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Third Judicial District, Washington County
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District Court - SRBA
Fifth Judicial District
In Re: Administrative Appeals
County of Twin Falls - State of Idaho
JAN 17 2020
By
Clerk
Deputy Clerk

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

ECKHARDT FAMILY LLLP, an Idaho Limited Partnership,

Plaintiff,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES,

Defendant.

IN THE MATTER OF APPLICATIONS FOR PERMIT 67-15292 THROUGH 67-15297 IN THE NAME OF ECKHARDT FAMILY LLLP

Case No. CV44-20-0038

PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

Category Fee: L.3.a
Fee: $221.00

Petitioner Eckhardt Family LLLP ("Eckhardt" or "Petitioner"), by and through its counsel Norman M. Semanko of Parsons Behle & Latimer, and pursuant to Idaho Code §§ 42-1701A(4) and 67-5270 through 67-5279, and Rule 84 of the Idaho Rules of Civil Procedure, hereby files this

petition ("Petition") seeking judicial review of an agency action by the Idaho Department of Water Resources ("Department" or "Respondent").

SUMMARY OF THE CASE

1. This is a civil action pursuant to Idaho Code §§ 42-1701A(4) and 67-5270 through 67-5279 seeking judicial review of the December 20, 2019, *Order on Reconsideration; Amended Final Order* ("*Amended Final Order*") issued by Gary Spackman, the Director of the Department (the "Director").

2. On September 12, 2018, Eckhardt Family LLLP ("Eckhardt") filed Applications for Permit Nos. 67-15292 through 67-15297 with the Department, seeking authorization for various stock water ponds. The Department published notice of the applications on December 6 and 13, 2018. Double C & J Land Co., Inc, through its President John D. Hoff ("Protestant"), filed protests against each of the applications.

3. The Department conducted a consolidated administrative hearing on May 23, 2019.[1]

4. On July 8, 2019, hearing officer James Cefalo ("hearing officer") issued a *Preliminary Order Denying Applications 67-15292 through 67-15297* ("*Preliminary Order*").[2]

5. On July 22, 2019, Eckhardt timely filed a *Petition for Reconsideration.*

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[1] Although a single hearing was held on May 23, 2019 to address the instant matter along with the related matter of *In the Matter of Applications for Permit 67-15298 and 67-15300*, the two matters were not formally consolidated and separate orders were issued in each matter. Accordingly, Petitioner is filing separate *Petitions for Judicial Review of Agency Action* for each of the two matters.

[2] The hearing officer issued two orders, one in the instant matter and one in *In the Matter of Applications for Permit 67-15298 and 67-15300* owing to there being "important factual distinctions related to the ponds." *Amended Final Order* at 1.

6. On August 2, 2019, the Protestant filed a *Response to Petition for Reconsideration,* which was not considered, as "responses to petitions for reconsideration are not recognized under the Department's rules of procedure. *See* IDAPA 37.01.01.730." *Amended Final Order* at 1, n.2.

7. On August 8, 2019, the hearing officer issued a single *Order Granting Petitions for Reconsideration, in Part (In the Matter of Applications for Permit 67-15292 through 67-15298 and 67-15300).*

8. On August 8, 2019, the hearing officer also issued two *Amended Preliminary Orders Denying Applications,* one in *In the Matter of Applications for Permit 67-15298 and 67-15300,* and one in the *Matter of Applications for Permit 67-15292 through 67-15297.*

9. On August 23, 2019, Petitioner timely filed the *Eckhardt Family LLLP's Exceptions to Amended Preliminary Orders Denying Applications and Order Granting Petitions for Reconsideration In Part* ("*Eckhardt Exceptions*"). In response to the Eckhardt Exceptions, on September 5, 2019, the Protestant timely filed *Double C & J Land Co., Inc.'s Response to Eckhardt's Exceptions to Amended Preliminary Order.*

10. On November 14, 2019, the Director issued his *Order on Exceptions; Final Order (In the Matter of Applications for Permit 67-15292 through 67-15297) ("Order on Exceptions").*

11. On November 29, 2019, Eckhardt timely filed a single *Petition for Reconsideration of Orders on Exceptions; Final Orders (In the Matter of Applications for Permit 67-15292 through 67-15298 and 67-15300 in the Name of Eckhardt Family* LLLP).

12. On December 20, 2019, the Director issued his *Amended Final Order* in the Matter of Applications for Permit Nos. 67-15292 through 67-15297.

STATEMENT OF INITIAL ISSUES

13. Petitioner asserts the following initial issues on judicial review:

a. Whether the Department's *Amended Final Order* is in violation of constitutional or statutory provisions.

b. Whether the Department's *Amended Final Order* is in excess of the statutory authority of the agency.

c. Whether the Department's *Amended Final Order* was made upon unlawful procedure.

d. Whether the Department's *Amended Final Order* is without the support of substantial evidence on the record as a whole.

e. Whether the Department's *Amended Final Order* is arbitrary, capricious, or an abuse of discretion.

f. Whether the Department's *Amended Final Order* prejudiced substantial rights of the Petitioner.

JURISDICTION AND VENUE

14. This *Petition* is authorized by Idaho Code §§ 42-1701A(4) and 67-5270 through 67-5279.

15. The Order is a final agency action and therefore this Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A(4) and 67-5270 through 67-5279.

16. Venue lies in the Court pursuant to Idaho Code § 67-5272. Petitioner's principal place of business is 1275 Jenkins Creek Road, Weiser, Washington County, Idaho. Also, the real property and the proposed water use in the pond applications at issue are located in Washington County, Idaho.

17. 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 Court of the Fifth Judicial District." The Snake River Basin Adjudication Court's procedures instruct the clerk of the district court in which the petition is filed to issue a Notice of Reassignment. A form of Notice of Reassignment is attached herewith for the Court's convenience and marked Exhibit A.

AGENCY RECORD

18. Petitioner has contacted the Department regarding preparation of the agency record and tendered the estimated fee to be paid to the agency. Petitioner will pay the estimated fee, as provided by the Department, in accordance with Rule 84 of the Idaho Rules of Civil Procedure.

SERVICE

19. The undersigned hereby certifies that service of this Petition has been made on the Respondent and all other parties to the proceeding before the agency as shown on the Certificate of Service.

TRANSCRIPT

20. A transcript of the hearing in this matter is requested by Petitioner. The Department has provided its digital audio recording of the May 23, 2019 hearing to M&M Court Reporting, and Petitioner has remitted the required deposit to M&M and requested preparation of a transcript of said hearing in accordance with Rule 84 of the Idaho Rules of Civil Procedure.

DEMAND FOR ATTORNEY FEES AND COSTS

21. As a result of Respondent's actions, Petitioner has had to retain counsel. For services rendered, Eckhardt is entitled to its reasonable attorney fees and costs should it prevail in this action pursuant to Idaho Code § 12-117 and Rule 54 of the Idaho Rules of Civil Procedure.

DATED THIS 17th day of January, 2020.

PARSONS BEHLE & LATIMER

By */s/ Norman M. Semanko*
Norman M. Semanko
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2020, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

DOCUMENT FILED:
Third Judicial District Court,
Washington County
Via iCourt Filing System

- ☐ U.S. First Class Mail, Postage Prepaid
- ☐ U.S. Certified Mail, Postage Prepaid
- ☐ Federal Express
- ☐ Hand Delivery
- ☒ Electronic Mail/ECF Filing/iCourt

COURTESY COPY:
Snake River Basin Adjudication Court
Fifth Judicial District
PO Box 2707
Twin Falls, ID 83303-2707

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James Cefalo, Hearing Officer Idaho Department of Water Resources 900 North Skyline Drive, Suite A Idaho Falls, ID 83402 *james.cefalo@idwr.idaho.gov*	☒ U.S. First Class Mail, Postage Prepaid ☐ U.S. Certified Mail, Postage Prepaid ☐ Federal Express ☐ Hand Delivery ☒ Electronic Mail/ECF Filing/iCourt
John Hoff Double C & J Land Co., Inc 990 Jenkins Creek Road Weiser, ID 83642	☒ U.S. First Class Mail, Postage Prepaid ☐ U.S. Certified Mail, Postage Prepaid ☐ Federal Express ☐ Hand Delivery ☐ Electronic Mail/ECF Filing/iCourt

/s/ Norman M. Semanko
Norman M. Semanko

EXHIBIT A

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF WASHINGTON

ECKHARDT FAMILY LLLP, an Idaho Limited Partnership, Plaintiff, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Defendant.	Case No. _____ **NOTICE OF REASSIGNMENT**
IN THE MATTER OF APPLICATIONS FOR PERMIT 67-15292 THROUGH 67-15297 IN THE NAME OF ECKHARDT FAMILY LLLP	

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the

Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District; and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Snake River Basin Adjudication District Court the authority to adopt procedural rules necessary to implement said Order; and

WHEREAS on July 1, 2010, the Snake River Basin Adjudication District Court issued an Administrative Order regarding the Rule of Procedure Governing Petitions for Judicial Review or Actions for Declaratory Relief of Decisions from the Idaho Department of Water Resources.

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. The above-matter is hereby assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District for disposition and further proceedings.

2. All further documents filed or otherwise submitted in this matter, and all further filing fees filed or otherwise submitted in this matter, shall be filed with the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho 83303-2707, provided that checks representing further filing fees shall be made payable to the county where the original petition for judicial review or action for declaratory judgment was filed.

DATED THIS ___ day of _____, 2020.

CLERK OF THE DISTRICT COURT

By:_____
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____, 2020, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

Director Gary Spackman Idaho Department of Water Resources 322 E. Front Street PO Box 83720 Boise, ID 83720 gary.spackman@idwr.idaho.gov	☐ U.S. First Class Mail, Postage Prepaid ☐ U.S. Certified Mail, Postage Prepaid ☐ Federal Express ☐ Hand Delivery ☐ Electronic Mail/ECF Filing/iCourt
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CLERK OF THE DISTRICT COURT

By:_____
Deputy Clerk