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WATER RESOURCES
WESTERN REGION

BEFORE THEIDAHO DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. **63-34769** IN THE NAME OF KNIFE RIVER CORPORATION – MOUNTAIN WEST	**CITY OF BOISE CITY'S PETITION TO INTERVENE**

COMES NOW, the city of Boise City, herein referred to as "Boise City," by and through its attorney, Abigail R. Germaine, and pursuant to Rules 350 through 354 of the Rules of Procedure of the Idaho Department of Water Resources ("Department") (IDAPA 37.01.01.350 – 31.01.0.354), hereby petitions the Department for leave to intervene herein and to appear and participate as a party, and as the basis therefore states as follows:

I. BACKGROUND

On August 19, 2019, Knife River Corporation – Mountain West ("Applicant") filed Application for Permit No. 63-34769 ("Application"), which seeks to appropriate ground water in the amount of 1.00 cfs for commercial use and 0.12 cfs for irrigation. The place of use is located within Canyon County. On September 23, 2019, Pioneer Irrigation District ("Pioneer") filed a Notice of Protest ("Protest") alleging the Application may injure Pioneer's unlined

surface water delivery facilities. The Department has scheduled the matter for prehearing conference on December 17, 2019. A contested hearing is not scheduled at this time.

Boise City requests to participate in these proceedings related to this Application and Protest in order to be heard on the contention by Pioneer that the Applicant's groundwater pumping may cause injury to Pioneer's unlined surface water delivery facilities. Boise City believes the Department's determination on this issue could set precedent that may affect Boise City's own water rights or future appropriations.

II. STANDARDS

The Department's Rule of Procedure 350 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.

IDAPA 37.01.01.350. A petition to intervene must state, "the direct and substantial interest of the potential intervenor in the proceeding." IDAPA 37.01.01.351. A petition to intervene shall be considered timely if "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." IDAPA 37.01.01.352. A petition to intervene *will be* granted by the presiding officer, subject to reasonable conditioning, if the petition is timely filed, the petitioner shows a direct and substantial interest in the matter, and intervention does not unduly broaden the issues of the case. IDAPA 37.01.01.353 (emphasis added).

III. DISCUSSION

A. Boise City's Petition to Intervene is Timely.

The Department's Rule of Procedure 352 states that a petition to intervene will be considered timely if filed at least fourteen (14) days prior to the formal hearing, or by the date of the prehearing conference, whichever is earlier. IDAPA 37.01.01.357. At the date of filing this Petition to Intervene, a prehearing conference has not taken place. A prehearing conference is scheduled for December 17, 2019. A formal hearing in this matter has not been set. Therefore, this Petition to Intervene is timely.

B. Boise City has a Direct and Substantial Interest in this Proceeding.

Boise City holds numerous groundwater and surface water rights within Basin 63. These water rights are used for numerous beneficial purposes including, irrigation, municipal, recreation, water quality improvement, and aesthetics.

Boise City has a direct and substantial interest in this proceeding and the Department's determination related to Pioneer's claim that groundwater pumping may cause injury to an entity's unlined surface water delivery system. The Department's holding on this argument may have implications on Boise City's own water rights or potential future water right appropriations. Because of Boise City's groundwater rights and their potential proximate location to surface water delivery facilities, the Department's ruling on this issue has the possibility to negatively impact Boise City's groundwater right diversions.

C. The Interests of Boise City are not Represented by Other Parties.

Boise City's interests are unique as a municipality utilizing its groundwater rights for various purposes. Boise City's interest will likely be distinct from others who may participate in this proceeding. As discussed above, Boise City uses its groundwater rights for numerous

beneficial purposes. It is important that Boise City be allowed to participate in this proceeding to address how the Department's decision could impact Boise City's water rights.

D. Boise City's Involvement in this Proceeding will not Broaden the Issues before the Department.

If Boise City is granted intervention, Boise City's involvement will not broaden the issues before the Department. The basis of Boise City's Petition to Intervene centers around the proposition posed by the Pioneer that groundwater pumping may injure unlined surface water delivery facilities. This issue is already before the Department for determination based on Pioneer's Protest. Boise City does not intend to introduce new or different issues other than those related to Pioneer's Protest.

IV. CONCLUSION

Based on the foregoing, Boise City respectfully requests the Presiding Officer grant Boise City's Petition to Intervene and allow Boise City to fully participate in this proceeding. Boise City has met the standards of intervention set forth in the Department's Rules of Procedure and its Petition to Intervene is timely filed.

DATED this 16 day of December 2019.

Abigail R. Germaine
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 10 day of December 2019, served the foregoing documents on all parties of counsel as follows:

Original to:

Idaho Department of Water Resources Western Regional Office 2735 W. Airport Way Boise, Idaho 83705	☐ ☑ ☐ ☐	U.S. Mail Personal Delivery Facsimile Electronic Means w/ Consent

Copy to:

Knife River Corporation Attn: Justin Tietz 5450 W. Gowen Road Boise, Idaho 83709	☑ ☐ ☐ ☐	U.S. Mail Personal Delivery Facsimile Electronic Means w/ Consent
Sawtooth Law Offices Attn: Andrew J. Waldera PO Box 7985 Boise, Idaho 83707 andy@sawtoothlaw.com *Pioneer Irrigation District*	☐ ☐ ☐ ☑	U.S. Mail Personal Delivery Facsimile Electronic Means w/ Consent
Honsinger Law, PLLC Attn: Charles L. Honsinger PO Box 517 Boise, Idaho 83701 honsingerlaw@gmail.com *City of Meridian; City of Caldwell*	☐ ☐ ☐ ☑	U.S. Mail Personal Delivery Facsimile Electronic Means w/ Consent
Givens Pursley LLP Attn: Michael P. Lawrence PO Box 2720 Boise, Idaho 83701-2720 mpl@givenspursley.com *SUEZ Water Idaho, Inc.*	☐ ☐ ☐ ☑	U.S. Mail Personal Delivery Facsimile Electronic Means w/ Consent
Idaho Department of Water Resources Attn: Nick Miller 2735 W. Airport Way Boise, Idaho 83705 Nick.Miller@idwr.idaho.gov	☐ ☐ ☐ ☑	U.S. Mail Personal Delivery Facsimile Electronic Means w/ Consent

Abigail R. Germaine
Deputy City Attorney