

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Jonas A. Reagan, ISB#¹
BARKER ROSHOLT & SIMPSON LLP
163 Second Avenue West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

*Attorneys for American Falls
Reservoir District #2 and Minidoka
Irrigation District*

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**DEPARTMENT OF
WATER RESOURCES**

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

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**PETITION TO INTERVENE BY
A&B IRRIGATION DISTRICT,
AMERICAN FALLS RESERVOIR
DISTRICT #2, BURLEY IRRIGATION
DISTRICT, MINIDOKA IRRIGATION
DISTRICT, NORTH SIDE CANAL
COMPANY, and TWIN FALLS CANAL
COMPANY**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley
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; Order Setting Deadline for Petitions to Intervene* (the "Order") dated October 5,

¹ Mr. Reagan is currently practicing under a legal intern limited license (I.B.C.R. 226). Mr. Reagan also recently passed the bar exam and is the process of being admitted to the Idaho State Bar.

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 solely for convenience and in the interests of filing efficiency. The individual Coalition members seek to intervene as individual parties and reserve the right to participate as individual parties if deemed necessary at any point during this proceeding.

FACTUAL / PROCEDURAL BACKGROUND

On August 18, 2017, Milner Irrigation District ("Milner") submitted a letter to the Director of the Idaho Department of Water Resources ("IDWR") questioning "fall storage 'reset' for purposes of water right administration" in Water District 01, stating it is "not authorized in the current storage water right partial decrees."² The "storage reset" provision concerns the administration of storage water rights in Water District 01, including those decreed water rights in which the Coalition have legal interests in: Jackson Lake, Palisades, American Falls, and Lake Walcott. "Storage reset" in the context of this case means the resetting of the storage water right accounts to zero, in order to begin accruing water to the storage accounts for the following year's use. It is the Coalition's understanding that historically, prior to the development of the computerized accounting program, the Watermaster did not "reset" the storage water rights during the irrigation season. In other words, if the storage water rights came back into priority and there was available space in the reservoir and available natural flow, certain storage water rights were allowed to accrue additional water.³

² As the entity sending the letter, it is counsel's understanding that Milner Irrigation District is already a "party" to this contested case.

³ The Coalition is not aware of the Lake Walcott priority (1909) coming back into priority for administration in the fall prior to 1988.

Recent information provided by Water District 01 shows that about ten years following the initial use of the computerized accounting program, the Watermaster began to “reset” the storage water right priorities during the irrigation season even if the reservoirs had already filled earlier that year, resulting in a “reset” of the priority of the storage water rights at various times in the fall. This “storage reset” has resulted in the curtailment of natural flow rights that would otherwise be in priority and used to satisfy irrigation demands. The timing and the priority used for “reset” has also changed over time.

On October 5, 2017, the Director issued the *Order* setting a deadline for any petition to intervene and a pre-hearing conference for November 13, 2017.

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.

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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 November 13, 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

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

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

B. Interest in Proceeding

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 as required by Idaho law. 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”).

Milner’s letter concerns the administration of storage and natural flow water rights during the irrigation season, particularly in the fall. The Coalition members hold both natural flow and storage water rights that are affected by the methods used in water right administration, including any “storage reset” provision. As such, the individual Coalition members have particularized interests in the outcome of this proceeding and should be allowed to intervene as a matter of right.

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

The Coalition seeks intervention in this matter to protect the members’ individual interests, including their respective water rights. To date, the Coalition is unaware of any substantive motions 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 currently at issue in this proceeding.

IV. The Coalition is Not Adequately Represented by Existing Parties

Presently, the only formal party to this proceeding is Milner, which does not represent the other individual Coalition members’ interests in this matter. The Coalition members are separate legal entities that hold unique natural flow and storage water rights. Although the Coalition may have similar interests in certain matters or issues, it is not certain as to how this case will proceed or what positions will be advanced throughout the proceeding.

As such, each Coalition member has a right to intervene to ensure its individual interests and legal rights 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 the respective 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.

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 6th day of November, 2017.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

*Attorneys for A&B Irrigation District,
Burley Irrigation District, North Side
Canal Company, and Twin Falls
Canal Company*

FLETCHER LAW OFFICE



for

W. Kent Fletcher

*Attorneys for Minidoka Irrigation
District and American Falls
Reservoir District #2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of November, 2017, I caused to be served a true and correct copy of the foregoing **PETITION TO INTERVENE** by the method indicated below, and addressed to each of the following:

Director Gary Spackman c/o Kimi White IDWR 322 E Front St Boise, ID 83720-0098 *** service by U.S. Mail and electronic mail gary.spackman@idwr.idaho.gov kimi.white@idwr.idaho.gov garrick.baxter@idwr.idaho.gov		



Travis L. Thompson