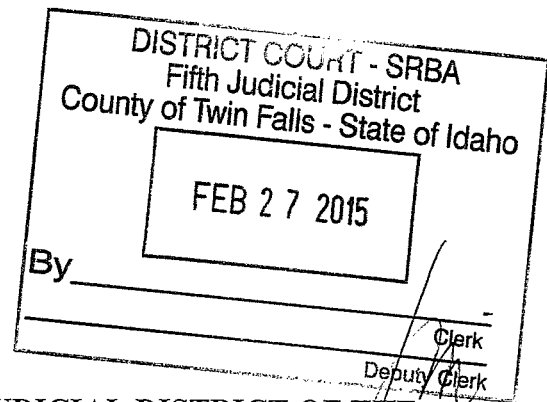


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DEPARTMENT OF
WATER RESOURCES



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

) Subcase Nos.: 36-2551 and 36-7694
)
) ORDER GRANTING MOTION TO
) PARTICIPATE
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)
)
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)
)
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I.

PROCEDURAL BACKGROUND

1. On December 29, 1997, a *Partial Decree* was entered for water right claim 36-2551. On December 30, 1997, a *Partial Decree* was entered for water right claim 36-7694.

2. On January 16, 2015, Rangen, Inc. ("Rangen") filed a *Motion to Set Aside Partial Decree* in both subcases pursuant to Idaho Rules of Civil Procedure 60(b)(5) and 60(b)(6). The *Motion to Set Aside* requests that this Court set aside the *Partial Decrees* previously entered and modify them to (1) identify the source as "Martin-Curren Tunnel, 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," and (2) add the following point of diversion: "Township 7S, Range 14E, SW1/4SW1/4NW1/4 Sec. 32." A hearing on the *Motion to Set Aside* is set for April 21, 2015, at 1:30 p.m.

3. On February 23, 2015, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed a *Motion to Participate* in the above-captioned subcases pursuant to *SRBA Administrative Order 1, Rules of Procedure* § 10.k, and Idaho Rule of Civil Procedure 24.

II. ANALYSIS

SRBA Administrative Order 1, Rules of Procedure § 10.k directs that “[a]ny party to the adjudication may seek leave to participate in a subcase by filing a timely *Motion to Participate*,” and that such a *Motion* “shall be treated like a motion to intervene under I.R.C.P 24.”

Under Idaho Rule of Civil Procedure 24(a), a party may intervene in an action as a matter of right if they meet the following criteria:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the state of Idaho confers an unconditional right to intervene; or (2) when the applicant 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, unless the applicant’s interest is adequately represented by existing parties.

I.R.C.P. 24(a). The Idaho Supreme Court has directed that rules providing for intervention should be given liberal construction. *See e.g., City of Boise v. Ada County*, 147 Idaho 794, 803, 215 P.3d 514, 523 (2009) (providing, “if there is any doubt as to whether intervention is appropriate, a motion to intervene should usually be granted”); *Herzog v. City of Pocatello*, 82 Idaho 505, 509, 523, 356 P.2d 54, 55 (1960) (providing, “statutes providing for intervention should be given a liberal construction”). In this case, the Court finds that IGWA is entitled to intervene in the above-captioned subcases as a matter of right.

Final judgments in the above-captioned subcases were previously entered by this Court in the form of *Partial Decrees*. The *Partial Decrees* for the claims were entered on the basis that the Director’s recommendations for the claims were uncontested, meaning that no party to the adjudication filed an *Objection* or *Response* to the Director’s recommendations for the claims. By filing the instant *Motion to Set Aside*, Rangen asks this Court to reopen these subcases for further litigation. As a result, the Court finds that IGWA’s *Motion to Participate* is timely. There was no delay in the filing of the *Motion to Participate*, and at the time IGWA moved this Court to participate, proceedings on the *Motion to Set Aside* were in its earliest stages. The *Motion to Participate* was filed shortly after the filing of the *Motion to Set Aside*, prior to hearing and any briefing deadlines. Furthermore, no substantive determinations of any kind had been made by this Court prior to the filing of the *Motion to Participate*. Therefore, the Court finds the *Motion to Participate* to be timely.

The Court next finds that IGWA has satisfied the criteria set forth in Rule 24(a)(2). IGWA members hold various water rights authorizing them to divert water from the Eastern Snake Plain Aquifer (“ESPA”). The above-captioned subcases concern water rights held by Rangen that are presently the subject of a delivery call before the Idaho Department of Water Resources in IDWR Docket No. 2011-004. In that call, the Director has concluded that water right numbers 36-2551 and 36-7694 are being materially injured by junior priority ground water use in the Eastern Snake Plain Aquifer (“ESPA”), including use under certain water rights held by IGWA members. As a result, the Director issued a curtailment order on January 29, 2014, which subjected members of IGWA to curtailment if IGWA did not provide mitigation.¹ As these subcases involve the requested set aside and modification of *Partial Decrees* for water rights that could potentially affect IGWA members’ curtailment and/or mitigation obligations in the delivery call proceeding, the Court finds that IGWA has sufficiently claimed an interest relating to the property or transaction which is the subject of the action. The Court finds further, and for the same reasons, that IGWA is so situated that the disposition of the *Motion to Set Aside* may as a practical matter impair or impede its ability to protect its interests.

The Court finds that IGWA’s interests are not adequately represented by the existing parties. At present, Rangen is the only party of record to these subcases. Therefore, there is no party that represents IGWA’s interests participating in these subcases. Accordingly, the Court finds that IGWA has met all the criteria set forth in Rule 24(a)(2), and is therefore entitled to intervene in these subcases as a matter of right.

Last, water right claims 36-2551 and 36-7694 were uncontested and ultimately decreed as recommended by the Director. The *Motion to Set Aside Partial Decree* seeks to set aside the partial decrees for the purpose of contesting the Director’s recommendations. Accordingly, because the rights were previously uncontested, leave of court is not required for a party to the adjudication to participate in the *Motion to Set Aside Partial Decree*.

III. ORDER

¹ The Director issued his *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962 (“Curtailment Order”)* on January 29, 2014, in IDWR Docket No. 2011-004.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO PARTICIPATE was mailed on February 27, 2015, with sufficient first-class postage to the following:

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A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the "Deputy Clerk" text.