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RECEIVED
JAN 18 2019
DEPARTMENT OF WATER RESOURCES

RECEIVED
JAN 29 2019
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 82405 IN THE NAME OF GARDNER FARMS	**CITIES OF BURLEY, CAREY, HEYBURN, JEROME, RUPERT, SHOSHONE AND WENDELL PETITION TO INTERVENE**

COME NOW the Cities of Burley, Carey, Heyburn, Jerome, Rupert, Shoshone, and Wendell (hereinafter "Cities"), pursuant to IDAPA 37.01.01.350 -.354, and hereby file this *Petition to Intervene* in the above-captioned matter.

I. BACKGROUND

On May 25, 2018, Gardner Farms ("Applicant") filed *Application for Transfer No. 82405* ("Application") with the Idaho Department of Water Resources ("IDWR") to, "Move a portion of 35-2765 to existing wells and a new POU." *Application* at 2. According to the Application, "Land irrigated by 35-2765 will no longer be irrigated." *Id.* at 4. On its face, the Application appears to be a straight-forward attempt to move water from one area of the Eastern Snake Plain Aquifer ("ESPA") to another.

The Application was protested by the Surface Water Coalition ("SWC") and the Idaho Power Company ("Idaho Power"). Both protests raised straight-forward issues of how the transfer would be mitigated to prevent injury.

A prehearing conference was held on August 10, 2018. A status conference was held on September 19, 2018. A hearing schedule as not yet been put in place.

On November 19, 2018, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed a *Petition to Intervene* ("Petition") in the above-captioned matter. According to the Petition:

> IGWA has [] learned that Idaho Power and the SWC have indicated they intend to use this Application to challenge the policies and procedures set forth in IDWR's Transfer Processing Memo No. 24 pertaining to changes to points of diversion within the ESPA. This is, to IGWA's knowledge, the first time anyone has challenged the policies and procedures set forth in Transfer Processing Memo No. 24. This issue is not identified in, nor apparent from, the Application. Moreover, the disposition of this matter may have sweeping implications that directly affect IGWA and its members. Therefore, IGWA respectfully petitions to intervene in this matter.

Petition at 1-2 (emphasis added).

To the best of the Cities' knowledge, IGWA's Petition has not been ruled upon by IDWR. The Cities are similarly unaware of any prior attempts to challenge Transfer Processing Memo No. 24.

The Cities have recently learned that IDWR is in the process of evaluating all transfers it has processed from the ESPA over the last ten years, and what the cumulative effects of those transfers have been on the ESPA. The Cities have recently learned that IDWR intended to complete this evaluation by the end of 2018, but that evaluation has not yet been completed.

What began as a simple proceeding to move water from one area of the ESPA to another now appears to have turned into a contested case that will determine how future ESPA ground water transfers will be reviewed, with review of existing policies and procedures that underlie

Transfer Processing Memo No. 24. Based on the information known, the Coalition of Cities respectfully petition to intervene in this proceeding.

II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is "timely" filed, IDAPA 37.01.01.352, and that it has a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . ." IDAPA 37.01.01.353. The Cities meet these requirements.

First, the Cities have a direct and substantial interest in the outcome of the hearing. The Cities rely on ground water from the ESPA for various purposes of use. As cities grow, so will their need for water, with the great likelihood that existing water rights will need to be transferred to meet future demand. Understanding whether IDWR will change its policies and procedures from Transfer Processing Memo No. 24, how IDWR will review transfers in light of this Application, and knowing that existing rights will need to be transferred in the future demonstrates the Cities' direct and substantial interest in this proceeding. While the Applicant is a ground water user, only the Cities rely on ground water on a year-round basis. How this Application will affect year-round users cannot be adequately represented by other parties to this proceeding.

Second, the filing of the Cities' petition should not be denied based on timeliness. A petition to intervene is timely if it is:

> [F]iled 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. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny of conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are

bound by orders and notices earlier entered as a condition of granting the untimely petition.

IDAPA 37.01.01.352.

Here, the prehearing conference has already occurred, but a hearing schedule has not been put in place. Moreover, based on the Cities' knowledge, IDWR has not completed its review of the past ten years' of ESPA transfers. IDWR's review of the prior transfers appears to be part of the review of Transfer Processing Memo No. 24. The Cities have only recently learned that Transfer Processing Memo No. 24 may be reviewed in this proceeding, and could not have discerned from the Application or protests that IDWR's policies and procedures for ESPA transfers would be called into question in what appeared to be a routine transfer of ground water from one location to another. Granting intervention will not prejudice the Applicant, SWC, or Idaho Power, as it appears no hearing schedule is in place, no formal discovery has been commenced, and no dispositive motions have been filed. Therefore, the Cities meet the good cause requirement for intervention, and as a condition of intervention, agree to be bound by earlier entered notices and orders.

III. CONCLUSION

Based on the foregoing, the Cities meet the standards for intervention, and respectfully request the hearing officer grant its petition to intervene in this proceeding and fully participate in all matters that may arise.

Respectfully submitted this 18th day of January, 2019.

McHugh Bromley, PLLC

CHRIS M. BROMLEY
Attorneys for Cities of Burley, Carey, Heyburn, Jerome, Rupert, Shoshone, and Wendell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2019, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

Idaho Department of Water Resources 322 E. Front St., Ste. 648 Boise, ID 83702	☐ US Mail, Postage Paid ☐ Facsimile ☒ Hand-Delivered ☐ Electronic Mail
James Cefalo Idaho Department of Water Resources 900 North Skyline Drive, Suite A Idaho Falls, ID 83402-1718 james.cefalo@idwr.idaho.gov	☒ US Mail, Postage Paid ☐ Facsimile ☐ Hand-Delivered ☒ Electronic Mail
John K. Simpson Barker Rosholt & Simpson, LLP 1010 Jefferson St., Ste. 102 P.O. Box 2139 Boise, ID 83701-2139 jks@idahowaters.com	☒ US Mail, Postage Paid ☐ Facsimile ☐ Hand-Delivered ☒ Electronic Mail
W. Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318 wkf@pmt.org	☒ US Mail, Postage Paid ☐ Facsimile ☐ Hand-Delivered ☒ Electronic Mail
Gardner Farms 589 N. 150 W. Blackfoot, ID 83221	☒ US Mail, Postage Paid ☐ Facsimile ☐ Hand-Delivered ☐ Electronic Mail
Greg Sullivan Brockway Engineering 2016 N. Washington St., Ste. 4 Twin Falls, ID 83301 greg.sullivan@brockwayeng.com	☒ US Mail, Postage Paid ☐ Facsimile ☐ Hand-Delivered ☒ Electronic Mail
TJ Budge Racine Olson, PLLP 201 E. Center St. PO Box 1391 Pocatello, ID 83204-1391 tjb@racinelaw.net	☒ US Mail, Postage Paid ☐ Facsimile ☐ Hand-Delivered ☒ Electronic Mail

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RECEIVED
JAN 22
Department of Water Resources
Eastern Region

January 18, 2019

Via Email and U.S. Mail to:

James Cefalo, Hearing Officer
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718
James.cefalo@idwr.idaho.gov

RE: Transfer No. 82405

Dear Hearing Officer Cefalo:

Please find enclosed the original and extra copy of the City of Pocatello's Petition to Intervene in the referenced matter. Please file the original and conform stamp the extra copy and return it to me in the enclosed stamped and addressed return envelope.

Thank you in advance.

Kind regards,

Sarah A. Klahn