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NOV 10 2017

DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**CITY OF IDAHO FALLS’
PETITION TO INTERVENE**

The City of Idaho Falls (“Idaho Falls” or “City”), by and through its counsel, Holden. Kidwell, Hahn & Crapo, P.L.L.C., petitions to intervene in the above-entitled matter pursuant to the Rules of Procedure of the Idaho Department of Water Resources, specifically IDAPA 37.01.01.350—37.01.01.354. Idaho Falls seeks to intervene to represent and protect its interests.

I. BACKGROUND

On August 18, 2017, Milner Irrigation District (“Milner”) submitted a letter to the Idaho Department of Water Resources (“IDWR” or “Department”) concerning the “fall ‘storage reset issue.’” IDWR treated the letter as a petition initiating the above-entitled contested case, and issued a *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (the “Order”) on October 5, 2017. The Order contained a deadline of Sunday, November 12, 2017, for

petitions to intervene to be filed. The Order also provided notice of a status conference to be held on Monday, November 13, 2017, at 1:30 p.m.

II. LEGAL STANDARD

A party may intervene in a proceeding under certain circumstances. IDAPA 37.01.01.350. Rule 353 of the Idaho Department of Water Resources Rules of Procedure provides:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353. Thus, the analysis of a petition to intervene requires consideration of: (a) whether it is timely, (b) the potential intervenor showing a "direct and substantial interest in any part of the subject matter of a proceeding," (c) a showing that the intervention would "not unduly broaden the issues," and (d) whether the potential intervenor's "interest is adequately represented by existing parties." *Id.*

III. ARGUMENT

A. Idaho Falls' petition is timely.

The rules provide further specificity regarding timeliness. A petition to intervene is timely filed if it is "filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice." IDAPA 37.01.01.352.

This *Petition* is filed before the prehearing conference currently scheduled for November 13, 2017, and is thus timely.

B. Idaho Falls has a direct and substantial interest in the subject matter of this proceeding.

Idaho Falls holds 1,180 shares in Palisades Water Users, Inc. (“PWUI”), an entity that holds contracts for 53,630 acre-feet of space in Palisades Reservoir. Additionally, Idaho Falls owns ground water rights that it exercises to provide culinary water to its residents, and is a patron in the New Sweden Irrigation District, Idaho Irrigation District, and Progressive Irrigation District which entitle it to surface water.

The ability for Idaho Falls to utilize its PWUI storage water, utilize water delivered to it by the three above-mentioned irrigation districts, and to exercise its ground water rights could be affected by any change in the accounting practices of Water District 01. It is unknown at this time precisely how Milner’s petition may affect the City’s interests, and therefore, it is necessary for Idaho Falls to participate in this proceeding. As such, Idaho Falls has a direct and substantial interest in the outcome of the above-entitled proceeding.

C. The City’s intervention will not unduly broaden the issues involved in this proceeding.

Presently, this proceeding is in its very early stages, as no contested matter has been addressed and no prehearing conferences have been held. The only issue presently raised by Milner is the storage reset date, and Idaho Falls does not intend to raise any additional issues at the present time. Therefore, the City’s intervention will not unduly broaden the issues.

D. The City’s interest is not adequately represented by existing parties.

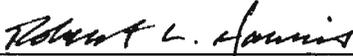
As the only current party to this matter, Milner does not represent the interests of Idaho Falls. Furthermore, Milner’s requested relief to alter or amend the storage reset date could negatively impact Idaho Falls storage water yield. For this reason, the City’s interests are not adequately represented by the existing party to this matter.

Additionally, other potential intervenors have their own property interests to protect, and are not in a position to also protect the City's interests. The intervention of Idaho Falls is necessary to adequately represent and protect its unique interests.

IV. CONCLUSION

For the foregoing reasons, Idaho Falls has satisfied the applicable rules regarding intervention and its petition should be granted to allow Idaho Falls to intervene in this proceeding and fully participate in all matters that may arise.

Dated this 10th day of November, 2017.



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2017, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed by the methods indicated.

Document Served: CITY OF IDAHO FALLS' PETITION TO INTERVENE

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