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Attorneys for the City of Ketchum

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. **CV07-21-243**

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

Fee Category: Exempt
I.C. § 67-2301

COMES NOW the CITY OF KETCHUM ("Ketchum"), by and through its attorneys of record WHITE, PETERSON, GIGRAY & NICHOLS, P.A., and files this motion to intervene in the above entitled matter.

I. INTRODUCTION

On May 4, 2021, the Director of the Idaho Department of Water Resources commenced the Basin 37 Administrative Proceeding, Docket No. AA-WRA-2021-001. The City of Ketchum

filed a Notice of Intent to Participate on May 12, 2021. Pursuant to the Director's prehearing order and scheduling order, Ketchum participated in the third group of parties, which consisted of water users in Basin 37 outside the proposed area of curtailment.

The above entitled matter was commenced with the filing of a Petition for Judicial Review by South Valley Ground Water District and Galena Ground Water District on May 24, 2021. This Court issued a Procedural Order stating that a person or entity who was a party to the underlying administrative proceeding may file a notice of appearance within 10 days of the issuance of the procedural order, and the notice of appearance would be treated as a motion to intervene. Although Ketchum was a party to the underlying administrative proceeding, it did not file a notice of appearance within 10 days of the Procedural Order.

II. ARGUMENT

A. Intervention of Right

Rule 24(a)(2) of the Idaho Rules of Civil Procedure provides for intervention of right for anyone who:

Claims an interest relating to the property or transaction that 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 protect that interest.

Ketchum meets the standard for intervention of right under Rule 24(a).

1. Ketchum has an interest in this matter as a junior groundwater user in Basin 37.

Ketchum was a participant in the underlying administrative action because it has an interest in the legal and factual issues as a junior groundwater user in Basin 37. Although Ketchum was outside the area of curtailment identified in the Director's notice, Ketchum could be included in the area of curtailment in any future proceeding. Accordingly, Ketchum has an interest in legal

issues raised by this proceeding, including the Director's authority to commence proceedings under I.C. 42-237a.g., the Director's authority to curtail groundwater rights in the absence of a delivery call, and whether the administrative proceeding conducted by the Department comports with due process.

2. Ketchum's interests may be impaired or impeded by resolution of the issues in this matter.

As a junior groundwater user, Ketchum may face curtailment in a future administrative proceeding similar to the underlying administrative action in this matter. If the Director uses a similar procedure in the future that includes Ketchum in the area of curtailment, Ketchum may be unable to adequately defend its interests.

3. Ketchum's interests are not adequately represented by any existing party.

Ketchum is a holder of water rights in Basin 37 and should be permitted to protect its own interests in this matter.

B. Permissive Intervention

Ketchum also meets the standard for permissive intervention under Rule 24(b). Rule 24(b) provides for permissive intervention where a person "has a claim or defense that shares with the main action a common question of law or fact." As discussed above, the questions of law raised in this proceeding have an impact on Ketchum's interests as a junior groundwater user in Basin 37.

Rule 24(b)(3) provides that "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." This action has not proceeded to the point where intervention would cause prejudice or delay to any party. Nothing has come before the court except the Petitioners' motions for a temporary restraining order. Moreover, the agency's final decision in the underlying administrative proceeding was issued on June 28, 2021,

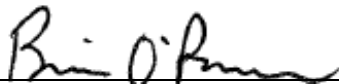
less than a week prior to the filing of this motion. Under I.C. § 67-5273, a party may file a petition for judicial review within 28 days of the service date of the final agency order. This motion to intervene in a judicial review action is filed within the statutory period to file a petition for judicial review.

III. CONCLUSION

The City of Ketchum satisfies the criteria for intervention under IRCP 24(a) and 24(b) and respectfully requests that its motion to intervene be granted.

RESPECTFULLY SUBMITTED this 2nd day of July, 2021.

WHITE PETERSON

By:  _____
Brian T. O'Bannon
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd of July, 2021, I filed the foregoing electronically through the iCourt system, which caused the following parties or counsel to be served by electronic means, as set forth below:

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