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WATER RESOURCES
WESTERN REGION

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

IN THE MATTER OF PERMIT
APPLICATION NO. 63-32499 IN THE NAME
OF MAYFIELD TOWNSITE LLC

**PETITION TO INTERVENE OF
PACIFIC WEST LAND LLC**

Pacific West Land LLC (“PacWest”), through counsel Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP and pursuant to IDAPA 37.01.01.350 to .354, petitions the Idaho Department of Water Resources (“IDWR” or “Department”) to intervene in this matter.

BACKGROUND

In 2006, Mayfield Townsite LLC (“Mayfield”) filed a municipal water right application (“Application”) seeking up to 10 cubic feet per second (“cfs”) of ground water to supply a proposed 8,000 home planned community (the “Mayfield Project”) in western Elmore County. Notices of Protest to the Application were timely filed by Daniel S. Van Grouw and G3, LLC (“Protestants”).

In 2008, PacWest filed an application with IDWR for municipal water permit number 63-33036, which seeks a right to divert ground water for a proposed 9,600 home planned

community in east Ada County (the “PacWest Project”) less than four miles southwest of Mayfield’s proposed project.

Mayfield proposes to divert ground water from up to eight wells at depths of up to 1,200 feet. PacWest proposes to divert water from up to nine wells at similar depths. Whether a hydraulic connection will exist between PacWest’s and Mayfield’s proposed wells is unknown at this time. Hydrogeologic studies of the area commissioned by PacWest are currently underway but are not yet completed. A ground water supply evaluation accompanying Mayfield’s Application does not state whether the aquifer from which Mayfield proposes to divert extends to the area of the PacWest Project. *See generally, Ground-Water Supply Evaluation for the Mayfield Townsite Property* (the “*Mayfield Evaluation*”), prepared by SPF Water Engineering, LLC (Nov. 1, 2007). Mayfield has not put forth a plan to monitor the effects of its proposed pumping.

The *Mayfield Evaluation* states that ground water flow directions in the area are generally from the northeast to the southwest (i.e. from the Mayfield Project to the PacWest Project). *Mayfield Evaluation*, Executive Summary at iv. It further indicates that 900 acre-feet of waste water will be returned to the aquifer up-gradient of the PacWest site through injection wells and surface water storage ponds. The *Mayfield Evaluation* predicts that Mayfield’s proposed withdrawals will deplete local aquifers by 3,960 acre-feet annually. *Id.* at ii. The *Mayfield Evaluation* also predicts that “the average annual volume of water likely available for appropriation ranges from approximately 2,600 to 28,000 acre feet per year.” *Id.*

ARGUMENT

A contested case before IDWR is governed by the Rules of Procedure of the Idaho Department of Water Resources, IDAPA 37.01.01. IDAPA 37.01.01.001. Rule 350 of the Rules of Procedure provides: “Persons not applicants or claimants or appellants, petitioners,

complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding.” Rule 353 states: “If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant’s interest is adequately represented by existing parties.”

Thus, a request for intervention must be granted if a petitioner: (1) shows a direct and substantial interest in the matter; (2) does not unduly broaden the issues; and (3) is not adequately represented by existing parties. Because PacWest satisfies these criteria, it is entitled to intervene in this case.

I. PacWest has a direct and substantial interest in the subject matter of this proceeding.

The phrase “direct and substantial interest” is not defined in IDAPA. No reported case in Idaho has interpreted this phrase, but the Idaho Supreme Court has repeatedly held that “ordinary words will be given their ordinary meaning.” *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 428 (1993); *Bunt v. City of Garden City*, 118 Idaho 427, 430 (1990). A direct interest is “[l]acking [in] compromising or mitigating elements; absolute.” *American Heritage Dictionary of the English Language* (4th ed., 2006) (“direct”). A substantial interest is “of ample or considerable amount, quantity, size, etc.” *Id.* (“substantial”). PacWest’s interest in the subject matter of this proceeding is both direct and substantial.

PacWest has a direct and substantial interest in Mayfield’s Application because its approval could affect the availability and future quality of the ground water supply necessary for the PacWest Project, or the supply available to others whose use may affect the PacWest Project.

According to the *Mayfield Evaluation*, the PacWest Project is situated downgradient (“down stream” along the ground water flow path) from the Mayfield Project. Mayfield’s proposed design, construction, and operation of injections wells and/or rapid infiltration basins are of great concern to PacWest. In addition, it appears from the *Mayfield Evaluation* that Mayfield’s proposed annual diversions could exceed the amount of currently understood recharge to the aquifer. This is of great concern to PacWest because this suggests that the water supply may not be sufficient for Mayfield’s purposes and that Mayfield’s proposed use could adversely affect PacWest’s water right application and proposed planned community.

PacWest is also concerned with the information Mayfield did not provide. For example, Mayfield made no commitment to implement any design, construction, or operational techniques to eliminate, reduce or determine impacts on other water rights (such as a ground water monitoring program). Rule 40.05(c)(iii). Mayfield’s proposal does not suggest that it will in any way contribute to the general understanding of the aquifer(s) underlying the area through monitoring of water levels and ground water chemistry. Also, Mayfield provides scant information showing it has the financial resources to complete the Mayfield Project or that any progress has been made to obtain other necessary approvals (such as land use entitlements) for the Mayfield Project. Rule 40.05(e), (f). This lack of information creates significant concern that Mayfield’s Application is not made in good faith and may be for speculative purposes. PacWest has a direct and substantial interest in ensuring that possibly speculative water right applications do not preclude, complicate or hamper its ability to obtain a water right for the PacWest Project.

II. PacWest will not unduly broaden the issues or delay the proceedings.

Per Idaho Code Section 42-203A(5), the Department must determine whether the water use proposed in the Application will reduce the quantity of water under existing water rights,

whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated, whether the Application is made in good faith or whether it is made for delay or speculative purposes, whether Mayfield has sufficient financial resources with which to complete the work involved, whether the proposed use will conflict with the local public interest, and whether the proposed use is contrary to conservation of water resources within the state of Idaho. The issues raised by the Protestants are contained within these statutory criteria, as are the issues PacWest seeks to address.

This matter is in its initial stages. PacWest's intervention will not cause delays or upset any existing schedules.

III. PacWest's interests are not adequately represented by existing parties.

While some of the current Protestants' concerns are similar to PacWest's (i.e. they are both concerned with how Mayfield's proposed use will affect the aquifer), the Protestants do not adequately represent PacWest's interests. The Protestants appear to be concerned primarily with potential injury that Mayfield's proposed water use might cause to their existing (i.e. senior priority) ground water rights. PacWest's interest is in ensuring that Mayfield's proposed use is not speculative, is based in sound scientific study and documentation, and does not hinder PacWest's proposed water use and planned community by depleting the aquifer or harming its water quality. It is possible that Mayfield could alleviate the existing Protestants' concerns by simply agreeing to compensate the Protestants if their wells need to be deepened or modified in the future (a relatively low cost to Mayfield). Such a resolution would not protect PacWest's interests. While PacWest would be open to a reasonable resolution of this matter, it cannot adequately protect its interests without becoming a party and representing its own concerns.

CONCLUSION

Because PacWest satisfies the criteria for intervention set forth in IDAPA 37.01.01.353,
it is entitled to intervene in this matter.

DATED this 16th day of October 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
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Michael P. Lawrence

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

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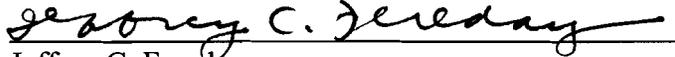
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