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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Water Dist. 37-B Groundwater Group

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHTS HELD BY)
MEMBERS OF THE BIG WOOD & LITTLE)
WOOD WATER USERS ASSOCIATION)
DIVERTING FROM THE LITTLE WOOD)
RIVER)
_____)

Docket No. CM-DC-2015-002

MOTION TO GRANT LATE
REQUEST TO PARTICIPATE AS
RESPONDENT/PETITION TO
INTERVENE

The Water Dist. 37-B Groundwater Group, through undersigned counsel of record, hereby files this motion to be designated as a respondent and/or intervenor in the "Little Wood" delivery call proceeding, pursuant to IDWR Rules of Procedure 154, 260, and 350-354.

1. The Group is a nonprofit association composed of several groundwater users within the Camas Prairie. *See generally* Notice of Non-Profit Association Status of 09/02/15; Notice of Intent of 04/22/15; Joinder in Cities' Motion to Dismiss of 07/10/15.

2. The Group timely filed a notice of intent to participate in the "Big Wood" delivery call proceeding on April 22, 2015.

3. Several of the Group's members also timely filed separate notices of intent to participate in both the "Big Wood" and "Little Wood" delivery call proceedings. *See, e.g.*, Notices of Intent to Participate of 04/01/15 (Ralph Campanale, M.D.), 04/16/15 (Strom Ranches Inc.), 04/22/15 (H. Philip Cash), 04/23/15 (Michelle Wolf), 04/23/15 (Gwinn Rice Ranch, Inc.), 04/24/15 (Black Butte Hills LLC), 04/24/15 (Smokey Dome LLC), 04/24/15 (South Cove Ventures L.L.C.), 04/24/15 (SV Ranch LLC), 04/27/15 (Deborah L. and Matt A. McLam), and 05/08/15 (David A. and Karen L. Simon).

4. On July 10, 2015, current counsel for the Group filed a notice of appearance on behalf of the Group in both the "Big Wood" and "Little Wood" proceedings.

5. On July 24, 2015, the Director issued two orders stating that, because the April 22, 2015 notice of intent filed by the Group itself was only filed in the "Big Wood" proceeding, filings by the Group would not be considered in the "Little Wood" proceeding. *See* Order Denying Joint Motion to Designate ACGWS, p. 2, n. 1; Order Denying Sun Valley Company's Motion to Modify/Withdraw, p. 2, n. 3.

6. Because of this situation, individual members of the Group who filed timely notices of intent continue to receive filings in the "Little Wood" proceeding, even though their intent is for such documents to be served on counsel for the Group.

7. On June 1, 2015, Brian Lamar Smith and Diane Steffey-Smith (the "Smiths") submitted a letter request to become parties to the "Big Wood" and "Little Wood" proceedings after the May 27, 2015 deadline for notices of intent to participate. In his August 21, 2015 order granting that request, the Director treated such request as a motion to grant a late request to participate. The Director granted that request on the bases that (1) "the Smiths are ground water users the Department identified as potentially affected by one or both of the...delivery calls"; (2) the

Department received the letter only a few days after the May 27, 2015 deadline; and (3) granting the motion “will not result in prejudice to other parties.” Order Granting Late Request to Participate of 08/21/15, at p. 2.

8. In addition, Rules of Procedure 350-354 provide the Director with the authority to grant a petition to intervene in a proceeding after the prehearing conference, if the petitioner claims a direct and substantial interest in the proceeding and states a substantial reason for delay.

9. The members of the Group received a letter from the Director stating that, “[y]ou are receiving this letter because the Department identified you as a holder of a junior-priority ground water right or rights that may be affected by one or both of the above-described delivery calls.”. See Spackman Letter and associated mailing list of 03/20/15. Therefore, the Group is clearly “potentially affected” by, and has a “direct and substantial interest in,” this proceeding.

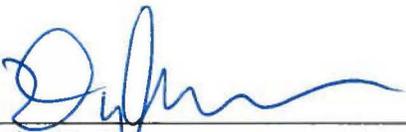
10. While the Group’s request is being lodged more than “a few days” after the May 27, 2015 deadline for notices of intent to participate, and also after the June 3, 2015 prehearing conference that took place only one week later, granting this request is still appropriate. The orders stating that the Director would not consider Group filings in the Little Wood proceeding were issued July 24, 2015. The unofficial January 11-22, 2016 hearing dates have been vacated, see Order Granting Sun Valley Company’s Motion to Compel of 08/12/15, at p. 3, and the hearing has not been rescheduled. In addition, there is no scheduling order. Moreover, the Group did timely file a notice of intent to participate in the Big Wood proceeding, and therefore will already be present at and participating in the hearing, whenever it occurs. Particularly given that the “Big Wood” and “Little Wood” proceedings have proceeded in lock-step, with all of the same deadlines, hearing dates, *etc.*, it is procedurally awkward for the Group to be a party to the “Big Wood” proceeding, but not the “Little Wood” proceeding.

11. Granting this request will not result in prejudice to other parties, given that there are no hearing dates or scheduling orders in effect, and that the Group is already a party to the “Big Wood” proceeding.

12. Based on the foregoing, the Group respectfully requests that the Director grant this Motion/Petition, and allow the Group to participate as a respondent and/or intervenor in the “Little Wood” proceeding.

DATED THIS 31st day of August, 2015.

Varin Wardwell LLC

By: 
Dylan B. Lawrence
Attorneys for Water Dist. 37-B
Groundwater Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 1st day of September, 2015, I served a true and correct copy of the above and foregoing document by placing a copy of the same in the United States mail, postage prepaid and properly addressed, and by e-mail to participants who have provided e-mail addresses to the Department for service to the following:

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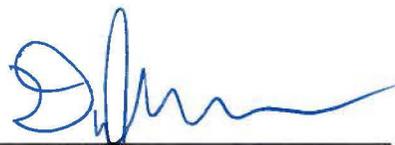
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