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ATTORNEYS FOR ASSOCIATION OF IDAHO CITIES

**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,)	Case No. CV-2015-172
HAZELTON, HEYBURN, JEROME, PAUL,)	
RICHFIELD, RUPERT, SHOSHONE, and)	ASSOCIATION OF IDAHO CITIES'
WENDELL,)	PETITION TO APPEAR AS AMICUS
)	CURIAE
Petitioners,)	
)	
vs.)	Fee Category A: \$221.00
)	
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.)	
_____)	

COMES NOW the Association of Idaho Cities (“AIC” or “Association”) pursuant to Idaho Appellate Rule (“I.A.R”) 8 to petition the Court to appear as amicus curiae 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.

AIC was founded in 1947 and is a nonpartisan, nonprofit corporation that is owned, organized, and operated by Idaho’s city governments. AIC’s members provide water to their communities under the terms of licensed and decreed water rights.

The results of this appeal are likely to impact AIC’s members and the administration of their water rights. As reflected on Exhibits 1 and 2 to the *Affidavit of Adelheid (“Heidi”) M.*

Welsh, P.E., In Support of AIC Motion for Amicus, at least 50 AIC members are junior ground water users within the ESPA and the area of common ground water supply, the geographic area within the ESPA subject to conjunctive administration. AIC's members supply their communities with water supplies under both decreed and licensed water rights. *Id.* As such, numerous AIC members are likely to be in the position to seek mitigation plans to avoid curtailment as the result of IDWR injury findings in ongoing and potential future delivery calls. Many of the effected AIC members are small municipalities with relatively few resources, entities which would most likely seek to stipulate with a senior water user in the context of a delivery call to avoid the expense of litigation.

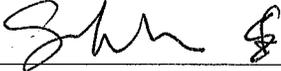
To provide a voice to these interests, AIC seeks to provide legal argument in support of Petitioners regarding the proper standards to be applied by the Director in the event a stipulated mitigation plan is presented to IDWR under Rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11.043). In addition, to the extent that the Director can lawfully decline to adopt a stipulated mitigation plan, AIC will offer legal argument that curtailment as the remedy against junior municipal water rights 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.

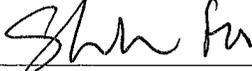
REQUEST FOR RELIEF

AIC 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. AIC 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 13th day of April, 2015.

WHITE & JANKOWSKI

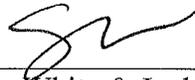
By 
Sarah A. Klahn

By 
Mitra M. Pemberton

ATTORNEYS FOR ASSOCIATION OF IDAHO
CITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2015, I caused to be served a true and correct copy of the foregoing **ASSOCIATION OF IDAHO CITIES' PETITION TO APPEAR AS AMICUS CURIAE** in CV-2015-172 upon the following by the method indicated:



 Sarah Klahn, White & Jankowski, LLP

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