

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

IN THE MATTER OF DETERMINATION
OF EXTENT OF BENEFICIAL USE
MADE UNDER CITY OF GOODING
RECHARGE WATER RIGHT PERMIT
NO. 37-23059 DURING CALENDAR
YEAR 2022.

**ORDER DIRECTING SERVICE OF
PETITION UPON THE CITY OF
GOODING AND APPOINTING
DEPARTMENT CONTACT FOR
INFORMAL PROCEEDINGS**

BACKGROUND

On November 15, 2023, Recharge Development Corporation (“RDC”) filed with the Department a *Petition Requesting Initiation of a Contested Case, Request for Hearing, and Request for Order Authorizing Discovery* (“*Petition*”). RDC captioned the request as “In the Matter of Determination of Extent of Beneficial Use Made Under City of Gooding Recharge Water Right Permit No. 37-23059 During Calendar Year 2022.” *Petition* at 1. The *Petition* states that Permit No. 37-23059 “is owned by the City of Gooding and authorizes the diversion of water from the Little Wood River for the purpose of aquifer recharge at the Gooding Bypass Channel [“recharge site”].” *Id.* RDC states it has an agreement with the City of Gooding (“City”) to operate the recharge site. *Id.* at 1–2. Given the agreement, RDC claims it “has an interest in the volume of recharge credit accounted for and recognized as a result of water recharged at the site.” *Id.* at 2.

RDC alleges that in June 2023 the Department “determined the volume of water recharged as ‘Recharge Credit for RDC’ to be 117.7-acre feet for calendar year 2022” at the recharge site. *Id.* RDC alleges that upon reevaluation, on October 31, 2023, the Department determined RDC’s 2022 recharge credit to be 573 acre-feet of water. *Id.* RDC argues that the Department’s October 2022 recharge determination “incorrectly state[s] the material facts” and “misapplies the provisions of law governing the appropriation and beneficial use of water in Idaho and the statutory authorities of the Department.” *Id.* 2–3. In its *Petition*, RDC requests: 1) the Department initiate a contested case conducted as informal proceedings; 2) an agency hearing, pursuant to Idaho Code 42-1701A(3), to contest the Department’s October 2022 recharge determination; and 3) an order authorizing discovery. *Id.* at 3–4.

SERVICE UPON PARTIES REQUIRED

The Department’s Rules of Procedure govern contested cases before the Department. IDAPA 37.01.01.001. Rule 2.12 defines a “party” as, among others, “[e]ach person named or admitted as a party . . . including an applicant . . .” IDAPA 37.01.01.002.12. To facilitate proper notice to parties, Rule 202 requires service upon parties and their representatives:

From the time a party files its initial pleading in a contested case, that party must serve all documents filed with the agency upon all other parties or their designated

representatives unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon parties or their representatives.

IDAPA 37.01.01.202. In addition, Rule 53.05 requires that “[e]very document filed or served must be accompanied by a proof of service” IDAPA 37.01.01.053.05.

RDC’s caption for this matter identifies the “City of Gooding Recharge Water Right Permit No. 37-23059.” As acknowledged by RDC in its *Petition*, the City is the owner of Permit No. 37-23059. As the original applicant and now permit owner, the City is automatically a party to any contested case involving determinations related to the provisions of its permit. *See* IDAPA 37.01.01.002.12.

The *Petition* is an initial pleading in a contested case, so RDC “must serve” it upon not only the Department but also “upon all other parties or their designated representatives unless otherwise directed” IDAPA 37.01.01.202. But RDC offers no proof that the City has been served with the *Petition*. Under Rule 202, the Director concludes that RDC must serve the *Petition* and a copy of this order upon the City and file proof of service with the Department as required by Rule 53.05.¹

REQUEST FOR INFORMAL PROCEEDINGS

Pursuant to IDAPA 37.01.01.100.03, and based on RDC’s *Petition*, the Director concludes that initiating a contested case conducted as informal proceedings is appropriate in this matter. The Director further concludes that he must appoint an agency employee to facilitate informal proceedings and to serve as the point of contact for the Department.

REQUEST FOR HEARING AND DISCOVERY

Formal proceedings have not been initiated in this contested case, so the Department will not appoint a presiding officer, schedule an agency hearing, or formally authorize discovery at this time. IDAPA 37.01.01.100.01; *See* IDAPA 37.01.01.521. However, per the Department’s rules governing informal proceedings, the appointed agency employee may issue a Notice of Informal Settlement and conduct an informal settlement conference with all parties present. IDAPA 37.01.01.101.

ORDER

IT IS HEREBY ORDERED that Recharge Development Corporation shall serve the City of Gooding with a copy of its *Petition Requesting Initiation of a Contested Case, Request for Hearing, and Request for Order Authorizing Discovery* and this order on or before January 26, 2024.

¹ The Department seeks to ensure that the City has notice of the proceeding and the opportunity to participate if it desires to do so. The City is not required to participate.

IT IS FURTHER ORDERED that Recharge Development Corporation shall file proof of service with the Department in conformity with IDAPA 37.01.01.053.05 on or before January 29, 2024.

IT IS FURTHER ORDERED that the contested case in the above-captioned matter shall continue through informal proceedings until Recharge Development Corporation or any other party requests the commencement of formal proceedings or until the Department determines that informal proceedings are unlikely to resolve the contested case.

IT IS FURTHER ORDERED that Rob Whitney, Water Distribution Section Manager, is appointed as the Department contact for informal proceedings in this contested case. The parties may reach out to Rob Whitney at rob.whitney@idwr.idaho.gov or (208) 287-4800.

DATED this 28th day of December 2023.



MATHEW WEAVER
Director

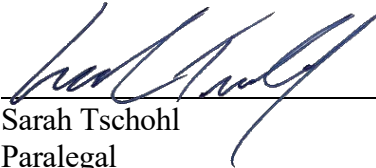
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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