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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

**RIVERSIDE IRRIGATION DISTRICT
LTD.'S PRE-HEARING CONFERENCE
MEMORANDUM**

COMES NOW, Riverside Irrigation District Ltd. ("Riverside"), by and through its attorneys of record, Barker Rosholt & Simpson LLP, and hereby submits this Pre-hearing Conference memo in advance of the Pre-hearing Conference hearing scheduled for July 8, 2020, before the Director.

The City of Nampa's reuse permit issued by IDEQ authorizes delivery of water to Pioneer's Phyllis Canal and requires elimination of Nampa's irrigation season discharges to Indian Creek. Nampa proposes to begin this use on or around 2026, according to IDEQ staff evaluation of the reuse permit.

Riverside's Petition sought a ruling from the Department on two points: 1) Pioneer cannot divert or accept water from the City of Nampa or apply any of that water to land in the Pioneer District boundaries under the reuse permit without obtaining a water right, and 2) any attempt by Pioneer or the City to divert water under the permit to Pioneer without applying for a water right is

in contravenes Idaho law. The Director's *Order* of June 11, 2020, recognized that the Riverside Petition sought ruling on those precise issues. *Order* p. 1.

In an *Order* dated May 7, 2020, the Director set a continued prehearing conference for July 8, 2020, at 2:00 p.m. At the last prehearing conference, counsel for the various parties seeking intervention and Riverside advised the Director that they would be entering into a stipulation of facts to present to the Director for his consideration in ruling on the Petition, and agreed to prepare such a stipulation. The municipal intervenors and Idaho Power Company all agreed to limit their involvement to the stipulated facts agreed upon between Nampa, Pioneer and Riverside for purposes of the ruling on the petition for declaratory relief. The Director so ordered in his petition granting the motions to intervene. *Order* June 11, 2020.

On June 30, 2020, the City of Nampa submitted to the Department a document entitled Stipulation Regarding Legal Issues and a document entitled Stipulation of Facts. Neither the Stipulation Regarding Legal Issues nor the Stipulation of Facts has been stipulated to by Riverside. Nor had it been when submitted on June 30 submission. Prior to the City of Nampa's June 30th submittals, counsel for Riverside had attempted to obtain additional information related to Pioneer's use of the reuse water and its arrangements with the City of Nampa. Riverside was advised that some of the agreements it requested did not exist, only to find out later that there were such agreements that had been requested did exist. Some of those agreements have now been provided. Riverside also posed some questions and was advised that those questions would take some time to answer. Some of that information was provided after the "stipulations" were submitted. Before the City submitted these documents, counsel for Riverside had prepared preliminary edits to the "stipulations" and was awaiting additional information requested to make additional changes. Riverside also has identified additional documents as part of its investigation

that Riverside intends to offer as stipulated exhibits beyond those Nampa has included in its “stipulation.”

Riverside intends to attempt to work with the Nampa and Pioneer to develop a more neutral set of facts that can be agreed to and to add additional facts and exhibits that Riverside believes are pertinent to the decision of the Director. Counsel for Riverside was unable to complete that task prior to the status conference, in part because of a deadline for filing a brief with the Ninth Circuit Court of Appeals on July 6, 2020. Riverside still intends to work with Nampa and Pioneer if they are willing to do so, but will need some additional time to evaluate the information and documents recently provided. Perhaps Riverside will need additional information from Nampa and Pioneer concerning the arrangements between the two of them for water use.

With respect to the proposed stipulation regarding legal issues, Riverside does not agree with the City of Nampa’s attempt to re-write Riverside’s petition. The legal issues that Riverside petitioned to be determined are set forth in the Petition, not Nampa’s purported stipulation. Riverside does not agree that the legal issues that Nampa has set out properly frame the issues raised by the Petition. Nor does Riverside believe that an intervenor, like Nampa is, has the right to reformulate Riverside’s Petition. This is Riverside’s Petition; not Nampa’s.

Nampa also proposes to expand the Petition to include an advisory ruling on the scope of mitigation that might be required. When an application for a water right is filed, the applicant must provide the information required by Rule 35. IDAPA 37.03.08.035. The Department’s rules provide mandatory steps for processing including, public notice, protests, additional information requirements, etc. IDAPA 37.03.08.40. The Director must apply the statutory criteria, even if there is no protest. IDAPA 37.03.08.45. Conditions of approval may be required. IDAPA 37.03.08.50. Nampa would skip over the Idaho water right process. Riverside believes that any conditions on a

water right should be informed by Idaho's statutory process.

Riverside does not believe that this Petition is the appropriate vehicle to determine the elements or conditions on a water right should Pioneer be required to seek one. Conditions require evaluation by the Department under the water right application process that should not be truncated in the manner suggested by Nampa.

Procedurally, the proposed Stipulation of Facts provide that the parties may seek to offer additional facts and exhibit beyond the information agreed to in the stipulation and contained in the exhibits. If a party decides to insert additional facts or exhibits that are not in the stipulated record, the opposing party will need an opportunity to evaluate that information and perhaps engage in discovery with respect to any new information or documentation that one party is attempting to inject, before being required to respond to that new information.

With respect to the proposed Stipulation of Facts, Riverside had intended to respond to Nampa's proposed stipulation and will still do so if appropriate. Nampa's proposed Stipulation of Facts fall into several broad categories: (1) undisputed facts that Riverside can stipulate to; (2) spin on or characterization of facts which must be either discarded or set out in a more neutral fashion to be agreeable; (3) proposed legal conclusions or facts which Riverside will not agree to; and (4) statements of Nampa's future intent. These statements of future may or may not be true, but Riverside can not agree that they are facts. Finally, there are additional facts and documents that Riverside believes need to be included in the record that were omitted from the proposed statement of facts prepared by Nampa.

CONCLUSION

Riverside believes that additional time is necessary to work out a mutually agreeable stipulation of facts and documents admissible in evidence. Once that stipulation of facts has

worked out, the Parties can propose a briefing schedule based upon the stipulated facts and evidence for consideration by the Director.

DATED this 8th day of July 2020.

BARKER, ROSHOLT & SIMPSON LLP



Albert P. Barker

Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2020, I caused to be served a true and correct copy of the foregoing **PRE-HEARING CONFERENCE MEMORANDUM** by the method indicated below, and addressed to each of the following:

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