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DEPARTMENT OF WATER RESOURCES

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Irrigation District, Milner Irrigation District,  
North Side Canal Company, and Twin Falls  
Canal Company*

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

	)	
	)	Docket No. AA-GWMA-2016-001
IN THE MATTER OF DESIGNATING	)	
THE EASTERN SNAKE PLAIN	)	
AQUIFER GROUND WATER	)	<b>SURFACE WATER COALITION'S</b>
MANAGEMENT AREA	)	<b>PETITION TO INTERVENE</b>
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COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (hereafter collectively referred to as "Surface Water Coalition" or "Coalition"), by and through counsel of record, and pursuant to the Department's Rules of Procedure 350 – 354 (IDAPA 37.01.01), hereby petitions to intervene in the above-captioned matter.

## FACTS

The Idaho Department of Water Resources held several meetings this summer to discuss the possibility of establishing a groundwater management area in the Eastern Snake Plain Aquifer (ESPA). The Coalition participated in these meetings, including those held in Rexburg, Blackfoot, and Jerome, Idaho. On August 31, 2016, the Coalition submitted formal comments on the proposed Ground Water Management Area (GWMA).

On November 2, 2016, the Director issued his *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (“*Final Order*”). Thereafter, Sun Valley Company, the City of Pocatello, and the Coalition of Cities all filed petitions for reconsideration. Sun Valley Company also filed a petition requesting a hearing. The Idaho Ground Water Appropriators, Inc. (IGWA) filed a petition to intervene. No pre-hearing conferences have been scheduled and the Director has not ruled on the pending petitions for reconsideration.

## STANDARD OF REVIEW

The Department’s Rules of Procedure provide the following for persons seeking to intervene in a proceeding:

Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it.

Rule 351.

Further, petitions to intervene must be filed at least 14 days before the date set for the formal hearing, or by the date of the pre-hearing conference. *See* Rule 352. Finally, the Director may consider whether the petition would “unduly broaden the issues” and whether the petitioner is “adequately represented by existing parties.” *See* Rule 353.

**ARGUMENT**

**I. The Coalition’s Petition is Timely.**

No hearing or pre-hearing conference has been set in this matter. The Director’s *Final Order* that is the subject of the various petitions for reconsideration and Sun Valley’s petition requesting a hearing was issued less than four (4) weeks ago. IGWA just recently filed a petition to intervene as well. According to Rule 352 the Coalition’s petition is timely.

**II. The Coalition’s Direct and Substantial Interest.**

**A. Name and Address**

A&B Irrigation District  
Dan Temple, Manager  
P.O. Box 675  
Rupert, Idaho 83350

American Falls Reservoir District #2  
Lynn Harmon, Manager  
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John Lind, Manager  
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North Side Canal Company  
Alan Hansten, Manager  
921 N. Lincoln St.  
Jerome, Idaho 83338

Twin Falls Canal Company  
Brian Olmstead, Manager  
P.O. Box 326  
Twin Falls, Idaho 83303

**B. Interest in Petition**

The Coalition members hold natural flow and storage water rights to the Snake River. The water rights are on file with the Department and are administered by the Water District 01 Watermaster. The Snake River is hydraulically connected to the Eastern Snake Plain Aquifer. Of particular importance to the Coalition is the Near Blackfoot to Minidoka reach where springs

and reach gains provide a significant source of the Coalition's water supply. Further, Coalition members also hold ground water rights to the Eastern Snake Plain Aquifer, notably the A&B Irrigation District. Collectively, the Coalition's landowners and shareholders irrigate approximately 600,000 acres across the Magic Valley. As recognized in the *Final Order*, the Coalition's water supplies have suffered due to declining spring flows, reach gains, and groundwater levels. Protecting and enhancing the water supply is of vital importance to the Coalition. Notably, the Coalition has participated in various administrative and judicial proceedings that have addressed management, permitting, and water right administration throughout the ESPA. The Coalition is committed to lawful administration and management of the ESPA groundwater supply for the benefit of its members.

The outstanding petitions in this matter allege various facts and seek legal determinations that could detrimentally affect the Coalition's interests. Notably, Sun Valley seeks to limit the Director's authority and constrain his right to properly manage the aquifer in compliance with Idaho law. Since the Coalition holds senior surface and ground water rights that could be affected by these rulings, there is no question that the Coalition has a direct and substantial interest in this proceeding. Furthermore, unlike Sun Valley which has no water rights in the ESPA, the Coalition has a direct and substantial interest in proper management of the ESPA.

### **III. The Coalition's Petition Does Not Unduly Broaden the Issues.**

The Coalition seeks intervention in this matter to protect its interests and address any erroneous arguments or positions advanced by Sun Valley or others that conflict with Idaho law. Since no contested matters have been addressed and no pre-hearing conferences have been held, the proceeding is in a very early stage. Accordingly, the Coalition's petition does not unduly broaden the issues that have yet to be defined.

**IV. The Coalition is Not Adequately Represented by Existing Parties**

Presently, the only formal parties to this proceeding are the Sun Valley Company, the City of Pocatello, and the Coalition of Cities. In addition, IGWA has filed a petition to intervene. None of these entities represent the Coalition's individual interests in this matter, which include unique property right interests to water rights to the Snake River and the ESPA.

Just the opposite, some or all of these entities may advance positions or arguments in direct conflict to the Coalition's interests. As such, the Coalition has a right to intervene to ensure its interests are adequately protected and represented.

**CONCLUSION**

The Coalition's petition is timely, demonstrates a direct and substantial interest, does not unduly broaden the issues, and further demonstrates that no existing party adequately represents its interests. Therefore, the Coalition requests an order from the Director granting intervention this proceeding. *See* Rule 354.

DATED this 29<sup>th</sup> day of November, 2016.

**BARKER ROSHOLT & SIMPSON LLP**



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District, North Side Canal Company, and  
Twin Falls Canal Company*

**FLETCHER LAW OFFICE**



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W. Kent Fletcher

for

*Attorneys for Minidoka Irrigation  
District and American Falls  
Reservoir District #2*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of November, 2016, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition to Intervene* on the following by the method indicated:

<p>Director Gary Spackman c/o Deborah Gibson Idaho Dept. of Water Resources 322 E Front St Boise, Idaho 83720-0098 *** service by U.S. and electronic mail</p> <p><a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@idwr.idaho.gov</a> <a href="mailto:deborah.gibson@idwr.idaho.gov">deborah.gibson@idwr.idaho.gov</a> <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a></p>	<p>Scott Campbell Matt McGee Sarah McCormack Moffatt Thomas, Chtd. P.O. Box 829 Boise, Idaho 83701 *** service by electronic mail only</p> <p><a href="mailto:slc@moffatt.com">slc@moffatt.com</a> <a href="mailto:mjm@moffatt.com">mjm@moffatt.com</a> <a href="mailto:sam@moffatt.com">sam@moffatt.com</a></p>	<p>Randy Budge T.J. Budge Racine Olson P.O. Box 1391 Pocatello, Idaho 83204-1391 *** service by electronic mail only</p> <p><a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a></p>
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