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DEPARTMENT OF
WATER RESOURCES

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Attorney for U.S. Department of the Interior, Bureau of Indian Affairs

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

IN THE MATTER OF PETITION FILED BY)	Docket No. P-WRA-2017-001
ABERDEEN-SPRINGFIELD CANAL)	
COMPANY REGARDING DISTRIBUTION)	BUREAU OF INDIAN AFFAIRS
OF NATURAL FLOW BY WATER DISTRICT)	PETITION TO INTERVENE
01)	
)	

The U.S. Bureau of Indian Affairs (“BIA”), pursuant to the Department’s Rules of Procedure 350 – 354 (IDAPA 37.01.01) and the Director’s *Notice of Pre-Hearing Conference; Notice of Hearing; Order Setting Deadlines for Petitions to Intervene* (“Order”) dated March 6, 2017, petitions the Director to intervene in the above-captioned matter.

Facts

This matter stems from an action by Aberdeen-Springfield Canal Company (ASCC), which submitted a letter to Lyle Swank, Water District 01 Watermaster seeking 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. On March 22, 2017, the Director held a pre-hearing conference and in that conference extended the date by which entities could file

petitions to participate in this matter to March 28, 2017.

Standard of Review

This petition to intervene is subject to the Department's Rule of Procedure 351, which states:

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.

Analysis

A. Name and Address

The name of the potential intervenor is the U.S. Bureau of Indian Affairs. The contacts are:

Michael Dammarell
Water Rights Specialist
U.S. Bureau of Indian Affairs
Northwest Region
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B. BIA's Petition to intervene is timely.

At the pre-hearing conference held by the Director on March 22, 2017, the Director extended the filing date for petitions to intervene to March 28, 2017. This petition to intervene is being filed prior to March 28, 2017, and is thus timely.

C. BIA claims a direct and substantial interest in the subject of ASCC's Demand.

BIA is the federal agency that Congress authorized to construct and operate the Fort Hall Irrigation Project (Project). In the 1990 Shoshone-Bannock Tribal Water Rights Settlement, the parties agreed that many of the water rights for this Project were to be held by the United States in trust for the Shoshone-Bannock Tribes (Tribes), including water rights from the Snake River in or near the reaches of the Snake River referenced by ASCC. In addition, under their water settlement, the Tribes have entitlements to water stored in American Falls and Palisades Reservoirs. Their settlement includes the right for the Tribes to establish a water bank and market their entitlement to stored water. *See In Re SRBA*, Revised Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin (August 12, 2014). Further, BIA also holds water rights from the Snake River in its own name to irrigate lands within that portion of the Project that are outside the boundaries of the Ft. Hall Indian Reservation.

As noted above, BIA holds natural flow Snake River water rights in trust for the Tribes and also for lands outside the Reservation. ASCC's letter raises questions about and requests changes in the accounting for losses in the Snake River at or near the reaches where BIA has established water rights. Any change in the distribution of natural flow in the reaches identified by ASCC could impact the Tribal water rights held in trust by BIA and the water rights held by BIA for the Project lands outside the Reservation. This circumstance, we believe, would warrant intervention by BIA as a matter of right in this proceeding.

D. This Petition does not unduly broaden the issues.

BIA seeks intervention in this matter to participate as needed to protect its interests and responsibilities and advance factual and legal arguments arising from the issues that ASCC has

presented to the Director. Accordingly, BIA does not seek to unduly broaden the scope of the issues raised by ASCC.

E. BIA is not adequately represented by existing parties.

BIA is the federal agency entrusted by Congress to manage and operate the federal Ft. Hall Irrigation Project. As part of those responsibilities and authorities, and also pursuant to the water rights decree referenced above, BIA, which holds title to the water rights for the Project, is entitled to assert in this matter its direct and substantial interests in the Project water rights. These interests and responsibilities, which as explained above could be impacted in the proceedings initiated by ASCC, are unique to BIA and cannot be delegated to another entity.

Conclusion

BIA respectfully submits this timely petition to intervene in the above-captioned matter so that it may protect its direct and substantial interest. Since the petition will not unduly broaden the issues and there is no existing party that adequately represents BIA's interests, intervention should be granted.

DATED this 24th day of March, 2017.

U.S. Department of the Interior
Office of the Regional Solicitor


Attorney for the U.S. Bureau of Indian Affairs

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2017, I served a true and correct copy of the foregoing *U.S. Bureau of Indian Affairs* 'Petition to Intervene on the following by the method indicated:

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Thank

Idaho Department of Water Resources Receipt

Receipt ID: C103255

Payment Amount \$25.00 Date Received 3/27/2017 9:47 AM Region STATE
Payment Type Check Check Number 4413
Payer MECHAM, DUANE
Comments BUREAU OF INDIAN AFFAIRS PETITION TO INTERVENE

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	PROTESTS	56103	0229	21		1155



Signature Line (Department Representative)