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

IN THE MATTER OF THE MITIGATION
PLAN FILED BY THE CITY OF
POCATELLO

Docket Nos. CM-MP-2015-001, CM-MP-
2015-004, CM-MP-2015-005

IN THE MATTER OF THE MITIGATION
PLAN FILED BY THE COALITION OF
CITIES

MOTION TO CONSOLIDATE

IN THE MATTER OF THE CITY OF
IDAHO FALLS MITIGATION PLAN FOR
THE SURFACE WATER COALITION
CALL

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

The Coalition of Cities, the City of Pocatello (hereinafter, simply "Pocatello"), and the City of Idaho Falls (hereinafter, simply "Idaho Falls") (hereinafter collectively the "Cities"), by and through their above-identified counsel, hereby submit this *Motion to Consolidate*. This motion is filed pursuant to Rule 555 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.555). Rule 555 provides that the Department "may consolidate

two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced.”

The Cities represent sixteen (16) cities which divert water from the Eastern Snake Plain Aquifer (the “ESPA”), and have sought to protect diversion under their ground water rights from curtailment in response to the Surface Water Coalition’s (the “SWC” or “Coalition”)¹ delivery call (hereinafter, the “SWC Call”) by filing mitigation plans pursuant to Rule 43 of the Idaho Department of Water Resources’ *Rules for Conjunctive Management of Surface and Ground Water Resources* found at IDAPA² 37.03.11 (hereinafter, the “CM Rules”). Rule 43 of the CM Rules is hereafter referred to as “CMR 43.”

Pocatello filed its mitigation plan on April 7, 2015, which was protested by the Coalition. Pocatello and the Coalition have been in negotiations since February 2015 regarding its mitigation plan and Pocatello’s mitigation obligations under such a plan. Staff and counsel for IDWR have been present at some of these negotiations, notably over the summer of 2015, and the Department is likely aware that the parties are working to develop a long-term resolution of this matter. The negotiation of Pocatello’s plan has been delayed since approximately October of 2015 because of concerns regarding the implementation of the *Settlement Agreement Entered Into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of the Idaho Ground Water Appropriators, Inc.* (hereinafter, the “SWC-IGWA Agreement”) and its affect on other water users.

¹ The SWC consists of the A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

² “IDAPA” is an acronym for rules promulgated pursuant to the Idaho Administrative Procedure Act (Chapter 52 of Title 67 of the Idaho Code). The IDAPA administrative rules can be accessed at <http://adminrules.idaho.gov/rules/current/index.html>

The Coalition of Cities filed its mitigation plan on June 19, 2015, which was also protested by the Coalition. Similar to Pocatello, negotiations with the Coalition have been delayed because of concerns with the *SWC-IGWA Agreement*.

Idaho Falls filed its mitigation plan on October 19, 2015, which was protested by the Coalition and the New Sweden Irrigation District. Idaho Falls has not engaged in negotiations with the Coalition and New Sweden Irrigation District on its individual plan, but instead, has requested no further processing on its plan at this time as it focuses on a larger municipal mitigation plan described below.

Over the last four months (since late October), the Cities have been working on developing and negotiating a comprehensive plan to resolve the Coalition's delivery call with respect to municipal junior ground water users. As stated by the SRBA Court,

a preferable mitigation plan is one that applies to more than just the instant irrigation season. . . . Ultimately under a long term plan the result is less delay and more certainty and predictability for both senior and junior right holders.

Memorandum Decision and Order on Petition for Judicial Review at 15, Case No. CV-2010-3075, Jan. 25, 2011. The Cities and the Coalition acknowledge that the framework of the *SWC-IGWA Agreement* will not work for municipalities, in part because rather than committing to a reduction in pumping as IGWA did, a mitigation plan for the Cities needs to allow for increased pumping in the future as the Cities grow. Discussions with the Coalition continue to be productive with an alternative framework having been discussed via conference call and currently under review by the Coalition.

As we understand it, the Department intends to re-activate its Methodology Order for 2016. See *Third Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, April 17, 2015. Pursuant to Step 3 of the Methodology Order, IDWR will determine whether any Coalition entity is predicted to

suffer a “demand shortfall” under the methodology, and that junior water users will have no more than 14 days from that date to establish “their ability to secure a volume of storage water or to conduct other approved mitigation activities that will deliver water to the injured members of the SWC”. *Id* at 33. As a result, the Coalition and the Cities intend to finalize a mitigation plan as soon as possible. To aid in this process, it will be beneficial for all parties to these proceedings to move forward under a single administrative case. This is because the Cities are closely aligned in their interests and in their water use patterns. Therefore, for purposes of efficiency and consistency in addressing legal and factual questions that will arise, the Department should address the above mitigation plans in a single proceeding rather than three separate proceedings. To be clear, the Cities will continue their negotiations with the Coalition in the hopes of achieving both a 2016 solution and then pursue a longer term agreement on a mitigation plan for the Cities. However, depending on the speed with which the Cities are able to resolve differences with the Coalition regarding the 2016 water year, the Cities also reserve the right to come back to the Department and ask that the Department determine a curtailment date using the Methodology Order and would ask for such a determination in the context of this consolidation.

In addition, and in accordance with CMR 43.03.m, the consolidation of the Cities’ mitigation plans provides for future participation, on an equitable basis, by other municipalities who divert ground water from the ESPA. Future participation by these municipalities will occur through the filing of notices with IDWR, the Cities, and the Coalition of intention to participate. This will further ensure the consistent application of legal principles with an established mitigation framework addressed either through a stipulated mitigation plan or a plan approved after a hearing for all cities that divert ground water from the ESPA. The issues facing all ESPA

municipalities are related and the rights of the parties to these proceedings will not be prejudiced by combining them, and therefore, this *Motion to Consolidate* meets the standards required for consolidation under Rule 555. Therefore, for the reasons set forth above, the Cities request that the Department consolidate the above three mitigation plan proceedings into a single proceeding.

Respectfully submitted this 25th day of January, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the parties listed below by hand delivery, email, mail, or by facsimile, with the correct postage thereon, on this 25th day of January, 2016.

DOCUMENT SERVED: MOTION TO CONSOLIDATE

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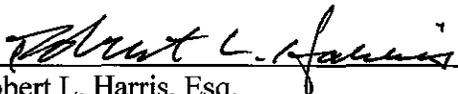
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