

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

IN THE MATTER OF THE	)	
ALLOCATION OF STORED WATER	)	ORDER GRANTING
TO THE CITY OF POCATELLO	)	PETITION TO INTERVENE
<u>BY WATER DISTRICT 01</u>	)	

On April 25, 2024, the City of Pocatello (“Pocatello”) filed a *Petition Requesting a Hearing on WD01’s 2023 Storage Report* (“Hearing Request”), pursuant to Idaho Code § 42-1701A(3). Consistent with Idaho Code § 42-1701A, Pocatello’s Hearing Request creates a contested case before the Department, governed by the Department’s Rules of Procedure (IDAPA 37.01.01).

On August 7, 2024, Burley Irrigation District, Fremont-Madison Irrigation District, and Idaho Irrigation District (collectively “Districts”) filed *Spaceholders’ Combined Motion to Intervene & Memorandum in Support of the Motion to Intervene* (“Petition”). Pocatello did not respond to the Districts’ Petition. The Department has not yet conducted a prehearing conference on Pocatello’s Hearing Request.

Rules 350 through 354 of the Department’s Rules of Procedure (IDAPA 37.01.01) set forth the standards for filing and reviewing petitions to intervene in contested cases before the Department. These rules state:

350. PETITIONS TO INTERVENE.

A person who is not already a party to a contested case and who has a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case.

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.

Petitions to intervene must comply with Rules 52, 200, and 300. 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.

352. TIMELY FILING OF PETITIONS TO INTERVENE.

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions filed after this deadline are considered late and must state a good cause for delay.

353. DECIDING PETITIONS TO INTERVENE.

01. Timely-Filed Petitions. If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not

unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties.

02. Late Petitions. The agency may grant late petitions to intervene for good cause shown or may deny or conditionally grant petitions to intervene that are late for failure to state good cause for the late filing, to prevent disruption, to prevent prejudice to existing parties, to prevent undue broadening of the issues, or for other reasons.

03. Order and Notices Issued Prior to Intervention. Intervenors are bound by orders and notices entered in the contested case prior to the approval of the petition to intervene.

354. ORDERS GRANTING INTERVENTION -- OPPOSITION.

Any party opposing a petition to intervene must file an objection within (7) days of the date the petition is filed. Responses to the objection must be filed within seven (7) days of the service date of the objection. The objection and responses to the proposed intervention must be served on all parties of record and on the person petitioning to intervene.

The Districts' Petition is timely because it was filed at least fourteen days prior to the date of the initial prehearing conference. An initial prehearing conference had not been scheduled at the time the Petition was filed.

The Districts have demonstrated a direct and substantial interest in the proceeding. According to the Petition, the Districts "hold unique storage water rights administered by WD01 and the subject matter of this litigation has the potential for immediate and future impacts and injuries to their storage water rights and the implementation and use of the WD01 Rental Pool." *Petition* at 2.

The Districts' Petition does not unduly broaden the issues of the contested case. The Districts argue: "The focus of this proceeding is on the rental pool procedures that control distribution of water in WD01 and how water is properly allocated to the City of Pocatello's storage account." *Petition* at 6. "Those procedures directly overlap with the Spaceholders' interests in the proper distribution of their water rights in WD01." *Id.* The presiding officer agrees. Pocatello's hearing request is related to the legitimacy and implementation of certain procedures in the Water District 01 Rental Pool Procedures. The Districts' Petition is related to those same procedures. Therefore, the issues presented in Pocatello's Hearing Request will not be unduly broadened if the Districts are allowed to intervene.

The Districts' interests are not adequately represented by existing parties to the contested case. Pocatello challenges certain procedures of the Water District 01 Rental Pool and is seeking a greater allocation of storage water. The allocation of storage water is a zero-sum process. Therefore, increasing the allocation of storage water to Pocatello would result in a decrease in the allocations to other spaceholders, which may affect the Districts' storage allocations. Therefore, the

Districts' interests are not adequately represented by Pocatello, the only existing party to the contested case.

CONCLUSIONS OF LAW

The Districts have demonstrated a direct and substantial interest in the contested case. Granting the Districts' Petition will not unduly broaden the issues of the contested case. Finally, the Districts' interests are not adequately represented by existing parties to the contested case. Therefore, the Districts' Petition should be granted and the Districts should be allowed to intervene in this contested case.

ORDER

IT IS HEREBY ORDERED that the Districts' Petition is GRANTED. Pursuant to Rule 710 (IDAPA 37.01.01), this order granting intervention is an Interlocutory Order.

Dated this 10th day of October, 2024.



James Cefalo
Presiding Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October 2024, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Documents Served: Order Granting Petition to Intervene

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