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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF POCATELLO, CITY OF IDAHO
FALLS, CITY OF BLISS, CITY OF BURLEY,
CITY OF CAREY, CITY OF DECLO, CITY
OF DIETRICH, CITY OF GOODING, CITY
OF HAZELTON, CITY OF HEYBURN, CITY
OF JEROME, CITY OF PAUL, CITY OF
RICHFIELD, CITY OF RUPERT, CITY OF
SHOSHONE, CITY OF WENDELL, and
MCCAIN FOODS USA, INC.,

Petitioners,

vs.

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

Case No. CV01-23-08306

IDWR Docket No. CM-DC-2010-001

**PETITION FOR JUDICIAL REVIEW OF
MAY 5, 2023 DISCOVERY ORDER**

Fee Category L.3.a: \$221.00

Respondents.

IN THE MATTER OF THE DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY AND FOR THE BENEFIT OF A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALLS CANAL COMPANY

Petitioners, the Cities of Idaho Falls, Pocatello, Jerome, Burley, Bliss, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Paul, Richfield, Rupert, Shoshone, and Wendell; and McCain Foods USA, Inc. (collectively, the “Petitioners”), by and through their respective counsel, submit this *Petition for Judicial Review of May 5, 2023 Discovery Order* (“Petition”) pursuant to Idaho Code §§ 67-5270 through 67-5279.

1. This *Petition* seeks judicial review of agency action taken by the Idaho Department of Water Resources (“IDWR” or “Department”).

2. This *Petition* is taken to the District Court of the State of Idaho, Fourth Judicial District, Ada County.

3. This *Petition* requests judicial review of the following order issued by the Director of the Department in IDWR Docket No. CM-DC-2010-001:

3.1 *Order Denying the Cities’ Motion for Appointment of Independent Hearing Office and Motion for Continuance and Limiting Scope of Depositions* issued May 5, 2023 (“Discovery Order”).

4. This court is the proper venue under Idaho Code § 67-5272(a) because the agency action was taken in Ada County, Idaho.

5. Pursuant to Administrative Orders issued by the Idaho Supreme Court on December 9, 2009, and by the Snake River Basin Adjudication Court (“SRBA Court”) on December 3, 2020, this case should be reassigned to the presiding judge of the SRBA Court for further proceedings.

6. The Petitioners submit the following preliminary statement of issues for judicial review:

- 6.1 Whether Idaho law recognizes a “deliberative process” privilege;
- 6.2 Whether the Department may assert a “deliberative process” privilege during discovery in administrative or judicial proceedings;
- 6.3 Whether the Department’s procedural rules give it *carte blanche* to limit discovery in a manner that is inconsistent with Idaho law.
- 6.4 Whether the Director violated constitutional or statutory provisions, acted upon unlawful procedure, and/or abused his discretion by issuing the *Discovery Order*, which limits the scope of discovery and thereby precludes the Petitioners from discovering information that is relevant to the issues in this case;
- 6.5 Whether the *Discovery Order* otherwise violates constitutional or statutory provisions, was made upon unlawful procedure, or contains finding of fact or conclusions of law that are arbitrary, capricious, or an abuse of discretion; and
- 6.6 Whether the Director is liable for attorney fees under Idaho Code § 12-117 for issuing the *Discovery Order* without a reasonable basis in fact or law.

The undersigned attorneys certify that Service of this Petition has been made on the Department.

DATED this 22nd day of May, 2023.

<p>SOMACH SIMMONS & DUNN</p> <p>By <u> /s/ Maximilian C. Bricker</u> Maximilian C. Bricker (ISB #12283) Sarah A. Klahn (ISB #7928)</p> <p><i>Attorneys for City of Pocatello</i></p>	<p>MCHUGH BROMLEY, PLLC</p> <p>By <u> /s/ Candice M. McHugh</u> Candice M. McHugh (ISB# 5908) Chris M. Bromley (ISB # 6530)</p> <p><i>Attorneys for the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell, and McCain Foods USA, Inc.</i></p>
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 2023, I caused to be filed a true and correct copy of the foregoing document via iCourt E-File and Serve, and upon such filing, the following parties were served via electronic mail:

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