

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
163 Second Avenue West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

*Attorneys for American Falls
Reservoir District #2 and Minidoka
Irrigation District*

RECEIVED

NOV 16 2016

DEPT OF WATER RESOURCES
SOUTHERN REGION

RECEIVED

NOV 21 2016

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. 81238

In the name of Foster Land & Cattle

**SURFACE WATER COALITION'S
PETITION TO INTERVENE**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (hereafter collectively referred to as "Surface Water Coalition" or "Coalition"), by and through counsel of record, and pursuant to the Department's Rules of Procedure 350 – 354 (IDAPA 37.01.01 *et seq.*), hereby petition to intervene in the above-captioned matter.

FACTS

Foster Land & Cattle ("Applicant") filed the above-referenced application for transfer on September 12, 2016. The transfer appears to propose to move portions of certain surface water

rights in the upper Willow Creek drainage to a new point of diversion and place of use related to a recent application for permit filed by Century Holdings LLC (#25-14434) downstream of Ririe Dam. The new shared pump station or point of diversion will also apparently be used to divert storage water from the Upper Snake Reservoirs to land that was previously non-irrigated. Fremont-Madison Irrigation District (“FMID”) and Egin Bench Canals Inc. filed protests on October 31, 2016. Hearing Officer James Cefalo then scheduled a pre-hearing conference for November 17, 2016.

STANDARD OF REVIEW

The Department’s Rules of Procedure provide the following for persons seeking to intervene in a proceeding:

Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it.

Rule 351.

Further, petitions to intervene must be filed at least 14 days before the date set for the formal hearing, or by the date of the pre-hearing conference. *See* Rule 352. Finally, the Hearing Officer may consider whether the petition would “unduly broaden the issues” and whether the petitioner is “adequately represented by existing parties.” *See* Rule 353.

ARGUMENT

I. The Coalition’s Petition is Timely.

No hearing has been set in this matter. The pre-hearing conference is scheduled for November 17, 2016. The protest deadline recently expired a little over two weeks ago. Since

the Coalition's petition is filed by the date of the pre-hearing conference it is timely according to Rule 352.

II. The Coalition's Direct and Substantial Interest.

A. Name and Address

A&B Irrigation District
Dan Temple, Manager
P.O. Box 675
Rupert, Idaho 83350

American Falls Reservoir District #2
Lynn Harmon, Manager
409 N. Apple St.
Shoshone, Idaho 83352

Burley Irrigation District
John Lind, Manager
246 E 100 S
Burley, Idaho 83318

Milner Irrigation District
Walt Mullins, Manager
5294 E 3610 N
Murtaugh, Idaho 83344

Minidoka Irrigation District
Dan Davidson, Manager
98 W 50 S
Rupert, Idaho 83350

North Side Canal Company
Alan Hansten, Manager
921 N. Lincoln St.
Jerome, Idaho 83338

Twin Falls Canal Company
Brian Olmstead, Manager
P.O. Box 326
Twin Falls, Idaho 83303

B. Interest of Intervenors.

The Coalition members hold natural flow and storage water rights to the Snake River. The Willow Creek drainage is tributary to the Snake River. The Coalition's water rights are on file with the Department and are administered by the Water District 01 Watermaster. Collectively, the Coalition's landowners and shareholders irrigate approximately 600,000 acres across the Magic Valley. The Coalition members are particularly concerned about new applications for permit or transfer that could injure their existing water rights, including in particular to this proceeding, senior storage water rights in Jackson Lake Reservoir, Palisades Reservoir, American Falls Reservoir, and Lake Walcott Reservoir. Changes to the hydrology of

Willow Creek and the irrigation of new land with storage water may injure the Coalition's water rights.

Notably, the Protestants have identified concerns about injury to existing storage rights in Island Park and Ririe Reservoirs. Since the Upper Snake reservoirs are operated in coordination, an injury to one storage right could lead to injury to other storage rights as well, including those held by the Coalition members.

The transfer application, if approved, could detrimentally affect the Coalition's interests. Since the Coalition holds senior surface water rights that could be affected by this application, there is no question that the Coalition has a direct and substantial interest in this proceeding.

III. The Coalition's Petition Does Not Unduly Broaden the Issues.

The Coalition seeks intervention in this matter to protect its interests, most importantly its senior natural flow and storage water rights. Since no contested matters have been addressed and the pre-hearing conference is scheduled for tomorrow November 17th, the proceeding is in a very early stage. Accordingly, the Coalition's petition does not unduly broaden the issues that have yet to be defined.

IV. The Coalition is Not Adequately Represented by Existing Parties.

Presently, the only parties to this proceeding are the Applicant and Protestants FMID and Egin Bench Canals, Inc. None of these entities represent the Coalition's individual interests in this matter, which include unique property right interests to water rights to the Snake River. Although the Protestants have identified storage rights in Island Park and Ririe Reservoirs, the Coalition is uniquely situated to address injury to their natural flow rights as well as storage rights in other reservoirs. Consequently, the Coalition has a right to intervene to ensure its interests are adequately protected and represented.

CONCLUSION

The Coalition's petition is timely, demonstrates a direct and substantial interest, does not unduly broaden the issues, and further demonstrates that no existing party adequately represents its interests. Therefore, the Coalition requests an order from the Hearing Officer granting intervention this proceeding. *See* Rule 354.

DATED this 16th day of November, 2016.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson
Paul L. Arrington

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation
District, North Side Canal Company, and
Twin Falls Canal Company*

FLETCHER LAW OFFICE



W. Kent Fletcher

*Attorneys for Minidoka Irrigation
District and American Falls
Reservoir District #2*

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2016, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition to Intervene* on the following by the method indicated:

James Cefalo Idaho Dept. of Water Resources Eastern Regional Office 900 N. Skyline Dr., Ste. A Idaho Falls, Idaho 83402-1718 *** service by U.S. mail and electronic mail sharla.cox@idwr.idaho.gov james.cefalo@idwr.idaho.gov	Luke H. Marchant Holden Kidwell Crapo Hahn P.O. Box 50130 Idaho Falls, Idaho 83405 *** service by electronic mail only lmarchant@holdenlegal.com Attorneys for Applicant	Jerry R. Rigby Rigby Andrus & Rigby PLLC P.O. Box 250 Rexburg, Idaho 83440 *** service by electronic mail only jerry.rigby@gmail.com Attorneys for Protestants
---	---	---



Travis L. Thompson

FOR OFFICE USE ONLY

Fee: \$175.00

Receipt No.: S035824

Date Received: 11/16/2016 By: 