

Gibson, Deborah

From: Wigle, Victoria
Sent: Tuesday, December 02, 2008 4:53 PM
To: Gibson, Deborah
Subject: FW: Petition to Intervene
Attachments: Petition to Intervene.pdf

From: Pam Mottishaw [mailto:pam@racinelaw.net]
Sent: Tuesday, December 02, 2008 4:49 PM
To: Wigle, Victoria; fcjschroeder@gmail.com; jar@idahowaters.com; tlt@idahowaters.com; rharris@holdenlegal.com
Cc: T. J. Budge; Becky J. Harvey
Subject: Petition to Intervene

Attached please find a Petition to Intervene by the Ground Water Districts and Aberdeen-Springfield Canal Company for filing. If you have any problems with the file please give me a call.

Pam Mottishaw
Paralegal
Racine Olson Nye Budge & Bailey, Chartered
(208)232-6101
(208)232-6109 fax

CONFIDENTIALITY NOTICE: This e-mail and its attachments are confidential and may be privileged. If you believe this e-mail has been sent to you in error, please notify the sender immediately and delete this email. Do not deliver, distribute or copy this transmission.

12/2/2008

Randall C. Budge, ISB No. 1949
Candice M. McHugh, ISB No. 5908
Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
Post Office Box 1391
201 E. Center Street
Pocatello, Idaho 83204-1391
208-232-6101 - Telephone
208-232-6109 - Fax

Attorneys for the Ground Water Districts and Aberdeen-Springfield Canal Company

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF LICENSING
WATER RIGHT PERMIT NO. 01-7011 IN
THE NAME OF TWIN FALLS CANAL
COMPANY AND NORTH SIDE CANAL
COMPANY

PETITION TO INTERVENE

Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Clark-Jefferson Ground Water District, Madison Ground Water District, and Aberdeen-Springfield Canal Company, acting for and on behalf of their member water users, by and through counsel, hereby petition to intervene in the above-captioned proceeding pursuant to the Department's *Order Designating Contested Case and Appointing Hearing Officer* (November 12, 2008) and Rules 350 through 354 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.350-354).

The Department's Rules of Procedure provide that "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." IDAPA 37.01.01.350. A timely-filed petition for intervene 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.

These Petitioners include thousands of irrigators, municipalities, and commercial and industrial entities operating within the State of Idaho. They are owners of water rights that divert from the Snake River or from groundwater sources tributary to the Snake River at locations upstream from Milner Dam. These Petitioners' water rights have priority dates both senior and junior to the March 30, 1977, priority date of Idaho Water Right Number 01-7011, which is the subject of this proceeding. In addition, these Petitioners have a substantial interest in future water use and development upstream from Milner Dam, particularly for recharge purposes.

Water Right Number 01-7011, issued by the Department on October 20, 2008, includes various conditions, including that the Right shall be subordinate to "all subsequent upstream depletionary uses, other than hydropower...." (Condition No. 1.) This condition prevents Twin Falls Canal Company (TFCC) and North Side Canal Company (NSCC) from curtailing junior-priority water rights, including many of these Petitioners' water rights, in order to increase the supply of water for their hydropower facility at Milner Dam. The condition also assures that Water Right Number 01-7011 will not be wielded by TFCC and NSCC to destroy important efforts to recharge the East Snake Plain Aquifer (ESPA).

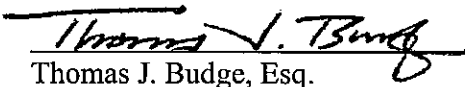
TFCC and NSCC filed a *Protest and Petition for Hearing* on Nov. 4, 2008, seeking to have certain of the conditions in Water Right Number 01-7011 amended or removed entirely, including the subordination condition involving groundwater recharge. This could upend current and future recharge of the ESPA—now recognized as a central component to sustaining the

viability of both surface and ground water rights that are hydraulically connected to the ESPA. The recently issued draft Comprehensive Aquifer Management Plan (CAMP) presented by the Idaho Water Resource Board calls for 50,000 acre-feet of annual managed recharge of the ESPA at sites upstream from Milner Dam.¹ Removal of the recharge subordination condition as requested by TFCC and NSCC would fatally impact recharge efforts on the ESPA, undermining the CAMP and potentially devastating many businesses and industries across southern Idaho.

As water users that are keenly interested in recharging the ESPA, these Petitioners have a direct and substantial interest in supporting and defending the conditions of Water Right Number 01-7011 as issued by the Department. These Petitioners do not intend to introduce any additional issues into this proceeding; they seek only to protect the currently-imposed conditions of Water Right Number 01-7011. And these Petitioners are in the best position to represent their interests and to know and understand the specific impacts upon their water rights in the event TFCC and NSCC were successful in changing the conditions of Water Right Number 01-7011. Additionally, these Petitioners accept the appointment of Gerald F. Schroeder as the hearing officer in this matter. Accordingly, these Petitioners meet the standard for intervention under the Department's Rules of Procedure, and therefore respectfully request an order granting their intervention in this proceeding.

DATED this 2nd day of December, 2008.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED


Thomas J. Budge, Esq.

¹ *Draft Comprehensive Aquifer Management Plan*, November 6, 2008, at 23. The plan is available at: http://www.idwr.idaho.gov/ESPAPlan/ESPA_CAMP_Plan/FINALESPADRAFTPLAN11-12-08.pdf

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of December, 2008, the above and foregoing document was served in the following manner:

Idaho Department of Water Resources
c/o Victoria Wigle
Assistant to the Director
Post Office Box 83720
Boise, Idaho 83720-0098
victoria.wigle@idwr.idaho.gov

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery
☒ E-Mail

Honorable Gerald F. Schroeder
Hearing Officer
[home address]
fcjschroeder@gmail.com

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery
☒ E-Mail

John Rosholt
Travis Thompson
BARKER ROSHOLT
113 Main Ave. West, Ste 303
Twin Falls, Idaho 83301-6167
jar@idahowaters.com
tlr@idahowaters.com

☐ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery
☒ E-Mail

Robert L. Harris
HOLDEN KIDWELL
Post Office Box 50130
Idaho Falls, Idaho 83405
rharris@holdenlegal.com

☐ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery
☒ E-Mail


THOMAS J. BUDGE