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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

McCAIN FOODS USA, INC.

Petitioners,

v.

GARY R. SPACKMAN, in his official
capacity as Director of the Idaho
Department of Water Resources, and THE
IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondents.

Case No. CV01-16-21480

IGWA'S MOTION TO INTERVENE

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of its members, hereby moves the court for an order granting intervention in this case under Rule 24 of the Idaho Rule of Civil Procedure.

ARGUMENT

Rule 24(a)(2) entitles anyone to intervene in an action, upon timely motion, who:

claims an interest relating to the property or transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

This rule is to be construed liberally.¹ It does not require “a direct or personal pecuniary interest in the subject of the litigation.”² It is sufficient if “the intervener will either gain or lose by the direct legal operation and effect of the judgment.”³

As explained below, IGWA’s motion to intervene meets the requirements Rule 24(a)(2), entitling IGWA to intervene as a matter of right.

A. IGWA’s motion is timely.

The timeliness of a motion to intervene under Rule 24 is “determined from all the circumstances: the point to which the suit has progressed is not solely dispositive.”⁴ Intervention is timely as long as it will not “unnecessarily and unreasonably delay the trial of issues between the original parties.”⁵ “Whether or not the applicant has been dilatory is not the test of timeliness, but the extent of prejudice which any delay resulting from the granting of the application will cause to the existing parties.”⁶

In this case, McCain Foods, Inc. (“McCain”) filed its *Notice of Appeal and Petition for Judicial Review of Agency Action* (“McCain’s Appeal”) on November 17, 2016. On December 5, 2016, McCain and the Idaho Department of Water Resources filed a *Joint Motion to Stay Proceedings and Memorandum in Support*, which has yet to be decided. No responsive pleadings have been filed on the merits of McCain’s Appeal, no court hearings have been held, and no discovery has been propounded. Therefore, this motion meets the requirement of timeliness.

B. IGWA claims a significant interest in this action.

An “interest” for purposes of Rule 24(a) means a “significant protectable interest.”⁷

McCain’s Appeal challenges the *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (“Order”) issued by the Director of the Idaho Department of Water Resources on November 2, 2016. (“McCain’s Appeal pp. 2, 4.) The Order creates a Ground Water Management Area under Idaho Code 42-233b that spans

¹ *Herzog v. City of McCain*, 82 Idaho 505, 509 (Idaho 1960).

² *Id.*

³ *Id.*

⁴ *State v. United States*, 134 Idaho 106, 109 (Idaho 2000).

⁵ *Herzog*, 82 Idaho at 510.

⁶ *Duff v. Draper*, 96 Idaho 299, 302 (Idaho 1974)

⁷ *Donnelly v. Glickman*, 159 F.3d 409 (9th Cir. 1998).

and governs the entirety of the Eastern Snake Plain Aquifer (ESPA). (Order p. 25.) IGWA's members include eight ground water districts and two irrigation districts whose members divert water from the ESPA for irrigation, municipal, industrial, commercial and other beneficial purposes. Collectively, IGWA's members represent roughly ninety percent of all groundwater diversions from the ESPA.

Under Idaho Code 42-233b, the Director has authority to develop a ground water management plan and curtail groundwater diversions within a ground water management area. Consequently, the Director's designation of the ESPA Ground Water Management Area and the pending development and implementation of a ground water management plan will directly impact IGWA's members. Accordingly, IGWA petitioned for and was granted intervention in the administrative action before the Idaho Department of Water Resources from which McCain takes its appeal.

McCain's Appeal raises various issues that may directly affect the reach and implications of the ESPA Ground Water Management Area, such as whether the Order "complies with the requirements set forth in the Ground Water Act," "whether the designated area is truly a 'ground water basin,'" and "whether the designated area is 'approaching the conditions of a critical ground water area.'" (McCain's Appeal, p. 4.)

Thus, the Court's decision may limit or otherwise shape the designation and implementation of the ESPA Ground Water Management Area. As such, it may directly affect the use of water rights owned by IGWA's members. Therefore, IGWA and its members claim an interest in this action that warrants intervention under Rule 24(a)(2).

C. IGWA's interests are not adequately represented by existing parties.

To demonstrate that IGWA's interests are not adequately represented by existing parties, it is sufficient to show that the interests of other parties "may" be inadequate to represent IGWA's interests."⁸ Here, the only other party is McCain which is a single water user who diverts a small fraction of the total groundwater diverted annually from the ESPA for industrial purposes. McCain does not represent and is incapable of adequately representing the interests of the irrigators and other IGWA members who divert the vast majority of the groundwater across the full expanse of the ESPA.

⁸ *Duff v. Draper*, 96 Idaho 299, 302 (1974).

CONCLUSION

As set forth above, IGWA meets the requirements of Rule 24(a)(2) because (1) this motion to intervene is timely filed, (2) IGWA has a significant protectable interest in the subject of this case, and (3) IGWA's interests are not adequately represented by existing parties. Therefore, IGWA respectfully requests an order granting intervention in this case.

Respectfully submitted this 12th day of January, 2017.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED

By: 


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CERTIFICATE OF SERVICE

I certify that on this 12th day of January, 2017, the foregoing document was served on the following persons in the manner indicated.


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