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AUG 14 2017

DEPARTMENT OF
WATER RESOURCES

Attorneys for Boise Project Board of Control

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMITS TO	)	
APPROPRIATE WATER NOS. 63-	)	
34079 & 63-34080, IN THE NAME OF	)	MOTION TO STRIKE AND
CHRIS EMMERT	)	MEMORANDUM IN SUPPORT
	)	
	)	

The Boise Project Board of Control, by and through its counsel of record, the law firm Barker Rosholt & Simpson LLP, and hereby Moves the Director, pursuant to I.R.C.P 7(b)(1) and Idaho Department of Water Resources Rule 37.01.01.260, to strike the Municipal Providers' Brief on Exceptions to the Director for the reasons set forth below.

ARGUMENT

Pursuant to Rule 158, persons other than applicants, petitioners, complainants, respondents, protestants, and intervenors, are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. IDAPA 37.01.01.158. However, these interested parties may participate as "public witnesses" in accordance with Rule 355. *Id.* The Municipal Providers have failed to timely attempt intervention in this proceeding, and have failed to satisfy every requirement necessary to justify an untimely motion to intervene. Given Municipal Providers' questionable claims to a substantial reason for delay, lack of any direct and

substantial interest in the proceedings, failure to accept the case as they find it, prejudice to the existing parties, and disruption of the proceedings, the Municipal Providers cannot qualify to intervene.¹ Therefore, they may only be participate as “public witnesses.” IDAPA 37.01.01.158. A public witness may only provide testimony and put on exhibits during a contested case hearing if it provides five days prior notice to the parties to the proceeding of intention to participate as a public witness and also an explanation as to the nature of the proposed testimony. IDAPA 37.01.01.355. A public witness is not granted any authority to make motions or participate in briefing. Any such participation by a public witness is limited to the provision of testimony and exhibits, after notice, during the formal hearing. As the Municipal Providers have not, and cannot under the analysis provided above, become parties to this contested case, the brief submitted by them should be stricken from the record as improperly filed by a non-party to the proceedings. The Municipal Providers recourse is to raise the issues raised by them in the improperly filed Brief on Exception in action on their own future water right applications.

CONCLUSION

As stated in Boise Project’s Memorandum in Opposition to Second Petition to Intervene, the Municipal Providers have not and cannot become parties to the proceedings on application no. 63-34079 and 63-34080. The limitations on public witnesses deny the authority to make motions and participate in the briefings. Therefore, the *Municipal Providers’ Brief on Exceptions to the Director* should be stricken from the record.

DATED this 11th day of August, 2017.

BARKER ROSHOLT & SIMPSON LLP


Shelley M. Davis

Attorneys for Boise Project Board of Control

¹ *Memorandum in Opposition to Second Petition to Intervene.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of August, 2017, I caused to be served a true and correct copy of the foregoing **MOTION TO STRIKE AND MEMORANDUM IN SUPPORT** by the method indicated below, and addressed to each of the following:

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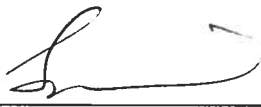
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