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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
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**PALISADES WATER USERS, INC.'S
PETITION TO INTERVENE**

Palisades Water Users, Inc. ("PWUI"), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., petitions to intervene in the above-entitled matter pursuant to the Rules of Procedure of the Idaho Department of Water Resources, specifically IDAPA 37.01.01.350—37.01.01.354. PWUI seeks to intervene to represent and protect its interests.

I. BACKGROUND

On August 18, 2017, Milner Irrigation District ("Milner") submitted a letter to the Idaho Department of Water Resources ("IDWR" or "Department") concerning the "fall 'storage reset issue.'" IDWR treated the letter as a petition initiating the above-entitled contested case, and issued a *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (the "Order") on October 5, 2017. The Order contained a deadline of Sunday, November 12, 2017, for

petitions to intervene to be filed. The Order also provided notice of a status conference to be held on Monday, November 13, 2017, at 1:30 p.m.

II. LEGAL STANDARD

A party may intervene in a proceeding under certain circumstances. IDAPA 37.01.01.350.

Rule 353 of the Idaho Department of Water Resources Rules of Procedure provides:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353. Thus, the analysis of a petition to intervene requires consideration of: (a) whether it is timely, (b) the potential intervenor showing a "direct and substantial interest in any part of the subject matter of a proceeding," (c) a showing that the intervention would "not unduly broaden the issues," and (d) whether the potential intervenor's "interest is adequately represented by existing parties." *Id.*

III. ARGUMENT

A. PWUI's petition is timely.

The rules provide further specificity regarding timeliness. A petition to intervene is timely filed 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.

This *Petition* is filed before the prehearing conference currently scheduled for November 13, 2017, and is thus timely.

B. PWUI has a direct and substantial interest in the subject matter of this proceeding.

PWUI holds contracts for water accruing to storage space in Palisades Reservoir. PWUI entered into contract no. 14-06-100-1881 on March 26, 1960, and acquired storage space equal to 4.1442% of the active storage space in the Palisades Reservoir (which has an estimated active storage capacity of 1,200,000 acre-feet). Accordingly, PWUI's share of such storage space was to be treated under this contract as 49,730 acre-feet of the active capacity of Palisades Reservoir.

Later, on March 16, 1973, PWUI accepted an assignment of the spaceholder contract previously held by Shattuck Irrigation Company under contract no. 14-06-W-31, dated December 12, 1952 (and amended on February 13, 1963), where Shattuck Irrigation Company had acquired 0.325% of the active storage capacity of Palisades Reservoir, or 3,900 acre-feet of such active storage capacity. Under both contracts, PWUI is the holder of 53,630 acre-feet of space in Palisades Reservoir.

Milner's demand seeks a determination of the storage reset date utilized by Water District 01. A decision on this issue will directly impact PWUI because the reset date issue possibly change the accounting practices utilized by Water District 01 to determine the yield of storage water to PWUI's storage space. As a result, PWUI has a direct and substantial interest in the subject matter of this proceeding.

C. PWUI's intervention will not unduly broaden the issues involved in this proceeding.

Presently, this proceeding is in its very early stages, as no contested matter has been addressed and no prehearing conferences have been held. The only issue presently raised by Milner is the storage reset date, and PWUI does not intend to raise any additional issues at the present time. Therefore, PWUI's intervention will not unduly broaden the issues.

D. PWUI's interest is not adequately represented by existing parties.

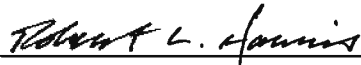
As the only current party to this matter, Milner does not represent the interests of PWUI. Furthermore, Milner's requested relief to alter or amend the storage reset date could negatively impact PWUI storage water yield. For this reason, PWUI's interests are not adequately represented by the existing party to this matter.

Additionally, other potential intervenors cannot adequately represent PWUI because none of these potential intervenors are parties to PWUI's contracts described herein. The other potential intervenors have their own property interests to protect, and are not in a position to also protect PWUI's interests. The intervention of PWUI is necessary to adequately represent and protect their unique interests.

IV. CONCLUSION

For the foregoing reasons, PWUI has satisfied the applicable rules regarding intervention and its petition should be granted to allow PWUI to intervene in this proceeding and fully participate in all matters that may arise.

Dated this 10th day of November, 2017.



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAIN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2017, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed by the methods indicated.

Document Served: PWUI's PETITION TO INTERVENE

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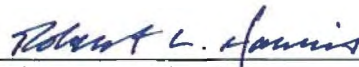
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