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Attorneys for Kurt W. Bird & Janet E. Bird

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

The IDAHO WATER RESOURCE BOARD,
and the IDAHO DEPARTMENT OF FISH
AND GAME,

Petitioners,

v.

KURT W. BIRD and JANET E. BIRD,

Cross Petitioners.

v.

THE IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

Case No. CV01-20-09661

Fee Category L.3.a – \$221.00

**CROSS-APPEAL AND CROSS-
PETITION FOR JUDICIAL REVIEW
OF FINAL AGENCY ACTION**

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 74-16187 IN THE NAME OF
KURT W. BIRD OR JANET E. BIRD

Petitioners Kurt W. Bird and Janet E. Bird (collectively “Bird”), by and through their counsel of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby file this *Cross-Appeal and Cross-Petition for Judicial Review of Final Agency Action* challenging a final decision by the Idaho Department of Water Resources (“IDWR” or “Department”), pursuant to Idaho Code § 67-5273(2).

CROSS-PETITION FOR JUDICIAL REVIEW

1. A *Notice of Appeal and Petition for Judicial Review of Final Agency Action* (the “Appeal”) was filed in the above-entitled matter on June 18, 2020 by the Idaho Water Resource Board (the “Board”) and the Idaho Department of Fish and Game (“IDFG”).

2. The Appeal concerns IDWR Director Gary Spackman’s issuance of his *Order on Exceptions; Final Order* (“Order”) issued on May 21, 2020 in the above-referenced contested case proceeding before IDWR, which was entitled *In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird*.

3. This Cross-Petition likewise concerns the Order and is authorized and filed pursuant to Idaho Code § 67-5273(2) and I.R.C.P. 84.

4. The Order is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

5. Bird is the applicant for the permit sought in the above-entitled contested case. Bird is a party to this action and participated as the applicant in the contested case proceeding before the Department.

6. Pursuant to Idaho Code §§ 67-5273(2), Bird may file a cross-petition for judicial review within fourteen (14) days after Bird was served with the Appeal. Such service occurred on June 18, 2020, and therefore, the deadline to file this Cross-Petition is on or before July 2, 2020.

7. This Cross-Petition is taken to the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada because of an assignment pursuant to order of the Idaho Supreme Court and the Court. This Court has jurisdiction over this action pursuant to Idaho Code § 67-5272.

I.R.C.P 84(c) INFORMATION

8. **Name of Agency For Which Judicial Review is Sought:** Respondent, Idaho Department of Water Resources, is 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 Street, Boise, Ada County, Idaho 83720.

9. **Title of the District Court to Which the Petition is Taken:** In the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

10. **Case Caption and Action for Which Judicial Review is Sought:** In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird.

11. **Hearing Recording:** A hearing on this matter was held on August 28-29, 2019, in Salmon, Idaho. As described in the Appeal, audio recordings were made, and the Board and IDFG have requested a transcript of the hearing and paid the estimated fee for preparation of the transcript of the hearing.

12. **Statement of Issues for Judicial Review on Cross-Appeal:** In addition to responding to all issues on identified by the Board and IDFG in the Appeal, Bird asserts the following initial statement of issues for which they seek judicial review:

- A. Whether the Director erred by including condition no. 8 in the permit approval for 74-16187 in violation of Idaho Code § 67-5279(3)(a).
- B. Whether the Director erred by including condition no. 9 in the permit approval for 74-16187 in violation of Idaho Code § 67-5279(3)(a).
- C. Whether the Director erred by including condition no. 10 in the permit approval for 74-16187 in violation of Idaho Code § 67-5279(3)(a).
- D. Whether the Director erred by including condition no. 11 in the permit approval for 74-16187 in violation of Idaho Code § 67-5279(3)(a).

Pursuant to I.R.C.P. 84(d)(5), Bird reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated in this petition or which become later discovered.

13. **Designation as to Whether a Transcript is Requested:** As described in the Appeal, audio recordings were made, and the Board and IDFG have requested a transcript of the hearing.

14. **Attorney Certification:** I, Robert L. Harris, counsel for Bird, certify that (1) service of this Cross-Petition has been made upon the Department and on the other parties at the time of the filing of this Cross-Petition; (2) that the Board and IDFG have stated in the Appeal that

they have paid the estimated fee for preparation of the hearing transcript; and (3) that the Board and IDFG have indicated in the Appeal that they will pay the estimated fee for preparation of the record, and once those costs are finalized, Bird is willing to participate in paying its necessary share of such costs as described in the procedural order issued in this matter.

Dated this 2nd day of July 2020.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July 2020, I served a copy of the following described pleading or document on the parties listed below by the indicated method.

Document Served: CROSS-APPEAL AND CROSS-PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION

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