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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 TRANSFER NO. 82405 IN THE
NAME OF GARDNER FARMS

**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 Idaho Department of Water Resources (IDWR) Rules of Procedure 350 through 354.

BACKGROUND

On May 25, 2018, Gardner Farms ("Applicant") filed Application for Transfer No. 82405 (the "Application") in this matter. IGWA did not protest the Application because it appeared to comply with the statutory requirements of Idaho Code § 42-222.

On July 13, 2018, Idaho Power Company filed a Notice of Protest against the Application, in part on the basis that "mitigation may be required consistent with the ESPA Transfer Spreadsheet." Also on July 9, 2018, the Surface Water Coalition ("SWC") filed a Notice of Joint Protest, in part on the basis that "The application is unclear as to how the Applicant will satisfy the mitigation required to prevent injury to senior water right holders."

A prehearing conference was subsequently held on August 10, 2018, followed by a status conference on September 19, 2018. IGWA has since 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.

Receipt
#2044574

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.

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." Rule 353.

ANALYSIS

1. IGWA claims a direct and substantial interest in the subject of the Petition.

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. To meet changing water needs and maximize beneficial use of Idaho's water resources, IGWA members frequently transfer groundwater from one point of diversion to another within the ESPA. As such, IGWA and its members have a direct and substantial interest in IDWR policies and procedures governing point of diversion changes within the ESPA. Since these policies and procedures are being challenged in this proceeding, IGWA has a directive substantial interest in this matter.

¹ North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Aberdeen-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

2. This Petition does not unduly broaden the issues.

IGWA seeks to intervene to address the statutory criteria set forth in Idaho Code § 42-222 and to respond to issues the protestants have injected into this matter concerning Department policies concerning those criteria. Thus, this Petition does not duly broaden the issues.

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

The parties to this matter presently consist of the Applicants and the Surface Water Coalition, none of whom represent the interests of IGWA or its members. While the Applicant owns groundwater rights, the Applicant does not represent the interests of groundwater users generally, nor does the Applicant represent the interests of IGWA members specifically. IGWA's interests are particularly unique given its obligations to mitigate for declining groundwater levels in the ESPA.

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. However, this deadline is not hard and fast:

The presiding officer may deny or 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.

Id.

While a prehearing conference has been held, the documents available on the IDWR website do not indicate that a date has been set for formal hearing. To IGWA's knowledge no discovery has been conducted and no pre-hearing motions have been filed. Moreover, the protests raise novel arguments that could not have been anticipated at the time the Application was filed, and IGWA agrees to comply with all orders and notices earlier entered in this matter.

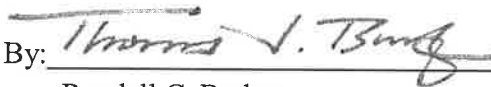
Therefore, IGWA's Petition to Intervene will not prejudice other parties and should not be denied based on timeliness.

CONCLUSION

Based on the foregoing, IGWA respectfully requests that this Petition to Intervene be granted.

DATED this 15th day of November, 2018.

RACINE OLSON, PLLP

By: 

Randall C. Budge

Thomas J. Budge

Attorneys for IGWA

CERTIFICATE OF MAILING

I certify that on this 15th day of November, 2018, the foregoing document was served on the following persons in the manner indicated.


Signature of person mailing form

James Cefalo Idaho Department of Water Resources 900 North Skyline Drive, Suite A Idaho Falls, Idaho 83402-1718 James.cefalo@idwr.idaho.gov	☒ U.S. Mail/Postage Prepaid ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
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November 15, 2018

James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

RECEIVED

NOV 19 2018

Department of Water Resources
Eastern Region

Re: Transfer Nos. 82405

Dear James,

Enclosed please find the original and extra copy of IGWA's Petition to Intervene in regard to Transfer Application No. 82405. 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 for your assistance. Should you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read 'T.J. Budge', is written over the printed name.

T.J. BUDGE