

Sarah A. Klahn, ISB #7928
SOMACH SIMMONS & DUNN
2033 11th Street, #5
Boulder, CO 80302
Telephone: (303) 449-2834
Email: sklahn@somachlaw.com

Attorney for City of Pocatello

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SOUTH VALLEY GROUND WATER DISTRICT,
and GALENA GROUND WATER DISTRICT,

Petitioners,

v.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN in his
official capacity as Director of the Idaho
Department of Water Resources,

Respondents.

CASE NO. CV07-2021-243

**CITY OF POCATELLO'S
MOTION TO INTERVENE**

Fee Category: Exempt
Idaho Code § 67-2301

CITY OF POCATELLO (“Pocatello”), by and through its attorneys of record, files
this *Petition to Intervene* in the captioned matter.

BACKGROUND

On May 4, 2021, the Director of the Idaho Department of Water Resources issued a
Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing in Docket No.
AA-WRA-2021-001 (“Basin 37 Matter”).

On May 12, 2021, Pocatello filed its *Notice of Intent to Participate* in the Basin 37
Administrative Proceeding as described in the *Notice of Administrative Proceeding, Pre-
Hearing Conference, and Hearing*. Pocatello was allowed to participate as a member of the

“Interested Water Users” group, and its participation was limited to legal issues. *See, Prehearing Order; Scheduling Order, May 25, 2021, at page 2.*

On May 24, 2021, Petitioners South Valley Ground Water District and Galena Ground Water District (“SVGWD/GGWD”) initiated the captioned matter, related to the Basin 37 Matter, by filing their *Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Injunction or, Alternatively, Writ of Prohibition* along with supporting documents. Undersigned counsel for Pocatello learned of the filing on May 26, 2021, and prepared a *Notice of Intent to Participate* because Pocatello has an interest in the legal issues raised by the plaintiffs and because it was a participant in the underlying Basin 37 Administrative Proceeding.

Before the *Notice of Intent to Participate* could be filed, the Court in its May 27, 2021 *Order Denying Application for Temporary Restraining Order* denied the Petitioners’ request for a temporary restraining order, stating “[t]he Court does not find the need for such relief to be clear and plain given the Director has not yet ruled on the issues of water right administration that are presently before him.” The Court also issued a *Procedural Order*, allowing that “a person or entity who was a party to the underlying administrative proceeding [but] is not made a named party in the *Petition*, and is not otherwise a Petitioner, such person or entity may file a *Notice of Appearance* in this matter within ten (10) days [June 6, 2021] from the issuance of this *Procedural Order*. This Court will treat the *Notice of Appearance* as a *Motion to Intervene* and will treat the party filing the *Notice of Appearance* as an Intervenor. Under such circumstances, the Court will automatically issue an order granting the *Motion to Intervene*.” However, Pocatello’s *Notice of Intent to Participate* was not filed within the time limit specified by the *Procedural Order*.

As the deadline for parties to the underlying agency action to file *Notices of Intent to Participate* has passed, Pocatello seeks intervention in this matter as it continues to have an interest in the legal issues raised by the captioned matter. Granting Pocatello's *Motion to Intervene* is timely and satisfies the standards under Rules 24(a) and 24(b), and thus would not cause prejudice to any party. Pocatello has consulted with the attorneys for Petitioners SVGWD/GGWD. However, at the time of filing of this *Motion to Intervene*, Pocatello had not received a definitive response from the Petitioners to indicate whether or not they would oppose such *Motion*.

ARGUMENT

A. Mandatory Intervention

Pursuant to IRCP 24(a)(2), the granting of intervention is mandatory in any action upon a timely motion that:

claims an interest relating to the property or transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

This rule is to be construed liberally.¹ As argued below, Pocatello's *Motion to Intervene* meets the standard under Rule 24(a)(2) for mandatory intervention.

1. Pocatello's Motion to Intervene is Timely.

The timeliness of a motion to intervene under Rule 24 is "determined from all the circumstances: the point to which the suit has progressed is not solely dispositive."²

Intervention is timely as long as it will not "unnecessarily and unreasonably delay the trial of

¹*City of Boise v. Ada Cty (In re Facilities & Equip. Provided by the City of Boise)*, 147 Idaho 794, 803 (2009) ("courts should look with favor on intervention in a proper case, and be liberal in permitting parties to intervene under the proper circumstances." If there is any doubt as to whether intervention is appropriate, a motion to intervene should usually be granted").

² *State v. United States*, 134 Idaho 106, 109 (Idaho 2000).

issues between the original parties.”³ Timeliness is judged by the “extent of prejudice which any delay resulting from the granting of the application will cause to the existing parties.”⁴

In this matter, SVGWD/GGWD sought both declaratory and injunctive relief; to date, the Court has acted only to deny the request for a Temporary Restraining Order, and to stay Count 1 of the complaint, dismissing without prejudice the remainder of the counts. The scope and claims to be made in the case have yet to be determined. Pocatello’s intervention is timely.

2. Pocatello Has an Interest in this Matter.

For purposes of Rule 24(a), an “interest” means a “significant protectable interest.”⁵ Pocatello’s interest in this matter relates to the legal issues surrounding the Director’s convening a hearing to consider curtailing junior ground water users in Basin 37 in the absence of a delivery call. Whether or not the Director has adequate statutory authority to evaluate curtailment in this manner is an issue of first impression. To date the Director has not signaled in any way that the Department’s exercise of its authority in the underlying administrative matter is limited to the facts or specific legal issues surrounding Basin 37. Because Pocatello opposes the Department’s actions on a legal basis, it seeks to litigate issues related to the Department’s authority here to avoid being caught in some future Eastern Snake Plain Aquifer Ground Water Management Area (“ESPA-GWMA”) curtailment effort that proceeds along similar lines.

³ *Herzog v. City of Pocatello*, 82 Idaho 505, 510 (1960).

⁴ *Duff v. Draper*, 96 Idaho 299, 302 (Idaho 1974); *but see State v. United States*, 134 Idaho at 110 (“*Duff*’s (generous) timeliness holding does not apply in the context of the SRBA Litigation”).

⁵ *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998).

3. Pocatello's Interests May be Impaired or Impeded by Resolution of the Legal Issues in this Matter.

Specifically, Pocatello is a junior water right holder in the ESPA-GWMA, which does not have an approved GWMA Management Plan, and while Pocatello has resolved disputes with some of the senior water rights in the ESPA-GWMA by settlement, the Director's approach in Basin 37 appears to provide for a parallel means to curtail junior ground water users. In other words, if no delivery call is required, the Director could simply decide that the seniors in the ESPA-GWMA are not getting enough water and notice a hearing for curtailment in the same manner as was done in Basin 37, regardless of agreements between water users.

4. Pocatello's interests are not adequately represented by any existing party.
Only Pocatello is in a position to determine which arguments to assert to protect its existing ground water rights.

B. Permissive Intervention.

Pocatello also satisfies the criteria for permissive intervention under I.R.C.P 24(a), which "allows permissive intervention by a person '[u]pon timely application' and 'when an applicant's claim . . . and the main action have a question of law or fact in common.'" *State v. United States (in Re SRBA Case No. 39576)*, 134 Idaho 106, 110, 996 P.2d 806, 810 (2000). "To determine timeliness, the court considers three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 390 (2002). "The decision of whether to grant the motion to intervene is discretionary with the trial court. A court acts within its discretion if it perceives the issue as discretionary, acts within the outer

boundaries of its discretion and consistently with applicable legal standards, and reaches its decision by an exercise of reason.”⁶ *Id.*

CONCLUSION

Because Pocatello satisfies the requirements for intervention under either prong of Rule 24, I.R.C.P., it respectfully requests that its *Motion to Intervene* be granted.

Respectfully submitted this 25th day of June, 2021.

SOMACH SIMMONS & DUNN

By  _____

Sarah A. Klahn

⁶ *See also, McCormack v. Hiedeman*, 2012 U.S. Dist. LEXIS 79273 at *4-5 (D. Idaho, June 6, 2012) (“As with Rule 24(a) intervention, the court should interpret the 24(b) requirements broadly in favor of intervention.”)

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2021, I caused to be served a true and correct copy of the foregoing **CITY OF POCA TELLO’S MOTION TO INTERVENE**, by the method indicated below and addressed to the following:

<p>Gary Spackman, Director Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Gary.Spackman@idwr.gov Megan.jenkins@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile (208) 287-6700 <input checked="" type="checkbox"/> Email</p>
<p>Garrick L. Baxter Rebecca Wills Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Garrick.baxter@idwr.idaho.gov Rebecca.wills@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Albert P. Barker Travis L. Thompson Michael A. Short John K. Simpson BARKER ROSHOLT & SIMPSON LLP PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com tlt@idahowaters.com mas@idahowaters.com jks@idahowaters.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

<p>Candice M. McHugh Chris M. Bromley MCHUGH BROMLEY, PLLC 380 S. 4th St, Ste 103 Boise, ID 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Robert L. Harris HOLDEN KIDWELL HAHN & CRAPO, PLLC PO Box 50130 Idaho Falls, ID 83405-0130 rharris@holdenlegal.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Michael C. Creamer Michael P. Lawrence Charlie S. Baser GIVENS PURSLEY LLP PO Box 2720 Boise, ID 83701-2720 mpl@givenspursley.com csb@givenspursley.com mcc@givenspursley.com harmonywright@givenspursley.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Matthew A Johnson Brian T. O'Bannon White Peterson Gray & Nichols, P.A. 5700 E Franklin Rd, Ste 200 Nampa, ID 83687-7901 mjohnson@whitepeterson.com bobannon@whitepeterson.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>J. Evan Robertson Gary D. Slette Robertson & Slette, PLLC PO Box 1906 Twin Falls, ID 83303-1906 erobertson@rsidaholaw.com gslette@rsidaholaw.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

James R. Laski Heather O’Leary Reece Dringle-Robert Lawson Laski Clark PLLC PO Box 3310 Ketchum, ID 83340 heo@lawsonlaski.com jrl@lawsonlaski.com efiling@lawsonlaski.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Norman M. Semanko Parsons Behle & Latimer 800 W Main St, Ste 1300 Boise, ID 83702 nsemanko@parsonsbehle.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Charles L. Honsinger HONSINGER LAW, PLLC PO Box 517 Boise, ID 83701 honsingerlaw@gmail.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Dylan Lawrence Varin Wardwell PO Box 1676 Boise, ID 83701 dylanlawrence@varinwardwell.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Laird B. Stone Stephan, Kvanig, Stone & Trainor PO Box 83 Twin Falls, ID 83303-0083 Sks&t@idaho-law.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Jerry R. Rigby Chase Hendricks Rigby, Andrus & Rigby 25 N Second E Rexburg, ID 83440 jrigby@rex-law.com chendricks@rex-law.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

<p>Joseph F. James Brendan L. Ash James Law Office, PLLC 125 5th Ave W Gooding, ID 83330 joe@jamesmvlaw.com efile@jamesmvlaw.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Rusty Kramer WD 37B Groundwater Association PO Box 507 Fairfield, ID 83327 Waterdistrict37b@outlook.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Randall C. Budge Thomas J. Budge Racine Olson, PLLP PO Box 1391 Pocatello, ID 83204 randy@racineolson.com tj@racineolson.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>James P. Speck Speck & Aanestad, PC PO Box 987 Ketchum, ID 83340 jim@speckandaanestad.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Lawrence Schoen Napuisunaih 18351 U.S. Highway 20 Bellevue, ID 83313 lschoen@naramail.net</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Vic Conrad J.R. Simplot Company PO Box 27 Boise, ID 83707-0027 Vic.conrad@simplot.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Paul Bennett Swiftsure Ranch 114 Calypso Lane Bellevue, ID 83313 info@swiftsureranch.org</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

<p>Paul L. Arrington Idaho Water Users Association 1010 W Jefferson Ste 101 Boise, ID 83702 iwua@iwua.org</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Ann Y. Vonde Owen Moroney Michael C. Orr Idaho Attorney General’s Office PO Box 83720 Boise, ID 83720-0010 Ann.vonde@ag.idaho.gov Owen.moroney@idfg.idaho.gov Michael.orr@ag.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Richard T. Roats Lincoln County Prosecuting Attorney PO Box 860 Shoshone, ID 63352 rtr@roatslaw.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Tom Bassista Technical Assistance Program Coordinator Idaho Dept. of Fish and Game Headquarters Office PO Box 25 Boise, ID 83707 Thomas.bassista@idfg.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Kaysi and Rodney Hubsmith Kaysi10@live.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Idaho Ranch Rands Property Management 218 Meadowbrook Hailey, ID 83333 idahoranchhands@gmail.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

<p>Big Wood Farm c/o Alton Huyser 72 North, Hwy 75 Shoshone, ID 83352</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>Fred Brossy Barbara Farms LLD PO Box 424 Shoshone, ID 83352</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>Mark Sabala Sabala Farms, Inc. 1819 E 1550 S Gooding, ID 83330</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>
<p>Southern Comfort Homeowner's Association PO Box 2739 Ketchum, ID 83340</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>

Sarah Klahn
Somach Simmons & Dunn