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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,

v.

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. CV07-21-00243

**CITY OF HAILEY'S MOTION TO
INTERVENE**

Fee Category: Exempt
Idaho Code § 67-2301

The City of Hailey ("City"), by and through its attorneys Givens Pursley LLP, hereby files this *Motion to Intervene* in the above-captioned matter.

BACKGROUND

On May 4, 2021, the Director of the Idaho Department of Water Resources ("IDWR") issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* in Docket No. AA-WRA-2021-001 ("Basin 37 Matter"). The Basin 37 Matter involves the potential curtailment of groundwater pumping in Basin 37, particularly within an area commonly known as the "Bellevue Triangle."

City holds groundwater rights in Basin 37, but not in the Bellevue Triangle.

Nevertheless, City is concerned that the factual and legal issues addressed in the proceeding could affect the City's water rights. Accordingly, on May 18, 2021, City filed its *Notice of Intent to Participate* in the Basin 37 Administrative Proceeding as required by the *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing*. City was allowed to participate as a member of the "Outside Bellevue Triangle Water Users" group and, together with other parties in that group, including the Cities of Bellevue and Ketchum and Sun Valley Company, it was allowed to fully participate in the proceedings. *See Prehearing Order; Scheduling Order* at 2 (May 25, 2021).

On May 24, 2021, Petitioners South Valley Ground Water District and Galena Ground Water District (together, the "GWDs") initiated the above-captioned matter, which concerns 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.

On May 27, 2021, in addition to denying the Petitioners' request for a temporary restraining order, the Court also issued a *Procedural Order* providing that persons or entities that file a *Notice of Appearance* within ten days (i.e. by June 6) would automatically be allowed intervention in this proceeding. City was unaware of that deadline and did not file a *Notice of Appearance*.

On June 28, 2021, the Director issued his *Final Order* in the Basin 37 Matter, ordering the curtailment of groundwater rights in the Bellevue Triangle.

The GWDs have again requested that this Court issue a temporary restraining order and other relief, a hearing on which was conducted on July 1, 2021 (the day the Director’s *Final Order* determined that curtailment should begin). The Court issued an order denying the GWD’s requests on the date of this filing (July 2, 2021).

City seeks intervention in this matter because it continues to have an interest in the factual and legal issues raised in this matter. As with the City of Pocatello’s June 25, 2021 *Motion to Intervene*, which this Court granted on June 30, 2021, City’s *Motion to Intervene* is timely and satisfies the standards under Idaho Rule of Civil Procedure 24(b), and granting it would not cause prejudice to any party.

ARGUMENT

City satisfies the criteria for permissive intervention under Rule 24(b)(1), which provides:

On timely motion, the court may permit anyone to intervene who: . . .

(B) has a claim or defense that shares with the main action a common question of law or fact.

I.R.C.P. 24(b)(1). *See also State v. United States (in Re SRBA Case No. 39576)*, 134 Idaho 106, 110, (2000) (“I.R.C.P. 24(b) 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.’”). “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.*¹ “In exercising its discretion, the court

¹ *See also McCormack v. Hiedeman*, No. 4:11-CV-00433-BLW, 2012 WL 2049359, at *2 (D. Idaho June 6, 2012) (“As with Rule 24(a) intervention, the court should interpret [the Rule 24(b)] requirements broadly in favor of intervention.”)

must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." I.R.C.P. 24(b)(3). *See also Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 390 (2002) ("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.").

1. City's *Motion to Intervene* is timely and its intervention will not unduly delay or prejudice other parties' rights.

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 (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, 508 (1960). Timeliness is judged by the "extent of prejudice which any delay resulting from the granting of the application will cause to the existing parties." *Duff v. Draper*, 96 Idaho 299, 302 (1974).

In this matter, the GWDs seek both declaratory and injunctive relief. To date, the Court has acted only to deny the request for a Temporary Restraining Order, to stay Count 1 of the complaint (dismissing without prejudice the remainder of the counts), and to hear argument on a renewed motion for Temporary Restraining Order. The scope and claims to be made in the case have yet to be determined. City's intervention is timely.

2. City's claims and defenses share a common question of law or fact with the main action.

City's claims and defenses in this matter relate to the factual and legal issues surrounding the Director's convening a hearing to consider curtailing junior ground water users in Basin 37 outside the Conjunctive Management Rules, IDAPA 37.03.11 ("CM Rules"). Whether the

Director has adequate statutory authority to evaluate and order curtailment in this manner is an issue of first impression that potentially affects all groundwater users in Basin 37—indeed, in the entire State. In addition, facts at issue in this proceeding, such as those concerning the use of the Wood River Valley Groundwater Flow Model v.1.1, may potentially affect all groundwater users located within the Model domain, including the City. These factual and legal issues are the “common question[s] of law or fact” that provide the basis for City’s intervention in this proceeding.

CONCLUSION

Because City satisfies the requirements for intervention under I.R.C.P. 24(b), it respectfully requests that its *Motion to Intervene* be granted.

Respectfully submitted this 2nd day of July, 2021.

GIVENS PURSLEY LLP



By: _____

Michael P. Lawrence

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 2nd day of July, 2021, I filed and served true and correct copies of the above and foregoing document by method selected below:

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