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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER**

ABERDEEN-SPRINGFIELD CANAL  
COMPANY, an Idaho Corporation, JEFFREY  
and CHANA DUFFIN, individually, as  
stockholders, and as husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES, an executive department of the  
State of Idaho,

Defendant.

Case No. CV-2014-165

**SURFACE WATER COALITION'S  
REPLY TO PLAINTIFF'S  
MEMORANDUM IN OPPOSITION  
TO SURFACE WATER  
COALITION'S MOTION TO  
INTERVENE**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley  
Irrigation District, Minidoka Irrigation District, Milner Irrigation District, North Side Canal  
Company and Twin Falls Canal Company (hereafter collectively "Surface Water Coalition",  
"Coalition", or "SWC"), by and through their attorneys of record, and submit this *Reply To  
Plaintiff's Memorandum in Opposition to Surface Water Coalition's Motion to Intervene.*

## ARGUMENT

### 1. THE COALITION IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO I.R.C.P. § 24(a)(1) & (2).

Plaintiffs argue that the Coalition should be denied intervention pursuant to I.R.C.P. § 24(a)(2) because it does not have an interest in the “property or transaction which is the subject of the action.” *Plaintiffs’ Memorandum in Opposition to SWC’s Motion to Intervene* at p. 3. The Easter Snake Plain Aquifer (“ESPA”) is hydraulically connected to the Snake River. *See Clear Springs Food, Inc. v. Spackman*, 150 Idaho 790, 794 (2011); *Rules for Conjunctive Management of Surface and Ground Water Resources*, 37.03.11.50 (“CM Rules”). Considering that the Coalition is comprised of 7 individual canal companies and irrigation districts located in the Magic Valley holding individual natural flow and storage water rights from the Snake River as well as groundwater rights directly from the ESPA (in the case of A&B Irrigation District), the Coalition most certainly does have an interest in the “property or transaction” at issue in this litigation. Given that the “property or transaction which is the subject of the action” involves the diversion of water from the ESPA, the disposition of this action will impair or impede the Coalition’s ability to protect its interests.

The only real issue is whether SWC’s interests can be or are adequately represented in this litigation. Plaintiffs assert that the Idaho Department of Water Resources (“IDWR”) adequately represents SWC’s interests just because IDWR enforces the law and currently believes that the use of the recovery wells is unlawful pursuant to its reading of the statute. Plaintiffs are incorrect—IDWR is charged with protecting the Coalition’s and its members’ interests the same as protecting Plaintiffs’ interests or other citizens of the State of Idaho. IDWR is an executive department of the state government, charged with interpreting and enforcing the laws. Although IDWR may have an interest in seeing the Court uphold the law, it does not own

the Coalition's water rights and it will not be able to articulate the impact that the Plaintiff's request will inflict on the Coalition and its members. The Coalition consists of 7 individual canal companies and irrigation districts, with thousands of water users. IDWR is an administrative body and does not have the same interests as the Coalition's members, does not act as an advocate for the Coalition and represents its own interests, which are not necessarily the interests of the Coalition.

SWC only needs to show that the representation *may* be inadequate. *Duff v. Draper*, 96 Idaho 299, 302 (1974). Here, IDWR does not represent the Coalition's position concerning the meaning and application of I.C. § 42-228. As such, intervention should be granted.

**2. ALTERNATIVELY, THE COALITION SHOULD BE ALLOWED TO PERMISSIVELY INTERVENE UNDER I.R.C.P. § 24(b).**

In the alternative, the Court should allow the Coalition permissive intervention pursuant rule 24(b)(2) based upon the fact that anyone may be permitted to intervene "when the applicant's defense and the main action have a question of law or fact in common." I.R.C.P. § 24(b)(2).

Plaintiffs' first argument against permissive intervention is that "SWC has only an interest, not a claim" and generally lacks standing. *Plaintiffs' Memorandum in Opposition to SWC's Motion to Intervene*, pp. 4-5. Yet, it is uncontroverted that the Coalition's members divert natural flow and storage water rights from the Snake River – which is hydraulically connected to the ESPA. *See Clear Springs Food, Inc. v. Spackman*, 150 Idaho 790, 794 (2011); *Rules for Conjunctive Management of Surface and Ground Water Resources*, 37.03.11.50 ("CM Rules"). Any decision in this action addressing the diversion and use of groundwater from the aquifer that supplies water to the Snake River impacts the Coalition's water supplies.

Additionally, section 42-228 also applies to the Coalition members – who will likely be bound by any decision from the Court on its interpretation. As Plaintiffs’ claims concern a diversion and consumptive use of groundwater from the aquifer—there is a common question of law and fact with SWC’s defense of the same.

The only real question the Court should consider in deciding intervention pursuant to rule 24(b) is whether it “will unduly delay or prejudice the adjudication of the rights of the original parties.” I.R.C.P. 24(b). Plaintiffs’ argue that it will “cause additional and unnecessary briefing, and potentially unnecessary discovery.” *Plaintiffs’ Memorandum in Opposition to SWC’s Motion to Intervene*, p. 6. Outside of initial pleadings, and a pendente lite stipulation regarding the preliminary injunction, this case is still in its infancy and the only issue left unresolved is the declaratory relief claim regarding the application of I.C. § 42-228. As pointed out by Plaintiffs, nothing has been calendared as it still only anticipates moving for summary judgment. *See Plaintiffs’ Memorandum in Opposition to SWC’s Motion to Intervene*, p. 6. The Plaintiffs concerns about delay are pure speculation and should be treated as such. Furthermore, by combining their efforts, the individual members of the Coalition will reduce delay, discovery, cost, and briefing overall associated with their involvement.

Plaintiffs will not be unduly delayed or prejudiced, and therefore the Court should grant SWC’s motion for permissive intervention.

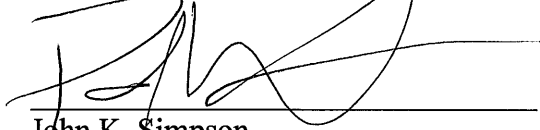
### CONCLUSION

It is generally recognized that courts should be liberal in permitting parties to intervene and look with favor on intervention in proper cases—and that if there is any doubt, intervention should usually be permitted. *City of Boise v. Ada County (In re Facilities & Equip. Provided by the City of Boise)*, 147 Idaho 794, 803, 215 P.3d 514, 523 (2009). Based upon the

aforementioned, the Court should grant SWC's motion for intervention pursuant to I.R.C.P. § 24(a) or § 24(b).

DATED this 8<sup>th</sup> day of July, 2014.

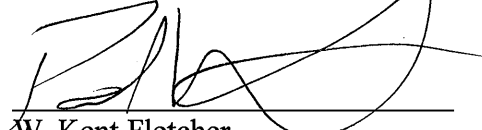
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**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on the 12<sup>th</sup> day of July, 2014, I served true and correct copies of the foregoing upon the following by the method indicated:

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Meghan Carter  
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