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*Attorneys for Riverside Irrigation District*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER  
RESOURCES and GARY SPACKMAN in his  
official capacity as Director of the Idaho  
Department of Water Resources,

Respondents,

IN THE MATTER OF REUSE PERMIT NO.  
M-255-01, IN THE NAME OF THE CITY OF  
NAMPA

Case No. CV CV14-21-05008

**Fee Category L.3**

**NOTICE OF APPEAL AND  
PETITION FOR JUDICIAL  
REVIEW OF AGENCY ACTION**

COMES NOW, the Petitioner, the Riverside Irrigation District (“Riverside”), by and through its counsel of record, Barker Rosholt & Simpson, LLP and hereby files this Petition seeking judicial review of a final agency action of the Director of the Idaho Department of Water Resources.

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## **STATEMENT OF THE CASE**

1. This Petition is a civil action filed pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of the Order on Petition for Declaratory Ruling entered by the Director of the Department of Water Resources on May 3, 2021, in the above-referenced contested case.

## **JURISDICTION AND VENUE**

2. This petition is authorized by Idaho Code §§ 67-5270 and 67-5279.

3. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A and 67-5272.

4. Venue lies in this Court pursuant to Idaho Code § 67-5272 and the Snake River Basin Adjudication Court's July 1, 2010, *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order dated December 9, 2009*. Petitioner Riverside's primary place of business lies in Canyon County, Idaho, and the real property that was the subject of the agency decision is located in Canyon County, Idaho.

5. Pursuant to the Idaho Supreme Court's *Administrative Order* issued on December 9, 2009 "all petitions for judicial review of any decision regarding administration of water rights from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District." The SRBA Court's procedures instruct the clerk of the district court in which the petition is filed to issue a *Notice of Reassignment*. The Petitioners have attached a copy of the SRBA Court's *Notice of Reassignment* form for the convenience of the clerk.

6. The Director's Order on Petition for Declaratory Ruling was issued on May 3, 2021. The Director's Order on Petition for Declaratory Ruling is a final agency action subject to

review pursuant to Idaho Code § 67 5270(3). This Petition is timely as it is filed within 28 days of the date of service of a final order. Idaho Code § 67 5273(2).

### **PARTIES**

7. Petitioner Riverside is a duly organized and operating non-profit corporation operating in the State of Idaho as an irrigation delivery entity.

8. Respondent, Idaho Department of Water Resources is a state agency with its main office located at 322 E. Front Street, Boise, Idaho. Respondent, Gary Spackman, is the Director of the Idaho Department of Water Resources.

### **STATEMENT OF INITIAL ISSUES**

9. Petitioners assert the following issues on judicial review:

a. Whether the Director committed reversible error by interpreting I.C. § 42-201(8) as a matter of law to include and authorize water use by Pioneer Irrigation District without a water right, when Pioneer is not a municipality or municipal provider as defined in Idaho Code § 42-202B(4) or (5)?

b. Whether the Director improperly concluded as a matter of fact and law that Pioneer was acting on behalf of the City of Nampa when Pioneer claimed that it would be applying water for the beneficial use of Pioneer's water right users?

c. Whether the Director committed reversible error by concluding that Pioneer Irrigation District is not required to obtain a water right under Idaho Code § 42-201(2) when Pioneer diverts water without a water right and puts it to beneficial use on Pioneer lands outside the City of Nampa and/or the City of Nampa's Service Area?

d. Whether the Director committed reversible error by concluding that, as applied, Riverside has no standing to contend that the Director's interpretation of Idaho

Code § 42-201(2) violates Article XV, § 3 of the Idaho Constitution?

e. Whether the Director committed reversible error by failing to acknowledge that Nampa's water rights contain conditions precluding the use of its water rights for irrigation when surface water is available and failing to acknowledge that surface water is available for the lands where Pioneer intends to apply this water, and whether Pioneer's scheme to place Nampa's water rights on Pioneer's irrigated land as an additional water supply for lands with surface water rights is therefore an enlargement of the water rights?

f. Whether the Director committed reversible error by essentially authorizing Pioneer to capture and put to use a third party's waste water without a water right.

g. Whether the Director committed reversible error by failing to apply the Supreme Court's holding in *A&B Irrigation District v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 118 P.3d 78 (2005) as to the source of the water at issue.

#### **AGENCY RECORD**

10. Judicial review is sought of the Director's May 3, 2021, Order on Petition for Declaratory Ruling.

11. Petitioners request that all documents filed with the Department, and all exhibits, be included in the agency record.

12. The estimated cost of the preparation of the agency record is \$20.00, according to the agency, which sum has been paid to the Idaho Department of Water Resources.

13. Service of this Notice of Appeal and Petition for Judicial Review has been made on the Respondents at the time of filing of this Petition.

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## JUDICIAL REVIEW I.R.C.P. 84(c) INFORMATION

14. **Name of Agency for Which Judicial Review is Sought:** Idaho Department of Water Resources, an executive department existing under the laws of the state of Idaho pursuant to Idaho Code § 42-1701 et seq., with its state office located at 322 E. Front St., Boise, Ada County, Idaho 83702.

15. **Title of District Court to Which Petition is Taken:** In the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon.

16. **Case Caption and Action for Which Judicial Review is Sought:** In the Matter of Riverside's Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01; Docket No. P-DR-2020-001.

17. **Hearing Recording:** A hearing was not held in this matter, as the matter was submitted to the Director on a Stipulated Statement of Facts. Accordingly, there is no hearing recording.

18. **Statement of Issues of Judicial Review:** Whether the Director committed reversible error in his Order on Petition for Declaratory Ruling Regarding the Need for a Water Right to Divert Water Under a Reuse Permit.

19. **Designation of Whether a Transcript is Required:** A hearing transcript is not being requested as this matter was submitted to the hearing officer based on a Stipulated Statement of Facts.

20. **Attorney Certification:** I, Albert P Barker, counsel for the Petitioner, certify the following: 1) service of this petition has been made upon the Department; and 2) that the clerk of the agency has been paid the estimated fee for the preparation of record after my assistant contacted Megan Jenkins of the Department, who provided the estimate of \$20.00, which I then

paid by mailing a check for the amount to the Department's state office, located at 322 E. Front St., Boise, Idaho 83702.

DATED this 28<sup>th</sup> day of May 2021.

**BARKER ROSHOLT & SIMPSON LLP**

*/s/ Albert P. Barker* \_\_\_\_\_  
Albert P. Barker  
Sarah W. Higer  
*Attorneys for Petitioner Riverside Irrigation  
District*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of May 2021, I caused to be served a true and correct copy of the foregoing **Notice of Appeal and Petition for Judicial Review of Agency Action** by the method indicated below, and addressed to each of the following:

Idaho Department of Water Resources	<input type="checkbox"/>	U. S. Mail
322 E. Front St.	<input type="checkbox"/>	Hand Delivered
P.O. Box 83720	<input type="checkbox"/>	Overnight Mail
Boise, ID 83700-0098	<input checked="" type="checkbox"/>	iCourt
	<input checked="" type="checkbox"/>	E-mail

Director Gary Spackman	<input type="checkbox"/>	U. S. Mail
Idaho Department of Water Resources	<input type="checkbox"/>	Hand Delivered
322 E. Front St.	<input type="checkbox"/>	Overnight Mail
P.O. Box 83720	<input checked="" type="checkbox"/>	iCourt
Boise, ID 83700-0098	<input checked="" type="checkbox"/>	E-mail
<a href="mailto:Gary.Spackman@idwr.idaho.gov">Gary.Spackman@idwr.idaho.gov</a>		

Christopher H. Meyer	<input type="checkbox"/>	U. S. Mail
Michael P. Lawrence	<input type="checkbox"/>	Hand Delivered
Givens Pursley LLP	<input type="checkbox"/>	Overnight Mail
601 W. Bannock Street	<input type="checkbox"/>	iCourt
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/s/ Albert P. Barker  
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