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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-2020-01

**REUSE PROPONENTS' SUBMISSION  
REGARDING LEGAL ISSUES**

This Submission is offered jointly by the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, the Association of Idaho Cities (“AIC”), and the Hayden Area Regional Sewer Board (“HARSB”) (collectively, “Municipal Intervenors”) and Pioneer Irrigation District (“Pioneer”). Municipal Intervenors and Pioneer are referred to collectively as “Reuse Proponents.”<sup>1</sup>

Reuse Proponents have shared drafts of this Submission with Riverside Irrigation District (“Riverside”) and Idaho Power Company (“Idaho Power”) (collectively, “Reuse Opponents”). In doing so, Reuse Opponents sought input from Reuse Opponents and invited them to join in the Submission or a revision thereof. Although discussions continue, as of this time, Reuse Opponents have not elected to join in this Submission. Accordingly, Reuse Proponents make

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<sup>1</sup> This and other submissions by the Reuse Proponents employ the following shorthand definitions:

- “AF” ..... acre-feet
- “AFA” ..... acre-feet per annum (year)
- “AIC” ..... Association of Idaho Cities
- “Boise-Kuna” ..... Boise-Kuna Irrigation District
- “Bureau” ..... U.S. Bureau of Reclamation
- “DMR” ..... Discharge Monitoring Report
- “EPA” ..... U.S. Environmental Protection Agency
- “HARSB” ..... Hayden Area Regional Sewer Board
- “IDWR” or “Department” ... Idaho Department of Water Resources
- “IDEQ” ..... Idaho Department of Environmental Quality
- “Idaho Power” ..... Idaho Power Company
- “Municipal Intervenors” ..... The cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, AIC and HARSB.
- “Nampa” or “City” ..... City of Nampa
- “Nampa WWTP” ..... Nampa’s wastewater treatment plant
- “NMID” ..... Nampa Meridian Irrigation District
- “NPDES Permit” ..... Nampa’s National Pollution Discharge Elimination System Permit No. ID0022063
- “Party” or “Parties” ..... Any or all of the Reuse Proponents and Reuse Opponents
- “PI System” ..... Nampa’s non-potable pressurized irrigation water delivery system
- “Pioneer” ..... Pioneer Irrigation District
- “Potable System” ..... Nampa’s potable water delivery system
- “Reuse Agreement” ..... The agreement between Pioneer and Nampa known as *Recycled Water Discharge and Use Agreement* dated 3/7/2018
- “Reuse Opponents” ..... Riverside Irrigation District and Idaho Power Company
- “Reuse Permit” ..... Reuse Permit No. M-255-01 issued to Nampa by IDEQ
- “Reuse Project” ..... The project authorized by Nampa’s *Reuse Permit*
- “Reuse Proponents” ..... Municipal Intervenors and Pioneer
- “Riverside” ..... Riverside Irrigation District
- “WWTP” ..... Wastewater treatment plant

this Submission in advance of the upcoming status conference in the interest of facilitating discussions aimed at identifying areas of agreement or disagreement. This Submission is not intended to discontinue further efforts to reach agreements with Reuse Opponents aimed at narrowing and clarifying the issues before the Department.

This outline of legal issues is not intended to (nor could it) limit, shape, or control the Department's consideration of the issues as it perceives them. The goal of the Submission is simply to inform the Department of the Reuse Proponents' positions and expectations.

**I. POINTS OF LAW ON WHICH THE REUSE PROPONENTS AGREE AND SEEK A DECLARATORY RULING**

The Reuse Proponents agree on the following points of law and seek a declaratory ruling to that effect:

1. As a municipal water provider, Nampa is authorized to use and reuse to extinction water it lawfully diverts, delivers to municipal customers, and collects as wastewater in its sewage system.
2. Riverside may not compel Nampa to continue Nampa's discharge of municipal wastewater to Indian Creek.
3. Nampa's decision to stop or reduce the wasting of water to Indian Creek does not result in injury to Riverside or other entities that may have diverted and used such wastewater in the past.
4. Idaho Code § 42-201(8) authorizes municipalities and certain other entities to collect, treat, store, and dispose of effluent from a publicly owned treatment works without obtaining a water right when such action is undertaken in response to state or federal regulatory requirements.

5. Nampa's delivery of some of its wastewater to Pioneer's Phyllis Canal, pursuant to an agreement with Nampa, and pursuant to a Reuse Permit obtained from IDEQ, falls within the scope of Idaho Code § 42-201(8).

6. Accordingly, Nampa does not need a new water right in order to undertake its Reuse Project in accordance with its Reuse Permit.

7. Consistent with the Prior Appropriation doctrine, Idaho Code § 42-101 provides that it is the duty of the State to supervise the appropriation and allotment of all "waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes."

8. Consistent with the Prior Appropriation doctrine, the second sentence of Idaho Code § 42-201(2) provides, "No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so."

9. Pioneer's acceptance of Nampa's delivery of wastewater to the Phyllis Canal does not constitute a "diversion" of water by Pioneer within the meaning of Idaho Code §§ 42-101, 42-201(2), or the Prior Appropriation Doctrine.

10. Consistent with the Prior Appropriation Doctrine, the last sentence of Idaho Code § 42-110 provides, "Water diverted from its source pursuant to a water right is the property of the appropriator while it is lawfully diverted, captured, conveyed, used, or otherwise physically controlled by the appropriator."

11. Pursuant to Idaho Code § 42-110, Nampa is authorized to utilize Pioneer's Phyllis Canal, by agreement with Pioneer, in order to deliver Nampa's recycled municipal wastewater to its non-potable water delivery system. In other words, such water delivered to the Phyllis Canal

and then re-delivered to Nampa remains “physically controlled by the appropriator” within the meaning of Idaho Code § 42-110.

12. If the Department determines—because the statements in paragraph 1 through 12 are incorrect or for any other reason—that Pioneer or Nampa is required to obtain a new water right before Nampa delivers and Pioneer accepts wastewater in the Phyllis Canal, neither Pioneer nor Nampa is required to mitigate for the reduction in wastewater available to Riverside resulting from Nampa’s decision to stop wasting water to Indian Creek.

**II. LEGAL ISSUES THAT REUSE PROPONENTS BELIEVE ARE AND SHOULD BE BEYOND THE SCOPE OF THIS PROCEEDING**

13. In the event that the Department were to rule to the contrary of the statement in paragraph 12, Reuse Proponents do not seek or expect the Department to quantify or more specifically evaluate the extent or nature of what mitigation would be required. Such a determination should be left for a contested case involving a future water right application.

14. The Reuse Proponents agree that the Department need not address or resolve in the declaratory ruling how the law applies to the circumstances of any entity other than Nampa and Pioneer.

15. The Reuse Proponents understand that the declaratory ruling may establish a non-binding administrative or judicial precedent with respect to the water rights or wastewater reuse or disposal actions of entities other than Nampa and Pioneer.

Respectfully submitted this 30<sup>th</sup> day of June, 2020.

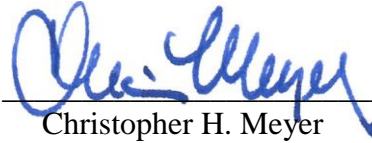
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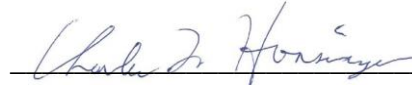
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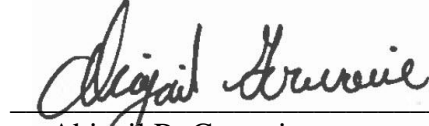
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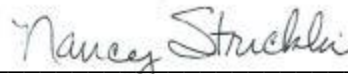
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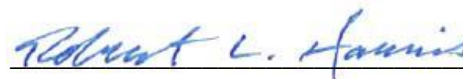
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I HEREBY CERTIFY that on this 30<sup>th</sup> day of June, 2020, the foregoing was filed, served, and copied as shown below.

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