

May 29, 2024

DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF APPLICATION FOR
 PERMITS NOS. 63-34403, 63-34652, 63-
 34897, AND 63-34900, IN THE NAME OF
 CAT CREEK ENERGY, LLC

**VEOLIA’S PETITION
 TO INTERVENE**

IN THE MATTER OF APPLICATION FOR
 PERMIT NO. 63-35522, IN THE NAME OF
 CAT CREEK ENERGY, LLC

Veolia Water Idaho, Inc. (“Veolia”), by and through its attorneys Givens Pursley LLP, hereby submits this Petition to Intervene in the above-captioned matter pursuant to Rules 350 through 354 of the Idaho Department of Water Resources (“Department” or “IDWR”), IDAPA 37.01.01.350 to 354.

BACKGROUND

On May 16, 2017, Cat Creek Energy LLC (“CCE”) filed application for permit no. 63-34403 with the Department. Between 2019 and 2020, CCE filed three additional separate, related applications for permits to appropriate water with the Department—Nos. 63-34652, 63-34987, and 63-34900. Veolia filed protests to the first two applications. The Director of IDWR subsequently consolidated all four applications and recognized all previous protestants and intervenors as parties to the consolidated contested case. *Amended Order Consolidating Dockets*

and Parties, Order to Reorganize Applicant’s Rule 40.05 Information; Order Establishing Protective Order Procedure; Order Authorizing Discovery; Notice of Continued Prehearing Conference (June 10, 2020).

On January 18, 2024, CCE filed an additional separate, related application for permit to appropriate water with the Department—No. 63-35522. Multiple parties have protested or sought intervention. On May 22, 2024, the Director served parties in the consolidated case notice of a status conference to be held on June 13, 2024, to discuss, among other things, the Idaho Department of Fish and Game’s May 2024 *Petition to Intervene* and whether CCE’s new application should be consolidated with the other consolidated applications.

LEGAL STANDARD

Entities that are “not already a party to a contested case and who ha[ve] a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case.” IDAPA 37.01.01.350. A timely filed petition to intervene showing a “direct and substantial interest in any part of the subject matter of a contested case” and that “does not unduly broaden the issues” must be granted “subject to reasonable conditions, unless the applicant’s interest is adequately represented by existing parties.” IDAPA 37.01.01.353. “Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice.” IDAPA 37.01.01.352.

ANALYSIS

For the reasons discussed below, Veolia’s intervention must be granted because this petition is timely, Veolia has a direct and substantial interest in the subject matter of this

contested case, Veolia's participation will not unduly broaden the issues, and Veolia's interest is not adequately represented by existing parties.

I. Veolia's Petition to Intervene is timely.

This Petition to Intervene is timely because no formal hearing or initial prehearing conference has yet been set or conducted in this matter, and the Department has not issued any order or notice establishing a different time for filing a petition to intervene. To the extent the June 13, 2024 status conference is a "hearing" or "initial prehearing conference," this Petition to Intervene is timely because it is being filed at least fourteen (14) days in advance.

II. Veolia has a direct and substantial interest in this matter.

Application for Permit No. 63-35522 seeks an appropriation of water for a number of purposes, including municipal, municipal storage, and mitigation uses. Veolia has a direct and substantial interest in the Application's municipal, municipal storage, and mitigation uses. Veolia is a regulated public utility that holds surface and ground water rights in the Boise River Basin under which it diverts water for delivery to its municipal customers within its certificated service area, which currently includes parts of the Cities of Boise, Eagle, Garden City, and Meridian, as well as parts of unincorporated Ada County. Veolia provides water to customers throughout its service area for various municipal purposes, including domestic in-home use, irrigation of homes and public spaces, commercial use, industrial use, and aesthetic and environmental use, among others. The application, if granted, could potentially supply a portion of Veolia's municipal uses, or mitigation for its existing or future water rights if needed. Veolia is a party to CCE's other related applications because of these interests, and because it is not clear whether, or with what conditions, the Department might approve any of CCE's applications. Veolia generally desires that the applications be approved, but only with conditions

acceptable to Veolia. Accordingly, Veolia must be granted intervention to ensure that this application and the other related applications are approved with conditions that are acceptable to Veolia.

III. Veolia's interests are not adequately represented by existing parties.

Veolia's interests are not represented by CCE or the other protestants or intervenors. Veolia is the largest municipal water provider in the state of Idaho. Its service area is located in the Boise River Basin, which includes two of the fastest growing counties in the state. No other party to this matter has the same water supply demands or challenges as Veolia. It is impossible for any other municipal provider to adequately represent Veolia's interests in this proceeding.

CCE seeks approval of the application and to sell shares of storage water to Veolia and other municipal providers. However, CCE is not Veolia's agent and does not represent Veolia's interests with respect to obtaining additional water supplies. Neither CCE nor any other municipal provider fully understands Veolia's water supply needs, or whether any elements or conditions of a permit granted under the application will satisfy Veolia's needs. CCE and other municipal providers could conceivably agree to or accept terms or conditions that are unacceptable to Veolia with respect to the protests and the application in general. Veolia must participate in this contested case so it can defend its rights and interests.

Concerning the other protestants and intervenors who oppose approval of the application, obviously they do not represent Veolia's interests. Veolia does not oppose approval of the application.

IV. Veolia's participation would not broaden the issues.


Veolia does not seek to broaden the issues in this proceeding beyond those raised in the application and protests.

CONCLUSION

Based on the foregoing, Veolia respectfully requests that this Petition to Intervene be granted and Veolia be allowed to fully participate as a party in this proceeding.

Respectfully submitted this 29th day of May, 2024.

GIVENS PURSLEY LLP

By  _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 29, 2024, I caused to be served a true and correct copy of the foregoing by the method indicated below:

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