

District Court - SRBA
 Fifth Judicial District
 In Re: Administrative Appeals
 County of Twin Falls - State of Idaho

FEB - 4 2016

By SEE CURRENT Clerk
STAYNO Deputy Clerk RR

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

RICHARD PARROTT
pro se
 Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
 RESOURCES and GARY SPACKMAN in
 his capacity as Director of the Idaho
 Department of Water Resources,

Respondents,

and

CEDAR RIDGE DAIRY LLC,

Intervenor.

) Case No. CV-42-2015-4552
) *Appeal of the*
) ~~ORDER~~
) ORDER ON MOTION TO
) CLARIFY SCOPE OF
) JUDICIAL REVIEW
) PROCEEDING
)
) *Transfer 79380*
) *Transfer 79357*

District Court - SRBA
 Fifth Judicial District
 In Re: Administrative Appeals
 County of Twin Falls - State of Idaho

FEB 25 2016

By _____ Clerk
 _____ Deputy Clerk

I.

BACKGROUND

1. On November 12, 2015, the Director of the Idaho Department of Water Resources issued an Amended Final Order conditionally approving transfer application number 79357 in the name of Thomas and Dorothy Leno.

2. On that same date, the Director issued an Amended Final Order conditionally approving transfer application number 79380 in the name of Thomas and Dorothy Leno.

3. On December 9, 2015, the Petitioner initiated the instant proceeding by filing a Petition for Judicial Review. He subsequently filed an Amended Petition on December 11, 2015. In the caption of both the original and amended Petition, the Petitioner indicates he is seeking

Appeal of the

judicial review of the Director's Amended Final Order conditionally approving transfer application number 79380.

4. On December 21, 2015, the Petitioner filed a copy of an email from himself to the Director dated December 1, 2015. The email concerned transfer numbers 79357 and 79380. On the face of the copy of the email filed with this Court, the Petitioner circled transfer number 79357 and hand wrote the following notation: "Submitted to ^{The Court (only) to} insure the record - and add this water transfer number to the review."

5. On January 21, 2016, the Intervenor filed a Motion to Clarify. The Motion requests that this Court clarify that the scope of this judicial review proceeding is limited to review of the Director's Amended Final Order conditionally approving transfer application number 79380. The Respondents have joined in the Motion.

6. The Petitioner filed a Response to the Motion, requesting that this Court allow him to seek judicial review of the Director's Amended Final Orders conditionally approving transfer application numbers 79357 and 79380.

7. In its Motion, the Intervenor does not request oral argument. Under Idaho Rule of Civil Procedure 84(o), the Motion "shall be determined without oral argument unless ordered by the court." The Court does not so order. Therefore, it is appropriate for this Court to address the Motion without oral argument.

8. AT the status hearing the judge stated " I Don't know anything about this case. The petitioners effort here is to point out that ^{II.} the two transfers were treated ANALYSIS AS one before the hearing

Judicial review of a final decision of an agency is governed by the Idaho Administrative Procedure Act. Under the Act, a party aggrieved by a final order of the Director of the Idaho Department of Water Resources may file a petition for judicial review of that order "within twenty-eight (28) days of the service date of that final order . . ." I.C. § 67-5273(2). The petition must include "[i]nformation such as the date and the heading, case caption or other designation of the agency and the action for which judicial review is sought." I.R.C.P. 84(d)(3) (emphasis added). The term "action" as used in Rule 84(d)(3) means any "rule, order, ordinance or other decision or lack of decision of an agency made reviewable by statute." I.R.C.P. 84(a)(2)(A)(emphasis added).

9. IN the Rules governing adjudication it is stated limiting duplication is desirable

In this case, the Director's Amended Final Orders conditionally approving transfer application numbers 79357 and 79380 were both issued on November 12, 2015. The Petitioner timely filed a Petition for Judicial Review within twenty-eight days of the service date of those Orders. However, the information included in the Petitioner's Petition indicates that it seeks judicial review of the Director's Amended Final Order conditionally approving application number 79380. For instance, the caption of his Amended Petition reads as follows: "IN THE MATTER OF APPLICATION FOR REVIEW TRANSFER NUMBER 79380."¹ Conversely, there is no reference to transfer application number 79357 in either the caption or the body of the Petition. Therefore, the Petitioner's Petition clearly designates "the action for which judicial review is sought" as the Director's Amended Final Order conditionally approving transfer application number 79380.

This seemed inappropriate to state while being debated

Had the Petitioner also wished to seek judicial review of the Director's Amended Final Order conditionally approving transfer application number 79357, the Petitioner was required to file a separate petition placing that Order at issue. The Idaho Administrative Procedure Act permits an aggrieved party to file "a petition for judicial review of a final order" of the Director. I.C. § 67-5273(2) (emphasis added). This is stated in the singular. Where, as here, the Director issues two separate final orders addressing two separate applications for transfer, a party aggrieved by both must seek judicial review of each Order separately, via the use of two separate petitions for judicial review. This is necessary for the orderly processing of the petitions at the judicial level, as the agency record applicable to each order of the director is unique to that order. The Petitioner attempts to bootstrap into this proceeding judicial review of the Director's Amended Final Order conditionally approving transfer application number 79357 via his filing dated December 21, 2015. This is improper procedure under the Idaho Administrative Procedure Act, and does not excuse the absence of the filing of a separate petition for judicial review. Since the Petitioner did not timely file a petition seeking judicial review of the Director's Amended Final Order conditionally approving transfer application number 79357, the Court finds that issues pertaining to that Amended Final Order are not properly before the Court.

*stipulated to be heard jointly,
The final Amended orders are identical*

¹ Likewise, the caption of the Petitioner's original Petition reads "in the matter of application for review transfer number 79380."

Appeal of the

Respectfully Submitted

25 Feb 2016

Richard Pando pro se

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Appeal of the
Order on Motion to Clarify Scope of Judicial Review

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO CLARIFY SCOPE OF JUDICIAL REVIEW PROCEEDING was mailed on February 04, 2016, with sufficient first-class postage to the following:

IDWR AND GARY SPACKMAN IN HIS

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*5th district
water court hand deliver*

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ORDER
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Deputy Clerk

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[Signature]