

District Court - SRBA
 Fifth Judicial District
 In Re: Administrative Appeals
 County of Twin Falls - State of Idaho

JUL 18 2014

By _____ Clerk
 _____ Deputy Clerk

RECEIVED
JUL 21 2014
 DEPARTMENT OF
 WATER RESOURCES

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,)

Case No: CV-2014-165
**ORDER GRANTING MOTION TO
 INTERVENE**

vs.)

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

and)

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,)
)
 Defendant-Intervenors.)

_____)

I.

PROCEDURAL BACKGROUND

1. This matter was initiated on June 6, 2014, when the Plaintiffs filed a *Complaint* in the above-captioned matter asserting a declaratory judgment cause of action against the Defendant.

2. On June 19, 2014, the 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 (collectively, "Surface Water Coalition") filed a *Motion to Intervene*. The *Motion* asks this Court to permit the Surface Water Coalition to intervene as Defendants in this matter pursuant to Idaho Rule of Civil Procedure 24(a) and 24(b).

3. The Defendant filed its *Answer* to the *Complaint* on June 20, 2014.

4. The Plaintiffs filed a *Memorandum in Opposition* to the *Motion to Intervene* on June 30, 2014, and the Surface Water Coalition subsequently filed a reply.

5. A hearing on the *Motion to Intervene* was held before this Court on July 10, 2014. The parties did not request additional briefing, nor does the Court require any. The matter is therefore deemed fully submitted the following business day, or July 11, 2014.

II.

ANALYSIS

A. Intervention as a matter of right.

Under Idaho Rule of Civil Procedure 24(a), a party may intervene in an action as a matter of right if they meet the following criteria:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the state of Idaho confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

I.R.C.P. 24(a). The Idaho Supreme Court has directed that rules providing for intervention should be given liberal construction. *See e.g., City of Boise v. Ada County*, 147 Idaho 794, 803, 215 P.3d 514, 523 (2009) (providing, "if there is any doubt as to whether intervention is appropriate, a motion to intervene should usually be granted"); *Herzog v. City of Pocatello*, 82

Idaho 505, 509, 523, 356 P.2d 54, 55 (1960) (providing, “statutes providing for intervention should be given a liberal construction”). In this case, the Court finds that the Surface Water Coalition is entitled to intervene in this action as a matter of right.

As an initial matter, the Court finds that the Surface Water Coalition’s *Motion to Intervene* was timely. There was no delay in the filing of the *Motion*, and at that time the Surface Water Coalition moved this Court to intervene, this action was in its earliest stages. The *Motion* was filed shortly after the filing of the *Complaint*, prior to the filing of any answer, and prior to the issuance of a scheduling order by this Court. Furthermore, no substantive determinations of any kind had been made by this Court prior to the filing of the *Motion*. Therefore, the Court finds the *Motion* timely.

The Court next finds that the Surface Water Coalition has satisfied the criteria set forth in Rule 24(a)(2). This action concerns the interpretation of Idaho Code § 42-228. That statute governs, in part, the drilling and use of wells for “the sole purpose of recovering ground water resulting from irrigation . . .” I.C. § 42-228. The Plaintiffs seek a declaratory judgment that their use of a well to deliver irrigation water to the Duffins’ property without a water right is lawful under Idaho Code § 42-228. This is an issue of first impression in Idaho.

As the case involves the interpretation of a statute that could potentially authorize the diversion of water from the Eastern Snake Plain Aquifer (“ESPA”) without a water right, the Court finds that the Surface Water Coalition has sufficiently claimed an interest relating to the property or transaction which is the subject of the action. The members of the Surface Water Coalition hold various water rights authorizing them to divert water from the Snake River.¹ It is well established that ground water from the ESPA is hydraulically connected to the surface water in the Snake River and its tributaries. *See e.g., In The Matter of Distribution of Water To Various Water Rights Held By Or For the Benefit of A&B Irr. Dist.*, 155 Idaho 640, 315 P.3d 828 (2013) (providing, “the surface and ground waters in the Snake River Basin are hydraulically connected, such that groundwater pumping can decrease the natural flows in the Snake River and its tributaries”). The effects of junior ground water user in the ESPA on the Surface Water Coalition’s water rights has been put at issue in a delivery call presently pending before the Idaho Department of Water Resources. *See e.g.,* IDWR Docket No. CM-DC-2010-001. In that

¹ A list of these water rights are set forth in Exhibit A to the *Affidavit of Travis L. Thompson In Support of Motion to Intervene* dated June 19, 2014.

action, the Surface Water Coalition has alleged material injury to certain of its water rights resulting from junior ground water users on the ESPA. Portions of that delivery call are presently before this Court on judicial review. *See e.g.*, Gooding County Case No. CV-2010-382. Therefore, the Surface Water Coalition has established that engaging in the interpretation of a statute, the result of which may allow the Plaintiffs to divert water from the ESPA without a water right, may affect their water supplies.

The Court also finds that the Surface Water Coalition is so situated that the disposition of this action may as a practical matter impair or impede its ability to protect its interests. The members of the Surface Water Coalition are irrigation districts and canal companies. Their operations may therefore be subject to the interpretation of Idaho Code § 42-228, which governs in part the drilling and use of recovery wells by “canal companies, irrigation districts, and other owners of irrigation works.” I.C. § 42-228. If finally and fully resolved, the case will establish precedent regarding the interpretation of Idaho Code § 42-228, and the Surface Water Coalition may be bound by a judgment in this action concerning that interpretation. *See e.g., Duff v. Draper*, 96 Idaho 299, 302, 527 P.2d 1257, 1260 (1974) (providing it is sufficient “that the applicant ‘may’ be bound by a judgment in the action”).

Last, the Court finds that the Surface Water Coalition’s interests may not be adequately represented by the existing parties. *See e.g., Duff v. Draper*, 96 Idaho 299, 302, 527 P.2d 1257, 1260 (1974) (providing “[i]t was sufficient that the petitioner show that the representation ‘may’ be inadequate”). The Idaho Department of Water Resources does not represent the Surface Water Coalition’s interests in its individual water rights, nor is its interests sufficiently aligned with the interests of the Surface Water Coalition in this matter. Accordingly, the Court finds that the Surface Water coalition has met all the criteria set forth in Rule 24(a)(2), and is therefore entitled to intervene in this action as a matter of right.

B. Permissive intervention.

In the alternative, the Court finds that the Surface Water Coalition is entitled to permissively intervene in this matter. Permissive intervention may be permitted upon timely application if the following conditions are met: “when an applicant’s claim or defense and the main action have a question of law or fact in common.” I.R.C.P. 24(b)(2). The decision to grant or deny a request for permissive intervention is left to discretion of the trial court. *American*

Falls Reservoir Dist. #2 v. Idaho Dept. of Water Resources, 143 Idaho 862, 882, 154 P.3d 433, 453 (2007).

The Court finds, for the reasons stated above, that the Surface Water Coalition's *Motion to Intervene* is timely. Furthermore, the Surface Water Coalition's claims and defenses share a common question of law and fact with this action. As set forth in more detail above, the members of the Surface Water Coalition are irrigation districts and canal companies, and their operations may therefore be subject to the interpretation of Idaho Code § 42-228. The Surface Water Coalition may therefore be bound by a decision of this Court regarding the interpretation of Idaho Code § 42-228.

Last, the Court finds that permissive intervention will not result in undue delay or prejudice to the original parties. There was no delay in the filing of the Surface Water Coalition's *Motion* in this case. The *Motion to Intervene* was filed in the earliest stages of this proceeding, before either an answer or scheduling order had been filed. Therefore, the filing of the *Motion* will not result in delay or prejudice to the original parties. For these reasons, and in an exercise of its discretion, this Court finds that the Surface Water Coalition may permissively intervene in this matter.

III.

ORDER

Therefore, IT IS ORDERED that the Surface Water Coalition's *Motion to Intervene* is **hereby granted**.

IT IS FURTHER ORDERED that all further captions used in this proceeding shall include 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 as Defendant-Intervenors as shown above.

Dated July 18, 2014


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO INTERVENE was mailed on July 18, 2014, with sufficient first-class postage to the following:

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