

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS HELD
BY OR FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN FALLS
RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER IRRIGATION
DISTRICT, MINIDOKA IRRIGATION
DISTRICT, NORTH SIDE CANAL COMPANY,
AND TWIN FALLS CANAL COMPANY

Docket No. CM-MP-2016-001

**ORDER DENYING CITIES'
MOTION FOR
RECONSIDERATION**

IN THE MATTER OF IGWA'S SETTLEMENT
AGREEMENT MITIGATION PLAN

BACKGROUND

On December 28, 2023, the Coalition of Cities and the City of Pocatello (collectively "Cities") timely filed *Coalition of Cities' and City of Pocatello's Petition to Intervene* ("Petition"). On January 4, 2024, the Hearing Officer denied the *Petition*, concluding that "the Cities d[id] not demonstrate a direct and substantial interest in this matter" and that "any indirect interest the Cities may have in this proceeding will be adequately represented by existing parties." *Order Den. Petition* at 3.

On January 8, 2024, the Cities filed *Coalition of Cities' and City of Pocatello's Motion for Reconsideration* ("Motion"). The Cities' moved for reconsideration on the basis that: 1) "under Idaho law, they need only show they may be affected by the outcome of this matter" and 2) "the resolution of [hearing] Issue #3 has the potential to impact the amount of mitigation the Cities are required to provide under their own mitigation plan." *Motion* at 2.

ANALYSIS

First, the Cities argue the hearing officer applied the incorrect legal standard for intervention. *Motion* at 2. The Cities argue that the standard the hearing officer should apply is whether the Cities interests "may be affected." *Id.* The Cities cite the case *Duff v. Draper*, 96 Idaho 299 (1974) for this proposition. *Id.* The problem with the Cities' argument is that *Duff* applied the standard for intervention under Rule 24 of Idaho Rules of Civil Procedure ("I.R.C.P."). I.R.C.P. 24 does not apply in this proceeding. Rule 51 of the Department's Rules of Procedure states, "Unless required by statute, or otherwise provided by these rules, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested cases before the agency." Rule 353 of the Department's Rules of Procedure establishes the standard to intervene in a contested case proceeding before the Department. Rule 353 states, "If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention,

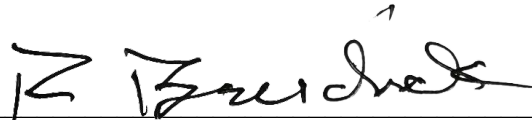
subject to reasonable conditions, unless the applicant’s interest is adequately represented by existing parties.” Thus, the standard is whether a petition “shows a direct and substantial interest.” The hearing officer applied the correct standard.

The Cities also argue that they should be allowed to intervene because their “mitigation obligations are tied to IGWA members’ compliance with the 2016 Mitigation Plan.” *Motion* at 2. The Cities “seek to intervene to argue that IGWA members *cannot* seek safe harbor for the 2022 breach of the 2016 Mitigation Plan by alternatively providing water to the SWC under the 2009 Mitigation Plan.” *Id.* at 3 (emphasis in original). The Cities position on this issue is substantially similar to the position of the Surface Water Coalition and American Falls-Aberdeen Ground Water District, parties to this proceeding. The Cities have failed to explain how their interests in this proceeding will not be adequately represented by existing parties.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the *Coalition of Cities’ and City of Pocatello’s Motion for Reconsideration* is DENIED.

DATED this 16th day of January 2024.



ROGER S. BURDICK
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of January 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

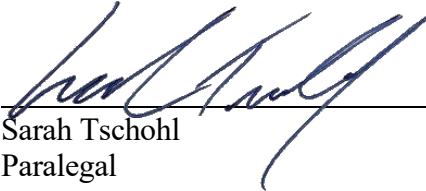
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