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DEPARTMENT OF  
WATER RESOURCES

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

IN THE MATTER OF RIVERSIDE'S  
PETITION FOR DECLARATORY RULING  
REGARDING NEED FOR A WATER  
RIGHT UNDER REUSE PERMIT NO.  
M-255-01

Docket No. P-DR-2020-01

**ANSWER TO PETITION FOR  
DECLARATORY RULING**

Pursuant to IDAPA 37.01.01.270.01 (answers to pleadings) and 37.01.01,230.01.b (definition of petition), the City of Nampa ("City"), by and through its counsel of record, hereby submits this *Answer to Petition for Declaratory Ruling* ("Answer") in response to the *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Riverside's Petition") filed by Riverside Irrigation District, Ltd. ("Riverside") in the above-captioned matter.

**ANSWER**

1. Earlier today, the Department issued a *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* ("Notice").

**ANSWER TO PETITION FOR DECLARATORY RULING**

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2. Last week, the City was advised by counsel for the Idaho Department of Water Resources (“Department”) that an answer to *Riverside’s Petition* may not be required under the Department’s rules, but that an answer is a permissible pleading. The *Notice* does not address whether an answer is required. Accordingly, the City is filing this *Answer* as a protective measure to ensure that it has a seat at the table and that the Department and parties are informed of the City’s initial position with respect to the *Riverside Petition*.

3. As a further protective measure the City will file a *Petition to Intervene* in this matter.

4. *Riverside’s Petition* was filed pursuant to Idaho Code 67-5232. The City agrees that this statutory mechanism, together with the Department’s rules, authorizes the declaratory ruling sought by Riverside.

5. *Riverside’s Petition* is directed to the Idaho Department of Water Resources (“IDWR” or “Department”), as opposed to the Idaho Water Resource Board. The City agrees that is appropriate.

6. The City believes that the Department is not obligated to issue a declaratory ruling in response to every petition for a declaratory ruling. In other words, the Department has discretion as to whether to initiate proceedings and issue a declaratory ruling.

7. The City has entered into an agreement with Pioneer Irrigation District (“Pioneer”) to direct treated municipal wastewater into the Phyllis Canal owned and operated by Pioneer, in accordance with *Reuse Permit No. M-255-01* (“*Reuse Permit*”) issued to the City by the Idaho Department of Environmental Quality (“IDEQ”).

8. The *Riverside Petition* is directed to the question of whether the City and/or Pioneer must first obtain a new water right, or changes to existing water rights, in order to undertake the actions authorized by the *Reuse Permit*.

9. The City believes that the law, including but not limited to Idaho Code § 42-201(8), is crystal clear that no new or changed water right is required of either the City or of Pioneer to implement and operate under the *Reuse Permit*. Hence, the City believes that, in the absence of Riverside's challenge, there would have been no need for a declaratory ruling.

10. However, given that Riverside has challenged the City and Pioneer on this issue in two administrative forums and, presumably, would challenge a summary dismissal of *Riverside's Petition*, the City believes that a substantive declaratory ruling by the Department would be preferable to a judicial determination without the benefit of the Department's analysis of the subject. Accordingly, under the circumstances dictated by Riverside's challenge, the City does not oppose issuance of a substantive declaratory order by the Department and encourages the Department to exercise its discretion to issue a substantive declaratory ruling in this matter.

11. The City denies each and every allegation of *Riverside's Petition* not specifically admitted herein.

12. The City admits the allegations in Paragraph 1 of *Riverside's Petition*.

13. The City is without sufficient knowledge and information to respond to the allegations contained in Paragraph 2 of *Riverside's Petition* and therefore denies the same.

14. The City admits the allegations in Paragraph 3 of *Riverside's Petition*.

15. The City admits the allegations in Paragraph 4 of *Riverside's Petition*, except with respect to the description of Riverside as being "senior," which is ambiguous in that *Riverside's Petition* does not say to whom or what Riverside is senior. The City further denies Riverside's

insinuation that it or others downstream of the City's wastewater treatment plant have a vested legal right (water right or otherwise) by which it may force the City to continue to discharge its wastewater to Indian Creek or to provide mitigation for discontinuing such discharge.

16. The City is without sufficient knowledge and information to respond to the allegations contained in Paragraph 5 of *Riverside's Petition* and therefore denies the same. To the extent a response is required, the City denies it or Pioneer is "diverting" water under the *Reuse Permit*. Instead, the City is directing its wastewater discharge stream to Pioneer's Phyllis Canal for reuse consistent with the *Reuse Permit*, including reuse within the City's municipal pressurized irrigation system which diverts water from the Phyllis Canal system downstream of the City's wastewater treatment plant.

17. The City is without sufficient knowledge and information to respond to the allegations contained in Paragraph 6 of *Riverside's Petition* and therefore denies the same. Further, the allegations contained in Paragraph 6 of *Riverside's Petition* call for legal conclusions to which no responsive pleading is required. To the extent a response is required, the City denies that it or Pioneer need new or changed water rights to implement and operate under the *Reuse Permit*.

18. Paragraph 7 of *Riverside's Petition* is an assertion of principles of law, to which no answer is required. To the extent a response is required, the City denies that it or Pioneer need new or changed water rights to implement and operate under the *Reuse Permit*.

19. Paragraph 8 of *Riverside's Petition* is a characterization of the content and effect of the *Reuse Permit*, to which no answer is required. To the extent a response is required, the City denies that it or Pioneer need new or changed water rights to implement and operate under the *Reuse Permit*. The City further denies that Riverside or others downstream of the City's

wastewater treatment plant have any vested legal right (water right or otherwise) in the City's wastewater discharge.

20. Paragraph 9 of *Riverside's Petition* is a quotation from an Idaho statute, to which no answer is required. To the extent that response is required, the City submits that Idaho Code § 42-201(8) is the more specific subsection of the statute governing this matter.

21. Paragraph 10 of *Riverside's Petition* is a quotation from an Idaho regulation, to which no answer is required. To the extent a response is required, the City submits as follows: (a) The quoted provisions are from regulations of another agency (IDEQ) that have no bearing on the question presented to the Department. (b) In any event, the *Reuse Permit* sufficiently considers water right implications by requiring the City and Pioneer to comply with all other applicable laws when implementing and operating under the *Reuse Permit*. (c) IDEQ complied with Idaho Code § 42-201(7) (vesting in IDWR "exclusive authority over the appropriation of the public surface water and ground waters of the state") by avoiding any more specific interpretation or guidance regarding water rights in the *Reuse Permit*.

22. Paragraph 11 of *Riverside's Petition* is a characterization of the content and effect of the *Reuse Permit*, to which no answer is required. To the extent a response is required, the City denies that Riverside or others downstream of the City's wastewater treatment plant have any vested legal right (water right or otherwise) in the City's wastewater discharge.

23. Paragraph 12 of *Riverside's Petition* contains assertions respecting the Department's legal authority, to which no answer is required. To the extent a response is required, the City denies that Riverside or others downstream of the City's wastewater treatment plant have any vested legal right (water right or otherwise) in the City's wastewater discharge.

24. The City admits that Riverside seeks a declaratory ruling as set out in Paragraph 13 of *Riverside's Petition*. See Paragraphs 3 through 9 above.

25. The City admits that Riverside requests an oral argument as set out in Paragraph 14 of *Riverside's Petition*. The City agrees that oral argument following briefing is appropriate.

#### **PRAYER FOR RELIEF**

The City prays for a declaratory ruling and order as follows:

1. That the delivery by the City of treated municipal wastewater to Pioneer's Phyllis Canal pursuant to and in accordance with the *Reuse Permit* does not require the City to first obtain any new water right or change to the existing water rights and other water entitlements under which the City operates its municipal water system.

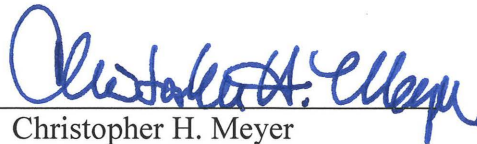
2. That Pioneer's acceptance and use within its irrigation delivery system of treated municipal wastewater delivered to the Phyllis Canal by the City pursuant to and in accordance with the *Reuse Permit* does not require Pioneer to first obtain any new water right or change to the existing water rights and other water entitlements under which Pioneer operates its irrigation delivery system.

3. That the City be granted its costs, expenses, and attorneys' fees incurred in the course of defending this matter.

4. That the City be granted such other relief as the Board deems appropriate.

Respectfully submitted this 16th day of March, 2020.

GIVENS PURSLEY LLP



Christopher H. Meyer

*Attorneys for City of Nampa*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March, 2020, the foregoing was filed, served, and copied as shown below.

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