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*Attorneys for the City of Pocatello*

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

IN THE MATTER OF DISTRIBUTION OF WATER)  
TO WATER RIGHT HELD BY ARK FISHERIES, )  
INC., WATER RIGHT NO. 36-07278 )

Docket No. CM-DC-2014-002

\_\_\_\_\_)  
And )

IN THE MATTER OF DISTRIBUTION OF WATER)  
TO WATER RIGHTS HELD BY DAN LEE AND )  
DADHRI LEE, WATER RIGHT NOS. )  
36-00124A AND 36-07315 )

Docket No. CM-DC-2014-003

**CITY OF POCA TELLO’S  
PETITION TO BE DESIGNATED A  
RESPONDENT OR  
ALTERNATIVELY TO  
INTERVENE**

TO THE IDAHO DEPARTMENT OF WATER RESOURCES AND ALL INTERESTED PARTIES:

The City of Pocatello (“Pocatello”), by and through its counsel, White & Jankowski, LLP, 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 (“Department’s Rules”) 154, 156, and 350 through 354. IDAPA

37.01.01.

On May 28, 2014, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) received notice from Lynn Babington for ARK Fisheries, Inc. requesting delivery of water by administration of water right no. 36-07278. On June 19, 2014, the Director received notice from Dan Lee and Dadhri Lee requesting delivery of water by administration of water right nos. 36-00124A and 36-07315.

Rule 154 of the Department’s Rules defines “respondents” as “[p]ersons against whom complaints are filed or about whom investigations are initiated.” IDAPA 37.01.01.154. Rule 156 defines “intervenor” as “[p]ersons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354.” IDAPA 37.01.01.156. 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.

IDAPA 37.01.01.350. Under Rule 352 petitions to intervene are timely if they are filed at least fourteen (14) days before the date set for a formal hearing or prior to a prehearing conference.

IDAPA 37.01.01.352. A status conference is currently set for on July 22, 2014 at 2:30 p.m. No hearing has been set in this matter. As such, Pocatello’s petition is timely.

Pursuant to the Department’s Rules, a timely filed petition to intervene shall be granted if the petitioner “shows [a] 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.” IDAPA 37.01.01.353.

Pocatello is a municipal corporation of the State of Idaho which diverts its municipal water supply from wells in the Eastern Snake Plan Aquifer (“ESPA”). Pocatello also owns and

operates associated surface water rights, including rights to water stored in Palisade Reservoir. Some of Pocatello's rights are among those which ARK Fisheries, Inc. and Dan and Dadhri Lee assert are causing injury in the current proceeding. As a result Pocatello is a party "about whom investigations are initiated" under Rule 154. Furthermore, Pocatello has a direct and substantial interest in future water use and development of hydraulically-connected reaches of the Snake River and ESPA. Pocatello's participation will not unduly broaden the issues in this proceeding.

Further, Pocatello's interests are specific and localized in nature, and cannot be adequately protected by the existing parties in these proceedings. IDAPA 37.01.01.353. Pocatello is not a member of the Idaho Ground Water Appropriators, Inc.—as such, without intervention Pocatello has no way of protecting its water rights from administration and potential curtailment. Pocatello's water rights are separate and distinct property rights that can only be adequately represented by Pocatello. If Pocatello is not allowed to participate in this proceeding, it would be deprived the opportunity to defend its water rights before the Department.

Pocatello meets the definition of a respondent, and should be designated and permitted to participate as such. Alternatively, Pocatello has met the standards set forth under Rules 352 and 353 of the Department's Rules and should be allowed to intervene in the above-captioned action.

Respectfully submitted this 11th day of July, 2014.

CITY OF POCATELLO ATTORNEY'S OFFICE

By   
A. Dean Tranmer

WHITE & JANKOWSKI, LLP

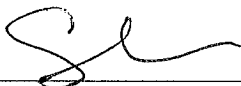
By   
Sarah A. Klahn

ATTORNEYS FOR CITY OF POCATELLO

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of July, 2014, a true and correct copy of the foregoing CITY OF POCA TELLO'S PETITION TO BE DESIGNATED A RESPONDENT OR ALTERNATIVELY TO INTERVENE was served on the following by the method indicated below:

Gary Spackman, Director IDWR P.O. Box 83720 Boise ID 83720-0098 deborah.gibson@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail – Federal Express <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Lynn Babington ARK Fisheries, Inc. 2825 South 1050 East Hagerman, ID 83332	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail – Federal Express <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Dan and Dadhri Lee 1148 East 2900 South Hagerman, ID 83332	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail – Federal Express <input type="checkbox"/> Facsimile <input type="checkbox"/> Email

  
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 Sarah A. Klahn  
 White & Jankowski, LLP