

Randall C. Budge, ISB No. 1949
Candice M. McHugh, ISB No. 5908
Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
101 S. Capitol Blvd., Ste. 300
Boise, ID 83702
Telephone: 208-395-0011
Facsimile: 208-433-0167

Attorneys for IGWA

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF
WATER RIGHT NOS. 36-07072 and 36-
08356 FOR SEAPAC OF IDAHO, INC.

("SEAPAC DELIVERY CALL")

DOCKET NO.: CM-DC-2011-003

**IGWA'S PETITION TO BE
DESIGNATED AS RESPONDENT OR
ALTERNATIVELY TO INTERVENE**

The Idaho Ground Water Appropriators, Inc., ("IGWA"), acting for and on behalf of its members, by and through counsel, hereby petitions to be designated as a "Respondent" or alternatively to intervene in the above-captioned proceeding pursuant to Rules of Procedure of the Idaho Department of Water Resources 154, 156, 350 through 354. (IDAPA 37.01.01 *et seq.*)¹ On July 14, 2011, the Department designated this matter as a contested case proceeding under Rule 230.

Rule 154 defines "Respondents" as "[p]ersons against whom complaints are filed or about whom investigations are initiated." Rule 156 defines "Intervenors" as "[p]ersons, not applicants or claimants, appellants, complainants, respondents or protestants to a proceeding,

¹ For ease of citation, IDAPA 37.01.01 will be omitted and citation to the Department's Rules of Procedure will simply be by "Rule".

IGWA'S PETITION TO BE DESIGNATED AS RESPONDENT OR ALTERNATIVELY TO INTERVENE

who are permitted to participate as parties pursuant to Rules 350 through 354.....” Rule 350 states that “[p]ersons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding.” A timely-filed petition to intervene shall be granted if the petition “shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues,... unless the applicant's interest is adequately represented by existing parties.” Rule 353.

On July 8, 2011, SeaPac of Idaho, Inc. (“SeaPac”) filed a letter with the Idaho Department of Water Resources for “delivery of 193.2 cfs from Thousand Springs pursuant to Water Right Nos. 36-07072 (9/5/1969 priority for 148.2 cfs) and 36-08356 (5/9/1988 priority for 45 cfs).” The letter states that “[t]hese water rights are all within Water District 130, and are hydrologically connected to the Eastern Snake River Plain Aquifer. In 2009, Seapac [sic] received an average daily flow of only 94.2 cfs.” The letter further claims that the “Idaho Department of Water Resources' past and current failure to administer the water rights in accordance with Idaho law and without the proper regulation of hydraulically connected junior priority ground water rights has caused past and immediate and material damage to Seapac's [sic] beneficial use of the water consistent with its decreed water rights.”

IGWA represents Ground Water Districts whose members consist of hundreds of irrigators, municipalities, and commercial and industrial entities operating within the State of Idaho. They are all owners of water rights that divert from the Eastern Snake Plain Aquifer that have hydraulic connections (to varying degrees) with the source for Water Right Nos. 36-7072 and 36-8356. These water users have water rights both senior and junior to the priority date of


Water Right Nos. 36-7072 and 36-8356. These water rights and use thereof are the subject of the administration demanded by SeaPac in the above captioned delivery call contested case. IGWA, for and on behalf of its members, has a substantial interest in future water use and development of hydraulically-connected reaches of the Snake River and ESPA. Further, IGWA is in the best position to represent the interests of the junior groundwater users and to know and understand the specific impacts upon their water rights and the claims made by SeaPac.

Because IGWA represents the interests of the owners of water rights that are junior in priority to September 5, 1969 and May 9, 1988 that could be subject to curtailment if the claims in the SeaPac Delivery Call are valid, and who are water users that are keenly interested in the future of groundwater use on the Eastern Snake Plain, IGWA, for and on behalf of its members indisputably has a direct and substantial interest in this proceeding.

Based on the foregoing, IGWA, for and on behalf of its members, meets the definition of a Respondent and as such, should be so designated and permitted to participate in the above captioned matter. Alternatively, IGWA, for and on behalf of its members should be granted intervention in the above captioned matter and permitted to participate as an intervenor in this contested case.

DATED this 25th day of July, 2011.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED


Randall C. Budge
Candice M. McHugh
Thomas J. Budge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of July, 2011, the above and foregoing document was served in the following manner:

Idaho Department of Water Resources
Victoria Wigle
PO Box 83720
Boise, Idaho 83720-0098
victoria.wigle@idwr.idaho.gov
garrick.baxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

- ☐ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☒ Hand Delivery
- ☒ E-mail

Geoffrey M. Wardle
HAWLEY TROXELL
PO Box 1617
Boise, ID 83701-1617
gwardle@hawleytroxell.com

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☒ E-mail

Mike Creamer
GIVENS PURSLEYLLP
PO Box 2720
Boise, ID 83702
mcc@givenspursley.com

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☒ E-mail


CANDICE M. MCHUGH