

District Court - SRBA  
Fifth Judicial District  
In Re: Administrative Appeals  
County of Twin Falls - State of Idaho

JUN 30 2020

By \_\_\_\_\_

Clerk

Deputy Clerk

Norman M. Semanko, ISB #4761  
PARSONS BEHLE & LATIMER  
800 West Main Street, Suite 1300  
Boise, Idaho 83702  
Telephone: 208.562.4900  
Facsimile: 208.562.4901  
Email: [NSemanko@parsonsbehle.com](mailto:NSemanko@parsonsbehle.com)

Attorneys for Snake River Storage

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BASIN 33 WATER USERS, a coalition of  
water right holders, and the UPPER VALLEY  
WATER USERS, a coalition of water right  
holders,

Petitioners,

vs.

SURFACE WATER COALITION, a coalition  
of water right holders,

Cross Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER  
RESOURCES,

Respondent,

and

CITIES OF BLISS, BURLEY, CAREY,  
DECLO, DIETRICH, GOODING,  
HAZELTON, HEYBURN, JEROME, PAUL,  
RICHFIELD, RUPERT, SHOSHONE, AND  
WENDELL; SOUTH VALLEY GROUND  
WATER DISTRICT; IDAHO GROUND  
WATER APPROPRIATORS, INC.; IDAHO  
POWER COMPANY; CLEAR SPRINGS  
FOODS, LLC; AND CITY OF POCATELLO,

Intervenors.

IN THE MATTER OF DESIGNATING THE  
EASTERN SNAKE PLAIN AQUIFER  
GROUND WATER MANAGEMENT AREA

Case No. CV01-20-8069

REPLY IN SUPPORT OF SNAKE  
RIVER STORAGE'S VERIFIED  
PETITION TO INTERVENE OR, IN  
THE ALTERNATIVE, APPEAR AS  
AMICUS CURIAE

REPLY IN SUPPORT OF SNAKE RIVER STORAGE'S VERIFIED PETITION TO  
INTERVENE OR, IN THE ALTERNATIVE, APPEAR AS AMICUS CURIAE - 1

COMES NOW Snake River Storage ("SRS"), by and through its undersigned counsel, Parsons Behle & Latimer, and hereby submits its reply to the Surface Water Coalition's ("SWC") Opposition to Snake River Storage's Verified Petition to Intervene, which was filed in the above-entitled matter pursuant to paragraph 3 of the Court's *Procedural Order Governing Judicial Review of Final Order of Director of Idaho Department of Water Resources* (May 27, 2020) ("Procedural Order"), Idaho Appellate Rule 7.1 and Idaho Rules of Civil Procedure 24(a) and 24(b), to represent and protect its interests, or in the alternative, to appear as amicus curiae pursuant to Idaho Rule of Civil Procedure 84(r) and Idaho Appellate Rule 8, for the limited purpose of briefing the issues in this matter and participating in oral argument.

## I. INTRODUCTION

SWC argues that SRS does not satisfy the applicable criteria for intervention. SWC further asserts that SRS should not be allowed to participate as amicus curiae.

SRS satisfies Idaho Appellate Rule 7.1 and Idaho Rules of Civil Procedure 24(a) and 24(b). As a result, SRS should be granted leave to intervene in this matter. Alternatively, SRS meets the criteria under Idaho Appellate Rule 8 and should be allowed to participate as amicus curiae at oral argument and in briefing the issues in this matter.

## II. ARGUMENT

### A. SRS's Petition to Intervene Should Be Granted Over SWC's Opposition.

SWC states that this proceeding does not concern the IGWA-SWC Settlement Agreement, private recharge, or the provisions of a future management plan for the ESPA Ground Water Management Area. SRS does not assert that it does. Rather, those items are a description of the

REPLY IN SUPPORT OF SNAKE RIVER STORAGE'S VERIFIED PETITION TO INTERVENE OR, IN THE ALTERNATIVE, APPEAR AS AMICUS CURIAE - 2

interests of SRS and its members, as required to intervene. As detailed in its petition, these interests stand to be impacted by the outcome of this matter.

Under Idaho Appellate Rule 7.1, intervention may be granted to "an entity whose interest would be affected by the outcome." Here, the Court's determination whether the ESPA Ground Water Management Area was correctly designated will dictate whether a management plan is developed. The Director's Order makes clear that a management plan will be developed. A future order will detail how that plan will be developed. See, *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* at 25 (November 2, 2016) ("The Director will issue a separate order addressing the procedure for developing pursuant to Idaho Code Sec. 42-233b a ground water management plan for the ESPA Ground Water Management Area.") (available at [www.idwr.idaho.gov](http://www.idwr.idaho.gov)) (emphasis added).

Contrary to SWC's assertions, there is no speculation involved. There will be a management plan developed if the Court upholds the Director's designation of the ESPA GWMA. As a result, SRS's interests will be affected by the outcome of this matter.

SWC also faults SRS for not seeking to intervene in the underlying administrative proceeding. However, participation in the underlying administrative proceeding is not a prerequisite for seeking intervention in the District Court proceeding. SRS is not seeking to commence an appeal. That has already happened. Instead, SRS is seeking to intervene, pursuant to the Court's Procedural Order in this matter.

SWC's arguments - that participation in this proceeding is limited to the parties to the underlying administrative proceeding, that intervention is limited to evidentiary proceedings, and

REPLY IN SUPPORT OF SNAKE RIVER STORAGE'S VERIFIED PETITION TO INTERVENE OR, IN THE ALTERNATIVE, APPEAR AS AMICUS CURIAE - 3

that intervention is limited to proceedings before the Idaho Supreme Court - ignore the plain language of the Court's Procedural Order in this matter. That order sets forth a specific process for intervention in the District Court proceeding by those who did not participate in the underlying administrative proceeding. SRS has followed that process. As discussed in its Petition, the request is timely. As a result, the Court should grant leave to SRS to intervene.

SWC further claims that SRS may not intervene because some of its members also belong to IGWA. As described in its petition, SRS is a separate legal entity - an unincorporated nonprofit association. It is not IGWA - the Idaho Ground Water Appropriators, Inc. SRS does not have the same membership as IGWA; most notably, SRS includes numerous canal and ditch companies who participate in ground water recharge activities on the ESPA pursuant to existing water rights. SRS does not have the same interests as IGWA. It does not exist for the same purpose. The two groups have completely separate identities. As argued in its petition, the interests of SRS are not adequately represented by any of the existing parties to this matter.

Accordingly, and for the reasons set forth in its petition, SRS has satisfied the provisions of I.A.R. 7.1 and I.R.C.P. 24(a) and 24(b) and should therefore be granted leave to intervene.

**B. In the Alternative, SRS Should Be Allowed to Appear as Amicus Curiae over SWC's Opposition.**

SWC asserts that amicus participation by SRS is unnecessary and would be duplicative of the positions of existing parties.

SRS's interests are not the same as the other parties. And its arguments will not be the same. SRS will not serve as a rubber stamp for anyone's position in this matter. It will assert and protect its own unique interests, as set forth in its petition.

REPLY IN SUPPORT OF SNAKE RIVER STORAGE'S VERIFIED PETITION TO INTERVENE OR, IN THE ALTERNATIVE, APPEAR AS AMICUS CURIAE - 4

SWC's attempt to characterize SRS's position as being the same as the Petitioner's is unavailing. Idaho Appellate Rule 8 specifically requires SRS to state who it would appear in support of. SRS stated in its petition only that it would most appropriately appear in support of the Petitioners. Complying with the rule by making this statement does not equate to having the same interests as the Petitioners.

SRS represents both surface water and ground water interests who collaboratively participate in ground water recharge activities, pursuant to existing water rights, for the enhancement of the ESPA and the Snake River. Its unique and significant position lends itself well to providing additional insights and perspectives to the Court, which are not likely to come from any other party and would otherwise be lacking in this proceeding.

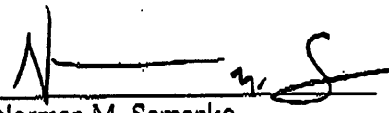
Accordingly, the Court should exercise its discretion to authorize SRS to appear as amicus curiae for the limited purpose of briefing the issues raised in this appeal and participating in oral argument.

### III. CONCLUSION

For the foregoing reasons, as well as those set forth in its Verified Petition, SRS has satisfied the applicable requirements regarding intervention, and its petition should be granted. Alternatively, SRS should be allowed to appear as amicus curiae, as requested.

DATED this 30<sup>th</sup> day of June, 2020.

PARSONS BEHLE & LATIMER

By:   
Norman M. Semanko  
*Attorneys for Snake River Storage*

REPLY IN SUPPORT OF SNAKE RIVER STORAGE'S VERIFIED PETITION TO INTERVENE OR, IN THE ALTERNATIVE, APPEAR AS AMICUS CURIAE - 5

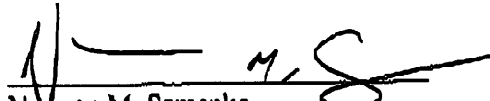
### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of June, 2020, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service as indicated.

GARRICK L. BAXTER DEPUTY ATTORNEY GENERAL STATE OF IDAHO PO BOX 83720 BOISE, ID 83720-0098	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
JERRY R. RIGBY 25 N 2ND E PO BOX 250 REXBURG, ID 83440-0250	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
ROBERT L HARRIS 1000 RIVERWALK DR, STE 200 PO BOX 50130 IDAHO FALLS, ID 83405	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
ALBERT P BARKER JOHN K SIMPSON BARKER ROSHOLT & SIMPSON LLP PO BOX 2139 BOISE, ID 83701-2139	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
TRAVIS L THOMPSON JONAS A REAGAN BARKER ROSHOLT & SIMPSON LLP PO BOX 63 TWIN FALLS, ID 83303-0063	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
KIRK BYBEE PO BOX 4169 POCATELLO, ID 83201	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
GARY SPACKMAN DIRECTOR IDWR PO BOX 83720 BOISE, ID 83720-0098	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
W. KENT FLETCHER FLETCHER LAW OFFICE PO BOX 248 BURLEY, ID 83318	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF

REPLY IN SUPPORT OF SNAKE RIVER STORAGE'S VERIFIED PETITION TO INTERVENE OR, IN THE ALTERNATIVE, APPEAR AS AMICUS CURIAE - 6

MICHAEL C. CREAMER GIVENS PURSLEY LLP PO BOX 2720 BOISE, ID 83701-2720	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
CANDICE MCHUGH CHRIS M BROMLEY MCHUGH BROMLEY, PLLC 380 S 4TH ST, STE 103 HOISE, ID 83702	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
RANDALL C BUDGE THOMAS J BUDGE PO BOX 1391 POCATELLO, ID 83204-1391	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
ROBERT E. WILLIAMS PO BOX 168 JEROME, ID 83338	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
SARAH A. KLAHN SOMACH SIMMONS & DUNN 2033 11TH ST, STE 5 BOULDER, CO 80302	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
DYLAN B. LAWRENCE J WILL VARIN VARIN WARDWELL LLC PO BOX 1676 BOISE, ID 83701-1676	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
JOSEPH F. JAMES 125 5TH AVE W GOODING, ID 83330	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF

  
Norman M. Semanko

REPLY IN SUPPORT OF SNAKE RIVER STORAGE'S VERIFIED PETITION TO INTERVENE OR, IN THE ALTERNATIVE, APPEAR AS AMICUS CURIAE - 7