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Attorneys for Jeffrey and Chana Duffin

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

JEFFREY AND CHANA DUFFIN, husband
and wife,

Petitioners,

v.

THE IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

Case No. _____

Fee Category L.3.a – \$221.00

**NOTICE OF APPEAL AND PETITION
FOR JUDICIAL REVIEW OF FINAL
AGENCY ACTION**

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 83160 IN THE NAME OF
JEFFREY AND CHANA DUFFIN

Petitioners Jeffrey and Chana Duffin (the “Petitioners”), by and through their counsel of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby file this *Notice of Appeal and Petition for Judicial Review of Final Agency Action* challenging a final decision by the Idaho Department of Water Resources (“IDWR” or “Department”), pursuant to Idaho Code §§ 42-1701A(4), 67-5270, and 67-5279.

STATEMENT OF THE CASE

1. This matter concerns IDWR Hearing Officer James Cefalo's issuance of his *Amended Preliminary Order Denying Transfer* (dated August 12, 2020) issued in the above-entitled matter (the "Order"). This is a civil action pursuant to Idaho Code §§ 42-1701A(4), 67-5270, and 67-5279 seeking judicial review of the Order.

2. The Order, which is a preliminary order of the Department, became a final order of the Department on August 28, 2020, fourteen (14) days after issuance of the Order. IDAPA 37.01.01.730.02.

3. Pursuant to Idaho Code §§ 67-5270 and 67-5273, the Petitioners may petition for judicial review within twenty-eight (28) days of "the date when the preliminary order became final," Idaho Code § 42-5273(2), which in this matter is on or before September 25, 2020. *See also* IDAPA 37.01.01.730.02.

4. The Order is the subject of this *Notice of Appeal and Petition for Judicial Review of Final Agency Action*.

JURISDICTION AND VENUE

5. This petition is authorized by Idaho Code §§ 42-1701A(4), 67-5270, and 67-5279.

6. This Court has jurisdiction and venue over this action pursuant to Idaho Code §§ 42-1701A(4) and 67-5272, as the party seeking review of the Order resides in Bingham County. Additionally, the county in which the real property that is the subject of the agency action (Water Right No. 35-7667) is located in Bingham County. *See also* IDAPA 37.01.01.791.01.

7. 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 Snake River Basin Adjudication District 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 Snake River Basin Adjudication District Court’s *Notice of Reassignment* form for the convenience of the clerk.

8. The Order is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

I.R.C.P 84(c) INFORMATION

9. **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 Street, Boise, Ada County, Idaho 83720.

10. **Title of the District Court to Which the Petition is Taken:** In the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bingham.

11. **Case Caption and Action for Which Judicial Review is Sought:** In the Matter of Application for Transfer No. 83160 in the Name of Jeffrey and Chana Duffin.

12. **Hearing Recording:** A hearing was **not** held in this matter, as the matter was submitted to the Hearing Officer on a *Stipulated Statement of Facts*. Accordingly, there is no hearing recording.

13. **Statement of Issues for Judicial Review:** An initial list of the statement of issues for judicial review are:

- a. Whether the hearing officer erred by concluding that the changes proposed in Transfer No. 83160 will result in an enlargement of the water right subject to the transfer (WR 35-7667).

- b. Whether the hearing officer erred by failing to interpret the plain language of the license for WR 35-7667 and/or whether the hearing officer erred by concluding as he did where there is no language combining WR 35-7667 with any other water rights or water entitlements.
- c. Whether the hearing officer erred in finding that “combined beneficial use” is an element and/or component of a water right, and whether “combined beneficial use” is merely another term for “consumptive use” (which is not an element of a water right) in violation of Idaho Code § 42-202B(1) and other applicable Idaho law.
- d. Whether the hearing officer erred by concluding that the changes proposed in Transfer No. 83160 will result in injury to other water rights.
- e. Whether the hearing officer erred by concluding that the changes proposed in Transfer No. 83160 are not consistent with the conservation of water resources in the state of Idaho.
- f. Whether the hearing officer erred by concluding that the changes proposed in Transfer No. 83160 are not in the local public interest.
- g. Whether the hearing officer’s actions prejudiced a substantial right of the Petitioners.

14. **Designation as to Whether a Transcript is Requested:** A hearing transcript is not being requested as this matter was submitted to the hearing officer based on a *Stipulated Statement of Facts*.

15. **Attorney Certification:** I, Robert L. Harris, counsel for the Petitioners, certify that (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 preparation of the record after I contacted Garrick Baxter of the Department, who provided an estimate of twenty dollars (\$20.00), which I then paid by hand-delivering a check for the estimated amount to the Eastern Region Office of IDWR at 900 N. Skyline Dr. Ste. A, Idaho Falls, Idaho 83402 on September 18, 2020.

Dated this 18th day of September 2020.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September 2020, I served a copy of the following described pleading or document on the parties listed below by the indicated method.

Document Served: NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION

Attorneys and/or Individuals Served:

Gary Spackman
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IDAHO DEPARTMENT OF WATER RESOURCES
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Courtesy Copy:
Snake River Basin Adjudication District Court
of the Fifth Judicial District
P.O. Box 2707
Twin Falls, Idaho 83303-2707

- Mail
- Hand Delivery
- Facsimile
- Courthouse Box
- Email



Robert L. Harris
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**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

JEFFREY AND CHANA DUFFIN, husband
and wife,

Petitioners,

v.

THE IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

Case No. _____

NOTICE OF REASSIGNMENT

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 83160 IN THE NAME OF
JEFFREY AND CHANA DUFFIN

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District, and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Snake River Basin Adjudication District Court the authority to adopt procedural rules necessary to implement said Order, and

WHEREAS on July 1, 2010, the Snake River Basin Adjudication District Court issued an Administrative Order regarding the Rule of Procedure Governing Petitions for Judicial Review or Actions for Declaratory Relief of Decisions from the Idaho Department of Water Resources.

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. The above matter is hereby assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District for disposition and further proceedings.

2. All further documents filed or otherwise submitted in this matter, and all further filing fees filed or otherwise submitted in this matter, shall be filed with the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho 83303-2707, provided that checks representing further filing fees shall be made payable to the county where the original petition for judicial review or action for declaratory judgment was filed.

DATED this _____ day of September 2020.

CLERK OF THE COURT

By: _____
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the NOTICE OF REASSIGNMENT on the attorneys and/or individuals listed below, by the method indicated, on this ____ day of September 2020.

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Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CLERK OF THE COURT

By: _____
Deputy Clerk