



judicial review of the Director's Amended Final Order conditionally approving transfer application number 79380.

4. On December 21, 2015, the Petitioner filed a copy of an email from himself to the Director dated December 1, 2015. The email concerned transfer numbers 79357 and 79380. On the face of the copy of the email filed with this Court, the Petitioner circled transfer number 79357 and hand wrote the following notation: "Submitted to insure the record – and add this water transfer number to the review."

5. On January 21, 2016, the Intervenor filed a Motion to Clarify. The Motion requests that this Court clarify that the scope of this judicial review proceeding is limited to review of the Director's Amended Final Order conditionally approving transfer application number 79380. The Respondents have joined in the Motion.

6. The Petitioner filed a Response to the Motion, requesting that this Court allow him to seek judicial review of the Director's Amended Final Orders conditionally approving transfer application numbers 79357 and 79380.

7. In its Motion, the Intervenor does not request oral argument. Under Idaho Rule of Civil Procedure 84(o), the Motion "shall be determined without oral argument unless ordered by the court." The Court does not so order. Therefore, it is appropriate for this Court to address the Motion without oral argument.

## II.

### ANALYSIS

Judicial review of a final decision of an agency is governed by the Idaho Administrative Procedure Act. Under the Act, a party aggrieved by a final order of the Director of the Idaho Department of Water Resources may file a petition for judicial review of that order "within twenty-eight (28) days of the service date of that final order . . . ." I.C. § 67-5273(2). The petition must include "[i]nformation such as the date and the heading, case caption or other designation of the agency and *the action for which judicial review is sought.*" I.R.C.P. 84(d)(3) (emphasis added). The term "action" as used in Rule 84(d)(3) means any "rule, *order*, ordinance or other decision or lock of decision of an agency made reviewable by statute." I.R.C.P. 84(a)(2)(A)(emphasis added).

In this case, the Director's Amended Final Orders conditionally approving transfer application numbers 79357 and 79380 were both issued on November 12, 2015. The Petitioner timely filed a Petition for Judicial Review within twenty-eight days of the service date of those Orders. However, the information included in the Petitioner's Petition indicates that it seeks judicial review of the Director's Amended Final Order conditionally approving application number 79380. For instance, the caption of his Amended Petition reads as follows: "IN THE MATTER OF APPLICATION FOR REVIEW TRANSFER NUMBER 79380."<sup>1</sup> Conversely, there is no reference to transfer application number 79357 in either the caption or the body of the Petition. Therefore, the Petitioner's Petition clearly designates "the action for which judicial review is sought" as the Director's Amended Final Order conditionally approving transfer application number 79380.

Had the Petitioner also wished to seek judicial review of the Director's Amended Final Order conditionally approving transfer application number 79357, the Petitioner was required to file a separate petition placing that Order at issue. The Idaho Administrative Procedure Act permits an aggrieved party to file "a petition for judicial review of *a final order*" of the Director. I.C. § 67-5273(2) (emphasis added). This is stated in the singular. Where, as here, the Director issues two separate final orders addressing two separate applications for transfer, a party aggrieved by both must seek judicial review of each Order separately, via the use of two separate petitions for judicial review. This is necessary for the orderly processing of the petitions at the judicial level, as the agency record applicable to each order of the director is unique to that order. The Petitioner attempts to bootstrap into this proceeding judicial review of the Director's Amended Final Order conditionally approving transfer application number 79357 via his filing dated December 21, 2015. This is improper procedure under the Idaho Administrative Procedure Act, and does not excuse the absence of the filing of a separate petition for judicial review. Since the Petitioner did not timely file a petition seeking judicial review of the Director's Amended Final Order conditionally approving transfer application number 79357, the Court finds that issues pertaining to that Amended Final Order are not properly before the Court.

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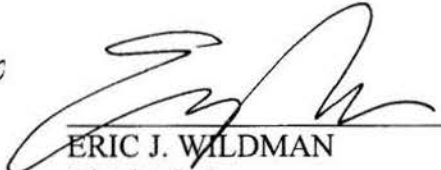
<sup>1</sup> Likewise, the caption of the Petitioner's original Petition reads "in the matter of application for review transfer number 79380."

**III.**  
**ORDER**

Therefore, IT IS ORDERED that the Intervenor's Motion to Clarify Scope of Appeal is **hereby granted.**

IT IS FURTHER ORDERED that the scope of the above-captioned judicial review proceeding is limited to review of the Director's Amended Final Order conditionally approving transfer application number 79380.

Dated February 4, 2016

  
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ERIC J. WILDMAN  
District Judge

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the ORDER ON MOTION TO CLARIFY SCOPE OF JUDICIAL REVIEW PROCEEDING was mailed on February 04, 2016, with sufficient first-class postage to the following:

IDWR AND GARY SPACKMAN IN HIS

Represented by:  
GARRICK L BAXTER  
DEPUTY ATTORNEY GENERAL  
STATE OF IDAHO - IDWR  
PO BOX 83720  
BOISE, ID 83720-0098  
Phone: 208-287-4800

CEDAR RIDGE DAIRY LLC

Represented by:  
PAUL L ARRINGTON  
195 RIVER VISTA PL STE 204  
TWIN FALLS, ID 83301-3029  
Phone: 208-733-0700

CEDAR RIDGE DAIRY LLC

Represented by:  
TRAVIS L THOMPSON  
195 RIVER VISTA PL STE 204  
TWIN FALLS, ID 83301-3029  
Phone: 208-733-0700

~~DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098~~

RICHARD PARROTT  
1389 E 4400 N  
BUHL, ID 83316  
Phone: 208-308-7113

