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*Attorneys for Dry Creek Water Company LLC*

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

INVESTIGATION INTO DRY CREEK	)	CASE NO. DRY-W-24-01
WATER COMPANY, LLC OWNER OF A	)	
WATER SUPPLY AND DISTRIBUTION	)	DRY CREEK WATER
SYSTEM	)	COMPANY'S EXPEDITED
	)	PETITION TO AMEND
	)	INTERLOCUTORY ORDER NO.
	)	36195
_____	)	

Dry Creek Water Company, LLC (“Dry Creek” or “Respondent”), in accordance with the Idaho Public Utilities Commission (“IPUC” or “Commission”) Rules 53 and 322, IDAPA 31.01.01.53 and 31.01.01.322, petitions the Commission to amend interlocutory Order 36195 (“the Order”) to extend the Order’s deadline for Respondent’s Reply Comments by four weeks (28 days). Given the impending reply comment deadline of June 26, 2024, Dry Creek respectfully requests expedited review of this Petition.

**I. RELEVANT BACKGROUND**

In February of 2017, Dry Creek Water Company was formed to distribute water to the Homeowners’ Association (HOA) of Dry Creek Ranch. On a monthly basis, Dry Creek

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issues a single monthly bill to the HOA. The HOA, in turn, charges residents of Dry Creek Ranch for their respective use of the water for potable and irrigation purposes. Dry Creek does not make a profit on the water distributed to the HOA, and in fact, has historically operated at a significant loss. Likewise, the HOA does not profit off what is collected for water expenses from the Dry Creek Ranch residents.

In November of 2022, a Deputy Attorney General, Mr. Hardie, acting on behalf of IPUC Staff, sent Dry Creek correspondence indicating concerns that Dry Creek was operating as an unregulated public utility. Over the next ~16 months, IPUC Staff performed an informal investigation, with Dry Creek's cooperation. On May 24, 2024, the IPUC issued a formal Notice of Investigation (the Order), which provided the case may be reviewed through written submissions. The Order set forth a deadline for Staff and public comments of June 12, 2024 and a Respondent reply comment deadline of June 26, 2024. Staff filed its comments on June 12<sup>th</sup>. No public comments were filed. On June 24, 2024, Dry Creek retained the law firm of Kirton McConkie as legal counsel in these proceedings.

## **II. FAIRNESS AND EFFICIENCY WOULD BE SERVED THROUGH AN EXTENSION**

Counsel of record, Kirton McConkie, was retained yesterday, on June 24, 2024, to evaluate and respond to Staff's June 12<sup>th</sup> comments. Upon being retained, Kirton McConkie contacted Staff's Deputy Attorney General, Mr. Triplett, and requested Staff's investigative documents, which are forthcoming, but have not yet been received. Although Staff has worked on its analysis for approximately 18 months, Dry Creek did not receive Staff's conclusions, or the basis for its conclusions, until it reviewed Staff's

comments just 11 days (8 business days) ago. As such, more time is necessary for Dry Creek and its counsel to appropriately evaluate and respond to Staff's concerns and to offer any necessary evidentiary support – all of which is critical to fairly inform the IPUC's decision.

Additionally, more time is necessary to allow communications directly between Dry Creek's newly retained counsel and Staff and the Deputy Attorney General to further demonstrate that Dry Creek is not a corporation; it is not dedicated to serving the public; and it is not operating for a profit but rather at cost, and therefore is not subject to the Commission's authority.<sup>1</sup> Of particular note, Staff's Comments express concern regarding the bonus depreciation method instituted by the previous administration that Dry Creek utilized and its potential to interfere with a clear analysis of whether Dry Creek was operating at cost. The parties would be best served to work through these evidentiary issues and to allow Dry Creek's counsel to review the evidentiary support and discuss with Staff and explore potential resolutions, which may be dispositive of the matter. If the matter can be resolved accordingly, it would be the most efficient course of action going forward.

### **III. PROCEDURE**

Dry Creek does not request a hearing on its Petition and requests it be processed under the Commission's Rules of Modified Procedure, by written submissions rather than by hearing.

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<sup>1</sup> The threshold question of the Commission's jurisdiction should be resolved before additional matters are explored regarding Dry Creek's potential status as a water company and whether its invested capital should be included in rate base. See Staff's Confidential Comments, 5.

**IV. COMMUNICATIONS AND SERVICE OF PLEADINGS**

Communications and other documents relating to this proceeding should be sent

to:

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Ashton G. Ruff (ISB 12220)

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**V. REQUEST FOR RELIEF**

Dry Creek respectfully requests that the Commission grant Respondent an additional 28 days to file its reply comments. Given that the current reply comment deadline is tomorrow, Respondent respectfully requests expedited review of this Petition.

Respectfully submitted this 25<sup>th</sup> day of June, 2024.

*/s/ Jennifer Reinhardt-Tessmer*

Jennifer Reinhardt-Tessmer

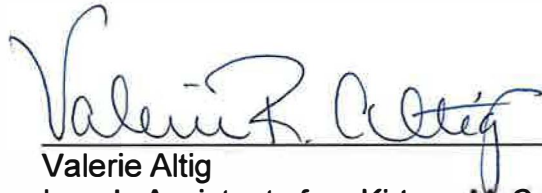
Attorney for Dry Creek Water Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of June, 2024, I served the foregoing document upon the following named parties by the method indicated below, and addressed to the following:

Idaho Public Utilities Commission:  
Commission Secretary  
Idaho Public Utilities Commission  
P.O. Box 83720  
Boise, ID 83720-0074  
secretary@puc.idaho.gov

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email

  
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Valerie Altig  
Legal Assistant for Kirton McConkie,  
Counsel for Dry Creek Water Co., LLC