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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 37-7842 IN THE NAME OF THE IDAHO WATER RESOURCE BOARD	)	**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION FOR DECLARATORY RULING**

COMES NOW, licensee, the Idaho Water Resource Board ("IWRB"), by and through its counsel of record, hereby submits this Memorandum in Support of Motion to Dismiss Petition for Declaratory Ruling in the above captioned matter.

FACTS

On June 30, 1980, Earl Hardy, Thorleif Rangen, John LeMoyne, and John W. Jones Jr. filed an application for permit 37-7842 with the Idaho Department of Water Resources ("IDWR") seeking to appropriate 800 cfs from the Little Wood River and Big Wood River for ground water recharge. On January 18, 1982, the application was assigned to the Lower Snake River Aquifer Recharge District ("LSARD"). On June 2, 1982, IDWR issued Permit 37-7842. Proof of beneficial use was due on or before June 1, 1987. On June 1, 1987, LSARD filed a Request for Extension of Time to Submit Proof of Beneficial Use. The request was approved by IDWR on Oct. 4, 1989 and a new deadline for proof of beneficial use was set for June 1, 1992. LSARD did not file proof of beneficial use by June 1, 1992. On June 5, 1992, IDWR notified LSARD that permit 37-7842 had lapsed. On July 27, 1992, LSARD filed proof of beneficial use for 300 cfs. On July 29, 1992, IDWR issued and Order of Reinstatement for Permit 37-7842. The Reinstatement Order advanced the priority date to August 25, 1980.

On April 28, 1999, LSARD assigned permit 37-7842 to the IWRB. On March 21, 2000, the IWRB passed a resolution requesting the Director extend the time for submitting proof of beneficial use for the undeveloped portion of Permit 37-7842. IDWR granted the IWRB's request and extended proof of beneficial use until June 1, 2004. On April 26, 2004, IWRB filed another Request for Extension of Time to Submit Proof of Beneficial Use for Permit 37-7842. IDWR granted the second request and extended the time within which to submit proof of beneficial use until June 1, 2009.

On June 1, 2009, the IWRB filed a third Request for Extension of Time to Submit Proof of Beneficial Use for Permit 37-7842. On September 2, 2010, IDWR approved the

request and extended the time within which to submit proof of beneficial use until June 1, 2014. On September 21, 2010, William Arkoosh, the Estate of Vernon Ravencroft, Koyle Hydro, Inc., Notch Butte Hydro Company, Inc., and Shorock Hydro Inc. filed a joint Petition for Hearing and Petition for Declaratory Ruling pursuant to I.C. § 42-1701A(3) seeking a hearing on the September 2, 2010 Order extending time within which to submit proof of beneficial use. The Petition argued that IDWR erred in approving the extension of time.

As a result of the Petition, IDWR initiated a contested case proceeding and a hearing date was set. On June28, 2011, the hearing officer issued a statement of legal issues to be addressed in summary judgment briefing. On November 30, 2011, the hearing officer issued a Recommended Order. The Recommended Order found that proof of beneficial use under Permit 37-7842 was limited to that submitted by LSARD on July 27, 1992 and that any undeveloped portion of Permit 37-7842 was relinquished. The hearing officer went on to find that all IDWR actions on the undeveloped portion of Permit 37-7842, including the orders granting IWRB's Requests for Extension of Time to Submit Proof of Beneficial Use were void. The Recommended Order was adopted by the Director of IDWR and a Final Order was issued February 28, 2012. No appeal was taken from the Final Order.

On July 17, 2017, IDWR issued a Preliminary Order Approving Water Right License 37-7842 for 250 cfs from the Little Wood River for ground water recharge. On July 31, 2017, the IWRB filed a Petition for Reconsideration of the Preliminary Order pursuant to I.C. § 67-5243(3), IDAPA 37.01.01.730.02.a. On August 1, 2017, William Arkoosh, the Estate of Vernon Ravenscroft, Koyle Hydro Inc., and Shorock Hydro Inc. ("Petitioners"), filed a Petition for Hearing and Petition for Declaratory Ruling pursuant to I.C. § 42-

1701A(3); IDAPA 37-01.01.400; IDAPA 37.01.01 *et. seq.* This Memorandum in Support of Motion to Dismiss addresses only the Petition Declaratory Ruling filed pursuant to IDAPA 37.01.01.400. The Petition for Hearing filed pursuant to I.C. § 42-1701A(3) will be addressed under a separate motion and memorandum.

STANDARD OF REVIEW

Idaho Code Section 67-5232 provides that any person may petition an agency for a declaratory ruling as to the applicability of any statutory provision or of any rule administered by the agency. Any person petitioning for a declaratory ruling shall file a petition with the agency. IDAPA 37.01.01.400. The petition must: "Identify the petitioner and state the petitioners interest in the matter; state the declaratory ruling that the petitioner seeks; and indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition." IDAPA 37.01.01.400.01.a–c. Notice of a petition for declaratory ruling must be issued "in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition." IDAPA 37.01.01.401. The agency's decision on a petition for declaratory ruling is a final agency action decided by order. IDAPA 37.01.01.402.01.

ARGUMENT

The Petition for Declaratory Ruling should be dismissed for failure to state the declaratory ruling that the petitioner seeks and for failure to cite to the statute, order, rule or other controlling law and the factual allegations upon which the petition is based as is required by IDAPA 37.01.01.400. In the alternative, the Petition should be amended to more clearly define the relief sought.

The Petition asks IDWR to "issue its ruling on the applicability of Idaho statutes, administrative rules and administrative orders on the subject permit." This statement is overly broad and vague. It references Idaho law in general without providing any specifics regarding which statute, rule, or order it seeks a ruling on. The Petition also fails to state the specific declaratory ruling that the Petitioners are seeking and the facts on which the Petition is based. The Petition is so vaguely worded as to preclude a response.

Therefore, the IWRB respectfully requests that the Petition for Declaratory Ruling be dismissed or, in the alternative, that the Petitioners amend the Petition to comply with the requirements of IDAPA 37.01.01.400.

DATED this 22nd day of August 2017.

ANN Y. VONDE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August, 2017, I caused to be served a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION FOR DECLARATORY RULING by placing a copy thereof in the manner listed below:

1. Original to:

Director Spackman Idaho Department of Water Resources PO Box 83720 Boise ID 83720-0098	☒ U.S. Mail, postage prepaid ☒ Hand Delivery ☐ Federal Express ☐ Email: ☐ Statehouse Mail

2. Copies to

Joseph F. James Brown & James 130 Fourth Avenue West Gooding ID 83330	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Email: ☐ Statehouse Mail
Water District #37 Kevin Lakey 107 W 1st Shoshone ID 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Email: ☐ Statehouse Mail

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