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ATTORNEYS FOR CITY OF POCATELLO

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

CITIES OF BLISS, BURLEY, CAREY,)
DECLO, DIETRICH, GOODING,)
HAZELTON, HEYBURN, JEROME, PAUL,)
RICHFIELD, RUPERT, SHOSHONE, and)
WENDELL,)

Petitioners,)

vs.)

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

Respondents.)

IN THE MATTER OF THE COALITION OF)
CITIES' SECOND MITIGATION PLAN)
FOR THE DISTRIBUTION OF WATER TO)
WATER RIGHT NOS. 36-15501, 36-02551,)
AND 36-07694 HELD BY RANGEN, INC.)

Case No. CV-2015-172

**CITY OF POCATELLO'S PETITION TO
APPEAR AS AMICUS CURIAE**

Fee Category: Exempt (I.C. § 67-2301)

COMES NOW, City of Pocatello (“Pocatello” or “City”), by and through its undersigned attorneys, to request pursuant to I.A.R. 8, that the Court grant Pocatello amicus curiae status in the captioned matter.

STANDARD OF REVIEW

I.A.R. 8 states that

An attorney, or person or entity through an attorney, may appear as amicus curiae in any proceeding by request of the Supreme Court; or by leave of the Supreme Court upon written application served upon all parties, setting forth the particular employment, if any, the interest of the applicant in the appeal or proceeding and the name of the party in whose support the amicus curiae would appear.

The decision on whether to limit participation to amicus curiae is discretionary with the trial court. *State v. United States (In Re SRBA Case No. 39576, Minidoka National Wildlife Refuge, SRBA Subcase No. 36-15452)*, 134 Idaho 106, 111, 996 P.2d 806, 811 (2000).

ARGUMENT

This case involves an appeal filed by the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (collectively, “Petitioners”) pursuant to Idaho Code §§ 67-5270 and 67-5279 appealing February 13, 2015 *Order Confirming Final Order Conditionally Approving Cities Second Mitigation Plan* (“Order”) entered by the Director of the Idaho Department of Water Resources (“IDWR” or “Department”). Petitioners appeal the Director’s Order which failed to relieve Petitioners of the threat of curtailment in the time frame requested, despite agreement by the calling senior. Petitioners also appeal the imposition of curtailment on the Petitioner Cities, despite the fact that the Department’s modeled basis for the Director’s curtailment order does not include modeling of the Petitioner Cities’, or indeed any, municipal pumping.

Pocatello relies on partially decreed ground water rights to supply its culinary and airport

wells; many of Pocatello's ground water rights are junior to the rights of seniors making delivery calls and Pocatello has appeared in the Surface Water Coalition ("SWC"), A&B and Rangen delivery calls before the IDWR, on judicial review, and before the Idaho Supreme Court. Just this week, Pocatello filed a mitigation plan with the IDWR in order to protect the City's ability to continue to pump its junior ground water rights in the event the Director finds that the SWC will be materially injured by a shortage of supply during the 2015 irrigation season.

Pocatello seeks to participate as an amicus to argue for the proper legal standards to be applied by the Director when parties present a stipulated mitigation plan. In addition, to the extent the Director can lawfully decline to adopt a stipulated mitigation plan, Pocatello will argue that, in the face of a stipulated mitigation plan, curtailment of junior municipal ground water rights in a delivery call is arbitrary and capricious in light of the fact that ESPAM curtailment runs do not include municipal pumping, nor are the operation of municipal ground water rights accurately reflected in the ESPAM.

REQUEST FOR RELIEF

Pocatello seeks leave to appear as amicus curiae and submit a brief to the Court addressing the legal issues presented in the captioned matter in support of Petitioners. Pocatello requests leave to participate in oral argument, and to file its amicus curiae briefs on the same deadlines applicable to Petitioners' briefs.

Respectfully submitted this 10th day of April, 2015.

CITY OF POCA TELLO ATTORNEY'S OFFICE

By 
A. Dean Tranmer

WHITE & JANKOWSKI

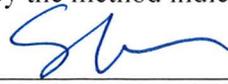
By 
Sarah A. Klahn

By 
Mitra M. Pemberton

ATTORNEYS FOR CITY OF POCA TELLO

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2015, I caused to be served a true and correct copy of the foregoing **CITY OF POCATELLO'S PETITION TO APPEAR AS AMICUS CURIAE** in CV-2015-172 upon the following by the method indicated:



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