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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-2020-001

**CITY OF IDAHO FALLS'
PETITION TO INTERVENE**

**Fee Category: Exempt
Idaho Code § 67-2301**

The City of Idaho Falls ("Idaho Falls" or "City"), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., petitions to intervene in the above-entitled matter pursuant to the Rules of Procedure of the Idaho Department of Water Resources, specifically IDAPA 37.01.01.350—37.01.01.354. Idaho Falls seeks to intervene to represent and protect its interests.

I. BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* (the "Petition") with the Director of the Idaho Department of Water Resources ("Director" or "IDWR"). The Petition was filed in response to a water reuse permit issued by the Idaho Department of Environmental Quality ("DEQ") authorizing the City of Nampa ("Nampa")

to discharge some amount of treated wastewater into Pioneer Irrigation District's ("Pioneer") Phyllis Canal, as opposed to the natural channel of Indian Creek. Riverside alleges the discharge of treated wastewater into Indian Creek must continue unless Nampa and/or Pioneer obtain a water right from IDWR:

Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department of 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.

Petition at 3.

The Petition was noticed by IDWR with a statement that petitions to intervene must be filed by April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (March 16, 2020). A prehearing conference is scheduled to occur on April 30, 2020. *Id.*

II. LEGAL STANDARD

A party may intervene in a proceeding under certain circumstances. IDAPA 37.01.01.350. Rule 353 of the Idaho Department of Water Resources Rules of Procedure provides:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353. Accordingly, the analysis of a petition to intervene requires consideration of: (a) whether it is timely, (b) the potential intervenor showing a "direct and substantial interest

in any part of the subject matter of a proceeding,” (c) a showing that the intervention would “not unduly broaden the issues,” and (d) whether the potential intervenor’s “interest is adequately represented by existing parties.” *Id.*

III. ARGUMENT

A. Idaho Falls’ petition is timely.

The Department’s procedural rules provide further specificity regarding timeliness. A petition to intervene is timely filed if it is “filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice.” IDAPA 37.01.01.352.

This *Petition* is being filed before April 23, 2020, which is “a different time [] provided by order or notice,” and is therefore timely.

B. Idaho Falls has a direct and substantial interest in the subject matter of this proceeding.

Idaho Falls holds NPDES Permit No. ID0021261 for wastewater discharge into the Snake River. Idaho Falls, like Nampa, is eligible to apply for a reuse permit with DEQ. Idaho Falls therefore has a direct and substantial interest in the issue of whether or not the wastewater effluent associated with the wastewater discharge under Idaho Falls’ NPDES permit can be reused without obtaining a water right. Idaho Falls also has a direct and substantial interest in whether or not reuse of wastewater in the manner allowed by Reuse Permit No. M-255-01 results in injury to senior water rights that would have otherwise received the effluent discharged to the Snake River as part of downstream water diversions. As such, Idaho Falls has a direct and substantial interest in the outcome of the above-entitled proceeding.

C. The City’s intervention will not unduly broaden the issues involved in this proceeding.

Presently, this proceeding is in its very early stages, and the issues raised in the *Petition* are

those that Idaho Falls has a direct and substantial interest. Idaho Falls' participation will not unduly broaden the issues.

D. The City's interest is not adequately represented by existing parties.

Riverside does not represent the interests of Idaho Falls. Riverside's requested relief could negatively impact Idaho Falls' ability to dispose of its wastewater as it deems appropriate. Furthermore, while it is anticipated that Idaho Falls' positions in this proceeding will be similar to Nampa's positions, given the different factual situations surrounding Idaho Falls' treatment of effluent and Nampa's treatment of effluent, it is important for Idaho Falls to participate to determine and address how the Director's decision could impact Idaho Falls' ability to pursue reuse projects. For these reasons, Idaho Falls' interests are not adequately represented by the existing parties to this matter.

Additionally, other potential intervenors have their own property interests to protect and are not in a position to also protect Idaho Falls' interests. The intervention of Idaho Falls is necessary to adequately represent and protect its unique interests.

IV. CONCLUSION

For the foregoing reasons, Idaho Falls has satisfied the applicable rules regarding intervention and its petition should be granted to allow Idaho Falls to intervene in this proceeding and fully participate in all matters that may arise.

Dated this 22nd day of April, 2020.



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

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2020, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed by the methods indicated.

Document Served: CITY OF IDAHO FALLS' PETITION TO INTERVENE

**ORIGINAL HAND FILED AT
EASTERN REGIONAL OFFICE;
ALSO BY EMAIL TO:**

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