

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

IN THE MATTER OF CITY OF BOISE  
WATER RIGHT Nos. 63-3013, 63-3014,  
63-7005B, 63-7042B, 63-7047, 63-7053,  
63-7055A, 63-7055C, 63-7055D, 63-7064A,  
63-7064B, 63-7078B, 63-7755B, 63-8130B,  
63-8435, 63-9243, 63-9359, 63-12461 and  
63-12470

**ORDER DIRECTING SERVICE OF  
PETITION ON THE CITY OF BOISE**

**INTRODUCTION**

On October 5, 2022, Petitioner CS Property Development LLC (“CS Property”) filed with the Idaho Department of Water Resources (“Department”) a *Petition for Partial Forfeiture* (“Petition”). CS Property states that it “is a petitioner as it seeks ‘to clarify or have the agency declare . . . a person’s rights or obligations.’” *Petition* at 4 (quoting IDAPA 37.01.01.152). The Petition names the City of Boise (“City”) as the owner of certain water rights, alleges those water rights have been partially forfeited, and requests the Department amend the water rights accordingly. Specifically, CS Property requests the Department “initiate a contested case and move to formal proceedings pursuant to IDAPA 37.01.01.101 to amend the City’s decreed water rights to represent this forfeiture and to decrease the City’s combined Water Rights.” *Id.* at 5.

CS Property acknowledges the “expected reluctance of the City” to accept that its water rights have been partially forfeited as alleged in the Petition. *Id.* But, despite seeking amendment of the City of Boise’s decreed water rights, the Petition does not include any proof that the City has been notified of or served with the Petition.

**APPLICABLE LAW**

The Department’s Rules of Procedure govern contested cases before the Department. IDAPA 37.01.01.001. Rule 2.12 defines a “party” as, among others, “[e]ach person named or admitted as a party . . . .” IDAPA 37.01.01.002.01. To facilitate proper notice to parties, Rule 202 requires service on parties and their representatives:

From the time a party files its initial pleading in a contested case, that party must serve all documents filed with the agency upon all other parties or their designated representatives unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon parties or their representatives.

IDAPA 37.01.01.202. In addition, Rule 53.05 requires that “[e]very document filed or served must be accompanied by a proof of service . . . .” IDAPA 37.01.01.053.05.

## ANALYSIS

CS Property seeks a declaration that certain decreed water rights have been partially forfeited. The Petition names the City as the owner of the water rights in question. Therefore, the City is a “party” to this proceeding. IDAPA 37.01.01.002.01.

The Petition is an initial pleading in a contested case, so CS Property “must serve” it on not only the Department but also “upon all other parties or their designated representatives unless otherwise directed . . . .” IDAPA 37.01.01.202. But CS Property offers no proof that the City has been served with the Petition. Under Rule 202, the Director concludes it is appropriate that CS Property serve the Petition on the City and, as required by Rule 53.05, file proof of that service with the Department.

The Director will consider whether it is appropriate to initiate formal proceedings, as CS Property requests, once there is proof that the City has been served with the Petition. *See* IDAPA 37.01.01.102.

## ORDER

IT IS HEREBY ORDERED that Petitioner CS Property Development LLC shall serve the City of Boise with the Petition and this order on or before December 23, 2022.

IT IS FURTHER ORDERED that CS Property Development LLC shall file with the Department a proof of service in conformity with IDAPA 37.01.01.053.05 on or before December 23, 2022.

DATED this 21<sup>st</sup> day of November 2022.



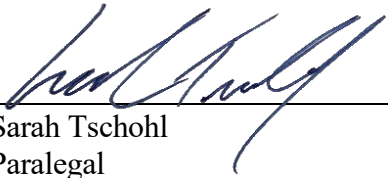
GARY SPACKMAN

Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 21st day of November 2022, the above and foregoing was served by the method indicated below, and addressed to the following:

<p>Albert P. Barker Michael A. Short <b>BARKER ROSHOLT &amp; SIMPSON LLP</b> P.O. Box 2139 Boise, Idaho 83701-2139 <a href="mailto:apb@idahowaters.com">apb@idahowaters.com</a> <a href="mailto:mas@idahowaters.com">mas@idahowaters.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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Sarah Tschohl  
Paralegal