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OCT 26 2017

DEPARTMENT OF  
WATER RESOURCES

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Carey, Declo, Dietrich, Gooding, Hazelton,  
Heyburn, Jerome, Paul, Richfield, Rupert,  
and Wendell*

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

|  |   |                                 |
|--|---|---------------------------------|
|  | ) | Docket No. P-WRA-2017-002       |
|  | ) |                                 |
| IN THE MATTER OF THE PETITION          | ) | <b>CITIES OF BLISS, BUHL,</b>   |
| REGARDING STORAGE RESET IN WATER       | ) | <b>BURLEY, CAREY, DECLO,</b>    |
| DISTRICT 01 FILED BY MILNER IRRIGATION | ) | <b>DIETRICH, GOODING,</b>       |
| DISTRICT                               | ) | <b>HAZELTON, HEYBURN,</b>       |
|  | ) | <b>JEROME, PAUL, RICHFIELD,</b> |
|  | ) | <b>RUPERT, AND WENDELL</b>      |
|  | ) | <b>PETITION TO INTERVENE</b>    |
|  | ) |                                 |

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COME NOW the Cities of Bliss, Buhl, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, and Wendell (hereinafter "Coalition of Cities"), pursuant to IDAPA 37.01.01.350 -.354, and hereby file this *Petition to Intervene* in the above-captioned matter, which was noticed on October 5, 2017 by the Director of the Idaho Department of Water Resources ("Director" or "IDWR") in response to an August 18, 2017 letter ("Letter") submitted by Milner Irrigation District ("Milner").

## I. BACKGROUND

On August 18, 2017, Milner filed the Letter with IDWR “concerning anticipated surface water right administration this fall in Water District 01. This letter follow up on my October 7, 2014 letter on the same subject.” *Letter* at 1. The Letter goes on to say:

As you are aware various water users in Water District 01 have been negotiating and discussing the fall “storage reset” for purposes of water right administration in the context of the SRBA. The Court recently decreed the Basin 01 storage water rights last August. The Watermaster is bound to distribute water in accordance with the water right decrees pursuant to state law.

As we understand it, the Water District “resets” the storage water right accounts on September 15<sup>th</sup> each year for purposes of priority administration. In other words, when available natural flow exceeds the irrigation demand of senior water rights, the District distributes that water to storage water rights in priority, even if the right’s storage volume had already filled once for the year.

Through our research and discussions it is now known that the priority date used for purposes of the “reset” administration has changed over time. It is our understanding the Water District now uses the Lake Walcott priority (12/14/1909) when water is distributed to storage in the fall. According to the current District accounting records the Lake Walcott storage right completely filled earlier in 2017. As such we are unaware of any law that would authorize the Water District to begin filling that water right in priority for a “second time” this calendar year (i.e. beginning on September 15<sup>th</sup>).

The administration is of particular interest to Milner because the reset to the Walcott priority has in effect curtailed Milner’s natural flow water right 1-17 (November 14, 1916 priority date in recent years. Instead of being allowed to divert available natural flow to deliver to its landowners, Milner has been forced to exhaust its storage water for those deliveries while the Water District distributes the natural flow to the Walcott storage right (for the second time in the same calendar year).

The fall storage “reset” is not authorized in the current storage water right partial decrees, including the Lake Walcott storage right (1-219). Therefore, if the conditions arise this fall, we would request the Water District and Director ensure Milner receives the appropriate natural flow as required by Idaho law.

*Letter* at 1-2.

On October 5, 2017, the Director issued a *Notice of Pre-Hearing Conference; Order Setting Deadline for Petitions to Intervene*. According to the same, the Director has treated the

Letter as a “petition as defined by the Department’s Rule of Procedure 230. *See* IDAPA 37.01.01.230. The Director will conduct formal proceedings to address the petition in accordance with the Department’s Rule of Procedure 104 (IDAPA 37.01.01.104). The Director will schedule a prehearing conference and order that petitions to intervene be filed by the day prior to the prehearing conference pursuant to the Department’s Rule of Procedure 352 (IDAPA 37.01.01.352).” *Notice of Pre-Hearing Conference; Order Setting Deadline for Petitions to Intervene* at 1 (emphasis added). The prehearing conference will take place on November 13, 2017, at 1:30 p.m., at IDWR’s State Office. *Id.*

According to IDWR’s website, on October 17, 2017, the Shoshone-Bannock Tribes petitioned the Director to intervene in the above-captioned proceeding. According to IDWR’s website, the Director has not ruled on the Shoshone-Bannock Tribes’ petition to intervene.

## II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is “timely” filed, IDAPA 37.01.01.352, and that it has a “direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . .” IDAPA 37.01.01.353. The Coalition of Cities meets these requirements.

First, the Coalition of Cities has a direct and substantial interest in the outcome of the hearing. The Coalition of Cities owns ground water and surface water rights above Milner Dam that could be affected by any change in Water District 01 water right administration and/or accounting. Additionally, the Coalition of Cities owns shares and interests in canal companies and irrigation districts located above Milner Dam, which could also be affected by any change in Water District 01 water right administration and/or accounting. The Coalition of Cities does not know, at this time, how Milner’s Letter, which has been treated as a petition by the Director, will

affect the Coalition of Cities' interests. As such, the Coalition of Cities has a direct and substantial interest in the outcome of the above-captioned proceeding. Moreover, given the early stages of the proceeding and the scope of the issues raised, the Coalition of Cities' participation will not broaden the issues. Therefore, the Coalition of Cities should be granted intervention.

Second, the filing of the Coalition of Cities' petition to intervene is timely. A petition to intervene is timely 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 (emphasis added). Here, the Director has scheduled the prehearing conference to take place on November 13, 2017. According to the Director, and in order to be timely, petitions to intervene must "be filed by the day prior to the prehearing conference." *Notice of Pre-Hearing Conference; Order Setting Deadline for Petitions to Intervene* at 1. Because the Coalition of Cities are petitioning the Director to intervene in the above-captioned proceeding prior to November 12, 2017, the Coalition of Cities' petition to intervene is timely, and intervention should be granted.

### III. CONCLUSION

Based on the foregoing, the Coalition of Cities meets the standards for intervention, and respectfully requests that the Director grant its petition to intervene in this proceeding and fully participate in all matters that may arise.

Respectfully submitted this 25<sup>th</sup> day of October, 2017.

McHugh Bromley, PLLC



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CHRIS M. BROMLEY

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of October, 2017, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

|  |  |
|--|--|
| Director Gary Spackman<br>IDAHO DEPARTMENT OF WATER RESOURCES<br>PO Box 83720<br>Boise, ID 83720                   | X US Mail, Postage Paid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Hand-Delivered<br><input type="checkbox"/> Electronic Mail |
| Travis L. Thompson<br>Barker Rosholt & Simpson, LLP<br>163 Second Ave. West<br>P.O. Box 63<br>Twin Falls, ID 83303 | X US Mail, Postage Paid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Hand-Delivered<br><input type="checkbox"/> Electronic Mail |
| Lyle Swank<br>Water District 01 Watermaster<br>900 N. Skyline Dr., Ste. A<br>Idaho Falls, ID 83402-1718            | X US Mail, Postage Paid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Hand-Delivered<br><input type="checkbox"/> Electronic Mail |
| William Bacon<br>Shoshone-Bannock Tribes<br>P.O. Box 306<br>Fort Hall, ID 83203                                    | X US Mail, Postage Paid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Hand-Delivered<br><input type="checkbox"/> Electronic Mail |
| Edmund Clay Goodman<br>Hobbs, Straus, Dean & Walker LLP<br>806 SW Broadway, Ste. 900<br>Portland, OR 97205         | X US Mail, Postage Paid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Hand-Delivered<br><input type="checkbox"/> Electronic Mail |



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