

Albert P. Barker, ISB # 2867
BARKER, ROSHOLT & SIMPSON LLP
1010 W. Jefferson, Suite 102
P. O. Box 2139
Boise, ID 83701-2139
Telephone: 208-336-0700
Facsimile: 208-344-6034

RECEIVED
FEB 24 2020
DEPARTMENT OF
WATER RESOURCES

Attorney for Riverside Irrigation District Ltd.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REUSE PERMIT)
NO. M-255-01, IN THE NAME OF CITY) Docket No.
OF NAMPA)
)
) **PETITION FOR DECLARATORY**
) **RULING REGARDING NEED FOR A**
) **WATER RIGHT TO DIVERT WATER**
) **UNDER REUSE PERMIT NO. M-255-01**
)
)
)

1. Riverside Irrigation District ("Riverside"), by and through its attorneys, Barker Rosholt & Simpson, LLP, files this Petition for Declaratory Ruling ("Petition") pursuant to Idaho Code § 67-5232 and the Idaho Department of Water Resources Rules of Procedure, IDAPA 37.01.01.400 and IDAPA 37.01.01.230.01.b.

2. Riverside Irrigation District, Ltd. is an irrigation delivery entity formed under the laws of the State of Idaho. It delivers water to 10,000 acres of irrigated land west of Nampa, on the south side of the Boise River. Indian Creek is a primary source of water for Riverside. 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 Rights 63-2279 and 63-2374 with priority dates reaching back to 1915 and 1922.

3. On January 21, 2020, the Idaho Department of Environmental Quality (“DEQ”) issued Reuse Permit No. M-255-01 (“Permit”). The Permit authorizes the City of Nampa (“City”) to construct, install, and operate a reuse facility.

4. Currently the City discharges to Indian Creek where the water is comingled with other waters of the State. The water has historically been diverted and put to use by senior downstream water right holders, including Riverside.

5. Under the Permit, the City intends to divert and deliver water to Pioneer Irrigation District (“Pioneer”) through a gift of approximately 20 CFS of water to Pioneer’s Phyllis Canal. In turn, Pioneer intends to use the water supplied to it under this Reuse Permit to deliver water to Pioneer’s water users.

6. Pioneer does not have a water right to take the water from the City or to apply that water to land. Pioneer has indicated to Riverside it does not intend to apply for a water right to receive water under the Permit, or to mitigate for injury to Riverside as a result of taking this water.

7. In taking this water from the City, Pioneer is not recapturing its own waste water.

8. The Permit issued by DEQ does not require any of the reuse water to be reused by the City of Nampa itself and does not require Pioneer to have a water right to divert and use this 20 CFS that had been used by other Indian Creek water users.

9. Idaho Code § 42-201(2) provides that no person may “apply water to land” without having a valid water right to do so.

10. Under DEQ’s Recycled Water Rules, when evaluating an application for a reuse permit, “[s]pecific conditions shall be established in consideration of characteristics specific to a facility.” IDAPA 58.01.17.600.01 (emphasis added). Such characteristics include “[l]egal considerations relative to land use and water rights.” IDAPA 58.01.17.600.01.d.

11. DEQ did not expressly require the City or Pioneer to obtain a water right for the use authorized in the permit by Pioneer as a condition of the reuse Permit. The Permit only obliquely refers to the City having to comply with “all other applicable federal, state, and local laws, statutes, and rules.” DEQ’s response to Riverside’s comments indicated that DEQ did not believe it had authority to determine whether the City or any other entity was required to obtain a water right or not.

12. IDWR clearly has authority to make a determination of when a water right is required and whether Pioneer’s use authorized by this Reuse Permit, rather than the City itself, requires a water right.

13. Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department for a declaratory ruling as to the applicability of I.C. § 42-201(2) to Reuse Permit No. M-255-01. Specifically, and without limitation, Riverside seeks a declaratory ruling that:

a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.

b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention to Idaho Law.

14. Riverside requests oral argument relating to the foregoing requests for declaratory ruling.

DATED this 24th day of February, 2020.

BARKER, ROSHOLT & SIMPSON LLP



Albert P. Barker

Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2020, I caused to be served a true and correct copy of the foregoing **PETITION FOR DECLARATORY REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-255-01** by the method indicated below, and addressed to each of the following:

Original to:

Director Gary Spackman
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83700-0098

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

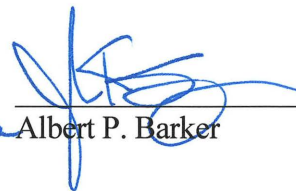
Copies to the following:

City of Nampa
411 3rd St. South
Nampa, Idaho 83651

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Andrew J. Waldera
Sawtooth Law
1101 W River St. Ste.110
Boise, ID83702

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email


For Albert P. Barker