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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF POCA TELLO, ET AL.,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, and GARY SPACKMAN, in
his capacity as Director of the Idaho
Department of Water Resources.

Respondents.

Case No. CV01-23-8258

**SURFACE WATER COALITION'S
MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE**

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY AND FOR THE BENEFIT OF
A&B IRRIGATION DISTRICT,
AMERICAN FALLS RESERVOIR
DISTRICT NO. 2, BURLEY IRRIGATION
DISTRICT, MILNER 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, Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company (hereafter collectively “Surface Water Coalition”, “Coalition”, or “SWC”), by and through their attorneys of record, and submit this *Memorandum in Support of Motion to Intervene*.

I.
INTRODUCTION AND PROCEDURAL HISTORY

On or about May 19, 2023 Petitioners the City of Pocatello et al. (“Petitioners”) filed a *Complaint for Declaratory Relief, Petition for Writ of Prohibition, and Petition for Writ of Mandamus*. The Petitioners also filed a *Motion for Order to Show Cause* and other supporting declarations. That same day Petitioners Bingham Ground Water District and Bonneville-Jefferson Ground Water District joined in a separate petition for judicial review concerning the same underlying matters. *See IGWA et al. v. IDWR*, Ada County Dist. Ct., Fourth Jud. Dist., Case No. CV01-23-8187. Both cases are pending before this Court. Petitioners are seeking various forms of relief to stop the administrative hearing that is set to begin in less than a week. IDWR recently filed *Respondents’ Motion and Supporting Points to Vacate Show Cause Hearing* on May 26, 2023.

The Petitioners’ lawsuit concerns orders issued by the Director of the Idaho Department of Water Resources (“IDWR”) this spring in an underlying conjunctive administration proceeding. The proceeding involves the Coalition’s water delivery call pursuant to the Conjunctive Management Rules (“CM Rules”). The Director issued certain orders on April 21, 2023 and set an administrative hearing for June 6-10, 2023. *See Exs. A-1, A-2, and A-3 to Klahn Dec.* Petitioners and other parties, including the Coalition, requested a hearing pursuant to

section 42-1701A(3). *See* Ex. A-8, A-9, A-12, A-16, A-17, A-26, A-28 to *Klahn Dec.* The parties have engaged in discovery and just yesterday filed extensive lists of witnesses, exhibits, and expert reports with IDWR. *See* Ex. A to *Thompson Dec.*

The Coalition is comprised of seven individual canal companies and irrigation districts located in the Magic Valley. The Coalition holds individual natural flow and storage water rights to the Snake River and relies upon these supplies to deliver water to their water users. *See generally; A&B Irr. Dist. et al. v. IDWR*, 155 Idaho 640, 315 P.3d 828 (2013). The outcome of the declaratory relief action will impact conjunctive administration of the Coalition's water rights during the 2023 irrigation season as it impacts the Director's administrative proceedings and timing of orders in that case. As such, the Coalition has a substantial interest in this case.

Accordingly, the Coalition seeks to intervene and participate in this litigation for the purpose of protecting their water rights, protectable real property interests, and any delay in conjunctive administration that may result from the Petitioners' actions here. The Coalition respectfully requests the Court to grant its motion accordingly.

II. ARGUMENT

1. THE COALITION IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO I.R.C.P. § 24(a)(2).

Idaho's civil rules provide for intervention of right in a civil proceeding, as follows:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the state of Idaho confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

I.R.C.P. 24(a).

Considering the procedural history of when this case was initiated, and its current status, the interveners meet the requirement for a timely application for intervention. Moreover, the Coalition has an “interest” relating to the subject of this action as it has requested conjunctive administration of groundwater rights in the ESPA and has had a pending delivery call on junior groundwater rights since 2005. The Coalition is a party to the underlying administrative proceeding and has requested a hearing on the Director’s orders as well. *See* Ex. A-28 to *Klahn Dec.* The Director’s actions in response to the Coalition’s call, including the orders issued this spring, directly affect the Coalition’s senior water rights and conjunctive administration during the 2023 irrigation season.

The Coalition also meets the requirements to intervene as matter of right pursuant to I.R.C.P. 24(a)(2). To meet the requirements of I.R.C.P. 24(a)(2), an applicant must do the following: 1) file a timely motion; 2) claim an interest in the property subject to the action; 3) demonstrate that it is so situated that the outcome will impair or impede its ability to protect that interest; and 4) that interest in not adequately protected by existing parties.

The motion to intervene is timely based upon the procedural history of this case and current status. The Idaho Supreme Court has noted that “timeliness” for purposes of a motion to intervene, is “determined from all the circumstances: the point to which the suit has progressed is not solely dispositive.” *State v. United States*, 134 Idaho 106, 109 (2000). The complaint in the instant case was filed on May 19, 2023, less than two weeks ago. The Cities noticed up a hearing on their motion for order to show cause for June 1, 2023 at 1:30 p.m. IDWR just filed a motion to vacate on May 26, 2023. Given that the litigation is in the very earliest stages and no contested proceedings have taken place, the court should find that the motion to intervene is timely.

Second, the Coalition has an interest that is subject to this action. Courts have further defined an “interest” for purposes of Rule 24(a) as a “significant protectable interest”, *Donnelly v. Glickman*, 159 F.3d 409 (9th Cir. 1998). This action seeks relief concerning an administrative hearing before IDWR to which the Coalition is a party. The Coalition holds various natural flow and storage water rights to the Snake River and the decision could impact conjunctive administration of those water rights during the 2023 irrigation season. These water rights represent real property interests in Idaho. *See* I.C. § 55-101; *Olson v. Idaho Dept. of Water Resources*, 105 Idaho 98, 101 (1983). As such, the Coalition has a “legal”, and therefore a “significant” and “protectable” interest in this action.

The Coalition’s ability to protect and use its water right will or may be “impaired or impeded” by the outcome of this action. The Idaho Supreme Court has noted that:

The language of Rule 24(a)(2) indicates that the drafters did not contemplate that the petitioner in intervention be required to show . . . that the petitioner in the intervention “is” bound by the judgment . . . It was sufficient that . . . the applicant “may” be bound by a judgment in the action.

Duff v. Draper, 96 Idaho 299, 302 (1974). Petitioners are seeking to stop the Director from holding an administrative hearing regarding the various orders issued in April. Whereas the Director has stated that he will not issue any curtailment orders until after the hearing is held, there is no question the Coalition will be affected by the outcome of this decision. *See* Ex. B to *Thompson Dec; Order Denying Motion for Reconsideration* at 6 (“The Director will not be issuing a curtailment order until after a hearing in this matter so that junior ground water users have the opportunity for a hearing before being curtailed”).

Finally, none of the other parties to this action adequately represent the Coalition’s interests. Similar to the above “may be bound” standard, the *Duff* Court noted that an applicant need only “show that the representation ‘may’ be inadequate.” 96 Idaho at 302. While IDWR

may have an interest concerning its administrative procedures and overall administration of water rights, it does not “represent” the interests of the Coalition and its individual private property right interests. Furthermore, IDWR may not represent the Coalition’s position concerning the Petitioners’ requests for relief in all matters, particularly when the consequences of those requests could further injure the Coalition’s senior water rights this summer.

As set forth above, the Coalition meets all of the requirements under I.R.C.P. 24(a) to intervene in this proceeding as a matter of right. It is generally recognized that courts should be liberal in permitting parties to intervene and look with favor on intervention in proper cases—and that if there is any doubt, intervention should usually be permitted. *See City of Boise v. Ada County (In re Facilities & Equip. Provided by the City of Boise)*, 147 Idaho 794, 803, 215 P.3d 514, 523, (2009).

2. ALTERNATIVELY, THE COALITION SHOULD BE ALLOWED TO PERMISSIVELY INTERVENE UNDER I.R.C.P. 24(b).

In the event the Court denies intervention by right, the Coalition alternatively requests permissive intervention under I.R.C.P. 24(b). Rule 24(b) provides the following:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant’s claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

I.R.C.P. 24(b).

The Idaho Court of Appeals, in *In re Doe*, 134 Idaho 760 (Ct. App. 2000), interpreted I.R.C.P. 24(b) to establish the following test for an applicant seeking permissive intervention:

A party may intervene: 1) where a statute confers a conditional right to intervene, or 2) where an applicant’s claim or defense has a question of law or fact in common with the matter in which the applicant seeks intervention.

134 Idaho at 763.

As explained above, the Coalition is a party to the underlying administrative case and holds water rights subject to the conjunctive administration proceeding, hence, it meets the second standard for permissive intervention. Under I.R.C.P. 24(b) “there is no requirement that the intervenor shall have a direct or personal pecuniary interest in the subject of the litigation,” *see Herzog v. City of Pocatello*, 82 Idaho 505, 509 (1960), only that its claim or defense has a question of law or fact in common with the matter in which the applicant seeks intervention. *See* I.R.C.P. 24(b)(2). Even if the Court should find that Coalition does not have a “direct or personal pecuniary interest,” the Court should grant permissive intervention. Since the Coalition’s water rights, and the procedures governing how those water rights are administered will be directly (or indirectly) affected by this action, there is no question that the Coalition has a common question of law and fact in this action.

For these reasons, the interests of the Coalition in this proceeding are sufficient to meet the standards for permissive intervention. Since this motion is timely, and its intervention will not unduly delay this proceeding or unfairly prejudice the rights of the other parties, the Court should permit the Coalition to intervene.

III. CONCLUSION

Based upon the aforementioned, the Coalition respectfully requests that it be granted intervention pursuant to I.R.C.P Rule 24(a) or 24(b).

DATED this 31st day of May, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2023, the foregoing was filed electronically using the Court's e-file system, and upon such filing the following parties were served electronically.

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