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DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF
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

Docket No. CM-DC-2010-001

**CITY OF BELLEVUE PETITION TO
INTERVENE**

The City of Bellevue (“City”), by and through its counsel of record, pursuant to IDAPA 37.01.01.350-354, hereby files this *Petition to Intervene* in the above-captioned matter.

I. BACKGROUND

On April 11, 2019, the Director issued his *Final Order Regarding April 2019 Forecast Supply (Methodology Steps 1-3)* (“April Final Order”). The April Final Order found a 20,900 acre-feet demand shortfall to the Twin Falls Canal Company, requiring curtailment of junior- priority ground water rights, absent mitigation, “within the Eastern Snake Plain Aquifer area of common ground water supply.” *April Final Order* at 6 (emphasis added). In the April Final Order, A&B Irrigation District, (“A&B”) was

assigned a “proportional share of the predicted [shortfall of] 2,121 acre-feet.” *Id.* at 5, fn.

4. On April 23, 2019, A&B filed a *Petition for Reconsideration and Request for Hearing Re: April 2019 As Applied Order* (“A&B Petition”).

The A&B Petition states that “[n]o explanation is given in the order regarding the method and calculation of the ‘proportionate share.’” *A&B Petition* at 2. The A&B Petition also states:

Finally, the Director failed to consider the impacts caused by hydraulically connected junior ground water rights tributary to the Snake River but that are not within the defined “area of common ground water supply.” Rule 50. Irrespective of the rule, the Director has a duty and obligation to use the best available science in water right administration, which he acknowledges is ESPAM 2.1. *See April Order* at 4, n.3. ESPAM 2.1 defines the Eastern Snake Plain Aquifer differently than the CM Rules, which were promulgated over 20 years ago. *See* CM Rule 50.01. The rule admittedly fails to account for the best available science to the detriment of junior ground water users like A&B.² [footnote discussing the Director’s prior attempt to repeal Rule 50] By excluding certain juniors from administration the Director has artificially enlarged the mitigation obligation of A&B contrary to Idaho’s constitution and water distribution statutes. Stated another way, if all hydraulically connected juniors are being appropriately administered, A&B’s “proportionate share” of the mitigation obligation would be lower. The application of the CM Rules in such a manner is unconstitutional and should be reconsidered.

Id. at 3 (emphasis added).

On May 14, 2019, the Director granted A&B’s request for hearing rendering A&B’s request for reconsideration moot. *Id.* at 2 fn. 4. The Director did not set a hearing date. *Id.* at 2.

II. ARGUMENT

IDAPA 37.01.01.352 (“Rule 352”) states that in order to grant a petition to intervene the moving party’s petition must be timely and the party must have a “direct and substantial interest in any part of the subject matter of the proceeding and does not unduly broaden the issues....” Rule 352.

A. The Petition is Timely

Rule 352 specifically states that a petition is timely so long as it is filed fourteen days before the formal hearing or by the pre-hearing conference. Thus, City of Bellevue's petition is timely as no hearing of any kind has yet be held or set in this matter.

B. The City Has a Direct and Substantial Interest

The A&B Petition raises questions regarding the "area of common ground water supply" and "CM Rule 50" both of which currently exclude Basin 37. *A&B Petition* at 3. The City of Bellevue has a "direct and substantial interest" in the proceeding because the City of Bellevue owns groundwater and surface water rights in Basin 37 and has been an active participant in protecting its water rights in the past delivery calls affecting that Basin. To date, Basin 37 has not been administered with the Eastern Snake Plain Aquifer ("ESPA"). Thus, the City of Bellevue's water rights have not been administered with water rights that are hydraulically connected to the ESPA. To do so, would expose the City's water rights to further demand or possible mitigation.

The City's participation will not broaden the issues involved in this proceeding. Given the scope of the A&B Petition, an outcome of the hearing ordered by the Director could implicate CM Rule 50, the area of common ground water supply, and the boundary of the ESPA thereby impacting the City of Bellevue's water rights.

III. CONCLUSION

Based on the foregoing, the City of Bellevue meets the standards for intervention, and requests the Director grant its petition to intervene in this proceeding.

DATED this 15th day of May, 2019

A handwritten signature in blue ink that reads "Candice M. McHugh". The signature is written in a cursive style with a large initial "C".

Candice M. McHugh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May, 2019, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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<p>The following parties were served a copy of the foregoing by email only:</p>	
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Candice M. Hugh
