

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

JAMES WHITTAKER, an individual, and) Case No. CV30-21-304
WHITTAKER TWO DOT RANCH LLC, an)
Idaho limited liability company,) **PROCEDURAL ORDER**
)
Petitioners,)
)
vs.)
)
)
THE IDAHO DEPARTMENT OF WATER)
RESOURCES, an administrative agency of the)
State of Idaho,)
)
Respondent.)
)
_____)
)
IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 84441 IN THE NAME OF)
BRUCE AND GLENDA MCCONNELL)
_____)

A *Petition for Judicial Review* was filed in the above-entitled district court seeking judicial review of an order issued by the Director of the Idaho Department of Water Resources (“Department” or “agency”). This *Order*, together with Rule 84, Idaho Rules of Civil Procedure, (I.R.C.P.), applicable statutes, and the *Administrative Order Regarding Transition to Electronic Filing System* issued by this Court on December 3, 2020, govern all proceedings before the Court.¹

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. **Petition for Judicial Review and Reassignment of Case:** The *Petition* was filed on November 30, 2021. The case was reassigned by the clerk of the court to this Court.

¹ A copy of the Court’s *Administrative Order Regarding Transition to Electronic Filing System* is attached as Exhibit A.

2. **Appearances by persons or entities who were a party to the underlying administrative proceeding but who were not made a named party in the *Petition for Judicial Review***: Where a person or entity who was a party to the underlying administrative proceeding is not made a named party in the *Petition*, and is not otherwise a Petitioner, such person or entity may file a *Notice of Appearance* in this matter within fourteen (14) days from the issuance of this *Procedural Order*. This Court will treat the *Notice of Appearance* as a *Motion to Intervene* and will treat the party filing the *Notice of Appearance* as an Intervenor.² Under such circumstances, the Court will automatically issue an order granting the *Motion to Intervene* unless one or more parties to the action files an opposition to the *Motion* within 10 days of the filing of the *Notice of Appearance*. A person or entity not a party to the underlying administrative proceeding who desires to participate in this action, and is not otherwise a Petitioner, must proceed in accordance with Idaho Appellate Rule 7.1.

3. **Stays**: Unless provided for by statute, the filing of a petition or cross petition does not automatically stay the proceedings and enforcement of the action before the Department. I.C. § 67-5274. Any application or motion for stay must be made in accordance with I.R.C.P. 84(m).

4. **Form of Review**: Pursuant to I.R.C.P. 84(e)(1), when judicial review is authorized by statute, judicial review shall be based upon the record created before the Department rather than as a trial de novo, unless the statute or the law provides for the procedure or standard. If the statute provides that the district court may take additional evidence upon judicial review, it may order the same on its own motion or the motion of any party. If the statute provides that review is de novo, the appeal shall be tried in the district court on any and all issues, on a new record. Pursuant to I.R.C.P. 84(e)(2), the scope of review on petition from the Department to the district court shall be as provided by statute.

5. **Preparation of Agency Record; Payment of Fees**: Pursuant to I.R.C.P. 84(f), when the statute provides what shall be contained in the official record of the agency upon judicial review, the Department shall prepare the record as provided by statute. Otherwise, the documents listed in paragraph (3) of I.R.C.P. 84(f) shall constitute the agency record for review. Petitioner (and cross-petitioner) shall pay all fees as required for preparation of the agency record in accordance with I.R.C.P. 84(f)(4). **The clerk of the Department shall lodge the record with the Department within 14 days of the entry of this Order, or no later than December 16, 2021.** Any extension in time for preparation of the agency record shall be applied for by the agency to the district court.

6. **Preparation of Transcript; Payment of Fee**: It is the responsibility of the petitioner (or cross-petitioner as the case may be) to timely arrange and pay for preparation of all portions of the transcript reasonably necessary for review, if any. Pursuant to I.R.C.P. 84(g), the

² The parties should note that in such instances the Court will treat the *Notice of Appearance* as a *Motion to Intervene* for housekeeping purposes. In doing so, it is the Court's intent to have the record in this matter clearly reflect which persons and/or entities are participants in this action. It is also the Court's intent to have the caption of this matter properly reflect all those parties who are participating in this action and to identify in what capacity those parties are participating (i.e., Petitioner, Respondent, or Intervenor).

responsible party shall contact the agency clerk to determine the estimated cost of the transcript, and pay the estimated cost in accordance with I.R.C.P. 84(g)(1)(A) or (2)(A) as the case may be. **The transcript, if one is requested, shall be lodged with the Department within 14 days of the entry of this Order, or no later than December 16, 2021.** The transcriber may apply to the district court for an extension of time, for good cause shown.

7. **Settlement of Transcript and Record**: Pursuant to I.R.C.P. 84(j), and unless otherwise provided by statute, upon receipt of the transcript and upon completion of the record, the Department shall mail or deliver notice of lodging of transcript and record to all attorneys of record or parties appearing in person and to the district court. The parties shall have 14 days from the date of mailing of the notice to pick up a copy of the transcript and agency record and to object to the transcript or record. All fees for the preparation of the transcript and record shall be paid by the responsible party at or before the pick-up of the agency record and transcript. Any objection to the record shall be determined by the Department within 14 days of the receipt of the objection and the decision on the objection shall be included in the record on petition for review. Upon the failure of the party to object within 14 days, the transcript and record shall be deemed settled. The settled record and transcript shall be lodged with the district court no later than **January 13, 2022**.

8. **Augmentation of the Record – Additional Evidence Presented to District Court – Remand to Agency to Take Additional Evidence**: Pursuant to I.R.C.P. 84(l) the agency record and/or transcript on review may be augmented upon motion to this court by a party within 21 days of the filing of the settled transcript and record in the manner prescribed by Idaho Appellate Rule (I.A.R.) 30. The taking of additional evidence by the district court and/or agency on remand shall be governed by statute or I.R.C.P. 84(l).

9. **Briefs and Memoranda**: The petitioner's brief shall be filed with the clerk of the court within 35 days after lodging of the settled transcript and record with the district court. The respondent's (and cross-petitioner's brief) shall be filed within 28 days after service of petitioner's brief. Any reply brief shall be filed within 21 days after service of respondent's brief. The organization and content of briefs shall be governed by I.A.R. 35 and 36. Pursuant to I.R.C.P. 84(p) only one (1) original signed brief may be filed with the court and copies shall be served on all parties.

10. **Extension of Time**: Motions to extend the time for filing a brief or modify order of briefing shall be submitted in conformity with I.A.R. 34(e). All other requests for extension of time shall be submitted in conformity with I.A.R. 46.

11. **Motions**: All motions shall be submitted in conformity with I.R.C.P. 84(o) and shall be heard without oral argument unless ordered by the Court.

12. **Oral Argument**: Oral argument will be heard **April 21, 2022, at 1:30 p.m. (Mountain Time)** at the Snake River Basin Adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho. Oral argument will be conducted via Zoom with instructions to be provided to the parties at a later date. The form and order of argument shall be governed by I.A.R. 37.

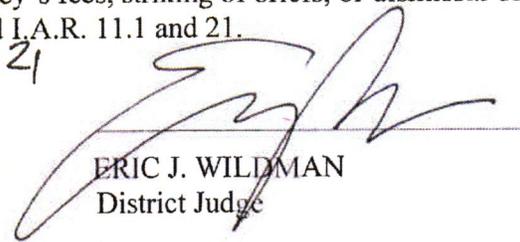
13. Judgment or Decision: The Court's decision will be by written memorandum as required by I.R.C.P. 84(t)(1). In compliance with I.R.C.P. 54(a), as amended effective July 1, 2010, a separate judgment will also issue contemporaneously therewith. Pursuant to I.R.C.P. 84(t)(2), if no petition for rehearing is filed the time for appeal to the Idaho Supreme Court shall begin to run after the date of the filing stamp of the clerk of the court appearing on the judgment. If a petition for rehearing is filed, the time for appeal shall begin to run after the date of the filing stamp of the clerk of the court appearing on either an order denying rehearing or on any modified judgment.

14. Petitions for Rehearing: Petitions for rehearing shall be governed by the time standards and procedures of I.A.R. 42. If rehearing is granted, the Court will issue an order granting same and setting forth a briefing schedule for responsive briefing, a reply, and oral argument. Unless otherwise ordered, the brief filed in support of rehearing will be treated as the opening brief.

15. Remittitur: If no notice of appeal to the Idaho Supreme Court is filed within forty-two (42) days after filing of the Court's written decision, the clerk shall issue a *remittitur* remanding the matter to the agency as provided in I.R.C.P. 84(t)(4). The Court will then notify the clerk of the district court where the petition was originally filed regarding completion of the case.

16. Failure to Comply: Failure by either party to timely comply with the requirement of this *Order* or applicable provisions of the Idaho Rules of Civil Procedure or Idaho Appellate Rules, if applicable, shall be grounds for imposition of sanctions, including, but not limited to the allowance of attorney's fees, striking of briefs, or dismissal of the appeal pursuant to I.R.C.P. 11 and 84(n) and I.A.R. 11.1 and 21.

Dated December 1, 2021



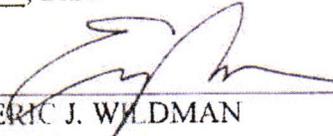
ERIC J. WILDMAN
District Judge

3. This *Order* applies to petitions for judicial review or actions for declaratory judgment filed after its issuance. It does not affect the processing of petitions for judicial review or actions for declaratory judgment filed prior to its issuance.

4. This *Order* does not apply to or affect any proceeding for the general adjudication of water rights pending before the Snake River Basin Adjudication District Court. For rules of procedure governing such adjudications, please see the Court's website at www.srba.idaho.gov.

5. The Court's *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order dated December 9, 2009* is superseded by this *Order* and is hereby withdrawn.

DATED this 3rd day of December, 2020.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

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Director – Idaho Department of Water
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Clerk of the Court

Dated: 12/2/2021 09:26 AM

By Jana Eagle
Deputy Clerk