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Attorneys for Eden's Gate LLC

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

EDEN'S GATE LLC,

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 APPLICATION FOR
PERMIT No. 63-34832 THROUGH 63-34838
AND 63-34840 THROUGH 63-34846 ALL IN
THE NAME OF EDEN'S GATE LLC

CV14-21-10116

Case No. CV _____

Fee Category L.3

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

COMES NOW, the Petitioner, Eden's Gate LLC ("Eden's Gate"), by and through its attorneys of record, Barker Rosholt & Simpson, LLP, and hereby files this Petition for judicial review of a final agency action of the Director of the 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 Exceptions; Final Order Partially Approving Applications* (“*Final Order*”) entered by the Director of the Department of Water Resources on October 14, 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 Eden’s Gate’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 Petitioner has attached a copy of the SRBA Court’s Notice of Reassignment form for the convenience of the clerk.
6. The Director’s *Final Order* was issued on October 14, 2021. The Director’s *Final Order* 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 the final order. *See* Idaho Code § 67-5273(2).

PARTIES

7. Petitioner Eden's Gate is a duly organized Idaho limited liability company operating in the State of Idaho.
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. Petitioner asserts the following issues on judicial review:
 - a. Whether the Director erred by relying on the Idaho Land Use Planning Act, Idaho Code § 67-6537, to deny the applications for irrigation use, but at the same time expanding the Act beyond the terms and conditions of Idaho Code § 67-6537, and whether in doing so the Director has effectively created a new *de facto* IDWR rule requiring the use of surface water in all circumstances under the local public interest rules, contrary to the legislative direction in Idaho Code § 67-6537 and Idaho Code § 42-202B(3) and contrary to the local public interest rules?
 - b. Whether the Director in denying the applications for irrigation use has in effect created new State-wide policy or rule without statutory authority and without engaging in rulemaking.
 - c. Whether the Director's order denies Petitioner the right to appropriate unappropriated waters in violation of Idaho's Constitution, Article XV § 3.

- d. Whether the Director erred by concluding that the local public interest criteria required the use of surface water for irrigation when the ground water supply in the vicinity of the Petitioner's land is fully capable of supplying water to the lands to be irrigated without injury to any other water rights?
- e. Whether the Director erred by concluding that the local public interest required the use of surface water for irrigation to maintain surface water distribution systems when the surface water shareholder continues to have an obligation to pay assessments, when the surface water delivery entity has a service area that is over 21,000 acres, but only has the right to irrigate 15,000 acres, leaving over 6,000 acres of land within Farmers' Co-op's Service Area susceptible of additional surface water irrigation, when there are willing buyers for the water shares, and when the water shares are transferable to other water users?
- f. Whether the Director erred in requiring that the surface water for irrigation must remain with the land when Farmers' Co-op's shares are not appurtenant to the land?
- g. Whether the Director erred in denying the applications for irrigation based on Idaho's Land Use Act, Idaho Code § 67-6537, when the facts clearly demonstrate that Idaho Code § 67-6537 does not apply to Petitioner's project?
- h. Whether the Director erred by applying a "standard" condition on supplemental ground water rights to applications for primary ground water rights for irrigation, when no similar "standard" condition, guidance or rule applies to applications for primary ground water rights?
- i. Whether the Director erred by failing to consider that the water quality of the surface water was not compatible with the desires and needs of the residents and the type of

small scale irrigation systems that would have to be used for surface delivery (e.g. silt, seeds and pesticides), and failing to consider the environmental benefit of reducing runoff of silty surface water to the Boise River in a portion of the river that is water quality limited?

- j. Whether the Director erred in determining that Farmers' Co-op's water is available to Eden's Gate when Eden's Gate does not own shares in Farmers Coop and when the water rights are not appurtenant to the land?

AGENCY RECORD

10. Judicial review is sought of the Director's October 14, 2021 *Final Order*.
11. Petitioner requests that the agency record for this proceeding as required by Idaho Code § 67-5249, and § 67-5242 be prepared, together with a transcript of the hearing.
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 the filing of this Petition.

JUDICIAL REVIEW I.R.C.P. 84I 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 Application For Permit No. 63-34832 Through 63-34838 And 63-34840 Through 63-34846 All In The Name Of Eden's Gate LLC.
17. **Hearing Recording:** An administrative hearing was held on June 15, 2020, before the Idaho Department of Water Resources with Nick Miller as the Hearing Officer.
18. **Statement of Issues of Judicial Review:** Whether the Director committed reversible error in his *Final Order*.
19. **Designation of Whether a Transcript is Required:** A hearing transcript is requested.
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 I contacted Garrick Baxter 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 10th day of November, 2021.

/s/ Albert P. Barker

Albert P. Barker

Attorney for Eden's Gate LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 2021, I served a copy of the foregoing **EDEN’S GATE LLC** *Notice of Appeal and Petition for Judicial Appeal* by the method indicated below, and addressed to the following:

Idaho Dept. of Water Resources
322 E Front St
Boise, Idaho 83720-0098

Hand Delivery
 U.S. Mail
 Facsimile
 iCourt
 Email: nick.miller@idwr.idaho.gov

S. Bryce Farris
Sawtooth Law
1101 W River St., Suite 110
Boise, ID 83702

Hand Delivery
 U.S. Mail
 Facsimile
 Overnight Mail
 Email: bryce@sawtoothlaw.com

/s/ Albert P. Barker
Albert P. Barker