse Permit* will entail net costs of roughly \$190 million (reflecting savings of roughly \$40 million offset by additional costs of roughly \$20 million) yielding net savings of roughly \$20 million. These anticipated savings are explained further in the following three paragraphs.

41. Nampa estimates that roughly \$20 million of the \$210 million upgrade cost corresponds to the cost of meeting temperature limits in Indian Creek, which are more stringent during the summer irrigation season. IDEQ’s water quality standards treat irrigation canals as manmade waterbodies with a water quality standard of “agricultural water supply.” IDAPA 58.01.02.101; 58.01.02.252.02. Accordingly, the effluent limits for temperature in the NPDES permit do not apply to discharges to the Phyllis Canal, as there is currently no temperature criterion for agricultural water supply.

42. Nampa’s NPDES Permit provides a TMDL-based wasteload allocation for phosphorus of 0.1 ppm (or mg/l), and a wasteload allocation for winter discharges of 0.35 ppm

(or mg/l). See Exhibit H, p. 30. Under the *Reuse Permit*, Nampa received a year-round (Phyllis Canal in the summer and Indian Creek in the winter) limit of 0.35 ppm (or mg/l). See Exhibit G, p. 20. Nampa estimates this will result in saving another roughly \$20 million, bringing the total estimated savings to \$40 million.

43. The roughly \$40 million in estimated savings will be offset by an additional roughly \$20 million in estimated costs entailed in constructing the Class A recycled water system, including infrastructure for delivery to the Phyllis Canal, necessitated by the *Reuse Permit*. The net result (\$40 million in savings less \$20 million in additional costs) will be an estimated savings of \$20 million to Nampa and its customers achieved by implementing the recycled water program authorized by the *Reuse Permit*.

44. In many respects, the Class A recycled water proposed to be discharged to the Phyllis Canal will be of higher quality than the background quality of the irrigation water in the Phyllis Canal.

45. Nampa's proposed wastewater discharge to the Phyllis Canal has been approved by IDEQ under IDEQ standards pursuant to the *Reuse Permit*.

46. During its evaluation of alternative methods of meeting the requirements of the compliance schedule in its NPDES Permit, Nampa sought input from community members and stakeholders in the form of the Nampa Wastewater Advisory Group (NWAG). The alternatives explored are described in the excerpt of minutes of the Nampa City Council (agenda item #29, February 20, 2018) reproduced in Exhibit T. Those minutes document (1) NWAG "overwhelmingly favored" alternative #2.5 (which includes the Reuse Project) (Minutes, p. 43, Exhibit T, p. 45), (2) public comment was mixed (three appeared in support, two appeared in

opposition) (Minutes, p. 46, Exhibit T, p. 48), and (3) the City Council unanimously approved the wastewater facility plan based on alternative 2.5 (Minutes, p. 47, Exhibit T, p. 49).

47. Riverside commented to IDEQ that Pioneer had no water right to use the reuse water on land within Pioneer boundaries. (Exhibit Q). IDEQ responded to Riverside's comments, by stating that IDEQ does not regulate water rights or have the ability to respond to Riverside's comments (Exhibit R). IDEQ included a provision in the *Reuse Permit* that the permittee is not relieved of its duty to comply with the other state laws and rules. IDEQ advised Riverside that Nampa has been informed of this concern (see Exhibit R). The Parties agree that IDEQ has no authority to authorize diversion or beneficial use of water and that whether a water right is necessary or not is a matter for IDWR.

48. Riverside filed a *Petition to Initiate a Contested Case* with IDEQ on February 24, 2020 ("*IDEQ Petition*"), challenging certain aspects of the *Reuse Permit* issued to Nampa. On March 12 and 13, 2020, Riverside entered into a stipulation with Nampa and Pioneer to withdraw the *IDEQ Petition* to focus the party's resources on the issues related to diversion and use of water in this pending proceeding before IDWR. Nampa and Pioneer agreed that they are precluded from arguing that Riverside's withdrawal of the *IDEQ Petition* prevents Riverside from asserting in this proceeding that Pioneer is required to obtain a water right to divert and use the water supplied by Nampa to the Phyllis Canal under the *Reuse Permit*.

49. On March 7, 2018, Nampa and Pioneer entered into a *Reuse Agreement* whereby Nampa would seek a recycled water reuse permit from IDEQ authorizing Nampa to discharge up to 41 cfs of Class A recycled water to Pioneer's Phyllis Canal as supplemental irrigation water supply. The 41 cfs number in the *Reuse Agreement* is larger than the 31 cfs authorized under the *Reuse Permit*. Nampa and Pioneer assert that this reflects their longer-term water reuse goals

that extend beyond the 20-year timeframe of the *Reuse Permit*. A copy of the *Reuse Agreement* was submitted separately as Exhibit F. (It also appears as Appendix B to the *Application for Reuse Permit*, which was submitted separately as Exhibit J.)

50. On March 19, 2019, Nampa, with Pioneer's support, filed its reuse permit application package with IDEQ. A copy of the application is submitted separately as Exhibit J. IDEQ ultimately approved the application and issued *Reuse Permit No. M-255-01* to Nampa on January 21, 2020. The *Reuse Permit* expires on January 21, 2030.

51. The *Reuse Permit* authorizes Nampa to discharge to the Phyllis Canal up to 31 cfs of Class A Recycled Water from the Nampa WWTP between May 1 and September 30 each year, subject to obtaining other governmental approvals, if any are applicable.

52. Nampa intends to continue to discharge its WWTP effluent to Indian Creek during the non-irrigation season.

53. A map showing five alternative paths for discharge of wastewater from Nampa's WWTP to the Phyllis Canal (options 1A, 1B, 2A, 2B, and 3) is submitted separately as Exhibit C. (It is also set out as an attachment to the *Reuse Agreement*, a copy of which is submitted separately as Exhibit F.) Nampa has not determined which route to use to convey water to the Phyllis Canal from the WWTP.

54. Two maps showing the locations at which Pioneer delivers irrigation water to Nampa are submitted separately as Exhibit D and Exhibit E.

55. The area illustrated below those points include approximately 17,000 acres of municipal and agricultural irrigation uses, including a part of Nampa's Non-Potable System. See Exhibit H, p. 17.

56. Nampa's delivery of wastewater under the *Reuse Permit* is intended to benefit Nampa and Pioneer by offsetting in part declining Phyllis Canal sources upstream of Nampa (notably the declining Fivemile Feeder Canal inputs into the Phyllis Canal, caused by declining drain flows in Fivemile Drain). Though variable, availability and utility of Pioneer water right no. 63-21731 (76.6 cfs from Fivemile Creek Drain with a priority of June 1, 1918) used to supply the Fivemile Feeder Canal has steadily declined over time to the point where approximately 30-40 cfs remains a reliable flow during the latter half of the irrigation season over the last five irrigation seasons. Riverside does not have sufficient knowledge to confirm or deny these representations, but stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to the facts set out in this paragraph.

57. Nampa and Pioneer assert that their undertaking under the *Reuse Permit* is also intended to enhance water delivery efficiency and reduce operational spills of water by linking and coordinating operations of Nampa's Eaglecrest and Moss Point pump stations with the Crestwood and Asbury Park pump stations, also owned, operated and maintained by Nampa as part of its Non-Potable System. The other two Non-Potable System pump stations served by the Phyllis Canal on or upstream of the McCarthy Lateral are the Horton and Orchard Heights pump stations. Nampa also owns and operates a Non-Potable System pump station on the Phyllis Canal just downstream of the Canal's crossing of the Jonah Drain (the Midway Park pump station). Riverside does not have sufficient knowledge to confirm or deny these assertions, but stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to the facts set out in this paragraph.

58. Within approximately three miles downstream of Nampa's proposed WWTP discharge into the Phyllis Canal, Pioneer delivers irrigation water to six Non-Potable System

pump stations owned and operated by Nampa. In addition, Pioneer makes a number of deliveries to other Pioneer landowners within Nampa's area of city impact (older subdivisions using non-pressurized irrigation systems as well as individuals using water for residential or agricultural irrigation).

59. These deliveries downstream of the proposed WWTP discharge are located on the Phyllis Canal, the 15.0 Lateral, the Hatfield Lateral, the Stevens Lateral, the Stone Lateral, the McCarthy Lateral, and branches thereof. The 15.0 Lateral, located within a mile downstream of the proposed WWTP discharge point, diverts 32 cfs from the Phyllis Canal for use on approximately 1,600 acres of lands located within Pioneer's place of use, including delivery to two of Nampa's Non-Potable System pump stations (Eaglecrest and Moss Point). (This number appears in Table 7-2 of the Preliminary Technical Report submitted by Nampa as part of its Reuse Permit Application, see Exhibit J, page 61.) Pioneer makes other deliveries downstream of the proposed WWTP discharge that deliver water to municipal (urban/suburban) and agricultural users within Pioneer's place of use, including some within Nampa's area of city impact.

60. Pioneer delivers to eight laterals and headgate deliveries listed in Table 7-2 from the Phyllis Canal. (See Phyllis Canal Diversions and Inputs on page 7-8 of the Preliminary Technical Report submitted by Nampa as part of its Reuse Permit Application, reproduced in Exhibit J, p. 61.)

Respectfully submitted this 11th day of September, 2020.

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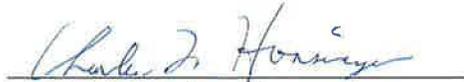
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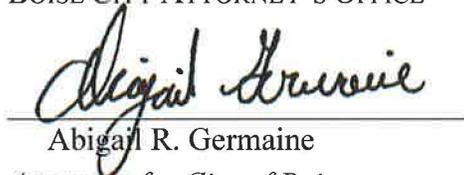
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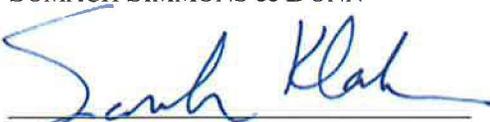
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