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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER 82746
(in the name of Idaho Water Company)

**GREAT WESTERN MALTING
COMPANY'S PETITION TO INTERVENE**

Pursuant to Rules 350 through 354 of IDAPA 37.01.01, Great Western Malting Company ("Great Western"), by and through its counsel of record Perkins Coie LLP, respectfully petitions the Idaho Department of Water Resources ("IDWR" or "Department") to intervene as a party in the above-referenced proceedings concerning the Application submitted by Idaho Water Company, LLC ("IWC"). This petition is supported by the facts, law and argument set forth below which conclusively demonstrate that Great Western meets the standard for intervention found at IDAPA 37.01.01.353.

BACKGROUND

On September 21, 2018, IWC filed an Application for Transfer of Water Right for a portion of Right No. 29-7006 ("IWC's Application") with the Department. Attached to IWC's Application is an Agreement for Purchase and Sale of Water Right dated August 13, 2018 by and between IWC and Great Western that demonstrates Great Western's intent to acquire a portion of 29-7006 for industrial use at its Pocatello barley malting facility.

After receipt and acceptance of IWC's Application, IDWR published notice and several parties filed a joint protest, including A&B Irrigation District, Burley Irrigation District, Milner

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Irrigation District, North Side Canal Company, Twin Falls Canal Company, American Falls Reservoir District #2 and Minidoka Irrigation District ("Protestants").

APPLICABLE LAW

The Department's Rules of Procedure governing intervention in contested cases provide:

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.

Rule 350. Additionally,

[i]f a timely-filed petition to intervene 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. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

Rule 353.

Finally, petitions to intervene must be filed 14 days before the date set for the formal hearing, or by the date of the prehearing conference. *See* Rule 352.

Thus, a request for intervention must be granted if it is timely and a petitioner demonstrates:

- (1) a direct and substantial interest; (2) that intervention will not unduly broaden the issues; and
- (3) that petitioner's interests are not adequately represented by existing parties.

ARGUMENT

I. GREAT WESTERN'S PETITION IS TIMELY.

No hearing has been set in this matter, and no prehearing conference has been scheduled.

Therefore, Great Western's petition is timely under Rule 352.

II. GREAT WESTERN HAS A DIRECT AND SUBSTANTIAL INTEREST IN THE SUBJECT MATTER OF THIS PROCEEDING.

The phrase "direct and substantial interest" is not defined in IDAPA. No reported case in Idaho has interpreted this phrase, but the Idaho Supreme Court has repeatedly held that "ordinary

words will be given their ordinary meaning." *Ada Cty. Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 428 (1993); *Bunt v. City of Garden City*, 118 Idaho 427,430 (1990). A direct interest is defined as "[a] certain, absolute interest." Black's Law Dictionary (8th ed., 2004). A substantial interest is "considerable in quantity; significantly great." Merriam-Webster's Collegiate Dictionary (10th ed., 2000) ("substantial").

Great Western has a direct and substantial interest in IWC's Application, as required for intervention pursuant to Rule 353, because it intends to acquire the water right at issue in this matter upon successful transfer. The Department's decision to approve or deny the transfer directly impacts Great Western and its Pocatello operations. Further, any conditions that might be placed on the water right will directly and substantially affect Great Western. Finally, Great Western is the custodian of relevant information about how the transferred water is intended to be used in the future, which may assist the Department in the transfer analysis.

III. GREAT WESTERN WILL NOT UNDULY BROADEN THE ISSUES OR DELAY THE PROCEEDINGS.

Great Western has a direct and substantial interest in the transfer at issue, and will seek to assist the Department in evaluating the issues raised by the Department and Protestants. Great Western is unlikely to independently raise issues that have not been raised by the Department or the existing parties.

This matter is in its initial stages. Great Western's intervention will not cause delays or upset any existing schedules.

IV. GREAT WESTERN'S INTERESTS ARE NOT ADEQUATELY REPRESENTED BY EXISTING PARTIES.

None of the parties to this proceeding represent Great Western's interest in this matter. It is obvious that Protestants do not adequately represent Great Western's interests.

Although Great Western's interests are generally aligned with the Applicant IWC, Great Western has substantially more at stake than IWC. While Great Western would be open to a reasonable resolution of this matter, it cannot adequately protect its interests without becoming a party and representing its own concerns.

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CONCLUSION

Great Western's petition is timely, demonstrates a direct and substantial interest in this matter, will not unduly broaden the scope of the issues, and demonstrates that no existing party adequately represents its interests. Therefore, Great Western's Petition to Intervene in this proceeding should be granted.

DATED: December 14, 2018

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 14th day of December, 2018, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the rules of procedure, to the following person(s):

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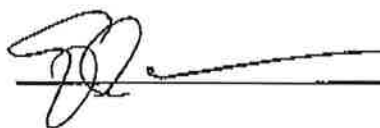
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GREAT WESTERN MALTING COMPANY'S PETITION TO INTERVENE - 5

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