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Department of Water Resources
Eastern Region

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

IDFG PETITION TO INTERVENE

Legal Standard

IDFG PETITION TO INTERVENE – 1

respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition or 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 a direct and substantial interest in any part of the matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention . . . unless the applicant’s interest is adequately represented by existing parties. *Id.* at .352. 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 . . .” *Id.* at .351.

Argument

IDFG has a direct and substantial interest in water right application 21-13262 that is not adequately represented by other protestants in this matter. IDFG owns water rights 21-2100 for the year-round purpose of use of fish propagation in its Henry’s Lake Hatchery. Water right 21-2100 is for a quantity of 6 cfs from Henry’s Lake and Sherwood Spring with a priority date of February 3, 1948. IDFG’s interest in this matter is to ensure that any water right issued under this application does not adversely affect existing water right 21-2100. IDFG receives less than its fully supply of water from Sherwood Spring and is concerned that the proposed well could further reduce flows from the spring.

Henry’s Lake Overlook previously filed water right application 21-13038 for the same point of diversion listed on the current application. IDFG protested water right application 21-13038 in May 2006. After protracted negotiations a settlement was reached and water right permit 21-13038 was issued with conditions acceptable to IDFG.

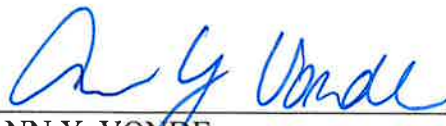
Condition #9 stated “the intake field of the well used as the point of diversion for this right shall begin no shallower than 100 feet below the elevation of IDFG’s spring box on Sherwood Spring.” On December 21, 2015, IDWR issued a *Preliminary Order Voiding Permit 21-13038* on the basis that the elevation of IDFG’s Sherwood spring box is “located at an elevation of 6,553 feet above sea level.” *Id.* at 2. Under Condition #9 the intake area of the well should be located at least 100 feet below the elevation of the Sherwood Spring box “(which equates to an elevation of 6,453 feet above sea level).” *Id.* at 2. However, the perforations on the well constructed under permit 21-13038 “begin at 6,530 feet above sea level . . .” *Id.* at 2. On the basis of failure of comply with Condition #9, among others, IDWR voided permit 21-13038.

Even after the permit was voided, Henry’s Lake Overlook Property Owner’s Association (“HLO”) was given the opportunity to modify the existing well to comply with Condition #9 or to drill a new well consistent with that condition and have the permit reinstated. Rather than doing so, HLO chose to file water right application 21-13262 to “seek approval of the well as it is currently constructed.” *See* Letter Accompanying Application for Permit 21-13262 dated December 18, 2018 at 2. Thus, water right application 21-13262 is simply a repackaging of voided water right permit 21-13038.

IDFG spent considerable resources and time negotiating the settlement in water right permit process 21-13038 so as to protect its existing water right 21-2100. The same issues that existed with regard to water right 21-13038 exist in regard to the current water right application 21-13262. IDFG has a direct and substantial interest in protecting its existing use of water under 21-2100. These interests are not adequately represented by

Fremont Madison Irrigation District, who also protested this water right application. In addition, a prehearing has not yet been set in this matter. Therefore, IDFG respectfully requests the hearing officer grant it intervention in this matter.

DATED this 21st day of February, 2019.


ANN Y. VONDE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February, 2019, I caused to be served a true and correct copy of the foregoing IDFG PETITION TO INTERVENE by transmitting a copy thereof in the manner listed below:

1. Original to:

James Cefalo
Idaho Department of Water Resources
Eastern Region
900 North Skyline Dr. Ste A
Idaho Falls ID 83402-1718

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☒ Federal Express
- ☒ Email: james.cefalo@idwr.idaho.gov
- ☐ Statehouse Mail

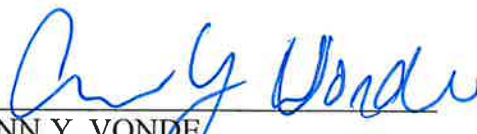
2. Copies to:

Rob Harris
Holden Kidwell Hahn & Crapo PLLC
PO Box 50130
Idaho Falls ID 83405

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Email: rharris@holdenlegal.com
- ☐ Statehouse Mail

Fremont Madison Irr. Dist.
Rigby, Andrus & Rigby Law PLLC
PO Box 15
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