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

IN THE MATTER OF RIVERSIDE'S)	Docket No. P-DR-2020-01
PETITION FOR DECLARATORY)	
RULING REGARDING NEED FOR A)	RESPONSE TO PETITIONS TO
WATER RIGHT UNDER REUSE)	INTERVENE
PERMIT NO. M-255-01)	
)	
)	
)	

COMES NOW, Riverside Irrigation District, by and through its attorneys, Barker Rosholt & Simpson LLP, and hereby files this response to the various petitions to intervene in this matter pursuant to IDAPA 37.01.01.354.

BACKGROUND

Riverside Irrigation District, Ltd. (hereinafter "Riverside") filed a *Petition for Declaratory Ruling* ("Riverside's Petition") on February 24, 2020. Several municipal entities submitted Petitions to Intervene: City of Nampa, City of Boise, Hayden Area Regional Sewer Board, City of Meridian, City of Caldwell, the Association of Idaho Cities, City of Idaho Falls, City of Bellevue, City of Jerome, City of Post Falls, and the City of Rupert. Pioneer Irrigation District and Idaho Power also filed motions to intervene. Only the City of Nampa and Pioneer Irrigation District truly allege a direct and substantial interest to their operations by virtue of Riverside's Petition. Idaho

Power raises interests related to its downstream power plants that are different from interests of the other parties, including the municipal entities. The other municipal entities seeking intervention are simply “piling on.” Their intervention motions should be denied under Rule 353, or their participation should be consolidated requiring them to speak with one voice to expedite the proceeding and manage the burden upon the parties and the Department under Rule 200 and Rule 560.

ARGUMENT

I. The Hearing Officer Should Deny the Municipalities’ Petitions to Intervene for Unduly Broadening the Issues and Because Their Interests Adequately Represented by the City of Caldwell.

Under the Rules of Procedure of the Idaho Department of Water Resources (Department) , only persons who have a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention. IDAPA 37.01.01.350. The petition to intervene must show direct and substantial interest in any part of the subject matter of the proceeding, and must not unduly broaden the issues. IDAPA 37.01.01.353. The presiding officer should not grant intervention if an applicant’s interest is adequately represented by existing parties. IDAPA 37.01.01.353.

Idaho Department of Environmental Quality (DEQ) issued the City of Nampa a water reuse permit, which directly implicates Pioneer Irrigation District, because the City of Nampa proposes to discharge its waste-water to Pioneer’s canal for Pioneer to use as Pioneer sees fit on Pioneer’s lands. Riverside does not oppose Nampa’s or Pioneer’s petitions to intervene as both parties have alleged a direct and substantial interest in Riverside’s Petition. As for the other municipal petitions, if they intend to raise issues beyond the legal question raised by Riverside,

granting those petitions would unduly broaden the issues. If they merely intend to respond to Riverside's petition with respect to Nampa's reuse permit, any interests these other municipalities may have are adequately represented by Nampa and Pioneer, and the hearing officer should deny the other municipalities' motions to intervene.

Riverside's Petition seeks a declaratory ruling on a question of law. The question of law is whether Pioneer is required to apply for a water right permit under Idaho Code § 42-101(2) to take water from Nampa's waste water plant into its canal system and put that water to beneficial use on land in Pioneer's place of use. Riverside's petition does not ask the Director to declare that Nampa is required to obtain a water right.

The City of Idaho Falls' Petition to Intervene claims that Idaho Falls holds a NPDES permit for wastewater discharge, and might want to apply for a reuse permit with DEQ in the future. *Petition* at 3. This Petition is a near carbon copy of the Bellevue's, Jerome's, Post Falls', and Rupert's, and claims only a potential future interest in a potential reuse permit. Idaho Falls also claims Riverside does not represent Idaho Falls' interests but Idaho Falls and the municipalities do not contend that Nampa does not represent their interests. Idaho Falls does not have a direct and substantial interest in this proceeding, and any interests Idaho Falls does have are represented by Nampa. Post Falls' and Rupert's Petitions to Intervene also raise possible future plans like Idaho Falls, those interests are already adequately represented by Nampa. The hearing officer should deny all these cities' Petitions to Intervene for failure to meet the requirements of Rule 353. The City of Bellevue's petition should similarly be denied. Its Petition claimed that because Bellevue "land-applies treated municipal wastewater on lands south of the City" that they have a direct and substantial interest in these proceedings. *Petition* at 2. But Riverside's petition does not ask Nampa (or Bellevue) to acquire a water right. Bellevue's petition is virtually identical

to other potential intervenor's and Nampa's interests.

The City of Jerome's Petition to Intervene raises a different issue involving an NPDES permit to discharge into North Side Canal Company's J8 canal. To the extent this is a different issue than addressed in Riverside's Petition, raising this tangential issue would unduly expand the legal question presented by Riverside's Petition. There is no claim that Jerome has a DEQ reuse permit, has applied or will apply for such a permit. Hence, Jerome does not have a direct and substantial interest in this proceeding, and if they do, its interests are adequately represented by Nampa.

If these other cities want to raise the specifics of their water right ownership or location, doing so improperly expands the scope of this proceeding. The hearing officer should deny these municipalities' petitions for unduly broadening the issues, for failing to have a direct or substantial interest, and because the interests they do have are adequately represented by the City of Nampa.

II. The Hearing Officer Should Limit the Number of Parties to Expedite the Proceeding and Reasonably Manage the Burden of Service.

The vast majority of municipal intervenors are concerned these proceedings may impact "future reuse permits within the State of Idaho." *See City of Boise Petition to Intervene* at 2. Should the hearing officer grant any of these other municipalities' petitions to intervene, it is clear that these other municipal users raise similar or identical issues involving Idaho Code § 42-201(8). Under IDAPA 37.01.01.200, "[i]f two (2) or more parties or persons file identical or substantially like initial pleadings, the presiding officer may limit the number of parties or persons required to be served with official documents in order to expedite the proceeding and reasonably manage the burden of service upon the parties and the agency." Under Rule 560, "[i]f two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid

duplication, the presiding officer may limit the number of them who testify, examine witnesses, *or make and argue motions and objections.*” IDAPA 37.01.01.560 (emphasis added).

All the municipalities who have petitioned to intervene agree that they share substantially like interests or positions. In fact, the City of Boise states the “basis of [their Petition] centers around the same issues brought by Riverside’s Petition and answered by Nampa’s Petition [] and its Answer.” *Petition* at 4. (emphasis added) The activity alleged by Hayden Area Regional Sewer Board is substantially similar as the public entity operates a publicly owned treatment works land applying water under a DEQ reuse permit. *Petition* at 2. Other cities, like Meridian and Caldwell claim they “do not seek to in any way broaden the issues in this proceeding [and] are concerned with the same issues raised by Riverside Irrigation District, and by the City of Nampa.” *Joint Petition* at 3.¹(emphasis added) Finally, the Association of Idaho Cities (AIC) states its interest is in “safeguarding and representing the rights of all cities, large or small to have the utmost flexibility of their water rights,” which is a substantially like position to the respective cities . *AIC Petition* at 3.

If the hearing officer grants any of these municipal petitions to intervene, the order should limit the number of parties who are able to “make and argue motions and objections,” and who are required to be served with official documents. Otherwise, the parties and the agency would be overburdened with duplicative documents wasting times and resources. Those parties whose issues are direct and different from one another are Riverside, Nampa, Pioneer and Idaho Power. The other petitions to intervene are identical except for minor factual differences. The nature of this proceeding involves a question of law. Individual motions and briefing from every potential

¹ Meridian and Caldwell also tacitly admit that the City of Nampa would be able to adequately represent their interests stating “no currently named party in these proceedings is able to adequately represent the [Cities’] interests because currently there is no party to this matter other than Riverside Irrigation District.” *Joint Petition* at 3.


intervenor would be rehashing the same case law and statutory interpretations over and over again when one presentation would have sufficed. The hearing officer should consolidate these other municipal intervenors and require them to appear through a single voice – either consolidated with Nampa or consolidated all other municipalities into one group that would be limited to a single filing. IDAPA 37.01.01.200, 37.01.01.560.

CONCLUSION

The hearing officer should deny the municipal Petitions to Intervene, as all fail to allege a direct and substantial interest in these proceedings, or would unduly broaden the issues to reflect unique factual situations of the respective cities, or in the alternative because all the cities are adequately represented by Nampa. Should the hearing officer grant any of the municipal petitions, those petitions should be consolidated into one group to submit and argue motions and objections and for service purposes.

DATED this 29th day of April 2020.

BARKER, ROSHOLT & SIMPSON LLP



Albert P. Barker

Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2020, I caused to be served a true and correct copy of the foregoing **RESPONSE TO PETITIONS TO INTERVENE** by the method indicated below, and addressed to each of the following:

Original to:

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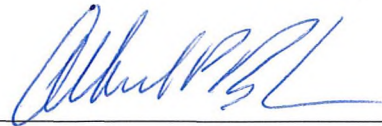
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