

Respondents.) **ALTERNATIVELY, WRIT OF**
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COME NOW, the Petitioners, SOUTH VALLEY GROUND WATER DISTRICT, on behalf of its members, by and through counsel of record, BARKER ROSHOLT & SIMPSON LLP and GALENA GROUND WATER DISTRICT, on behalf of its members, by and through counsel of record, LAWSON LASKI CLARK, PLLC (collectively “Petitioners”), pursuant to Idaho Code of Civil Procedure 15(a)(2), and hereby submits this *Motion to Amend Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction, or Alternatively, Writ of Prohibition*.

Procedural Background

The Director of the Idaho Department of Water (“Department” or “Director”) initiated administrative proceedings on May 4, 2021, with the intent of determining the need for curtailment of Petitioners’ members’ ground water rights in a designated area within Basin 37. On May 13, 2021, Petitioners filed a motion to dismiss the administrative process, which was denied on May 22, 2021 (“Denial Order”). On May 24, 2021, Petitioners filed its *Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction, or Alternatively, Writ of Prohibition* (“Petition”) requesting judicial review of the Denial Order, as well as declaratory relief, a preliminary injunction, or a writ of prohibition of the administrative proceeding.

On May 27, 2021, the Court denied Petitioners’ Application for Temporary Restraining Order, finding that “the need for such relief [is not] clear and plain, given the Director has not yet ruled on the issues of water right administration that are presently before him.” *Order Denying*

Application for Temporary Restraining Order, at 4. During the week of June 7 to 12, the Director conducted the administrative hearing and took evidence and testimony regarding potential injury to senior water right holders in Basin 37, and the potential curtailment of junior ground water rights within a defined area in Basin 37 (i.e. the “Bellevue Triangle”). The parties to the proceeding submitted post-hearing briefs on or before June 21, 2021. The Director issued his *Final Order* on June 28, 2021. *See Declaration of Michael A. Short*, ¶ 15. The final order required total curtailment of the Petitioners’ members’ ground water rights for the remainder of the 2021 irrigation season, effective July 1, 2021. *See Declaration of Michael A. Short*, Ex. S.

Legal Standard

Petitioners’ present motion seeks leave of the Court to amend its Petition pursuant to Idaho Rule of Civil Procedure 15(a)(2), “a party may amend its pleading only with the opposing party’s written consent of the Court’s leave. The Court should freely give leave when justice so requires.”

Argument

The Court should grant Petitioners’ motion to amend in the interests of justice. Petitioners original Petition sought judicial review of, and injunctions staying, the Director’s administrative proceeding. In general, Petitioner argued that the proceedings violated Petitioners’ substantive and procedural due process rights. In denying Petitioners’ application for temporary restraining order, this Court noted that due to the posture of the administrative proceeding at that time—the Director had not yet made determinations as to withdrawals of groundwater, nor had he issued a curtailment order—“any injury, loss, or damage to the Petitioners is speculative.” *Order Denying Application for Temporary Restraining Order*, at 3.

Petitioners maintain that they were injured by being forced to defend possible curtailment in a compressed and improper proceeding that denied them procedural due process. Nevertheless,

the Court's ruling on Petitioners' application for temporary restraining order illustrates the Court's belief that the issues addressed in the Petition were not ripe for judicial review *at that time*. Since Petitioners filed the Petition however, the Director has made a final determination on the withdrawal of certain groundwater within the Bellevue Triangle and has issued a curtailment order that will cause substantial and irreparable injury, loss, and damage to the Petitioners.

In light of the conclusion of the administrative hearing and the final order and curtailment order from the Director, Petitioners are now faced with the real prospect of significant loss and injury. It is therefore, in the interests of justice to allow Petitioners to amend its Petition, and to renew its request for judicial review, declaratory relief, and injunction. In furtherance of this motion, Petitioners file concomitantly, its *Amended Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction*, its *Motion to Stay During Consideration of Petition for Judicial Review*, its *Motion to Shorten Time*, and supporting memoranda.

DATED this 29th day of June, 2021.

BARKER ROSHOLT & SIMPSON LLP

/s/ ALBERT P. BARKER
Albert P. Barker

*Attorneys for South Valley Ground Water
District*

LAWSON LASKI CLARK, PLLC

/s/ HEATHER E. O'LEARY
Heather E. O'Leary

Attorneys for Galena Ground Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 2021, the foregoing was filed, served, and copied as shown below.

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