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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 REGARDING) **Docket No. P-WRA-2017-002**
STORAGE RESET IN WATER DISTRICT 01)
FILED BY MILNER IRRIGATION) **BUREAU OF INDIAN AFFAIRS**
DISTRICT) **PETITION TO INTERVENE**
)

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 October 5, 2017, petitions the Director to intervene in the above-captioned matter.

Background

This matter stems from an action by Milner Irrigation District (“Milner”), which submitted a letter to the Idaho Department of Water Resources (“Department”) on August 18, 2017. As explained in the Notice of Prehearing, Milner asserts that “the ‘fall storage ‘reset’ for purposes of water right administration’ in Water District 01 ‘is not authorized in the current storage water right partial decrees....’”

The issue whether Water District 01 is authorized to establish and implement a reset has been under close review by BIA. BIA, acting through counsel, has participated in extensive

discussions over the past several months with several other entities interested in the outcome of this issue. In his determination to initiate a contested case based on Milner's August 18th letter, the Director stated that he will "conduct formal proceedings to address the petition in accordance with the Department's Rule of Procedure 104 (IDAPA 37.01.01.104)." Accordingly, the Director has determined that the Department will consider Milner's assertions concerning Water District 01's use of a reset of storage water right accounts on September 15th each year for purposes of priority administration.

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:

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B. BIA's Petition to intervene is timely.

In the Director's Notice dated October 17, 2017, the Director set December 12, 2017, as the filing deadline to petition to intervene in this matter. This petition on behalf of the Bureau of Indian Affairs has been filed in compliance with this deadline.

C. BIA claims a direct and substantial interest in the subject of Milner'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 Milner. In addition, under their water settlement, the Tribes have entitlements to water stored in American Falls and Palisades Reservoirs referenced by Milner. Their settlement includes the right for the Tribes to establish a water bank and market their entitlement to this stored water that is not needed for Project purposes. *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).

Milner's letter raises questions about the rights established in the above referenced Revised Partial Final Consent Decree. A change in Water District 01's reset provisions for filling

reservoir storage space identified by Milner could impact the Tribal water rights held in trust by BIA and the water rights held by BIA for the lands served by the Project. 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 Milner has presented to the Director. Accordingly, BIA does not seek to unduly broaden the scope of the issues raised by Milner.

E. BIA is not adequately represented by existing parties.

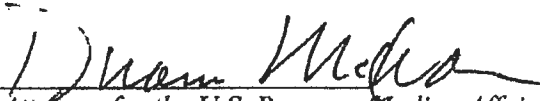
BIA is the federal agency entrusted by Congress to manage and operate the federal Ft. Hall Irrigation Project. As part of those responsibilities and authorities, and also pursuant to the water rights decree referenced above, BIA, which holds legal title to the water rights for the Project, is entitled to assert in this matter its direct and substantial interests in the Project water rights. These interests and responsibilities (including, but not limited to, trust responsibilities owed to the Tribes), which as explained above could be impacted in the proceedings initiated by Milner, are unique to BIA and cannot be represented by or 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 9th Day of November, 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 a copy of the foregoing *U.S. Bureau of Indian Affairs' Petition to Intervene* was delivered by U.S. and electronic mail this 13th day of November, 2017, as follows:

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Dated this 13th day of November, 2017



Nancy Rae Smith
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