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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SOUTH VALLEY GROUND WATER
DISTRICT and GALENA GROUND
WATER DISTRICT,

Petitioners,

vs.

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

Respondents.

Case No.: CV 07-2021-00243

MOTION TO INTERVENE

COMES NOW the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Coalition of Cities”) by and through its attorneys of record, and files this *Motion to Intervene* in the captioned matter. The Coalition of Cities were parties to the underlying administrative action and wish to intervene in the judicial review of the final order issued in the underlying administrative action. The Coalition of Cities understands that there are other matters and extraordinary and equitable relief actions pending before the Court but the Coalition of Cities takes the case as it finds it and asks that

intervention be granted in order for it to participate and intervene only in the judicial review of the final administrative order.

BACKGROUND

On May 4, 2021, the Director of the Idaho Department of Water Resources issued a Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing in Docket No. AA-WRA-2021-001 (“Basin 37 Matter”).

On May 19, 2021, the Coalition of Cities filed its Notice of Intent to Participate in the Basin 37 Matter and was allowed to participate as a member of the “interested parties” group. Thus the Coalition of Cities is a party to the underlying administrative action. The Coalition of Cities also filed a joined in post-hearing briefing.

On May 24, 2021, Petitioners South Valley Ground Water District and Galena Ground Water District (“SVGWD/GGWD”) initiated the captioned matter, related to the Basin 37 Matter, by filing their *Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction or, Alternatively, Writ of Prohibition* along with supporting documents.

After denying the extraordinary relief requested, the Court stayed the questions raised on judicial review in part because there was no final order curtailing groundwater users. The Court then issued a Procedural Order, allowing that “a person or entity who was a party to the underlying administrative proceeding [but] is not made a named party in the Petition, and is not otherwise a Petitioner, such person or entity may file a Notice of Appearance in this matter within ten (10) days [June 6, 2021] from the issuance of this Procedural Order. This Court will treat the Notice of Appearance as a Motion to Intervene and will treat the party filing the Notice

of Appearance as an Intervenor. Under such circumstances, the Court will automatically issue an order granting the Motion to Intervene.”

A hearing was held June 7-12, 2021. On June 28, 2021, the Director issued his final order in the Basin 37 Matter.

ARGUMENT

The Coalition of Cities *Notice of Intent to Participate* was not filed within the time limit specified by the Procedural Order due to an oversight by counsel. As the deadline for parties to the underlying agency action to file *Notices of Intent to Participate* has passed, the Coalition of Cities seeks intervention on the matter before this Court as it continues to have an interest in the legal issues raised in the Basin 37 Matter. The Coalition’s *Motion to Intervene* is timely and satisfies the standards under Rules 24(a) and 24(b), and thus would not cause prejudice to any party. Counsel has consulted with the attorneys for Petitioners SVGWD/GGWD and they indicated no objection to the Coalition of Cities’ intervention.

A. Intervention as of Right

This *Motion to Intervene* meets the standard under Rule 24(a)(2) for intervention as of right. Under to IRCP 24(a)(2), the granting of intervention is mandatory in any action upon a timely motion that: 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. *City of Boise v. Ada Cty (In re Facilities & Equip. Provided by the City of Boise)*, 147 Idaho 794, 803(2009) (“courts should look with favor on intervention in a proper case, and be liberal in permitting parties to intervene under the

proper circumstances.’ If there is any doubt as to whether intervention is appropriate, a motion to intervene should usually be granted”).

1. Motion to Intervene 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.” *State v. United States*, 134 Idaho 106, 109 (Idaho 2000). Intervention is timely as long as it will not “unnecessarily and unreasonably delay the trial of issues between the original parties.” *Herzog v. City of Pocatello*, 82 Idaho 505, 510 (1960). In this matter, SVGWD/GGWD sought both declaratory and injunctive relief. A hearing on the declaratory relief is set the date this Motion is filed but the issues raised in the *Amended Petition for Judicial Review* have not yet been briefed and the administrative record related thereto has not yet even been fully prepared. Thus, the Coalition of City’s intervention is timely and results in no prejudice to other parties in the matter as their participation will for all effective purposes be limited to the legal issues raised on judicial review.

2. The Coalition of Cities Has an Interest in this Matter.

An “interest under Rule 24(a), means a “significant protectable interest.” *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). The Coalition of City’s interest in this matter relates to the legal questions on whether, in a Ground Water Management Area (“GWMA”) without a GWMA Plan can the Director proceed solely under the Ground Water Act, Idaho Code 42-226 et al, without regard to the Department’s rules and whether the time frame and process the Director used in the Basin 37 Matter comports with due process. In addition, the Director’s order, curtailing junior ground water users in Basin 37 under Idaho Code 42-237.a.g. to curtail

groundwater users is a matter of first impression. The Coalition of Cities seeks to brief and argue the legal questions involved in the Amended Petition for Judicial Review.

3. The Coalition of Cities' Interests May be Impaired or Impeded by Resolution of the Legal Issues in this Matter.

The Coalition of Cities consist of 13 cities who hold junior groundwater rights that divert from the Eastern Snake Plain Aquifer GWMA which does not have an approved Management Plan. Thus, the Coalition of Cities find themselves in the same position as the groundwater users in Basin 37 – in a GWMA without an approved GWMA Plan. Drought and water shortages in Idaho are common. However, all prior disputes evaluating the impact of groundwater rights on senior water rights have been resolved under the Department's CM Rules. Here, the Director's approach in Basin 37 subjects junior groundwater users to another process that may curtail their use with only a few weeks notice and without any demand by senior users. This process stands to severely prejudice the Coalition of Cities, impact their water rights and use and undermine their existing agreements and mitigation efforts.

4. The Coalition of Cities' interests are not adequately represented by any existing party.

The 13 cities that make up the Coalition of Cities stand to provide argument that covers a range of municipal uses and interests. They have actively participated on all fronts to protect their water rights and their legal interests. They are the only parties who are in a position to know what they have argued in past proceedings and what is in their best interest to argue now.

B. Permissive Intervention.

The Coalition of Cities also satisfies the criteria for permissive intervention under I.R.C.P 24(b), which "allows permissive intervention by a person '[u]pon timely application' and 'when an applicant's claim . . . and the main action have a question of law or fact in common.'" *State v. United States* (in Re SRBA Case No. 39576), 134 Idaho 106, 110, 996 P.2d 806, 810 (2000).

“To determine timeliness, the court considers three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.” *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 390 (2002). “The decision of whether to grant the motion to intervene is discretionary with the trial court. A court acts within its discretion if it perceives the issue as discretionary, acts within the outer boundaries of its discretion and consistently with applicable legal standards, and reaches its decision by an exercise of reason.” *Id.*

CONCLUSION

Based on the foregoing the Coalition of Cities respectfully requests that its Motion to Intervene be granted under IRCP 24(a) or (b).

DATED this 1st day of July, 2021.

/s/ Candice M. McHugh
Candice M. McHugh
Attorney for Coalition of Cities

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July 2021, I served a true and correct copy of the foregoing document was served through iCourt on the person(s) whose names and addresses appear below and on any other persons who have entered notices of appearance through iCourt:

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