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

IN THE MATTER OF THE COALITION OF  
CITIES MITIGATION PLAN FOR DIRECT  
DELIVERY AND MANAGED RECHARGE

CM-MP-2015- 004

**COALITION OF CITIES CM RULE 43  
MITIGATION PLAN FOR DIRECT  
DELIVERY AND MANAGED  
RECHARGE IN RESPONSE TO THE  
SURFACE WATER COALITION  
DELIVERY CALL**

COME NOW the cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Cities”) by and through their counsel and, pursuant to Rule 43 of the Idaho Department of Water Resources’ (“IDWR”) *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11 (“CM Rules”), hereby submit this CM Rule 43 mitigation plan (“Mitigation Plan”) as a means to legally respond with mitigation upon the Director’s finding of material injury in the Surface Water Coalition’s (“SWC”) on-going conjunctive management delivery call, CM-DC-2010-001.

## I. MITIGATION PLAN

The Cities' Mitigation Plan is being submitted to the Director to secure advanced approval for: (1) the direct delivery of water to members of the SWC who are found to be materially injured under the CM Rules; and (2) for ground water recharge for the benefit of materially injured members of the SWC. These activities are collectively referred to herein as the "Mitigation Activity" or "Mitigation Activities."

The Cities Mitigation Plan is intended to be forward looking and is not intended to impose any obligation to continue to deliver water unless material injury to the SWC is found, and a curtailment order has been issued that implicates water rights owned by a city in this Coalition of Cities. This Mitigation Plan is intended to provide the Cities with authorization to implement the Mitigation Activity on an as needed basis in order to provide mitigation, prevent material injury to the SWC's senior-priority water rights, and thereby reduce or avoid curtailment of the Cities' junior-priority ground water rights.

Once the nature, extent and location of material injury to the SWC is known, the Cities will implement some or all of the above-listed Mitigation Activities to mitigate for material injury caused by the Cities' junior-priority ground water pumping. "One of the issues that has overshadowed the application of the CMR with respect to mitigation plans is ensuring a timely meaningful response to a delivery call so as to avoid injury to senior rights, while at the same time allowing holders of junior ground water rights the meaningful opportunity to submit and seek approval of a mitigation plan so as to avoid curtailment. The issue is complicated because the Director must make predictions regarding water supplies; climatic conditions can vary significantly and unpredictably within an irrigation season; and mitigation to remediate for the depletive effects of ground water withdrawals can be provided in a number of different ways and

combinations.” *Memorandum Decision and Order on Petition for Judicial Review*, CV-2010-3075, p. 14-15 (Fifth Jud. Dist. Jan 25, 2011). The Cities’ Mitigation Plan is intended to address the issue identified by the District Court and to timely and fully mitigate any material injury to the SWC.

**A. Name and Address of Applicants to Receive Mitigation Benefits**

The cities that make up this Coalition of Cities are the applicants to receive mitigation benefits. CM Rule 43.01.a. All correspondence regarding this Mitigation Plan should be sent to:

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(208) 324-2303

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(208) 287-0991

**B. Identification of Water Rights to Receive the Benefit of the Mitigation Plan**

It is the Cities’ intention to mitigate, through this Mitigation Plan, all of its junior-priority ground water rights, including any other junior-priority ground water rights may be obtained in the future, that are found to be causing material injury to the senior-priority natural flow, storage, and reasonable carryover held by the SWC. CM Rule 43.01.b.

**C. Summary Description of the Mitigation Plan**

**1. Direct Delivery of Water**

Upon a finding of material injury that results in a determination that the Cities’ junior-priority ground water rights are subject to curtailment, the Cities may provide direct delivery of water to materially injured members of the SWC. The Cities seek approval from the Director to implement this mitigation activity on an as needed basis. The amount of water needed to mitigate material injury will be determined when this mitigation activity is commenced, and may be supported by measurements, including any reasonable conveyance or carry losses, as well as

through contracts with water right users, storage right holders, and others, and may also include modelling results and other technical information that shows the benefit of the direct delivery of storage water to injured members of the SWC. Direct delivery of water will allow the Cities to mitigate material injury to the SWC's in-season irrigation needs, as well as material injury to the SWC's reasonable carryover.<sup>1</sup>

## **2. Ground Water Recharge**

Increasing aquifer levels in the Eastern Snake Plain Aquifer ("ESPA"), which in turn increases flows in the Snake River (and springs tributary thereto), can be accomplished by targeted recharge projects. Ground water recharge has long been approved by the Director as an acceptable form of mitigation in conjunctive management delivery calls. The Cities presently have a recharge plan approved in the Rangen delivery call. *Order Confirming Final Order Conditionally Approving Cities Second Mitigation Plan*, CM-MP-2014-007 *et al.* (February 13, 2105).

Through this mitigation activity, the Cities seek approval to obtain a mitigation credit for recharge; either through its own recharge project, or in conjunction with other water users. By recharging the ESPA, the Cities will be able to replace depletions to the SWC. The Cities seek approval from the Director to implement this mitigation activity on an as needed basis. The amount of credit to the Cities will be determined when this mitigation activity is commenced,

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<sup>1</sup> For instance, in 2015, the Director found 89,000 acre-feet of material injury to individual members of the SWC – American Reservoir District No. 2 ("AFRD2") and Twin Falls Canal Company ("TFCC") – in his *Final Order Regarding April 2015 Forecast Supply (Methodology Steps 1-3)* (April 17, 2015) ("April Forecast Supply Order"). On May 1, 2015, the Coalition of Cities submitted a *Notice of Secured* water in response to the April Forecast Supply Order. The *Notice of Secured Water* demonstrated that the Cities paid for 50 acre-feet of Upper Snake storage water from the Water District 01 small rental pool for the benefit of AFRD2 and TFCC. On June 2, 2015, in a letter sent to counsel for the Cities, the Director "return[ed] . . . the *Notice of Secured Water* . . . because the Cities do not have an approved mitigation plan for the SWC delivery call." This Mitigation Plan will provide the Cities with the ability to mitigate in response to the SWC delivery call with direct delivery of water, as they attempted to accomplish earlier this year by securing storage water from the Upper Snake.

and may be supported by contracts with landowners, water right users and others, modelling results and other technical information that shows the benefit of recharge to the injured senior. The mitigation credit the Cities seek to obtain is for material injury occurring to the SWC during the irrigation season, as well as material injury to reasonable carryover.<sup>2</sup>

**D. Mitigation Activities and Requirement**

The amount of mitigation will vary from year-to-year, depending on the Director's finding of material injury in response to the SWC delivery call. The Cities hereby request the Director approve the above-mentioned Mitigation Activities. The amount of credit to the Coalition of Cities will be determined when a Mitigation Activity is commenced, and may be supported by contracts with landowners, water right users and others along with measurements, and technical and modelling results that show the benefits of the mitigation activity as well as other information as is reasonably determined by the Director to be required in order to mitigate injury for the injured senior.

**E. Monitoring and Reporting**

Appropriate measurements and reporting will occur to document the mitigation activity and its effectiveness. The measurements and reporting will be submitted to the Director for review and approval.

**F. Other Information**

Any proposed Mitigation Activities under this Mitigation Plan will not injure other water rights and fully complies with the State's policy to conserve and enhance its water resources.

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<sup>2</sup> In addition to the storage water secured by the Cities in the *Notice of Secured Water*, the Cities also asked the Director for a mitigation credit for recharge performed during 2015. Again, the Director "return[ed] . . . the *Notice of Secured Water* . . . because the Cities do not have an approved mitigation plan for the SWC delivery call." This Mitigation Plan will provide the Cities with the ability to seek a mitigation credit for recharge in response to the SWC delivery call.

Further, the proposed Mitigation Activities have and will continue to promote the optimum development of water resources in the public interest and should be fully supported and encouraged. The benefits from any Mitigation Activity are expected to have positive and lasting effects on the ESPA and reaches of the Snake River. Any one or a combination of the above Mitigation Activities may serve as a contingency to ensure that material injury to the senior is fully and timely mitigated. IDAPA 37.03.11.043.03.c.

## **II. REQUEST FOR RELIEF**

The Coalition of Cities hereby request that IDWR process this plan as soon as possible.

The Coalition of Cities request that:

1. IDWR advertise this Mitigation Plan as required under the CM Rules;
2. IDWR hold any hearing as may be required;
3. The Director enter an order approving this Mitigation Plan upon such terms and conditions as may be reasonable and necessary to comply with CM Rules.
4. For such other and further relief as the Director may determine is reasonable and necessary to enable the Coalition of Cities to mitigate for material injury to the SWC.

RESPECTFULLY SUBMITTED.

DATED this 19<sup>th</sup> day of June, 2015.



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Chris M. Bromley  
McHugh Bromley, PLLC  
*Attorneys for the Coalition of Cities*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of June, 2014, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

Director Gary Spackman IDAHO DEPARTMENT OF WATER RESOURCES PO Box 83720 Boise, ID 83720	<input type="checkbox"/> Via US Mail, Postage Paid <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Hand-Delivered <input type="checkbox"/> Via Electronic Mail
Garrick L. Baxter Deputy Attorney General IDAHO DEPARTMENT OF WATER RESOURCES PO Box 83720 Boise, ID 83720-0098 Fax: 208-287-6700 <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a> <a href="mailto:kimi.white@idwr.idaho.gov">kimi.white@idwr.idaho.gov</a>	<input type="checkbox"/> Via US Mail, Postage Paid <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Via Electronic Mail
Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON 195 River Vista Place, Ste. 204 Twin Falls, ID 83301-3029 <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>	<input type="checkbox"/> Via US Mail, Postage Paid <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Via Electronic Mail
<p style="text-align: right;"><i>courtesy copy</i></p> Randall C. Budge Thomas J. Budge RACINE OLSON NYE BUDGE & BAILEY CHARTERED PO Box 1391 Pocatello, ID 83204-1391 Fax: (208) 232-6109 <a href="mailto:rbc@racinelaw.net">rbc@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a>	<input type="checkbox"/> Via US Mail, Postage Paid <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Via Electronic Mail

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