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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

| | |
|---|---|
| IN THE MATTER OF THE MITIGATION PLAN FILED BY THE IDAHO GROUND WATER APPROPRIATORS FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 AND 36-07694 IN THE NAME OF RANGEN, INC. | CM-MP-2014-001<br><br>PETITION FOR INTERVENTION ON BEHALF OF THE IDAHO CITIES OF BLISS, BURLEY, CAREY, DECLO, DIETRICH, GOODING, HAZELTON, HEYBURN, JEROME, PAUL, RICHFIELD, RUPERT, SHOSHONE, AND WENDELL |

The cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone and Wendell ("Cities") by and through their counsel as above noted, hereby petition to be granted status as Intervenors pursuant to the Rules of Procedure of the Idaho Department of Water Resources ("Rules of Procedure") Nos. 154, 156, and 350-354. Intervention in this proceeding is sought for the purpose of allowing the Cities, through counsel designated by them, to present information, examine witnesses, and provide argument on issues related to the mitigation plan filed by Idaho Groundwater Appropriators, Inc. ("IGWA").

## BACKGROUND

On February 11, 2014 IGWA filed its Mitigation Plan and Request for Hearing ("Mitigation Plan") with the Idaho Department of Water Resources ("IDWR") in response to IDWR's Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Groundwater Rights Junior to July 13th, 1962, dated as of January 29, 2014 in Docket No. CM-DC-2011-004 ("Order"). The hearing on the Mitigation Plan has been set for March 17th and 18th, 2014. Each of the Cities has one or more water rights that will be subject to curtailment under the Order. (Order, pp. 11-12)

Rule 43.02 of the Rules for Conjunctive Management of Surface and Groundwater Resources of the IDWR provides that:

"Notice and Hearing. Upon receipt of a proposed mitigation plan, the Director will provide notice, hold a hearing as determined necessary, and consider the plan under the procedural provisions of Section 42-222, Idaho Code in the same manner as applications to transfer water rights."

The Director of the IDWR has caused Notice of Hearing complying with this rule to have been published in the Times News, Twin Falls, Idaho.

Other than IGWA, who filed the mitigation plan under consideration and is therefore a Petitioner, it is not clear if any other person has been named as party to this proceeding. Rule 150 of the Rules of Procedure of IDWR ("Procedural Rules") provides, in part, that:

"Parties to contested cases before the agency are called Applicants or Claimants or Appellants, Petitioners, Complainants, Respondents, Protestants or Intervenors..."

Three (3) of the Cities, namely Jerome, Heyburn, and Rupert are currently members of IGWA. The remaining eleven (11) cities are not members. In their separate Petition for Intervention filed by Petitioners In the Matter of Distribution of Water to Water Right No. 36-02551 and 36-07964, Docket Number CM-DC-2011-004 the Cities sought intervention in order to join in IGWA's request for a stay of the Order. That petition has not been ruled on, perhaps because the Director of IDWR on February 21, 2014, entered an order issuing a stay pending the resolution of the present matter.

## COMPLIANCE WITH RULES OF PROCEDURE REGARDING INTERVENTION

Rule 351 of the Rules of Procedure provides that a potential intervenor state the direct and substantial interest of the potential intervenor in the proceeding.

The Cities have a substantial interest in this proceeding for the following reasons:

1. The Cities collectively deliver water to tens of thousands of residences, together with other local governmental use, such as school districts, businesses, industries and food processing plants. Implementation of the Order

would create immediate, severe and prolonged economic impacts on the Cities and their water users.

2. Cities support the mitigation plan proposed by IGWA.

3. Cities intend to propose their own mitigation plan in the near future. Proceedings in the IGWA mitigation plan are likely to establish precedent that will affect the mitigation plan to be offered by the Cities, therefore making it necessary for the Cities to participate in the current proceeding involving IGWA's mitigation plan.

4. The scope of the mitigation plan which may be approved by IDWR in the current proceedings will have substantial influence on the mitigation plan to be proposed by the Cities.

5. Cities met on the 20th day of February, 2014, and determined to assert their collective interests in response to the Order. A steering committee was established by the Cities and is in the process of making recommendations to each individual city to formally adopt in open meetings of each city council. It is anticipated that prior to the hearing scheduled for the matter on March 17th and March 18th, all cities will have authorized the consolidation of its representation in one or more attorneys. The hearing will not be prolonged by examination or production of evidence by separate attorneys or representatives for each of the Petitioners.

Rule 352 of the Rules of Procedure require that petitions to intervene be filed at least fourteen (14) days prior to the date set for formal hearing. This petition is timely in that the hearing has been set for March 17th and March 18th. Cities also observe that even had their current petition for intervention been filed late, untimely filing of a petition for intervention is not fatal under Rule 352 which indicates that an untimely filed petition to intervene must provide good cause to be considered. The same rule requires that petitioners who seek intervention must demonstrate that intervention will not disrupt the proceedings, prejudice existing parties or unduly broaden the issues. This Petition does not violate any of those standards.

Rule of Procedure 353 provides in substance that a petition for intervention will be granted if it meets the requirements of Rules 351 and 352, unless the petitioner's interest is adequately represented by existing parties. IGWA is the Petitioner in this proceeding. Although it is true that three (3) cities are members of IGWA, eleven (11) cities are not. The vast majority of IGWA's members own irrigation water rights which are consumptive in nature. Municipal water rights owned by the Cities are a mixture of consumptive and non-consumptive uses. The quantity of flow rates for rights owned by the Cities are extremely modest when compared to the flow rights for irrigation rights owned by other IGWA members. Nonetheless, the economic impact of the curtailment of the Cities' water rights is overwhelmingly disproportionate to the amount of water curtailed because it would directly affect tens of thousands of individuals, governmental entities, businesses and industries. Because the Cities have many years of experience in the use and delivery of water to their customers, and have developed specialized knowledge concerning their water as a consequence, Cities are best suited to represent their interests in this proceeding.

Finally, the Notice of Hearing published by the IDWR for this proceeding may be fairly construed as an invitation to any person who has a direct interest in the proceeding to participate in it and present information, examine witnesses and provide argument. If no persons could participate in this proceeding other than parties in Docket No. CM-DC-2011-004, the Rangen Call, publication of a notice of hearing of this proceeding would serve no purpose.

## CONCLUSION

The Cities respectfully request that they be granted intervenor status with the rights to present information, examine witnesses and provide argument.

RESPECTFULLY SUBMITTED.

DATED this 28th day of February, 2014.

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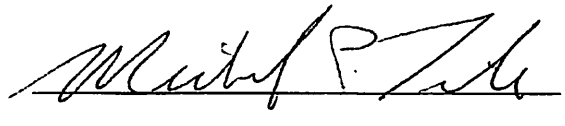

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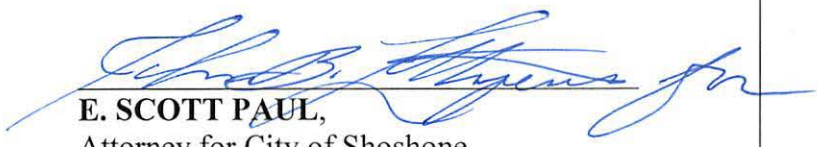

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28 day of February, 2014, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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