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DEPARTMENT OF
WATER RESOURCES

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**DISTRICT COURT OF THE STATE OF IDAHO
FIFTH JUDICIAL DISTRICT
TWIN FALLS COUNTY**

IN RE SRBA CASE NO. 39576

Subcase Nos. 36-7694 and 36-2551

**IGWA'S MOTION TO
PARTICIPATE**

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of its members, hereby moves the Court for an order allowing it to participate in SBRA subcase nos. 36-7694 and 36-2551. This motion is made pursuant to SRBA Administrative Order 1 § 10(k) and Idaho Rules of Civil Procedure 24(a), (b), and (c).

Administrative Order #1 § 10(k) states:

Any party to the adjudication who is not a party to a subcase may seek leave to participate in a subcase by filing a timely Motion to Participate. A Motion to Participate shall be treated like a motion to intervene under I.R.C.P. 24 and shall be decided by the Presiding Judge or the assigned Special Master.

As explained below, IGWA's motion to participate should be granted because it is timely filed and meets the requirements of I.R.C.P. 24.

First, this motion is timely. Rangen, Inc. (“Rangen”) filed its *Motion to Set Aside Partial Decrees* on January 16, 2015; and on January 26, 2015, the Court set a hearing on the matter for April 21, 2015.¹ This motion is filed two months before the scheduled hearing, allowing all interested parties sufficient notice and an opportunity to respond.

Next, IGWA’s motion is proper under I.R.C.P. 24. Rule 24(a) provides that any party can intervene in an action if it “claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede applicant’s ability to protect that interest.”² IGWA claims such an interest.

Rangen made a water delivery call based on the water rights in these subcases. As a result of this call, the Idaho Department of Water Resources (“IDWR”) issued a curtailment order on January 29, 2014.³ This order subjected IGWA members to curtailment if IGWA did not provide mitigation to Rangen based on the water rights in these subcases.

In a recent proceeding, this Court determined the water rights in these subcases have only the Martin-Curren Tunnel as their source.⁴ Rangen’s *Motion to Set Aside Partial Decrees* seeks to materially change these the water rights by adding new sources of water. In addition to Martin-Curren Tunnel, Rangen seeks to add “Curran Springs, flows from a concrete box, as well as from various seeps, rivulets, and springs originating and located on the talus slope, or other springs or seeps which are the headwaters of Billingsley Creek.”⁵ If Rangen succeeds, IGWA’s mitigation obligation will

¹ *Notice of Hearing* at 1, Jan. 26, 2015.

² I.R.C.P. 24(a)

³ *Final Order Re. Rangen, Inc.’s Pet. for Delivery Call; Curtailing Water Rights Junior to July 13, 1962*, IDWR Docket No. CM-DC-2011-004.

⁴ *See* Twin Falls County Case No. CV-2014-1338, *Mem. Dec. & Order on Pets. for Judicial Review*, Oct. 24, 2014.

⁵ *Memo. in Supp. of Rangen Inc.’s Mot. to Set Aside Partial Decrees* at 1, Jan. 16, 2015.

increase dramatically, so much so that IGWA will likely be unable to meet it, causing IGWA's members' water rights to be permanently shut off.

Thus, IGWA clearly "claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede applicant's ability to protect that interest."⁶

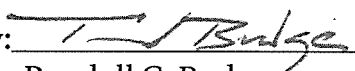
In addition, IGWA satisfies I.R.C.P. 24(b), which requires that IGWA's "claim or defense and the main action have a question of law or fact in common."⁷ IGWA claims Rangen is precluded under the doctrine of res judicata and other legal doctrines from amending its SRBA claims in these subcases. These defenses must be raised in this proceeding.

Finally, no other party to this proceeding represents IGWA's interest, and if IGWA is not allowed to intervene, "the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest."⁸

For these reasons, IGWA requests that the Court grant this motion to participate.

RESPECTFULLY SUBMITTED this 19th day of February, 2015.

RACINE OLSON NYE BUDGE & BAILEY, CHARTERED

By: 
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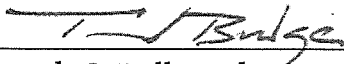
⁶ I.R.C.P. 24(a)

⁷ I.R.C.P. 24(b)

⁸ I.R.C.P. 24(a)

CERTIFICATE OF SERVICE

I certify that on this 19th day of February, 2015, the foregoing document was served on the following persons in the manner indicated.



Joseph G. Ballstaedt
T.J. Budge

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