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DEPT OF WATER RESOURCES
SOUTHERN REGION

March 1, 2022

James Cefalo
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

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MAR 03 2022

Department of Water Resources
Eastern Region

Re: Application for Permit No. 22-14440 in the name of Bear Crest, LLC

Dear James:

Recently the Department published notice of Application for Permit No. 22-14440 in the name of Bear Crest, LLC. I inadvertently overlooked this application and did not get a protest filed prior to the February 7th deadline. Therefore, enclosed for filing is a Petition to Intervene in this matter, together with a check in the amount of \$25.00 for the filing fee.

Sincerely,

A handwritten signature in black ink that reads 'T. J. Budge'.

T. J. BUDGE

c: Michelle Mortimer, Rigby Andrus & Rigby Law, PLLC

Thomas J. Budge (ISB# 7465)
Racine Olson, PLLP
201 E. Center St. / P.O. Box 1391
Pocatello, Idaho 83204
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Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

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Department of Water Resources
Eastern Region

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 22-14440

In the name of Bear Crest, LLC

**IGWA'S PETITION
TO INTERVENE**

Idaho Ground Water Appropriators, Inc. ("IGWA"), acting for and on behalf of its members, hereby petitions to intervene in this matter pursuant to rules 350 through 354 of the Rules of Procedure of the Idaho Department of Water Resources ("IDWR").

BACKGROUND

On December 6, 2021, Bear Crest, LLC ("Bear Crest") filed Application for Permit No. 22-14440 (the "Application"). The Application was published in the Rexburg Standard Journal on January 21 and January 28, 2022. The protest deadline expired February 7, 2022. Counsel for IGWA inadvertently overlooked the Application and did not file a protest prior to the February 7 deadline.

The Application seeks to divert 1.85 cfs and 25.88 acre-feet per year for commercial purposes, including 222 RV and cabin hookups, five bath houses, with 131 combined fixtures, a pool, and splash pad. This water will be diverted from the Eastern Snake Plain Aquifer at the Bear World facility between Rigby and Rexburg. The Application proposes to mitigate for consumptive use associated with the pool and splash pad but not for consumptive use associated with the cabins, RVs, laundry, or bath houses.

LEGAL STANDARD

Rule 350 of the Department's Rules of Procedure states: "Persons 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." If the petition "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." (IDAPA 37.01.01.353.)

ANALYSIS

1. IGWA claims a direct and substantial interest in the Application.

IGWA consists of nine ground water districts¹ and one irrigation district² whose members collectively irrigate nearly one million acres and use water in several other beneficial ways under groundwater rights that divert from the ESPA. These users divert water from some four thousand points of diversion from the ESPA. IGWA and its members have suffered through numerous water right delivery calls and curtailment orders stemming from declining groundwater levels in the ESPA, and they have expended significant efforts and resources to mitigate injury to holders of senior surface water rights.

IGWA's members entered into a historic settlement agreement with the Surface Water Coalition ("SWC") in 2015 to stabilize and recover the ESPA to a level that will provide sufficient water to members of the SWC. This settlement agreement has required IGWA's members to reduce groundwater diversions and to expend substantial sums to convert farmland from groundwater to surface water irrigation and conduct managed aquifer recharge. Despite these efforts, the ESPA has not recovered fully or as quickly as anticipated. Consequently, IGWA's members will likely be required to undertake additional conservation efforts or other measures to mitigate material injury to the SWC. If new water uses are developed from the ESPA that are not fully mitigated, this will effectively increase the amount of mitigation required by IGWA members.

The Application does not appear to propose full mitigation of depletions it will cause to the ESPA. IGWA believes that full mitigation should be required if the Department approves the Application. Thus, IGWA claims a direct and substantial interest in the Application.

2. This Petition does not unduly broaden the issues.

IGWA seeks to intervene solely to address the statutory criteria under Idaho Code 42-203A(5), which are issues that the Department must consider in any case. Thus, this Petition does not unduly broaden the issues.

3. IGWA's interests are not adequately represented by existing parties.

The Department's website does not indicate that any protests have been filed against the Application. Therefore, there do not appear to be any other parties to this proceeding. In any case, IGWA's interests are not capable of being adequately represented by other parties.

¹ North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Ab-
erdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water
District, Jefferson-Clark Ground Water District, Madison Ground Water District, Henry's Fork Ground Water District

² Southwest Irrigation District

4. IGWA's Petition to Intervene should not be denied based on timeliness.


“Petitions to intervene must be 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.” Rule 352. A prehearing conference has not yet been held in this matter, nor has a formal hearing been scheduled. Therefore, this Petition is timely filed.

CONCLUSION

Based on the foregoing, IGWA respectfully requests that this petition to intervene be granted.

DATED this 1st day of March, 2022.

RACINE OLSON PLLP



Thomas J. Budge
Attorneys for IGWA

CERTIFICATE OF MAILING

I certify that on this 1st day of March, 2022, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

Idaho Department of Water Resources 650 Addison Avenue West, Suite 500 Twin Falls, Idaho 83301-5858 james.cefalo@idwr.idaho.gov christina.henman@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Bear Crest LLC PO Box 160 Rexburg, Idaho 83440 michael@yellowstonebearworld.com	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Jerry R. Rigby Michelle M. Mortimer RIGBY, ANDRUS & RIGBY LAW, PLLC 25 N 2nd E PO Box 250 Rexburg, ID 83440-0250 jrigby@rex-law.com mmortimer@rex-law.com	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail

Idaho Department of Water Resources Receipt

Receipt ID: S039111

Payment Amount	\$25.00	Date Received	3/4/2022	Region	SOUTHERN
Payment Type	Check	Check Number	8005		
Payer	RACINE OLSON, PLLP				
Comments	NOTICE OF PROTEST FILED ON BEHALF OF: IGWA AGAINST #22-14440 FOR: BEAR CREST, LLC.				

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	PROTESTS	64103	0229	21		1155



Signature Line (Department Representative)