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DEPARTMENT OF  
WATER RESOURCES

A. Dean Tranmer, I.B. #2793  
City of Pocatello  
P. O. Box 4169  
Pocatello, ID 83201  
(208) 234-6149  
(208) 234-6297 (Fax)  
dtranmer@pocatello.us

Sarah A. Klahn, I.B. #7928  
Mitra M. Pemberton  
White & Jankowski, LLP  
511 Sixteenth Street, Suite 500  
Denver, CO 80202  
(303) 595-9441  
(303) 825-5632 (Fax)  
sarahk@white-jankowski.com  
mitrap@white-jankowski.com

*Attorneys for the City of Pocatello*

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

SUN VALLEY COMPANY,	)	<b>Docket No. P-DR-2016-001</b>
	)	
Petitioner,	)	
vs	)	
	)	<b>CITY OF POCTELLO'S PETITION</b>
GARY SPACKMAN, Director of the Idaho	)	<b>TO INTERVENE</b>
Department of Water Resources,	)	
	)	<b>Fee Category: Exempt per I.C. § 67-2301</b>
Respondent.	)	
	)	

The City of Pocatello ("Pocatello" or "City") petitions to intervene in this matter pursuant to the Idaho Department of Water Resources ("Department") Rules of Procedure ("Rules" or "Rule") 350-354.

**BACKGROUND**

On July 29, 2016, Sun Valley Company ("Sun Valley") filed an Amended Petition for Declaratory Ruling ("Petition") with the Department. The Petition raises issues regarding a July

7, 2016 Letter from the Director of the Department (“Letter”), which stated that the Department is considering creating a ground water management area (“GWMA”) for the Eastern Snake Plain Aquifer (“ESPA”). Pocatello participated in several meetings regarding the Department’s proposed ESPA GWMA and submitted comments to the Department regarding the same on September 2, 2016.

Sun Valley’s Petition seeks a declaratory ruling regarding the legality of the process initiated by the Director’s Letter as well as the bounds of the Director’s authority, *inter alia*, to create an ESPA GWMA. On August 23, 2016, Department sent a letter under Rule 401 providing notice of the Petition to persons likely to be interested in the Petition. Pocatello received that letter and hereby petitions to intervene.

### **ARGUMENT**

#### **I. Pocatello has a direct and substantial interest in this proceeding.**

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.

A 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 operates a municipal water system serving a population of approximately 50,000 residents in southeastern Idaho. The City’s primary water service area lies along the Portneuf River valley floor and the surrounding

foothills, and is supplied water from numerous wells in the Lower Portneuf River Valley Aquifer (“LPRVA”) in addition to wells in the ESPA. The LPRVA is an alluvial aquifer that underlies the Portneuf River and extends from the Portneuf Gap south of the City to the intersection with the ESPA north of the City. Pocatello also owns and operates associated surface water rights, including rights to water stored in Palisades Reservoir.

From an administrative perspective, a portion of the City’s wells are located within Water District 120, the Rule 50 Area of Common Ground Water Supply under Conjunctive Management Rules, and/or within the American Falls Ground Water Management Area. The issue of overlapping jurisdictional/administrative boundaries is one raised by the Sun Valley Petition, and resolution of the Sun Valley Petition will impact Pocatello’s interests.

The larger portion of the City’s wells are in the Lower Portneuf River Basin Aquifer, and outside of all of these administrative boundaries. Such tributary groundwater rights are identified a specific target of the Director’s GWMA efforts. Letter at 3. The Director’s determinations on the ultimate issue involving a GWMA for the entire ESPA will likewise impact Pocatello’s interests.

Further, if the Director establishes a GWMA that includes any of Pocatello’s water rights, the Director may “order those water right holders on a time priority basis . . . to cease or reduce withdrawal of water until such time as the director determines there is sufficient ground water.” I.C. § 42-233b. Pocatello therefore has a direct and substantial interest in this proceeding, as the extent and character of the Director’s authority to create a GWMA will impact the administration of Pocatello’s ground water rights. Therefore Pocatello has an interest in the resolution of legal issues raised by the Petition. *See* Petition ¶ 17.

**II. Pocatello's interests are not adequately represented by existing parties.**

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. The parties in this matter—Sun Valley Company and intervenors Water District 37-B Ground Water Association (“Water District 37-B”) and Idaho Ground Water Appropriators, Inc. (“IGWA”)—do not represent Pocatello's interests. Pocatello is not a member of IGWA and is not within the boundaries of Water District 37-B and intervention is necessary to protect Pocatello's water rights.

**III. Pocatello's petition is timely.**

Under Rule 352 petitions to intervene are timely if they are filed at least fourteen days before the date set for a formal hearing or prior to a prehearing conference. IDAPA 37.01.01.352. No hearing has been set in this matter, and Pocatello's Petition is timely.

**IV. Pocatello's participation will not unduly broaden the issues before the Department.**


Given Pocatello's demonstrated interests in this matter and the very early stage of the dispute in this matter, Pocatello's participation as a party in this matter will not unduly broaden issues before the Department. IDAPA 37.01.01.353.

**CONCLUSION**

Pocatello has met the standards set forth under Rules 352 and 353 and should be allowed to intervene in the above-captioned action.


Respectfully submitted this 6th day of September, 2016.

CITY OF POCA TELLO ATTORNEY'S OFFICE

By   
A. Dean Tranmer

WHITE & JANKOWSKI, LLP

Attorneys for the City of Pocatello

By   
Sarah A. Klahn

By   
Mitra M. Pemberton

### CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2016, I caused to be served a true and correct copy of the foregoing **CITY OF POCATELLO'S PETITION TO INTERVENE** in Docket No. **P-DR-2016-001** upon the following by the method indicated below:



Sarah Klahn, White & Jankowski, LLP

Director Gary Spackman Idaho Department of Water Resources 322 E Front St 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"/> Federal Express Overnight <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Scott L. Campbell Matthew J. McGee Sarah A. McCormack Moffatt, Thomas, Barrett, Rock & Fields, Chartered 101 S Capitol Blvd, 10th Floor P.O. Box 829 Boise, ID 83701 slc@moffatt.com mjmc@moffatt.com sam@moffatt.com	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Overnight 208-345-2000 <input type="checkbox"/> Facsimile 280-385-5384 <input checked="" type="checkbox"/> Email
Dylan B. Lawrence J. Will Varin Varin Wardwell LLC 242 N 8th St Ste 220 P.O. Box 1676 Boise ID 83724-1676 dylanlawrence@varinwardwell.com willvarin@varinwardwell.com	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Overnight 208-922-7060 <input type="checkbox"/> Facsimile 866-717-1758 <input checked="" type="checkbox"/> Email
Randall C. Budge Thomas J. Budge Racine Olson Nye Budge & Bailey Chartered 201 E Center St P.O. Box 1391 Pocatello ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Overnight 208-232-6101 <input type="checkbox"/> Facsimile 208-232-6109 <input checked="" type="checkbox"/> Email
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello ID 83201 dtranmer@pocatello.us	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Overnight 208-234-6149 <input type="checkbox"/> Facsimile 208-234-6297 <input checked="" type="checkbox"/> Email