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**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, DEITRICH, 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,

and

RANGEN, INC.,

Intervenor.

Case No. CV-2015-172

**OBJECTION TO THE ASSOCIATION
OF IDAHO CITIES' PETITION TO
APPEAR AS AMICUS CURIAE**

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.

COME NOW, Respondents Gary R. Spackman, in his official capacity as Director of the Idaho Department of Water Resources (“Department”), and the Department, an executive agency of the State of Idaho, by and through their attorneys of record, and request the Court deny the *Association of Idaho Cities’ Petition to Appear as Amicus Curiae* (“Association’s Amicus Petition”) in the above-captioned matter.

BACKGROUND

On November 20, 2014, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (collectively “Cities”) filed the *Coalition of Cities’ Second Mitigation Plan* (“Second Mitigation Plan”) with the Department. The purpose of the Second Mitigation Plan is to “mitigate the Cities’ out-of-priority ground water pumping” in the Rangen, Inc. (“Rangen”), delivery call proceedings. *Second Mitigation Plan* at 3. The Cities propose to mitigate the impacts of their ground water pumping by undertaking managed ground water recharge. *Id.* at 2.

On January 16, 2015, the Director issued his *Final Order Conditionally Approving Cities Second Mitigation Plan*. The order approved the Cities’ ability to recharge, but declined to grant mitigation credit in advance of the benefits of recharge accruing to Rangen. The Cities filed a petition for reconsideration and a request for hearing. A hearing was held and the Director affirmed his decision on February 13, 2015, in his *Order Confirming Final Order Conditionally Approving Cities Second Mitigation Plan* (“Order”). The Director stated:

If the Cities complete the mitigation plan activities in late February and early March of 2015, mitigation will be recognized at the earlier of: (a) the date the modeled transient benefits of the recharge activities to the Curren Tunnel equal the modeled depletions to the Curren Tunnel caused by the Cities' diversions, or (b) April 1, 2015, the beginning of the next mitigation "phase-in" year as established in previous orders.

Order at 11.

On March 10, 2015, the Cities filed a *Notice of Appeal and Petition for Judicial Review of Final Agency Action; Petition for Stay* ("Petition").¹ The Petition seeks judicial review of the Order. The Petition identifies a number of issues the Cities intend to raise on appeal. The issues generally fit into two categories. The first category challenges the Director's findings and legal conclusions regarding stipulated mitigation plans. *See Petition* at ¶¶ 35.a, c-i. The second category challenges the Director's inclusion of the Cities in curtailment lists issued in final orders of the Director in the 2011 Rangen delivery call (Docket # CM-DC-2011-004).² *See Petition* at ¶ 35.b ("Whether the Director erred by including the Cities in the curtailment lists when the Cities' depletions were not included in the quantification of material injury?") and ¶ 35.j ("Whether the Director erred by ordering curtailment of the non-consumptive junior-priority municipal water rights that included domestic, in-home uses owned by the Cities, but not ordering curtailment of non-consumptive junior-priority domestic water rights owned by private parties?").

On April 13, 2015, the City of Pocatello ("Pocatello") filed *City of Pocatello's Petition to Appear as Amicus Curiae* ("Pocatello's Amicus Petition") in this matter. Pocatello similarly groups the issues on appeal into two categories and seeks to participate as *amicus curiae* to support the Cities in their challenges to the two categories of issues. As to the first category, Pocatello seeks "to

¹ Although captioned as both a petition for judicial review and a petition for stay, the Cities do not request a stay of the Order in the body of the Petition and do not articulate legal justification for a stay in the body of the Petition.

² No order determining material injury has been issued in the 2014 Rangen delivery call (Docket # CM-DC-2014-004), so no curtailment order has been issued.

argue for the proper legal standards to be applied by the Director when parties present a stipulated mitigation plan.” *Pocatello’s Amicus Petition* at 3. As to the second category, Pocatello seeks to argue that “curtailment of junior municipal ground water rights in a delivery call is arbitrary and capricious in light of the fact that [Eastern Snake Plain Aquifer Model or “ESPAM”] curtailment runs do not include municipal pumping, nor are the operation of municipal ground water rights accurately reflected in the ESPAM.” *Id.*

On April 14, 2015, the Association of Idaho Cities (“Association”) filed the Association’s Amicus Petition in this matter. The Association seeks to present to the Court the same arguments the Cities identified in their Petition and that Pocatello identified in Pocatello’s Amicus Petition. Specifically, the Association seeks “to argue for the proper legal standards to be applied by the Director when parties present a stipulated mitigation plan.” *Association’s Amicus Petition* at 3. The Association also seeks to argue that curtailment of “junior municipal water rights is arbitrary and capricious in light of the fact that [Eastern Snake Plain Aquifer Model or “ESPAM”] curtailment runs do not include municipal pumping, nor are the operation of municipal ground water rights accurately reflected in the ESPAM.” *Id.*

STANDARD OF REVIEW

Idaho Appellate Rule 8 states, in relevant part:

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)*, 134 Idaho 106, 111, 996 P.2d 806 (2000); 4 Am. Jur. 2d *Amicus Curiae* § 8. The principle role

of *amicus curiae* is to aid the court on questions of law. 4 Am. Jur. 2d *Amicus Curiae* § 6.

Among other things, a court may evaluate whether the proffered information is timely, useful, or otherwise necessary to the administration of justice. *North Side Canal Co. v. Tuthill*, 2008 WL 8214251 (Fifth Jud. Dist. Ct. Jan. 29, 2008). Additionally, a court should look to whether the parties to the lawsuit will adequately present all relevant legal arguments. 4 Am. Jur. 2d *Amicus Curiae* § 8.

ARGUMENT

As stated above, the Association only seeks to participate as *amicus curiae* in this matter to present arguments that the Cities and Pocatello already seek to present to the Court. Specifically, the Association seeks “to argue for the proper legal standards to be applied by the Director when parties present a stipulated mitigation plan.” *Association’s Amicus Petition* at 3. The Association also seeks to argue that curtailment of “junior municipal water rights is arbitrary and capricious in light of the fact that [Eastern Snake Plain Aquifer Model or “ESPAM”] curtailment runs do not include municipal pumping, nor are the operation of municipal ground water rights accurately reflected in the ESPAM.” *Id.* Because the Cities and Pocatello already seek to present these arguments to the Court, the Association’s participation will not aid the Court, 4 Am. Jur. 2d *Amicus Curiae* § 6, or be useful or otherwise necessary to the administration of justice, *North Side Canal Co.*, 2008 WL 8214251. Because the interests of municipalities are already represented in this proceeding, the Association’s participation would only result in duplication of arguments and waste time and resources. Accordingly, the Court should deny the Association’s Amicus Petition.

In the event the Court allows the Association to participate as *amicus curiae* in this proceeding, for reasons set forth in the Respondents’ April 23, 2015, *Objection to City of*

Pocatello's Petition to Appear as Amicus Curiae and incorporated by reference herein, Respondents opposes the Association's attempt to argue that curtailment of "junior municipal water rights is arbitrary and capricious in light of the fact that [Eastern Snake Plain Aquifer Model or "ESPAM"] curtailment runs do not include municipal pumping, nor are the operation of municipal ground water rights accurately reflected in the ESPAM."

CONCLUSION

Based on the foregoing, Respondents respectfully request the Court enter an order denying the Association's Amicus Petition. Alternatively, Respondents respectfully request the Court deny the Association's request to argue that curtailment of "junior municipal water rights is arbitrary and capricious in light of the fact that [Eastern Snake Plain Aquifer Model or "ESPAM"] curtailment runs do not include municipal pumping, nor are the operation of municipal ground water rights accurately reflected in the ESPAM."

DATED this 23rd day of April 2015.

LAWRENCE G. WASDEN
Attorney General

CLIVE R. J. STRONG
Chief, Natural Resources Division



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April 2015, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the indicated methods:

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