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DEPARTMENT OF
WATER RESOURCES

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ATTORNEYS FOR THE CITY OF POCATELLO

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

IN THE MATTER OF MODIFYING)
THE BOUNDARIES OF THE)
AMERICAN FALLS GROUND) **CITY OF POCATELLO'S PETITION TO**
WATER MANAGEMENT AREA) **INTERVENE**
_____)

The City of Pocatello ("Pocatello") petitions to intervene in this matter pursuant to the Rules of Procedure of the Idaho Department of Water Resources ("Department"), and the Director's *Scheduling Order* of December 27, 2013. The grounds for this Petition are stated below.

ARGUMENT

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

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.

IDAPA 37.01.01.350.

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.

The American Falls Ground Water Management Area (“American Falls GWMA”) was created by the Director of the Department in an *Order in the Matter of Designating the American Falls Ground Water Management Area*, August 3, 2001. On August 29, 2003 the Director issued a *Final Order Modifying the Boundaries of the American Falls Ground Water Management Area* (“2003 Order”). The 2003 Order modified the boundaries of the GWMA to exclude those portions that overlapped with Water District Nos. 120 and 130.

Pocatello is a municipal corporation of the State of Idaho which diverts its municipal water supply from wells in the Eastern Snake Plain Aquifer (“ESPA”) within Water District 120 and within the American Falls GWMA. See Exhibit A, Affidavit of Gregory K. Sullivan, P.E. Pocatello also owns and operates associated surface water rights, including rights to water stored in Palisades Reservoir. Pocatello’s former counsel filed a Notice of Appearance on August 31, 2001 in the above-captioned matter without objection from any party.

Because Pocatello diverts water from the American Falls GWMA, it has a direct and substantial interest in the subject matter of this proceeding. The initial designation of the American Falls GWMA impacted the administration of ground water rights of Pocatello. Thus, challenges to the 2003 Order may impact Pocatello’s use of its water rights. Pocatello’s wells may be subject to administration in response to delivery calls by senior priority surface or ground water appropriators in the ESPA. Pocatello’s water rights are thus directly impacted by the designation and modification of the American Falls GWMA, and impacts on administration of

said actions by the Director.

Further, Pocatello has an interest in the resolution of legal issues raised by the Petition of North Side Canal Company and Twin Falls Canal Company—namely, whether the Director properly exercised his discretion to modify the boundaries of the American Falls GWMA based on the creation of overlapping water districts. *See generally* Petition to Schedule Hearing in Contested Case, Aug. 15, 2013. Pocatello has litigated this question on two prior occasions, and has an interest in protecting those results.

The Surface Water Coalition (“SWC”) attempted to have the entire ESPA designated as a ground water management area in the SWC Delivery Call proceeding. *See* Petition for Water Right Administration and Designation of the Eastern Plain Aquifer as a Ground Water Management Area, *In the Matter of the Petition for Administration by 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*, Jan. 14, 2005. There, the Director denied the request because water districts were expected to be in place across all of the ESPA prior to the irrigation season of 2006, and therefore creation of a ground water management area would provide no additional relief to the SWC. Order at 18–19, Feb. 14, 2005. The Hearing Officer in the SWC Delivery Call proceeding did not disturb this finding, and it was not appealed.

A&B Irrigation District also petitioned the Director in the context of its delivery call to designate the ESPA as a ground water management area. The Director denied the request, and the SRBA Court affirmed. Memorandum Decision and Order on Petition for Judicial Review at 43–48, Case No. 2009-000647, May 4, 2010.

Further, 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 is not a member of the Idaho Ground Water Appropriators, Inc.—as such, without intervention Pocatello has no way of protecting its water rights. Pocatello's water rights are separate and distinct property rights that can only be adequately represented by Pocatello.

II. Pocatello's petition is timely.

Under Rule 352 petitions to intervene are timely if they are filed at least fourteen (14) 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 this Petition is filed. As such, Pocatello's Petition is timely.

III. Pocatello's participation will not unduly broaden the issues before the Department.

Pocatello does not intend to raise issues outside those raised by the Director or other parties in this matter, or issues unrelated to applicable Idaho statutes and procedural rules. Accordingly Pocatello's intervention will not unduly broaden the issues. IDAPA 37.01.01.353.

CONCLUSION

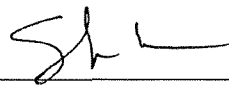
Pocatello has met the standards set forth under Rules 352 and 353 of the Department's Rules and should be allowed to intervene in the above-captioned action.

Respectfully submitted this 6th day of January, 2014.

CITY OF POCATELLO ATTORNEY'S OFFICE

By 
A. Dean Tranmer

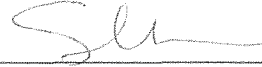
WHITE & JANKOWSKI

By 
Sarah A. Klahn

ATTORNEYS FOR CITY OF POCATELLO

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2014, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Petition to Intervene for IDWR Matter of Modifying the Boundaries of the American Falls Ground Water Management Area** upon the following by email and original mailed to IDWR:



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