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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

In Re: Amended Transfer No.)	Modified Transfer No. 73969
73969 –)	
Water Right 37-21956)	
)	PETITION TO INTERVENE
ROBERT ROHE,)	
Petitioner.)	
)	
Case No. 39576)	

COMES NOW, the Idaho Water Resources Board, by and through the undersigned deputy attorney general and hereby petitions to intervene in the above-entitled matter pursuant to Rules of Procedure of the Idaho Department of Water Resources 350 through 354 (IDAPA 37.01.01.350-354).

The Department's Rule of Procedure 350 provides that "[p]ersons not applicants, or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim 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.” IDAPA 37.01.01.350. A timely-filed petition for intervention shall be granted 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...unless the applicant’s interest is adequately represented by existing parties.” *Id.* at 37.01.01.353. A petition is timely if it is filed “at least fourteen (14) days before the date set for the formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice.” *Id.* at 37.01.01.352.

The Idaho Water Resource Board (“the Board”) holds three minimum stream flow water rights on the Big Wood River, water right nos. 37-8258, 37-7919 and 37-8307. Two of these water rights, nos. 37-7919 and 37-8307, will be adversely affected by Transfer No. 73969, which moves the point of diversion for water right 37-21956 upstream within the reach. In approving the transfer, therefore, the Department inserted Condition of Approval 3 to mitigate for the adverse impact of the transfer on the minimum stream flows. Condition of Approval 3 requires that the water right holder cease diverting water if the stream levels on the Big Wood fall below the minimum stream flows, as measured at the Hailey gage. Mr. Rohe filed a petition for reconsideration on the issue of the inclusion of the condition in the transfer, which was denied as to that particular issue. Mr. Rohe then filed a Petition for Exceptions to Modified Transfer No. 73969, asking the Department to remove the condition. In his brief in support of the exceptions, Mr. Rohe argues that minimum stream flow water rights are to be considered differently than other water rights with respect to transfers. The petition for exceptions is currently before the Director.

The Board has a direct and substantial interest in protecting its minimum stream flow rights. Mr. Rohe argues that minimum stream flow rights are entitled to less protection than other water rights constitutes a very real threat to Board’s minimum stream flow rights, both on the Big Wood River and elsewhere in the State. Mr. Rohe’s claims would have the effect of substantially

weakening of the protection of stream flows provided for in the Minimum Stream Flow Act. The Board's Petition is timely, as no formal hearing or pre-hearing conference has been set or held in this matter. Furthermore, the Board accepts that it is bound by orders and notices granted earlier in the proceeding and will not broaden the issues or attempt to change the course of the proceeding in any way. Rather, the Board wishes to ensure that its interests in protecting its minimum stream flow rights are adequately represented, particularly with regard to the legal issues introduced in Mr. Rohe's brief, and also ensure that it has an opportunity to participate in future proceedings, should this matter be the subject of judicial review.

The Board's Petition To Intervene meets the standards required by the Department's Rules, and therefore the IWRB respectfully requests an order granting intervention in this proceeding.

RESPECTFULLY SUBMITTED this 26th day of January, 2010.

STATE OF IDAHO
LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION



SHASTA J. KILMINSTER-HADLEY
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 26th day of January 2010, I caused to be served the original and/or copy of the PETITION TO INTERVENE on the following persons by the indicated method:

1. One Original to:

Gary Spackman
Director, Idaho Department of Water
Resources
P.O. Box 83720
Boise, Idaho 83720-0098

- ☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

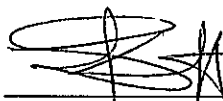
2. Copies to

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