

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

IN THE MATTER OF THE MITIGATION)	
PLAN FILED BY THE IDAHO GROUND)	CM-MP-2014-001
WATER APPROPRIATORS FOR THE)	
DISTRIBUTION OF WATER TO WATER)	ORDER DENYING
RIGHT NOS. 36-02551 AND 36-07694 IN)	IDAHO CITIES' PETITION
THE NAME OF RANGEN, INC.)	FOR INTERVENTION
_____)	

BACKGROUND

On February 11, 2014, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed with the Idaho Department of Water Resources ("Department") *IGWA's Mitigation Plan and Request for Hearing* ("Mitigation Plan"), pursuant to Rule 43 of the Conjunctive Management Rules, to avoid the curtailment required by the *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* issued on January 29, 2014 ("Curtailment Order"). The Department assigned the Mitigation Plan docket number CM-MP-2014-001.

On February 28, 2014, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell ("Cities") filed their *Petition for Intervention* ("Petition") seeking to intervene in the Mitigation Plan proceeding.

In response to the Cities' Petition, Rangen, Inc. ("Rangen") filed its *Memorandum in Opposition to the Idaho Cities' Petition for Limited Intervention* with the Department on March 5, 2014. The Cities filed their reply to Rangen's memorandum on March 7, 2014.

ANALYSIS

The petition to intervene in this proceeding was timely filed by the Cities. IDAPA 37.01.01.352. In addition, more than seven days have passed since the petition to intervene was filed; therefore, the Department may rule on the merits of the petition. IDAPA 37.01.01.354.

IDAPA 37.01.01.353 provides:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

1. The Cities fail to show a direct and substantial interest in this proceeding justifying separate representation and their participation may unduly broaden the issues.

The Cities argue that they have a substantial and direct interest in this proceeding because they “intend to propose their own mitigation plan” and are concerned that this proceeding may “establish precedent that will affect the mitigation plan to be offered by the Cities... .” *Petition* at 5. The Cities, however, fail to provide specifics as to their potential mitigation plan. Their only statement on this issue is that “the current proceeding will have a substantial influence on the mitigation plan to be proposed by the Cities.” *Id.* The lack of information or detail about the Cities’ mitigation plan makes it impossible for the Director to evaluate the Cities’ claim. A simple conclusory statement that the current proceeding will have an impact on the Cities’ mitigation plan is insufficient. Furthermore, because of the lack of detail surrounding the Cities’ request, the Cities’ participation could unduly broaden the issues. Because the Cities fail to provide support the argument that a desire to file a separate mitigation plan constitutes a direct and substantial interest in this proceeding, the request to intervene should be denied.

2. The Cities interests are adequately represented by IGWA.

The Cities support IGWA’s mitigation plan because they have junior water rights potentially subject to curtailment. *Petition* at 4-5. In fact, three of the cities requesting intervention are members of IGWA. *Id.* at 4. Still, the Cities suggest that their interests are not adequately represented by IGWA. First they argue that “[t]he 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.” *Id.* at 6. It is unclear exactly how having a mix of the consumptive and non-consumptive uses means their interests are not adequately represented by IGWA, especially since non-consumptive water uses are not subject to curtailment. *Order* at 42. Next, the Cities suggest that curtailment disproportionately affects the Cities as compared to other members of IGWA:

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.

Petition at 6.

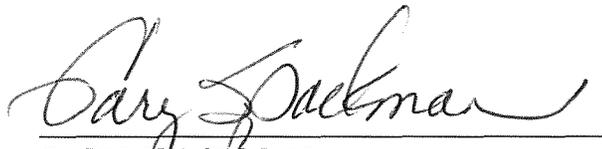
Even if the Cities' premise is accepted as true, the Director fails to see how this establishes that the Cities interests are different from IGWA's interests. IGWA's mitigation plan, if approved, provides sufficient mitigation for all junior ground water pumping causing material injury to Rangen. The ratio of quantity of flow to economic impact has nothing to do with the mitigation plan. The unstated assertion in the Cities' argument is that notwithstanding the fact that some of the cities are already members of IGWA, IGWA is not currently representing the Cities' interests adequately. If the Cities do not believe that their interests are being adequately represented by IGWA, they have a number of options. The cities that are not already members can join IGWA and work with IGWA to ensure the specific concerns of the Cities are addressed. If that is not acceptable to the Cities, they can join together and do as they have indicated and file their own mitigation plan. This will give them full control over legal representation. Intervention may be denied when the interests of the party seeking intervention are already adequately represented in the proceeding. IDAPA 37.01.01.353. Here, the Director concludes the Cities interests are adequately represented by IGWA.

ORDER

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

The Idaho Cities' Petition for Intervention is DENIED.

Dated this 10th day of March, 2014.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2014, the above and foregoing document was served on the following by providing a copy of the *ORDER DENYING THE IDAHO CITIES' PETITION FOR INTERVENTION* in the manner selected:

J JUSTIN MAY
MAY BROWNING & MAY PLLC
1419 W WASHINGTON
BOISE ID 83702-5039
jmay@maybrowning.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ROBYN BRODY
BRODY LAW OFFICE PLLC
PO BOX 554
RUPERT ID 83350-0554
robynbrody@hotmail.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

FRITZ X HAEMMERLE
HAEMMERLE HAEMMERLE
PO BOX 1800
HAILEY ID 83333-1800
fxh@haemlaw.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

RANDY BUDGE
T J BUDGE
RACINE OLSON
PO BOX 1391
POCATELLO ID 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

SARAH KLAHN
MITRA PEMBERTON
WHITE & JANKOWSKI
511 16TH ST STE 500
DENVER CO 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

A DEAN TRANMER
CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205
dtranmer@pocatello.us

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN K SIMPSON
TRAVIS L THOMPSON
PAUL L ARRINGTON
BARKER ROSHOLT & SIMPSON LLP
195 RIVER VISTA PL STE 204
TWIN FALLS ID 83301-3029
jks@idahowaters.com
tlt@idahowaters.com
pla@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

W KENT FLETCHER,
FLETCHER LAW OFFICE
PO BOX 248
BURLEY ID 83318
wkf@pmt.org

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

C THOMAS ARKOOSH
ARKOOSH LAW OFFICES
802 W BANNOCK STE 900
BOISE ID 83701
tarkoosh@arkoosh.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JERRY R RIGBY
HYRUM ERICKSON
ROBERT H WOOD
RIGBY ANDRUS & RIGBY CHRTD
25 NORTH SECOND EAST
REXBURG ID 83440
jrigby@rex-law.com
herickson@rex-law.com
rwood@rex-law.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ROBERT E WILLIAMS
JOHN B LOTH SPEICH
WILLIAMS MESERVY &
LOTH SPEICH LLP
PO BOX 168
JEROME ID 83338
rewilliams@cableone.net
jblothspeich@cableone.net

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ADAM B KING
ATTORNEY AT LAW
PO BOX 4962
KETCHUM ID 83340-4962
abk@ketchumlegal.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

CINDY L CAMPBELL
GOODING COUNTY PROSECUTOR'S
OFFICE
PO BOX 86
GOODING ID 83330
ccampbell@co.gooding.id.us

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

DAVID F SHIRLEY
PARSONS SMITH STONE
LOVELAND & SHIRLEY LLP
PO BOX 910
BURLEY ID 83318
dshirley@pmt.org

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

CRAIG D HOBDEY
ATTORNEY AT LAW
PO BOX 176
GOODING ID 83330
hobdeycraig@gmail.com

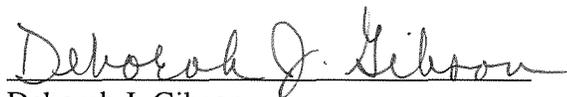
(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

MICHAEL P TRIBE
ROBINSON & TRIBE
PO BOX 396
RUPERT ID 83350
mpt@idlawfirm.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

E SCOTT PAUL
LINCOLN COUNTY
PROSECUTOR'S OFFICE
PO BOX 860
SHOSHONE ID 83352
sgregory@lincolncountyid.us

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail



Deborah J. Gibson
Admin. Assistant for the Director