

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SOUTH VALLEY GROUND WATER)	CASE NO. CV07-21-00243
DISTRICT and GALENA GROUND WATER)	
DISTRICT,)	ORDER GRANTING JOINT
)	MOTION REGARDING MOTION
Petitioners,)	TO AMEND
)	
vs.)	
)	
THE IDAHO DEPARTMENT OF WATER)	
RESOURCES and GARY SPACKMAN in his)	
official capacity as Director of the Idaho)	
Department of Water Resources,)	
)	
Respondents.)	
)	
)	
)	

PROCEDURAL BACKGROUND

On May 24, 2021, South Valley Ground Water District and Galena Ground Water District (“Petitioners”) filed a *Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction, or Alternatively Writ of Prohibition*, (“*Petition*”). The first count of the *Petition* was a petition for judicial review, pursuant to the applicable provisions of the Idaho Administrative Procedures Act, Idaho Code §§ 67-5270—67-5279, of certain actions taken by the Director of the Idaho Department of Water Resources in an administrative proceeding under Department under Docket No. AA-WRA-2021-001, before a final order had been issued. Counts II through V of the *Petition* alleged other causes of action regarding the Director’s actions in the administrative proceeding. The Petitioners also filed an *Application for Temporary Restraining Order* on May 24, 2021, for an order restraining the

Director from proceeding with the administrative hearing and issuing any curtailment orders pending a hearing on the Petitioners' request for a preliminary injunction.

On May 27, 2021, this Court issued an *Order Denying Application for Temporary Restraining Order*, and the next day the Respondents filed a motion to dismiss the *Petition*.¹ Subsequently, the Petitioners and Respondents stipulated to a stay of all further proceedings on Count I of the *Petition* pending issuance of a final order in the administrative proceeding, and to dismissal without prejudice of the remaining counts of the *Petition*. *Stipulation and Joint Motion to Stay Petition for Judicial Review and Dismiss Without Prejudice Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction, or Alternatively Writ of Prohibition* ("Stipulation and Joint Motion"). This Court issued an *Order Granting Joint Motion to Stay Count I and Dismiss Remaining Counts Without Prejudice* on June 10, 2021.

The Director issued a *Final Order* in the administrative proceeding on June 28, 2021, and this Court's stay order lifted by operation of its terms upon issuance of the *Final Order*. *Order Denying Second Application for Temporary Restraining Order; Order Denying Second Motion for Preliminary Injunction* (Jul. 2, 2021) ("Second TRO Order"). The Petitioners filed several documents in this case on June 30, 2021, including a *Motion to Amend Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction, or Alternatively, Writ of Prohibition* (June 30, 2021) ("Motion to Amend"), and a *First Amended Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction, or Alternatively, Writ of Prohibition* (June 30,

¹ The full title of the Respondents' motion is *Respondents' Motion to Dismiss Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction, or Alternatively Writ of Prohibition*.

2021) (“*First Amended Petition & Complaint*”). Among other things, the *Motion to Amend* sought to add to the *Petition* several counts requesting declaratory relief, a count requesting a preliminary injunction and a temporary restraining order, and a count requesting a writ of prohibition. *First Amended Petition & Complaint* at 13-18.

The Petitioners also filed a *Second Application for Temporary Restraining Order*, and a *Second Motion for Preliminary Injunction* on June 30, 2021. The Respondents filed *IDWR’s Response and Memorandum in Opposition to Second Application for Temporary Restraining Order* later the same day. This Court held a hearing on the Petitioners’ requests for a temporary restraining order and preliminary injunction on July 1, 2021, and issued an order denying the requests on July 2, 2021. *Second TRO Order*.

The Respondents filed a response opposing the *Motion to Amend*, in part, on July 9, 2021. *Respondents’ Response Opposing, in Part, Motion to Amend Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction, or Alternatively, Writ of Prohibition*. The *Response* did not oppose the proffered amendments to Count I of the *Petition*, but did oppose the request to add Counts II, III, IV, V, VI, and VII to the *Petition*. *Id.* at 2, 13-14. Subsequently, the Petitioners and Respondents filed a *Stipulation and Joint Motion Regarding Motion to Amend* (“*Joint Motion*”).

The *Joint Motion* seeks issuance of an order granting in part and denying in part the *Motion to Amend* according to the terms of the parties’ stipulation. *Id.* at 2, 4-5. The parties stipulated that the *Motion to Amend* should be granted as to Count I but denied as to Counts VI and VII. *Joint Motion* at 3-4. The parties further stipulated that the claims and issues identified in Counts II, III, IV, and V may be raised in the “statement of issues” under Count I and within the Petitioners’ opening brief, as arguments in support of Count I and the relief available under

Idaho Code § 67-5279(3), rather than as separate causes of action for declaratory relief under Idaho Code §§ 10-1201—10-1217. *Id.* The Petitioners agreed to withdraw their request to add Counts II, III, IV, and V as separate causes of action for declaratory relief under Idaho Code §§ 10-1201—10-1217, but the parties stipulated to allow the allegations in Counts II – V to be raised in support of arguments and assertions for relief pursuant to Idaho Code § 67-5279(3). *Id.*

The parties also stipulated that the Petitioners would retain their rights under I.R.C.P. 15 to seek leave to amend the *First Amended Petition & Complaint* to add the same, similar or additional counts depending on the progress or outcome of the administrative proceeding that may or may not resume after December 1, 2021, and that Respondents would retain their rights to oppose any such amendments or seek dismissal of such counts. *Id.* The parties further stipulated that the Petitioners reserved the right to seek other interim relief, and the Respondents reserved all rights to contest such applications. *Id.*

ANALYSIS

The *Motion to Amend* seeks leave to amend the *Petition* pursuant to Rule 15(a)(2) of the Idaho Rules of Civil Procedure. *Motion to Amend* at 2. This rule provides, in pertinent part, that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” I.R.C.P. 15(a)(2). The decision of whether to allow amendment of a pleading pursuant to Rule 15(a)(2) is committed to a district court’s sound discretion. *Elliott v. Murdock*, 161 Idaho 281, 286, 385 P.3d 459, 464 (2016).

In this case, the Petitioners and the Respondents have consented in writing to certain amendments of the *Petition*, provided the *Motion to Amend* is otherwise denied. Further, the parties’ stipulation reserves all of the parties’ respective rights regarding any request to amend


the *Petition* in the future to add new causes of action or claims for relief, including any request for interim relief. The Court finds that there is good cause to approve the parties' stipulation and grant the *Joint Motion*, and will do so in an exercise of its discretion.

THEREFORE, AND BASED ON THE FOREGOING, THE FOLLOWING ARE
HEREBY ORDERED:

1. The *Motion to Amend* is granted as to Count I.
2. The *Motion to Amend* is denied as to Count VI and Count VII.
3. The *Motion to Amend* is denied as to Counts II, III, IV, and V to the extent they would add to the *Petition* separate claims or causes of action for declaratory relief under Idaho Code §§ 10-1201—10-1217.
4. The *Motion to Amend* is granted as to Counts II, III, IV, and V only in that the Petitioners may rely upon the allegations and assertions in those Counts in support of their arguments and requests for relief pursuant to Idaho Code § 67-5279(3) under Count I of the *Petition*.

IT IS SO ORDERED.

DATED this 7/23/2021 2:00:33 PM day of _____, 2021.



ERIC J. WILDMAN
District Judge

CLERK’S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7/23/2021, I caused to be served a true and correct copy of the foregoing ORDER GRANTING JOINT MOTION REGARDING MOTION TO AMEND by the method indicated below, and addressed to each of the following:

Albert P. Barker U. S. Mail
Travis L. Thompson Overnight Mail
Michael A. Short E-mail
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139
apb@idahowaters.com
tlt@idahowaters.com
mas@idahowaters.com

James R. Laski U. S. Mail
Heather O’Leary Overnight Mail
LAWSON LASKI CLARK PLLC E-mail
PO Box 3310
Ketchum, ID 83340

Candice McHugh U. S. Mail
Chris Bromley Overnight Mail
MCHUGH BROMLEY, PLLC E-mail
380 S. 4th St., Ste. 103
Boise, ID 83702

W. Kent Fletcher U. S. Mail
FLETCHER LAW OFFICE Overnight Mail
P.O. Box 248 E-mail
Burley, ID 83318

Sarah A. Klahn U. S. Mail
SOMACH SIMMONS & DUNN Overnight Mail
2033 11th St., #5 E-mail
Boulder, CO 80302

Joseph F. James
James Law Office, PLLC
125 5th Ave. West
Gooding, ID 83330

U. S. Mail
 Overnight Mail
 E-mail

Chase Hendricks
Binghan Co PA
501 N Maple, Box 302
Blackfoot, ID 83221-1700

U. S. Mail
 Overnight Mail
 E-mail



Clerk of the Court