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DEPARTMENT OF
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Attorneys for Intervenor Water District 37-B Ground Water Association

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DESIGNATING)
THE EASTERN SNAKE PLAIN AQUIFER)
GROUND WATER MANAGEMENT AREA)

Docket No. AA-GWMA-2016-001

**PETITION TO
INTERVENE**

The Water District 37B Ground Water Association (the “Camas Group”), through undersigned counsel of record, hereby files this Petition to Intervene in the administrative proceedings regarding the creation of the ESPA Ground Water Management Area, pursuant to Rules 350-354 of the Rules of Procedure of the Idaho Department of Water Resources, IDAPA 37.01.01 (the “Procedural Rules”).

ORIGINAL

I. BACKGROUND

The Camas Group is a non-profit association, whose members are ground water irrigators within Idaho's Camas Prairie. On February 23, 2015, the Big Wood & Little Wood Water Users Association submitted letters to the Director of IDWR, requesting administration of ground water rights pursuant to the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 ("CM Rules). (Ltr. from James to Spackman of 2/23/15, Docket Nos. CM-DC-2015-001, CM-DC-2015-002.) On March 20, 2015, the Director sent a letter to Camas Prairie ground water users, informing them of the delivery call proceedings, and identifying them as "holder[s] of junior-priority ground water right or rights that may be affected by" the delivery calls. (Ltr. From Spackman to Water Users of 3/20/15, Docket Nos. CM-DC-2015-001, CM-DC-2015-002.)

Therefore, the members of the Camas Group initially formed their non-profit association in order to defend their interests in those proceedings, and formally appeared in the delivery calls through counsel on July 10, 2015. (Not. of Appearance of 7/10/15, Docket No. CM-DC-2015-001). The delivery calls were formally dismissed on June 23, 2016. (Final Order Dismissing Delivery Calls of 6/23/16, Docket Nos. CM-DC-2015-001, CM-DC-2015-002.) No timely appeals were filed.

On July 7, 2016, the Director sent a letter to "[i]nterested [p]art[ies]" (including members of the Camas Group), informing them of "the possible creation of a ground water management area for the [Eastern Snake Plain Aquifer]," and announcing a series of public meetings to discuss that proposal. (Ltr. from Spackman to Interested Parties of 7/7/16, p. 1.) According to that letter, "[t]he Department's technical information suggests that the

area that impacts water stored in the ESPA and spring discharge extends into tributary basins....” (*Id.*, p. 3.) The letter goes on to identify Camas Creek as one of those tributary basins. (*Id.*)

On November 2, 2016, the Director issued the Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area. While that Order excluded the Camas and other tributary basins from the ESPA GWMA, since then, multiple parties have filed petitions for reconsideration which raise broader issues regarding the proper formation and extent of GWMA. Given the Camas Group’s presence within an identified tributary basin of the ESPA, and the fact that it is already within another GWMA, the Camas Group wishes to intervene in this proceeding.

II. LEGAL STANDARDS

Procedural Rule 350 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.

(Emphasis added).

Petitions to intervene must, among other things, “state the direct and substantial interest of the potential intervenor in the proceeding.” Procedural Rule 351.

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. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

Procedural Rule 353 (emphasis added).

III. LEGAL ARGUMENT

A. The Petition to Intervene Is Timely

“Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice.” Procedural Rule 352. While a pre-hearing conference was held on January 12, 2017, it has now been rescheduled for March 22, 2017. In addition, it is the Camas Group’s understanding that the Director intends to allow interested parties additional time to file petitions to intervene pursuant to Procedure Rule 352. Therefore, this Petition is timely, and the heightened standards for petitions to intervene not timely filed of Procedural Rule 352 do not apply.

B. The Camas Group Claims a “Direct and Substantial Interest”

The members of the Camas Group own ground water rights within an identified tributary basin to the ESPA. Presumably, this means that IDWR believes it can properly include the Camas within the ESPA GWMA at some point in the future, and it is possible that some parties will argue that tributary basins should have been included. Resolution of some of the issues raised by the existing parties could significantly affect whether and how the Camas could be incorporated into the ESPA GWMA in the future.

In addition, the members of the Camas Group are already within the existing Big Wood River GWMA, and some of the issues raised by the existing parties could have implications for GWMA generally—not just the ESPA GWMA. Therefore, the Camas Group has a direct and substantial interest in this matter.

C. This Petition to Intervene Does Not Unduly Broaden the Issues

The Camas Group seeks to intervene in order to have standing to advance and respond to legal arguments related to the issues that have already been raised by the existing Petitions for Reconsideration. Therefore, this Petition does not “unduly broaden the issues,” pursuant to Procedural Rule 353.

D. The Camas Group’s Interests Are Not Adequately Represented by Existing Parties

The Camas Group is composed of farmers within Idaho’s Camas Prairie. While there are other parties from tributary basins generally, there are no existing parties who represent the interest of Camas Prairie water users. Therefore, the Camas Group’s interests are not adequately represented.

E. A Hearing is Required By Statute

Procedural Rule 350 suggests that a party may file a petition to intervene only if a “formal hearing is required by statute to be held in the proceeding.” As the Director has acknowledged, a hearing is required in this matter. (Order Granting Request for Hearing of 12/2/16.)

IV. CONCLUSION

Based on the foregoing, the Camas Group respectfully requests that the Presiding Officer grant this Petition to Intervene, allowing the Camas Group to become a party to this proceeding.

DATED THIS 17th day of January, 2017.

Varin Wardwell LLC

By: 
Dylan B. Lawrence
Attorneys for Water District 37-B
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2017, 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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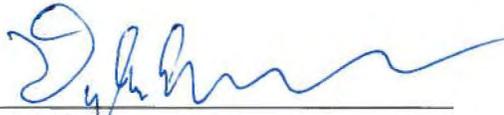
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