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*Attorneys for the City of Post Falls*

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APR 23 2020

WATER RESOURCES  
WESTERN REGION

**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

**PETITION TO INTERVENE**

Fee Category: Exempt (I.C. § 67-2301)

COMES NOW the City of Post Falls ("Post Falls"), by and through its counsel of record McHugh Bromley, PLLC, and pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files this *Petition to Intervene* in the above-captioned matter.

**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* ("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 waste water into Pioneer Irrigation District's ("Pioneer")

Phyllis Canal, as opposed to Indian Creek. Riverside alleges the discharge of treated waste water 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.

## **II. ARGUMENT**

In order to grant a petition to intervene, the moving party must demonstrate it is “timely” filed, IDAPA 37.01.01.352, and that it has a “direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . .” IDAPA 37.01.01.353. Post Falls meets these requirements.

First, Post Falls’ petition to intervene is timely. A petition to intervene is timely 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. Here, the Director has scheduled the prehearing conference to take place on April 30, 2020, with a deadline to intervene scheduled for April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene*. Because Post Falls

is petitioning the Director to intervene in the above-captioned proceeding prior to the April 23, 2020 deadline, Post Falls' petition to intervene is timely, and intervention should be granted.

Second, Post Falls has a direct and substantial interest in the outcome of this matter. Post Falls is located in northern Idaho and pumps ground water from the Rathdrum Prairie aquifer to meet the city's needs. Post Falls holds National Pollutant Discharge Elimination System ("NPDES") Permit No. ID-0025852 for waste water discharge into the Spokane River below Post Falls dam. Post Falls relies on the NPDES Permit to safely treat and dispose its waste water. In the future, Post Falls plans to recycle more water than it discharges into the Spokane River. Given its location, the terms of its NPDES Permit, and its plan to recycle water, only Post Falls can represent its interests. Thus, based on Post Falls' substantial interest, and the fact that it will not unduly broaden the issues, Post Falls should be granted intervention.

### III. CONCLUSION

Post Falls' petition to intervene is timely, with Post Falls having a direct and substantial interest in the outcome of this matter. Therefore, based on the foregoing, Post Falls' petition to intervene should be granted.

DATED this 23<sup>rd</sup> day of April, 2020.



Chris M. Bromley  
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*Attorneys for City of Post Falls*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of April 2020, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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