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DEPARTMENT OF
WATER RESOURCES

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Attorney and Designated Representative for the U.S. Department of the Interior, Bureau of Reclamation

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR FOR THE BENEFIT OF 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	**RECLAMATION'S PETITION TO INTERVENE**

INTRODUCTION

The U. S. Department of the Interior, Bureau of Reclamation, by and through its attorney and duly authorized representative, Kathleen Marion Carr, Office of the Field Solicitor, (Reclamation) pursuant to IDAPA 37.01.01.350 *et seq.*, hereby petitions for leave to intervene in the above-captioned contested case proceeding initiated by the *Order In The Matter of Distribution of Water To Various Water Rights Held By or For the Benefit of A&B Irrigation District et al (Feb. 14, 2005)* ("*Order*") issued by the Director of the Idaho Department of Water Resources ("IDWR"). The grounds for this Petition are set out below.

INTEREST'S OF THE BUREAU OF RECLAMATION

The U.S. Bureau of Reclamation's address is 1150 North Curtis Road, Suite 100, PN-3100, Boise, ID 83706-1234. The Bureau of Reclamation has a direct and substantial interest in this proceeding in that it stores and delivers irrigation water pursuant to water rights and SRBA claims they hold[1] in the Upper Snake River Basin for American Falls Reservoir, Jackson Lake and Palisades Reservoir. These water rights and claims are: 01-284, 01-2064, 01-2068, 01-4052, 01-4055, 01-4056, 01-4057, 01-10042, 01-10043, 01-10044, 01-10045, and 01-10053.

LEGAL STANDARD

Pursuant to IDAPA 37.01.01.353, IDWR will grant intervention if (1) the petition to intervene is timely, (2) the petitioner shows a direct and substantial interest in any part of the subject matter of the proceeding, (3) the issues will not be unduly broadened, and (4) the petitioner's interests are not adequately represented by the existing parties.

DISCUSSION

I. THE PETITION IS TIMELY.

A petition to intervene is timely if it is filed at least fourteen days before the date set for the formal contested case hearing or before the prehearing conference. *IDAPA 37.01.01.352.* In this case, the petition is timely because neither a formal hearing nor a prehearing conference has

[1] The nature and extent of Reclamation's ownership interest in the irrigation component of the storage water rights that are at issue in this proceeding have been recently determined by the Snake River Basin Adjudication (SRBA) District Court. *See, e.g., In re: SRBA 39576 (Subcase 91-63), Order on Motion for Reconsideration and Order Modifying Court's January 14, 2005, Final Order* (Fifth J. Dist., Idaho Mar. 3, 2005). However, the time for appeal of this decision has not run, and so the proceedings may be ongoing.

been scheduled. Moreover, this case is still in its earliest stages because the *Order* creating this contested case proceeding was only entered on February 14, 2005.

II. RECLAMATION HAS A DIRECT AND SUBSTANTIAL INTEREST IN THE SUBJECT MATTER OF THIS CASE.

Under the standard set forth in IDAPA 37.01.01.353, intervention is proper if the petitioner can show a direct and substantial interest in "any part" of the subject matter of the following rights held by Reclamation that have been raised in this proceeding: 01-284, 01-2064, 01-2068, 01-4052, 01-4055, 01-4056, 01-4057, 01-10042, 01-10043, 01-10044, 01-10045, and 01-10053. *Order, p. 12, ¶¶ 51, 52.* Because it is the holder of these water rights, Reclamation has a direct and substantial interest in ensuring that water rights are administered properly under the prior appropriation doctrine as established under Idaho law.

In its *Order*, IDWR finds that ground water depletions are adversely impacting storage rights held by Reclamation:

> Simulations using the Department's calibrated computer model of the ESPA show that ground water withdrawals from certain portions of the ESPA for irrigation and other consumptive purposes cause depletions to the flow of the Snake River in the form of reduced reach gains or increased reach losses in various reaches of the Snake River including the reach extending from Shelley, Idaho to Minidoka Dam, which includes the American Falls Reservoir.
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> * * *
>
> On the date of this Order, the United States through the USBR is authorized to divert water from the Snake River for reservoir storage under the water rights [01-284, 01-2064, 01-2068, 01-4052, 01-4055, 01-4056, 01-4057, 01-10042, 01-10043, 01-10044, 01-10045, and 01-10053] for the benefit of the members of the Surface Water Coalition. Historic ground water depletions are causing reductions in the flows of the Snake River and its tributaries and reductions in the amount of water that could

> otherwise be diverted by the United States for the benefit of the Surface Water Coalition.

Order, pp. 4, 15-16, ¶¶ 12, 67. Because Reclamation's water rights, including rights to store water in American Falls Reservoir, Jackson Lake, and Palisades Reservoir, are being adversely impacted, as found by IDWR, Reclamation necessarily has a direct and substantial interest in ensuring that during this proceeding proper determinations of injury and administration are made relative to its water rights.

Reclamation also has a direct and substantial interest in a number of the other factual and legal issues raised in the *Order*. For instance, IDWR made findings regarding Reclamation's water rights and federal contracts it entered into in regards to the distribution of the water supply yielded from its storage. *See Order pp.* 11-13, ¶¶ 50, 51, 52, 53, 54 and 55. IDWR also states in as a *Conclusion of Law* that:

> [w]hether the senior priority water rights held by or for the benefit of members of the Surface Water Coalition are injured depends in large part on the total supply of water needed for the beneficial uses authorized under the water rights held by the members of the Surface Water Coalition and available from both natural flow **and reservoir storage** combined.

Order, p. 30, ¶ 35 (emphasis added). Thus, the *Order* provides when it determines injury that IDWR will make determinations that will detrimentally affect the ability of Reclamation and the petitioners to utilize the storage supply as may have historically occurred and that has been provided for under both Idaho State law and federal contracts.

The Idaho Ground Water Appropriators (IGWA) have also raised seventeen (17) issues, which it characterizes as "significant" and insists that those issues be determined by IDWR in this proceeding. Many of the issues raised by IGWA are broadly framed and, consequently, could have far-reaching effects relative to the determination, administration, and operation of storage and other water rights at issue in this proceeding. *See, e.g., IGWA's, Inc.'s Petition to*

Intervene (Request for Administration in Water Dist. 120) (Feb. 3, 2005) ¶¶ 11(G),11(H), 11(I), 11(J) and 11(K). These issues raised by IGWA and others threaten to effect the validity, nature, and extent of Reclamation's water rights appropriated under state licenses, and distributed pursuant to state law and federal contracts.

As shown, Reclamation is the only party that can fully address the issues raised in either the *Order* or by the parties in their previous pleadings filed to date that relate to Reclamation's actual storage of water under state law or to Reclamation's distribution of storage water pursuant to state law and federal contract.

III. INTERVENTION WILL NOT UNDULY BROADEN THE ISSUES.

The scope of this proceeding and the issues raised in this contested case are extremely broad. As indicated above, it is because of the scope of the proceeding (which involves Reclamation's water rights and the use of project water supplies distributed pursuant to federal contracts) and the broad scope of the issues raised by the parties that make it necessary for Reclamation to intervene in this proceeding. Reclamation's direct and substantial interests, as set out above, do not broaden the issues already raised, but its participation as a party allows it to facilitate a proper determination of those issues as well assist the IDWR in understanding the application of federal contracts to its water rights.

IV. RECLAMATION'S INTERESTS ARE NOT ADEQUATELY REPRESENTED BY THE EXISTING PARTIES.

Because Reclamation is the holder of certain storage water rights and the contracting officer of federal contracts directly at issue in this proceeding, Reclamation is the only one

positioned to adequately represent its water rights and interests in their entirety.[2] Reclamation is a necessary party as shown and is entitled to intervene to fully protect its interests as outlined above.

V. SERVICE OF CASE PROCEEDINGS

Reclamation hereby requests, pursuant to IDAPA 37.01.01.200, that its duly authorized representative and attorney, Kathleen Marion Carr, and its Manager of Water Rights and Acquisitions, E. Gail McGarry be copied on all subcase orders or pleadings at the following addresses:

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CONCLUSION

Based on the foregoing, Reclamation requests that its petition to intervene as a full party be granted.

Dated this 7 day of March, 2005.

Kathleen Marion Carr
KATHLEEN MARION CARR

[2] The petitioners may be able to represent their contractual and legal interests in the irrigation portion of the water rights that Reclamation holds for them, but only Reclamation can represent *all* of the state authorized purposes of its water rights and all of the various contracts it has with its storage users.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 7 day of March 2005, a true and correct copy of **RECLAMATION'S PETITION TO INTERVENE** was served on the following person(s) as shown below:

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