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DEPARTMENT OF  
WATER RESOURCES

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ATTORNEYS FOR THE CITY OF POCATELLO

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

IN THE MATTER OF THE PETITION )  
REGARDING STORAGE RESET IN ) Docket No. P-WRA-2017-002  
WATER DISTRICT 01 FILED BY )  
MILNER IRRIGATION DISTRICT ) **CITY OF POCATELLO'S PETITION TO**  
 ) **INTERVENE**  
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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 October 5, 2017, the Director of the Department issued a *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* ("Order") in this matter. The Order initiated formal proceedings pursuant to IDAPA 37.01.01.104 in response to an August 18, 2017 letter from Milner Irrigation District ("Petition"). The Order states that petitions to intervene must be filed by November 12, 2017.

## ARGUMENT

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.

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.

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

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. Pocatello holds a *Contract Concerning Storage Capacity in Palisades Reservoir, and Related Matters, between the United States Department of the Interior Bureau of Reclamation and the City of Pocatello*, No. 14-06-100-1825, dated January 8, 1960 (“Contract”). Pocatello’s contract interest is for a portion of the yield from the 1939 priority storage water right, 50,000 acre feet of storage in the Palisades Reservoir. The Bureau of Reclamation holds the SRBA partial decrees for the Palisades Reservoir water rights for the benefit of water users like Pocatello. *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 115, 157 P.3d 600, 609 (2007). 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 in addition to wells in the Eastern Snake Valley Aquifer, and other surface water rights.

The Petition raises issues related to reset administration of water rights, including storage rights, in Water District 1. Pocatello has a direct and substantial interest in any proceeding

addressing such administration. The Petition states that fall storage reset in Water District 01 is not authorized by Idaho law and challenges the Department's past administration in Water District 01, alleging that there is no "statute, rule, or caselaw that would authorize such distribution." Petition at 2. Pocatello's Contract is directly impacted by administration of storage water rights in Water District 01, which affects the amount of water Pocatello is entitled to under its Contract.

Further, Pocatello's junior water rights described above will be affected by any change in administration of Milner Irrigation District's ("Milner") 1-17 water right, a subcase claim which Pocatello was a party to in the Snake River Basin Adjudication. Pocatello as a junior groundwater user has been subject to delivery calls by Milner involving its 1-17 right (Surface Water Coalition ("SWC") delivery call) for over 10 years. Any change in administration of reset that affects the amount of water Milner is entitled to under its 1-17 natural flow right (or other senior storage and natural flow water rights involved in the SWC delivery call) will affect the amount of mitigation water junior water users such as Pocatello are required to provide.

**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. Pocatello has a separate and unique interest in protecting its Contract and water rights in this proceeding, and therefore intervention is necessary to protect Pocatello's Contract.

**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. Further, Pocatello's Petition is filed before the Order's intervention deadline of November 12, 2017.

**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, 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 30th day of October, 2017.

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 30<sup>th</sup> day of October, 2017, I caused to be served a true and correct copy of the foregoing **CITY OF POCATELLO'S MOTION TO INTERVENE** in **Docket No. P-WRA-2017-002** upon the following by the method indicated below:

  
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 Sarah Klahn, White & Jankowski, LLP

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