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DEPARTMENT OF  
WATER RESOURCES

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**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

IN THE MATTER OF MODIFYING THE  
BOUNDARIES OF THE AMERICAN FALLS  
GROUND WATER MANAGEMENT AREA

**PETITION TO INTERVENE &  
MEMORANDUM IN SUPPORT**

COME NOW, A&B Irrigation District (“A&B”), American Falls Reservoir District #2 (“AFRD#2”), Burley Irrigation District (“BID”), Minidoka Irrigation District (“MID”) and Milner Irrigation District (“Milner”) (collectively, the “Irrigators”), by and through their attorneys of record, and move for an order granting intervention in the above proceedings, pursuant to Idaho Department of Water Resources Rules of Procedure 350 to 354 (IDAPA 37.01.01.350, *et seq.*).

**INTRODUCTION**

On August 29, 2003, IDWR issued a *Final Order Modifying the Boundaries of the American Falls Ground Water Management Area* (“2003 Order”). That order amended the boundaries of the American Falls Ground Water Management Area (“GWMA”) to exclude areas that were covered by the newly created Water Districts 120 and 130.

On October 2, 2003, North Side Canal Company and Twin Falls Canal Company timely filed a *Petition to Initiate Contested Case*, challenging the decision and requesting that the Director

initiate a contested case and set a hearing in the matter. To date, the Director has not taken any action on the Companies' petition. There has been no pre-hearing conference and no date has been set for a formal hearing.

The Irrigators hold both natural flow and storage water rights to the Snake River, and A&B also holds ground water rights to the ESPA. The Irrigators deliver that water to their respective water users in various counties across southern Idaho. Failure to adequately protect the ground water resources within the American Falls GWMA – as it was originally created, prior to the 2003 Order – has contributed to the inadequate water supplies and continued depletions of hydraulically connected surface water supplies. The Irrigators seek to participate in these proceedings in order to protect their water rights and their individual landowners' interests in proper aquifer management.

### **STANDARD FOR INTERVENTION**

Under the Department's Rules of Procedure, the following is required for a petition to intervene:

1. Name and address of potential intervenor, Rule 350;
2. Statement of "direct and substantial interest of the potential intervenor," *Id.*;
3. Timeliness, Rule 351; and
4. Intervention "does not unduly broaden the issues," Rule 353.

Since the Irrigators meet the above standards, intervention should be granted.

### **ARGUMENT**

#### **I. Name and address of potential intervenor (Rule 350).**

The names of the potential intervenors are: (i) A&B Irrigation District; (ii) American Falls Reservoir District #2; (iii) Burley Irrigation District; (iv) Minidoka Irrigation District; and (v) Milner Irrigation District. Each intervenor can be contacted through their respective counsel at the address in the caption above.

**II. Statement of “direct and substantial interest of the potential intervenor” (Rule 350)**

The Irrigators have a direct and substantial interest in the protection of the ground water resources within the original GWMA boundary, which affects their water rights and their respective landowners. The Irrigators each own natural flow water rights in the Snake River, including the following:

- A&B:** 1-14
- AFRD#2:** 1-6
- BID:** 1-7  
1-211B  
1-214B
- Milner:** 1-9  
1-17  
1-2050
- MID:** 1-8

In addition, each of the Irrigators entered into contracts for storage space in the various reservoirs in the Upper Snake River Basin, including American Falls Reservoir. Water users within MID and A&B are the beneficial users of natural flow and ground water rights held in the name of the U.S. Bureau of Reclamation. All of these water rights are negatively impacted by declining ground water levels and corresponding reduced reach gains to the Snake River.

Each of the irrigators has unique interests and rights that are separate from the Petitioners, North Side Canal Company and Twin Falls Canal Company – individual companies who do not represent the various interests of the Irrigators.

The Irrigators are frequently involved in proceedings relating to various water issues seeking to protect their water rights and availability. Indeed, over the last 8 years, the Irrigators have all been jointly involved in the Coalition delivery call proceedings – wherein the Director found that out of priority diversions under junior ground water rights are causing material injury to the

Irrigator's senior surface water rights. Many of the injurious junior priority ground water diversions occur within the original boundaries of the GWMA.

Idaho Code authorizes the creation of a GWMA in order to protect the state's ground water resources. *See* I.C. § 42-233b. The Irrigators each have unique interests in ensuring that the Director complies with the obligations mandated by Idaho law. Accordingly, the Irrigators have a direct and substantial interest in these proceedings and should be permitted to intervene.

**III. Timeliness (Rule 352)**

Rule 352 requires that a petition be filed "at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier." To date, there has been no prehearing conference and no date for a hearing has been set. As such, this motion is timely.

**IV. Intervention "does not unduly broaden the issues" (Rule 353)**

The Irrigators have reviewed the petition filed by North Side Canal Company and Twin Falls Canal Company. The Irrigators do not intend to assert any issues other than those identified in the petition, or other issues that may be raised by North Side Canal Company and/or Twin Falls Canal Company as discovered in this proceeding. In short, intervention will "not unduly broaden the issues."

**CONCLUSION**

Since the Irrigators meet the requirements for intervention as specified in the Department's Rules, the Hearing Officer should enter an order granting intervention.

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DATED this 15<sup>th</sup> day of August, 2013.

**FLETCHER LAW OFFICE**

**BARKER ROSHOLT & SIMPSON LLP**

  
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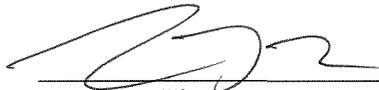
Travis L. Thompson  
Paul L. Arrington

*Attorneys for A&B Irrigation District, Burley  
Irrigation District and Milner Irrigation District*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of August, 2013, I served a copy of the foregoing **PETITION TO INTERVENE & MEMORANDUM IN SUPPORT**, by electronic and U.S. Mail to the following:

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Deborah Gibson  
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