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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
 FOR PERMITS FOR THE DIVERSION
 AND USE OF SURFACE AND
 GROUND WATER WITHIN THE
 SNAKE RIVER BASIN

**SURFACE WATER COALITION'S
 PETITION TO INTERVENE**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner 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 Procedural Rules 350 through 354 of the Idaho Department of Water Resources ("Department" or

“IDWR”), IDAPA 37.01.01.350 to 354, and hereby petition 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.

BACKGROUND

On October 21, 2022, the Director issued an *Amended Snake River Basin Moratorium Order* (“Amended Moratorium Order”). Since that time a number of entities have challenged the Amended Moratorium Order and have requested a hearing pursuant to Idaho Code § 42-1701A(3). Other entities have also filed petitions to intervene. IDWR recently completed published notice of the Amended Moratorium Order in November. No pre-hearing conference or other deadlines have been established yet in this matter.

STANDARD OF REVIEW

Entities that are “not already a party to a contested case and who ha[ve] a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case.” IDAPA 37.01.01.350. A timely filed petition to intervene showing “a direct and substantial interest in any part of the subject matter of a contested case” that “does not unduly broaden the issues” must be granted “subject to reasonable conditions, unless the applicant’s interest is adequately represented by existing parties.” IDAPA 37.01.01.353. “Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice.” IDAPA 37.01.01.352.

The Department's Rules of Procedure provide the following for persons seeking to intervene in a proceeding:

Petitions to intervene must comply with Rules 52, 200, and 300. 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.

IDAPA 37.01.01.351.

ARGUMENT

The Coalition's *Petition to Intervene* is timely because no formal hearing or initial prehearing conference has yet been set or conducted in this matter, and the Department has not issued any order or notice establishing a different time for filing a petition to intervene. For the reasons discussed below, the Coalition's intervention should be granted because its members have a direct and substantial interest in the subject matter of this contested case, the Coalition's participation will not unduly broaden the issues, and the Coalition's interest is not adequately represented by any existing parties.

I. The Coalition's Direct and Substantial Interest.

A. Name and Address

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Justin Temple, Manager
P.O. Box 675
Rupert, Idaho 83350

American Falls Reservoir District #2
Kevin Lakey, Manager
409 N. Apple St.
Shoshone, Idaho 83352

Burley Irrigation District
Brent Bowen, Director
246 E 100 S
Burley, Idaho 83318

Twin Falls Canal Company
Jay Barlogi, 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

Milner Irrigation District
Jeff War, Manager
5294 E 3610 N
Murtaugh, Idaho 83344

B. Interest in Proceeding

The Coalition members hold both decreed natural flow and storage water rights in the Upper Snake River Basin under which they divert for delivery of water to their respective landowners and shareholders in their projects. These water rights are used by the Coalition's water users to irrigate approximately 600,000 acres in southern Idaho. The Coalition is actively involved in matters protecting their members' water rights by participating in contested cases and monitoring and protesting new and or changed water uses in the basin. *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"). The water rights represented valuable property right interests that are protected by state law. *See* I.C. § 55-101.

The Coalition seeks to intervene to protect the interests of its landowners and shareholders that will be impacted by the Amended Moratorium Order.

II. 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 and the contested case is the very early stages. Accordingly, the Coalition's petition does not unduly broaden the issues currently at issue in this proceeding.

III. The Coalition is Not Adequately Represented by Existing Parties

The municipalities and others that have appeared or intervened in this matter do not represent the individual Coalition members' interests in this matter. The Coalition members are separate legal entities that hold unique natural flow and storage water rights in the Upper Snake River Basin. 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 December, 2022.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson
*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation
District, NSCC and TFCC*

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 December, 2022, I caused to be served a true and correct copy of the foregoing **SURFACE WATER COALITION’S PETITION TO INTERVENE** by the method indicated below, and addressed to each of the following:

| | | |
|--|--|---|
| <p>Director Gary Spackman IDWR 322 E Front St Boise, ID 83720-0098 *** service by U.S. Mail and electronic mail file@idwr.idaho.gov gary.spackman@idwr.idaho.gov garrick.baxter@idwr.idaho.gov</p> | <p>Candice McHugh Chris Bromley McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise ID 83702 cmchugh@mchughbromley.com cbromley@mchughbromley.com</p> | <p>Michael P. Lawrence Charlie S. Baser Givens Pursley, LLP P.O. Box 2720 Boise, ID 83701-2720 mpl@givenspursley.com csb@givenspursley.com</p> |
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