

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF)	CM-DC-2011-004
WATER TO WATER RIGHT NOS. 36-02551)	
AND 36-07694)	ORDER DENYING IDAHO
)	CITIES' PETITION FOR
(RANGEN, INC.))	LIMITED INTERVENTION
)	
_____)	

BACKGROUND

On January 29, 2014, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued the *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (“Curtailment Order”).

On February 14, 2014, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Cities”) filed their *Petition for Limited Intervention* (“Petition”) seeking to intervene in the proceeding.

In response to the Cities’ Petition, on February 19, 2014, Rangen, Inc. (“Rangen”) filed its *Memorandum in Opposition to the Idaho Cities’ Petition for Limited Intervention* and the *Affidavit of J. Justin May in Opposition to the Idaho Cities’ Petition for Limited Intervention*.

ANALYSIS

As the Cities acknowledge, the Petition was untimely filed. Specifically, Rule of Procedure 352 provides that, to be considered timely, a petition to intervene must be: “[F]iled at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order of notice.” IDAPA 37.01.01.352. Rangen initiated the water call at issue in this case in 2011. The prehearing conference was held on January 19, 2012. The formal hearing on this matter took place in May 2013. The Cities did not file their Petition until February 14, 2014, well after the formal hearing on this matter.

However, Rule of Procedure 352 provides that “[t]he presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause

for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons.” IDAPA 37.01.01.352. Even a timely-filed petition to intervene may be denied when the interests of the party seeking intervention are already adequately represented in the proceeding. IDAPA 37.01.01.353.

The Cities assert the Petition “is sought for the limited purpose of supporting the Idaho Ground Water Appropriators, Inc.’s, *Petition to Stay Curtailment and Request for Expedited Decision*, dated February 11th, 2014.” *Petition* at 1. The Cities contend that “nothing currently contemplated by the Petitioners will disrupt the proceedings, prejudice any existing party, or unduly broaden any of the current issues presented.” *Id.* at 5. The Cities argue:

Intervention will permit the Cities to participate in this action which directly relates to their water use and will allow the Cities to propose a mitigation plan tailored to the unique circumstances of the Cities and the municipal water rights they own. The scope of the [Curtailment] Order, the unique aspects of municipal water rights compared to other types of water rights, including irrigation rights, and the lack of the Cities’ direct participation in the proceedings to date constitute good cause for the untimely filing of the Petition as required by Rule of Procedure No. 352.

Id. at 5.

The Cities have not demonstrated good cause or any other reason to grant the untimely Petition as there is nothing for the Cities to further participate in before the Department with respect to this proceeding. After the Director issued the Curtailment Order, the Idaho Ground Water Appropriators, Inc. (“IGWA”) timely filed *IGWA’s Petition for Reconsideration* (“IGWA Petition”), Rangen timely filed *Rangen, Inc.’s Motion for Reconsideration and Clarification* (“Rangen Motion”), and the City of Pocatello (“Pocatello”) timely filed *City of Pocatello’s Motion to Reconsider* (“Pocatello Motion”). On March 4, 2014, the Director issued an *Order on Reconsideration* denying the IGWA Petition and Pocatello Motion and denying the Rangen Motion except for the request to clarify the basis for the amounts designated in the mitigation phase-in. Because the petitions for reconsideration have been denied, there are no further proceedings related to the Curtailment Order for the Cities to participate in.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

The Idaho Cities’ Petition for Limited Intervention is DENIED.

DATED this 26th day of March, 2014.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2014, the above and foregoing document was served on the following by providing a copy in the manner selected:

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