

MAR 21 2017

DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF THE PETITION
FILED BY ABERDEEN-SPRINGFIELD
CANAL COMPANY REGARDING
DISTRIBUTION OF NATURAL FLOW BY
WATER DISTRICT 01

Docket No. P-WRA-2017-001

**SURFACE WATER COALITION'S JOINT
PETITION TO INTERVENE**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (hereafter collectively referred to as "Surface Water Coalition" or "Coalition"), by and through their undersigned counsel of record, pursuant to the *Notice of Pre-Hearing Conference; Notice of Hearing; Order Setting Deadlines for Petitions to Intervene and Staff Memorandum* (the "Order") dated March 6, 2017 as well as the Department's Rules of Procedure 350 – 354 (IDAPA 37.01.01), and hereby petitions to intervene in the above-captioned matter.

The Coalition is filing this joint petition to intervene for convenience and in the interests of efficiency. The individual Coalition members reserve the right to participate in this proceeding as individual parties if deemed necessary at some point.

FACTS

On January 18, 2017, Aberdeen-Springfield Canal Company (“ASCC”) submitted a letter to Lyle Swank, Water District 01 Watermaster, questioning certain accounting practices that had been identified in the recent Accounting Model review process. The letter sought review of “the computation of natural flow for the Shelley to At Blackfoot reach that is diminished by loss in the At Blackfoot to Near Blackfoot reach.” On March 6, 2017, the Director issued the *Order*, setting deadlines and establishing a hearing on the matter. The *Order* set a deadline of March 21, 2017 for any petition to intervene.

STANDARD OF REVIEW

The Department’s Rules of Procedure provide the following for persons seeking to intervene in a proceeding:

Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it.

Rule 351.

Further, petitions to intervene must be filed at least fourteen (14) days before the date set for the formal hearing, or by the date of the pre-hearing conference. *See* Rule 352. Finally, the Director may consider whether the petition would “unduly broaden the issues” and whether the petitioner is “adequately represented by existing parties.” *See* Rule 353.

ARGUMENT

I. The Coalition's Petition is Timely.

The Coalition's Petition to Intervene is being filed within the timeframe identified in the *Order*, by the date of the March 21, 2017 pre-hearing conference. *See* Rule 352. Accordingly, the Coalition's petition is timely.

II. The Coalition's Direct and Substantial Interest.

A. Name and Address

A&B Irrigation District
Dan Temple, Manager
P.O. Box 675
Rupert, Idaho 83350

American Falls Reservoir District #2
Lynn Harmon, Manager
409 N. Apple St.
Shoshone, Idaho 83352

Burley Irrigation District
John Lind, Manager
246 E 100 S
Burley, Idaho 83318

Milner Irrigation District
Walt Mullins, Manager
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Minidoka Irrigation District
Dan Davidson, Manager
98 W 50 S
Rupert, Idaho 83350

North Side Canal Company
Alan Hansten, Manager
921 N. Lincoln St.
Jerome, Idaho 83338

Twin Falls Canal Company
Brian Olmstead, Manager
P.O. Box 326
Twin Falls, Idaho 83303

B. Interest in Petition

As the Director is aware, the Coalition members hold both natural flow and storage water rights to the Snake River in Water District 01. These water rights are used by the Coalition's water users to irrigate approximately 600,000 acres in southern Idaho. The water rights are administered by the Water District 01 Watermaster, who accounts for the delivery of natural flow and storage water. The water district accounts for reach and gains and losses throughout the

Snake River and uses that information in its daily and final accounting. The Coalition is actively involved in the ongoing review of the accounting procedures as well as protecting its members' water rights by participating in contested cases and monitoring and protesting new and or changed water uses that could affect their water rights. *See e.g. United States v. Pioneer Irr. Dist.*, 144 Idaho 106 (2007) ("Irrigation districts act as trustees for the landowners managing the water right, and standing in place of the landowners in cases involving the appropriation of the water").

ASCC's letter appears to challenge the present method of accounting for losses within the At Blackfoot to Near Blackfoot reach of the Snake River. ASCC requests that the current method of accounting for those losses be changed. *See Order* at 1 ("The letter from ASCC demands changes to the way Water District 01 distributes natural flow in the Shelley to At Blackfoot reach"). Any change in the distribution of natural flow in this reach of the Snake River stands to impact the Coalition's water rights and the supply available under those rights. As such, the individual Coalition members should be allowed to intervene as a matter of right in this proceeding.

III. The Coalition's Petition Does Not Unduly Broaden the Issues.

The Coalition seeks intervention in this matter to protect the interests of the individual SWC members and their water rights. To date, no substantive motions have been filed and no pre-hearing conferences have been held. As such, no issues have yet been defined. Accordingly, the Coalition's petition does not unduly broaden the issues.

IV. The Coalition is Not Adequately Represented by Existing Parties

Presently, the only party to this proceeding is ASCC, which does not represent the Coalition's individual interests in this matter. ASCC is a separate entity and its letter addresses

the interests of its own water users and ASCC's water rights. These interests may not align with the interests of the Coalition. As such, the Coalition has a right to intervene to ensure its interests are adequately protected and represented.

CONCLUSION

The Coalition has submitted this timely Petition to Intervene in the above-captioned matter so that it may protect its individual members' direct and substantial interests. The Coalition has filed this joint petition in the interests of economy but would request the Director to specifically recognize each Coalition's member's right to participate individually in this proceeding, if deemed necessary at some point.

Since the Petition will not unduly broaden the issues and there is no existing party that adequately represents the Coalition's interests, intervention should be granted.

DATED this 20th day of March, 2017.

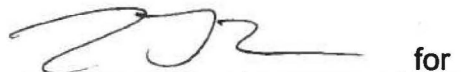
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for
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District and American Falls
Reservoir District #2*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2017, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition to Intervene* on the following by the method indicated:

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c/o Deborah Gibson
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Travis L. Thompson

Idaho Department of Water Resources Receipt

Receipt ID: C103226

Payment Amount \$175.00 Date Received 3/21/2017 10:54 AM Region STATE
Payment Type Check Check Number 1466
Payer BARKER ROSHOLT & SIMPSON LLP
Comments PROTEST/PETITION TO INTERVENE

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$175.00	PROTESTS	56103	0229	21		1155



Signature Line (Department Representative)