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*Attorneys for Veolia Water Idaho, Inc.*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VEOLIA WATER IDAHO, INC., an Idaho  
corporation,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES,

Respondent.

Case No.: CV01-23-04525

Fee Category L.3.a – \$221.00

**VEOLIA’S PETITION FOR JUDICIAL  
REVIEW OF FINAL AGENCY ACTION**

IN THE MATTER OF APPLICATION FOR  
TRANSFER NO. 85719 IN THE NAME OF  
VEOLIA WATER IDAHO, INC.

Petitioner Veolia Water Idaho, Inc. (“Veolia”), by and through its attorneys of record, Michael P. Lawrence and Charlie S. Baser of Givens Pursley LLP, hereby files this petition (“*Petition*”) seeking judicial review of a final agency action by the Idaho Department of Water Resources (“IDWR” or “Department”) pursuant to Idaho Code §§ 67-5270 through 67-5279 and Rule 84 of the Idaho Rules of Civil Procedure.

## STATEMENT OF THE ISSUES AND CASE

1. This *Petition* seeks judicial review of the February 2, 2023 *Order on Petition for Reconsideration* (“*Order*”) issued by IDWR in the matter of *Application for Transfer No. 85719 In the Name of Veolia Water Idaho, Inc.* (“*Transfer Application*”).

2. The issue on judicial review is whether, in the *Transfer Application* proceeding, IDWR could have and should have removed the words “per acre” from the following condition included in the partial decree for water right no. 63-9245: “This right when combined with Right Nos. 63-7368 & 63-7618 shall not exceed 4.5 cfs per acre.” (Emphasis added.) On judicial review, Veolia asks this court to order that the words “per acre” be stricken from this condition, or remand the matter to IDWR with instructions to remove the words “per acre” as requested in *Veolia’s Transfer Application*.

3. Because it is unclear whether the relief requested in this *Petition* can be granted by this court on judicial review or whether the Snake River Basin Adjudication (“SRBA”) Court is the proper venue to seek the relief requested, Veolia is also filing motions requesting essentially the same relief with the SRBA Court. Veolia contemplates that this judicial review and the SRBA Court proceedings could be consolidated, or that one could be stayed while the other proceeds.

## JURISDICTION AND VENUE

4. This *Petition* is authorized by Idaho Code §§ 67-5270 through 67-5279.

5. The *Order* is a final agency action subject to judicial review pursuant to Idaho Code §§ 67-5246(3) and 67-5270(2).

6. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A and 67-5270.

7. Venue lies in this Court pursuant to Idaho Code § 62-5272 and the SRBA Court's July 1, 2010 *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order dated December 9, 2009*. Petitioner Veolia's primary place of business is in Ada County, Idaho. IDWR's final action was taken in Ada County, Idaho.

8. Pursuant to the Idaho Supreme Court's *Administrative Order* issued on December 9, 2009 "all petitions for judicial review of any decision regarding administration of water rights from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District." The SRBA Court's procedures instruct the clerk of the district court in which the petition is filed to issue a *Notice of Reassignment*. Petitioners have attached a copy of the SRBA Court's *Notice of Reassignment* form for the convenience of the clerk.

9. This *Petition* is timely as it is filed within 28 days of the date of service of a final order. I.C. § 67-5273(2).

#### **PARTIES**

10. Petitioner Veolia is a corporation organized under the laws of the State of Idaho, including without limitation Title 50, Idaho Code, and its principal place of business is 8248 W. Victory Road, Boise, Idaho 83709.

11. Respondent IDWR is a state agency with its main office located at 322 E. Front St., Boise, Idaho, 83702.

#### **STATEMENT OF INITIAL ISSUES**

12. Petitioner asserts the following issue on judicial review:

12.1. Whether, as requested in Veolia's *Transfer Application*, IDWR could have and should have removed, or should be instructed to remove, the words "per acre" from the

following condition included in the partial decree for water right no. 63-9245: “This right when combined with Right Nos. 63-7368 & 63-7618 shall not exceed 4.5 cfs per acre.”

12.2. Whether, as requested in Veolia’s *Transfer Application*, this court should order the words “per acre” be stricken from the condition quoted above.

12.3. Whether IDWR has authority to change conditions in partial decrees when requested in a water right transfer proceeding.

#### **AGENCY RECORD**

13. IDWR has compiled a documentary record in this matter. Because no hearing was held, there is no transcript and none is requested.

14. Petitioner requests that all documents in IDWR’s files for the *Transfer Application* and water right no. 63-9245 be included in the agency record.

15. The undersigned attorneys for Veolia hereby certify that Veolia has paid the clerk of the agency the estimated fee of \$20.00 for the preparation of the record.

#### **SERVICE**

16. The undersigned hereby certify that service of this *Petition* has been made on Respondent.

#### **I.R.C.P. 84(C) INFORMATION**

17. **Name of Agency for Which Judicial Review is Sought:** Idaho Department of Water Resources, an executive department existing under the laws of the state of Idaho pursuant to Idaho Code § 42-1701 et seq., with its state office located at 322 E. Front St., Boise, Ada County, Idaho 83702.

18. **Title of District Court to Which Petition is Taken:** In the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

19. **Case Caption and Action for Which Judicial Review is Sought:** The February 2, 2023 *Order on Petition for Reconsideration* issued *In the Matter of Application for Transfer No. 85719 in the name of Veolia Water Idaho, Inc.*

20. **Hearing Recording:** A hearing was not held in this matter. Accordingly, there is no hearing recording or reporting.

21. **Statement of Issues of Judicial Review:** See above section entitled “Statement of Initial Issues.” In general, the issue is whether the words “per acre” can and should be removed by IDWR or this court from the following condition included in the partial decree for water right no. 63-9245: “This right when combined with Right Nos. 63-7368 & 63-7618 shall not exceed 4.5 cfs per acre.”

22. **Designation of Whether a Transcript is Required:** A hearing transcript is not being requested and no hearing was held.

23. **Attorney Certification:** The undersigned counsel for Petitioner certify the following: 1) service of this petition has been made upon the Department; and 2) that the clerk of the agency has been paid the estimated fee for the preparation of record after our staff contacted Nick Miller of the Department, who provided the estimate of \$20.00, which was then paid by mailing a check for the amount to the Department’s state office, located at 322 E. Front St., Boise, Idaho 83702.

Respectfully submitted this 16th day of March, 2023.

GIVENS PURSLEY LLP

By: /s/Charlie S. Baser  
Michael P. Lawrence  
Charlie S. Baser

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16th day of March, 2023, the foregoing was filed, served, and copied as set out below.

**DOCUMENT FILED:**

Clerk of the District Court – Ada County  
200 W. Front Street  
Boise, ID 83702

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail/iCourt

**SERVICE COPIES TO:**

Idaho Department of Water Resources  
322 E. Front Street  
Boise, ID 83702

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

By:     /s/Charlie S. Baser      
Charlie S. Baser