

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF THE MITIGATION
PLAN FILED BY THE CITY OF IDAHO
FALLS FOR THE SURFACE WATER
COALITION DELIVERY CALL

Docket No. CM-MP-2015-005

**ORDER GRANTING SURFACE
WATER COALITION'S PETITION
TO INTERVENE**

BACKGROUND

On October 19, 2015, the City of Idaho Falls ("City") filed with the Idaho Department of Water Resources ("Department") the *City of Idaho Falls Conjunctive Management Rule (CMR) 43 Mitigation Plan* in response to the Surface Water Coalition ("SWC") delivery call case. The Department published notice of the mitigation plan in the Post Register, Idaho Statesman, Times-News, and Idaho State Journal on November 5, 2015, and November 12, 2015. The deadline to file a protest was November 23, 2015.

On November 18, 2015, New Sweden Irrigation District filed a *Notice of Protest*. The SWC did not file a protest.

On December 24, 2015, the SWC filed the *Surface Water Coalition's Petition to Intervene* ("Petition"). The Petition requests that the Director grant SWC's request to intervene in the above-referenced matter pursuant to *Rules of Procedure of the Idaho Department of Water Resources* ("Rules of Procedure") 350 through 354. *Petition* at 2.

On January 8, 2016, the City filed a *Response of No Opposition to Surface Water Coalition's Petition to Intervene* ("Response"). The City states it "does not oppose" the Petition and "requests that the Director grant the petition." *Response* at 2.

ANALYSIS

Rules of Procedure 350 to 354 govern intervention in administrative proceedings. Rule 351 provides that the petition to intervene must set forth the name and address of the potential intervenor. Rule 352 provides that, to be considered timely, a petition to intervene must be "filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice." IDAPA 37.01.01.352.

The Petition identifies the SWC members as the proposed intervenors. The Director concludes the Petition is timely because the Department has not set this matter for hearing, no prehearing conference has been held and the Director has not provided a different time to file petitions to intervene.

Rule of Procedure 353 provides:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353.

The SWC argues it has a direct and substantial interest in the City's mitigation plan because the mitigation plan was filed in direct response to the SWC's delivery call. The SWC asserts that it has "private property right interests, or decreed senior water rights, that stand to be directly and materially affected by the outcome of this contested case." *Petition* at 5. The SWC argues its involvement in these proceedings will not unduly broaden the issues because this case is in the initial stages. *Petition* at 8. As stated above, the City does not oppose intervention and in fact "requests that the Director grant the petition." *Response* at 2.

The Director concludes the SWC has a direct and substantial interest in the City's mitigation plan and that intervention will not unduly broaden the issues. The Director further concludes the SWC's interest is not adequately represented by existing parties.

ORDER

IT IS HEREBY ORDERED that the SWC's Petition to Intervene is GRANTED.

Dated this 2nd day of February 2016.



GARY SLACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February 2016, I served the foregoing document on the following by the method(s) indicate below:

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