

JAN 06 2017

DEPARTMENT OF
WATER RESOURCES

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Attorneys for the Basin 33 Water Users

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF SUN VALLEY
COMPANY'S PETITION FOR
DECLARATORY RULING REGARDING
CREATION OF ESPA GROUND WATER
MANAGEMENT AREA

Docket No. P-DR-2016-001

**BASIN 33 WATER USERS'
PETITION TO INTERVENE**

The Basin 33 Water Users,¹ by and through their counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., file the *Basin 33 Water Users' Petition to Intervene* (this "Petition"), pursuant to the Rules of Procedure of the Idaho Department of Water Resources, specifically IDAPA 37.01.01.350—37.01.01.354. The Basin 33 Water Users seek to intervene in order to represent and protect their interests in their water rights.

I. BACKGROUND

On November 2, 2016, the Idaho Department of Water Resources (the "Department") issued the *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (the "Order"), initiating this proceeding with the creation of a Ground Water Management Area

¹ The "Basin 33 Water Users" are a group of individual water users in Basin 33, around Howe, Idaho on the Little Lost River, and more specifically listed in Exhibit A, attached hereto.

("GWMA") for the Eastern Snake Plain Aquifer ("ESPA").

The *Order* included the area around Howe, Idaho (the "Area"), including lands irrigated by the Basin 33 Water Users, within the GWMA. *See Order*, pp. 3-4, ¶¶ 10-12. However, the Area is not currently within the official defined boundary of the ESPA, though it is included within the ESPAM model boundary. *See Exhibit B*. The Basin 33 Water Users hold ground water rights within the Area. *See Exhibit A*.

On November 16, 2016, Sun Valley Company filed a petition requesting a hearing on the *Order*. The Department granted this request and scheduled a prehearing conference on January 12, 2017.

Other parties have already intervened in order to protect and represent their own interests in this proceeding. The intervenors include Idaho Ground Water Appropriators, Inc. ("IGWA"); the Surface Water Coalition; the City of Pocatello; and the Coalition of Cities.

II. LEGAL STANDARD

A party may intervene in a proceeding under certain circumstances. IDAPA 37.01.01.350. Rule 353 of the Idaho Department of Water Resources Rules of Procedure provides:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353. Thus, the analysis of a petition to intervene requires consideration of: (a) whether it is timely, (b) the potential intervenor showing a "direct and substantial interest in any part of the subject matter of a proceeding," (c) a showing that the intervention would "not unduly

broaden the issues,” and (d) whether the potential intervenor’s “interest is adequately represented by existing parties.” *Id.*

III. ARGUMENT

A. The Basin 33 Water Users’ *Petition* is timely.

The rules provide further specificity with regard to timeliness. A petition to intervene is timely filed if it is “filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice.” IDAPA 37.01.01.352.

This *Petition* is filed before the prehearing conference currently scheduled for January 12, 2017, and is thus timely.

B. The Basin 33 Water Users have a direct and substantial interest in subject matter of this proceeding.

As described above, the Area is not contained within the current ESPA boundary, and therefore, many of the Basin 33 users have not previously been subject to responses to delivery calls. *See* Exhibit B. Nevertheless, the *Order* includes the Area within the GWMA. *See Order*, Attachment A. Under the *Order*, all of the water rights held by the Basin 33 Water Users will be within the administration of the GWMA. Thus, the Department’s ability to “order those water right holders on a time priority basis, within the area determined by the director, to cease or reduce withdrawal of water until such time as the director determines there is sufficient ground water” and to implement “a ground water management plan” will directly involve, or affect, the Basin 33 Water Users. Idaho Code § 42-233b.

Further, the Little Lost River, which also flows through the Area, is included in the list of tributary basins to the ESPA. *Order*, p. 5, ¶ 15. As the *Order* noted, “[o]ften aquifers in the tributary basins differ from the ESPA in that the tributary aquifers are composed primarily of

materials other than Quaternary basalt, such as alluvial sediments. While all of these tributary basins are hydraulically connected to the ESPA, the nature and extent of hydraulic connection varies.” *Order*, p. 5, ¶ 16. For this reason, the Area presents a unique circumstance, as the nature and extent of its hydraulic connection to the ESPA may vary from other areas included in the GWMA.

C. The Basin 33 Water Users’ intervention will not unduly broaden the issues involved in this proceeding.

Presently, this proceeding is in its very early stages, as no contested matter have been addressed and no prehearing conferences have been held. Many of the issues have yet to be defined. Thus, the Basin 33 Water Users’ intervention will not unduly broaden the issues, as they have not yet been defined.

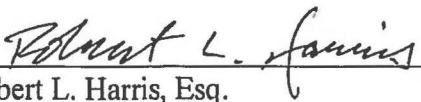
D. The Basin 33 Water Users’ interest is not adequately represented by existing parties.

The Basin 33 Water Users’ interests are specific and localized in nature, and are not adequately represented or protected by any of the existing parties to these proceedings. As described above, *see* Section III.B., *supra*, the Area is unique from the ESPA and presents different concerns and issues. None of the other parties—Sun Valley Company, IGWA, the Surface Water Coalition, the City of Pocatello, and the Coalition of Cities—represent any interest in the Area. The intervention of the Basin 33 Water Users is necessary to adequately represent and protect their unique interests.

IV. CONCLUSION

For the foregoing reasons, the Basin 33 Water Users have satisfied the Rules regarding intervention and the *Petition* should be granted, allowing the Basin 33 Water Users to intervene in the present proceedings for all purposes, as well as in all subsequent proceedings hereto related.

Dated this 6th day of January, 2017.



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2017, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

Document Served: BASIN 33 WATER USERS' PETITION TO INTERVENE

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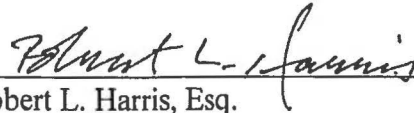
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Exhibit A

to

Basin 33 Water Users' Petition to Intervene

List of Basin 33 Water Users

1. Pancheri Inc. – 1494 Hwy 33, Howe ID. 83244
2. Pancheri Bros. LLC. – 1460 Hwy33, Howe ID. 83244
3. Matt Lagomarsino – 1798 W 4000 N, Howe ID 83244
4. Sunny Hawley, Estate of Lawrence R & Venice H Hawley, Vance Hawley, c/o Jeff Hawley – 3895 N LLR Hwy, Howe ID 83244
5. Owen Romrell – 1593 W 3700 N, Howe ID 83244
6. Little Lost River Land & Cattle LTD. c/o Dennis Weeks – 3774 N 1800 W, Howe ID 83244
7. Wade Williams – 1304 W 3880 N, Howe ID. 83244
8. Paige Woodie McAfee, Woodie Land & Livestock – 1293 W 3700 N, Howe ID 83244
9. Allen Farms Inc., N Scott Allen, Norman S Allen, - 3901 N LLR Hwy, Howe ID 83244
10. WT Williams Inc. – 3094 N 3200 E, Twin Falls ID 83301
11. David Andreason – 3794 LLR Hwy, Howe ID 83244
12. Wayne Bare, c/o Karen Bare Hoff – 1790 W 3720 N, Howe ID 83244
13. David Callister – 1454 W 3700 N, Howe ID 83244
14. Don Callister – 1496 W 3700 N, Howe ID 83244
15. Makayla Callister – 1454 W 3700 N, Howe ID 83244
16. Jason Fuger – 1333 W 3700 N, Howe ID 83244
17. Todd Echeverria – 1746 W 3800 N, Howe ID 83244
18. Sandra Drussel – 1611 W 3800 N, Howe ID 83244
19. Andrew Haight, Lynn Haight, c/o Dean Haight – 1521 W 3800 N, Howe ID 83244
20. Brian Harrell, Ilene Harrell, Carolyn Harrell – 1665 W 3900 N, Howe ID 83244
21. Barbara Hejtmanek, Thomas Hejtmanek – 1395 W 3900 N, Howe ID 83244
22. Weston Hejtmanek – 3082 W 2500 N, Arco ID 83213
23. Karen Isham - 4355 Ilene Cir., Ammon Id 83406
24. Jaymon Knight – 1450 W 3800 N, Howe ID 83244
25. Kirk Nickerson – 3880 N 1300 W, Howe ID 83244
26. Keith Nickerson – 3900 N 1300 W, Howe ID 83244
27. Suzanne Norris, c/o Robert Norris – 3842 N 1800 W, Howe ID 83244
28. Mike O Maley – 1740 W 3900 N, Howe ID 83244
29. Aaron Romrell, Misty Romrell – 1600W 3651 N, Howe ID 83244
30. Lynn Bingham
31. Craters of the Moon Farms LLC, c/o Tyson Burtenshaw
32. Dean Mays – 1441 Hwy 33, Howe ID 83244
33. Isham Farms – 3836 N 1300 W, Howe ID 83244
34. Leo Amy – 1398 Hwy 33, Howe ID 83244
35. Russell Mays, Kaylin Mays – 974 Hwy 33, Howe ID 83244
36. Roy Sermon – 1575 W 3600 N, Howe ID 83244

Exhibit B

to

Basin 33 Water Users' Petition to Intervene

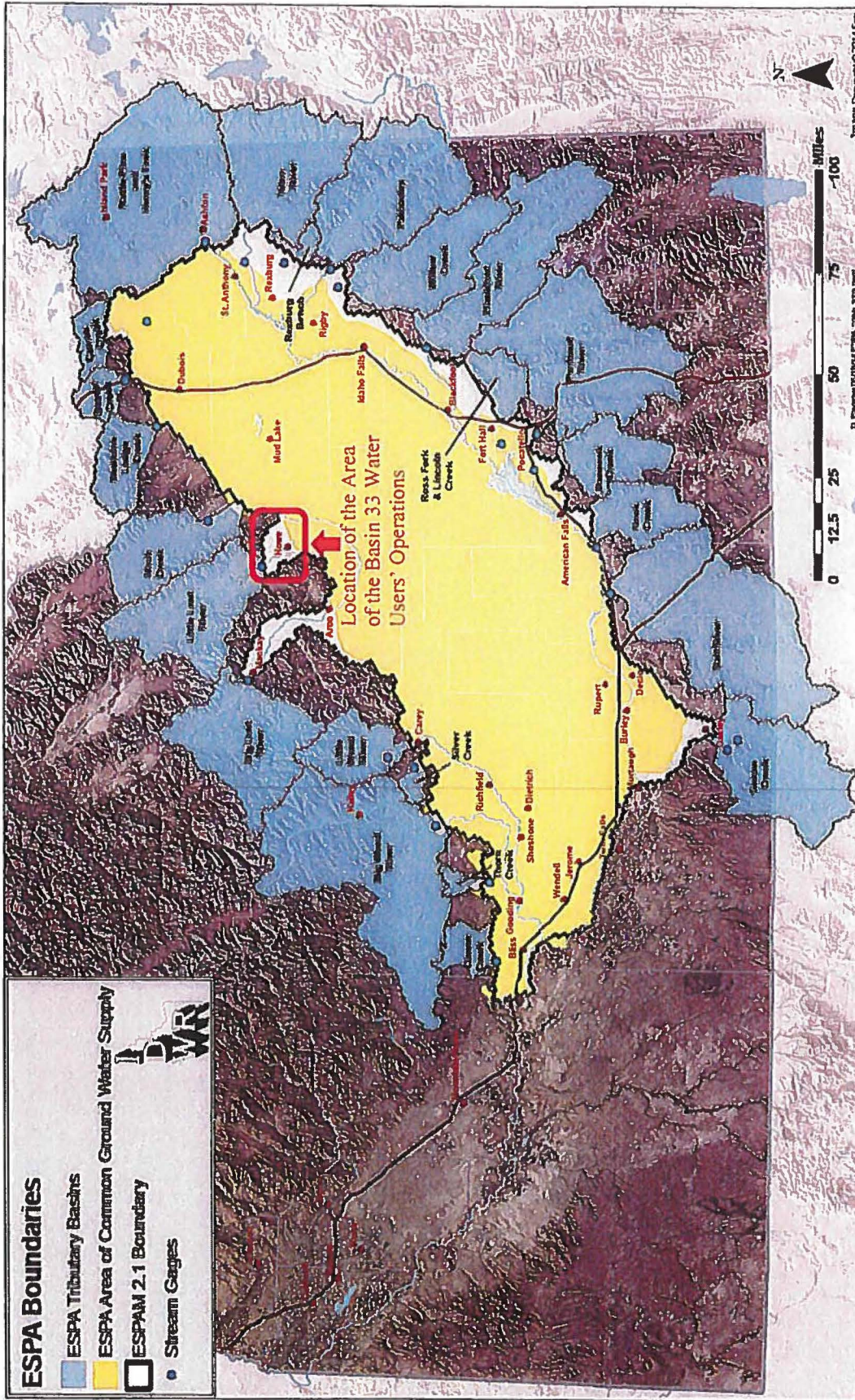


Exhibit B BASIN 33 WATER USERS' PETITION TO INTERVENE