

**ROBERT E. WILLIAMS**

IDAHO STATE BAR NO. 1693  
WILLIAMS, MESERVY & LOTHSPREICH,  
LLP  
Attorneys at Law  
153 East Main Street  
P. O. Box 168  
Jerome, Idaho 83338  
Telephone: (208) 324-2303  
Facsimile: (208) 324-3135  
[rewilliams@cableone.net](mailto:rewilliams@cableone.net)

*Attorney for Cities of Bliss, Buhl, Burley,  
Carey, Declo, Dietrich, Gooding, Hazelton,  
Heyburn, Jerome, Paul, Richfield, Rupert,  
and Wendell*

**CANDICE MCHUGH**

IDAHO STATE BAR NO. 5908  
**CHRIS M. BROMLEY**  
IDAHO STATE BAR NO. 6530  
MCHUGH BROMLEY, PLLC  
Attorneys at Law  
380 S. 4<sup>th</sup> St., Ste. 103  
Boise, ID 83702  
Telephone: (208) 287-0991  
Facsimile: (208) 287-  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)

*Attorneys for Cities of Bliss, Buhl, Burley,  
Carey, Declo, Dietrich, Gooding, Hazelton,  
Heyburn, Jerome, Paul, Richfield, Rupert,  
and Wendell*

**BEFORE DEPARTMENT OF WATER RESOURCES**

**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-DC-2010-001**

**NOTICE OF SECURED WATER**

The cities of Bliss, Buhl, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, and Wendell (collectively referred to herein as the "Coalition of Cities" or "Cities"), consistent with the Director's *Third Amended Final Order Regarding*

*Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”) and *Final Order Regarding April 2015 Forecast Supply* (*Methodology Steps 1—3*) (“April 2015 Forecast Supply Order”), and hereby files the Cities’ *Notice of Secured Water*. The Cities’ *Notice of Secured Water* is supported by the *Affidavit of Christian Petrich* and *Affidavit of Chris M. Bromley* filed contemporaneously herewith.<sup>1</sup>

### **Methodology Order**

The relevant portion of the *Methodology Order* states “junior water right holders”/“junior ground water users” must demonstrate their ability to secure storage water, or deliver by other activities, as confirmed by the Eastern Snake Plain Aquifer Model (“ESPAM”), a volume of water that can be delivered to injured members of the Surface Water Coalition (“SWC”) at the time of need:

**Step 2:** Typically within the first two weeks of April, the USBR and USACE issue their Joint Forecast that predicts an unregulated inflow volume at the Heise Gage for the period April 1 through July 31. Within fourteen (14) days after issuance of the Joint Forecast, the Director will predict and issue an April Forecast Supply for the water year for each SWC entity. The Director will compare the April Forecast Supply for each SWC entity to the baseline demand (“BD”) for each SWC entity to determine if a demand shortfall (“DS”) is anticipated for the upcoming irrigation season. The April Forecast Supply for each SWC entity is the sum of the forecasted natural flow supply and the forecasted storage allocation for each SWC entity. The forecasted natural flow supply will be determined using regression analysis. The forecasted storage allocation will be determined using an analogous year(s).

**Step 3:** The April DS is the volume of mitigation water junior water right holders must actually physically secure for delivery or deliver by other activities, as confirmed by ESPAM 2.1 model simulations, unless adjusted as explained below. If junior ground water users previously secured mitigation water for a reasonable carryover shortfall to an individual SWC member in the previous year, the current-year mitigation obligation to the individual SWC member will be reduced by the

---

<sup>1</sup> By submitting these documents, the Coalition of Cities in no way waive any argument it has made in the past or may make in the future regarding the treatment of municipal water rights or curtailment of municipal water rights. The Coalition of Cities is submitting these documents to protect its members from curtailment under the Director’s *Methodology Order* and *April 2015 Forecast Supply Order*.

quantity of water secured for the reasonable carryover shortfall.

By May 1, or within fourteen (14) days from issuance of the values set forth in Step 2, whichever is later in time, junior ground water users will be required to establish, to the satisfaction of the Director, 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 at the time of need.

**Step 4:** If junior ground water users fail or refuse to submit this information by May 1, or within fourteen (14) days from issuance of the values set forth in Step 2, whichever is later in time, the Director will issue an order curtailing junior ground water users.

*Methodology Order* at 33 (emphasis added).

#### **April 2015 Forecast Supply Order**

Addressing Methodology Steps 2 and 3, the *April 2015 Forecast Supply Order* states as follows:

The April predicted demand shortfall to AFRD2 is 15,300 acre-feet. The April predicted demand shortfall to TFCC is 73,700 acre-feet. The total predicted demand shortfall of 89,000 acre-feet is the volume of mitigation water junior water right holders must actually secure for delivery or deliver by other activities, as confirmed by ESPAM 2.1 model simulations.

*April 2015 Forecast Supply Order* at 4 (emphasis added).

Citing the *Methodology Order*, the *April 2015 Forecast Supply Order* states notice of secured water must be submitted, “By May 1, or within fourteen days from issuance of the values set forth in Step 2, whichever is later in time, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to secure a volume of storage water . . . .” *Id.* (emphasis added).

The *April 2015 Forecast Supply Order* went on to state, “If junior ground water users fail or refuse to submit this information by April 30, 2015, the Director will issue an order curtailing junior ground water users.” *Id.* at 5 (emphasis added). Even though the *April 2015 Forecast*



*Supply Order* stated April 30, 2015 was the deadline for submitting notices of secured water, the plain language of the *Methodology Order* does not require submittal of notices of secured water until “May 1, or within fourteen days from issuance of the values set forth in Step 2, whichever is later in time . . . .” *Methodology Order* at 33 (emphasis added). Regardless of the fact that the Director signed the *April 2015 Forecast Supply Order* on April 16, 2015, but the order was not given to the parties until April 17, 2015, the earliest date secured water must be presented to the Director for his consideration is May 1.

While the *April 2015 Forecast Supply Order* orders that the Idaho Ground Water Appropriators, Inc. (“IGWA”) “establish, to the satisfaction of the Director that it has secured 89,000 acre-feet of storage water . . . .”, *April 2015 Forecast Supply Order* at 6, the plain language of the *Methodology Order* allows “junior water right holders” or “junior ground water users” to submit notices of secured water, *Methodology Order* at 33.<sup>2</sup> Therefore, the *Methodology Order* allows the Coalition of Cities to submit this *Notice of Secured Water*.

#### **Notice of Secured Water**

As stated in the *April 2015 Forecast Supply Order*, the predicted demand shortfall to the SWC is 89,000 acre-feet. In accordance with Step 4 of the *Methodology Order*, if no volume of storage water was secured, or no modeled benefits were demonstrated, it would be necessary for the Director to curtail ground water rights. *Methodology Order* at 33.

If nothing was filed, and in order to provide the 89,000 acre-feet to the Near Blackfoot to Neeley and Neeley to Minidoka reaches of the Snake River (collectively the “Near Blackfoot to

---

<sup>2</sup> Even if the plain language of the *Methodology Order* could be construed differently, each city making up the Coalition of Cities is a member of IGWA. *Order Confirming Final Order Conditionally Approving Cities Second Mitigation Plan*, CM-MP-2014-007, p. 2 (February 13, 2015).

Minidoka Reach”), it would be necessary to curtail ground water rights junior to the early 1980s. *Affidavit of Christian Petrich* at 2. The only cities in the Coalition of Cities that rely on ground water rights junior to 1980 are the cities of Carey, Heyburn, and Richfield (“Junior Cities”). *Id.*

ESPAM 2.1 was run to determine the impacts of consumptive-use depletions by members of the Coalition of Cities with water rights junior to 1980 on the Near Blackfoot to Minidoka Reach. *Id.* The depletive amount that will accrue to the Near Blackfoot to Minidoka Reach as a result of depletions by the Junior Cities is less than four (4) acre-feet under transient hydraulic conditions. *Id.* The depletive amount that will accrue to the Near Blackfoot to Minidoka Reach as a result of depletions by the Junior Cities under steady-state hydraulic conditions is approximately 300 acre-feet per year. *Id.*

The Coalition of Cities participated in a recharge program at the Gooding Recharge Site starting in February 2015. *Id.* The recharge program consisted of diverting 1,500 acre-feet into the Milner Gooding Canal and to the Gooding Recharge Site. *Id.* It was previously projected that approximately 1,000 acre-feet would arrive at the Gooding Recharge Site; the balance would become aquifer recharge via seepage from the Milner-Gooding Canal. *Id.* Approximately 756 acre-feet actually arrived at the Gooding Recharge Site; the balance (approximately 744 acre-feet) recharged the ESPA via seepage from the Milner-Gooding Canal. *Id.*

The simulated benefit of this recharge (based on the initial assumption that 1,000 acre-feet would be recharged at the Gooding Recharge Site) to the Near Blackfoot to Minidoka Reach is approximately 1.17 acre-feet between April 1, 2015 – March 31, 2016, and 257.1 acre-feet per year under steady-state hydraulic conditions. *Id.* at 3. The benefit of the Coalition of Cities’ recharge between April 1, 2015 – March 31, 2016 is likely greater than 1.17 acre-feet because

conveyance losses (i.e., recharge) from the Milner-Gooding Canal, which is closer to the Near Blackfoot to Minidoka Reach than the Gooding Recharge Site, was greater than anticipated. *Id.*

The table below summarizes the ESPAM 2.1 simulations:

Parameter	Time Frame	Snake River Reach	
		Near Blackfoot to Neeley	Neeley to Minidoka
Simulated aggregate impact of pumping by Richfield, Heyburn, and Carey	4/1/2015 - 10/31/2015 (AF)	0.69	0.01
	4/1/2015 - 3/31/2016 (AF)	3.70	0.07
	Steady state (AF/yr)	282.55	15.74
	Approx. yrs to reach steady state	124	66
Simulated benefit of recharge along Milner-Gooding Canal and in Gooding Recharge Site*	4/1/2015 - 10/31/2015	0.17	0.00
	4/1/2015 - 3/31/2016	1.16	0.01
	Steady state (per year)	243.81	13.29
	Approx. yrs to reach steady state	47	34
*Assume 1005 AF recharged at the Gooding Recharge Site and 495 AF recharged along Milner-Gooding Canal			

*Id.*

Under a transient analysis, the difference between the Junior Cities' depletions and the benefits of recharge, for the period April 1, 2015 – October 31, 2015, is 0.53 acre-feet. The difference between the Junior Cities' depletions and the benefits of recharge, for the period April 1, 2015 – March 31, 2016, is 2.6 acre-feet. Under a steady-state analysis, the difference between the Junior Cities' depletions and the benefits of recharge is 41.19 acre-feet.

In order to ensure the Coalition of Cities' ability to pump groundwater, the Cities secured a total of 50 acre-feet from Water District 01, to provide to AFRD2 and TFCC – the injured members of the SWC. *Affidavit of Chris M. Bromley* at 2. By securing 50 acre-feet of storage water for the benefit of AFRD2 and TFCC, the Coalition of Cities respectfully request the Director approve this *Notice of Secured* water, thereby authorizing the Coalition of Cities to

continue out-of-priority ground water pumping, under either a transient or steady-state curtailment analysis.

Respectfully submitted this 1<sup>st</sup> day of May, 2015.

MCHUGH BROMLEY, PLLC



---

CHRIS M. BROMLEY

*Attorneys for Coalition of Cities*



## CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of May, 2015, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated:

Director Gary Spackman IDAHO DEPARTMENT OF WATER RESOURCES PO Box 83720 Boise, ID 83720	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Hand-Delivered <input type="checkbox"/> Electronic Mail
Deputy Attorney General Attn: Garrick L. Baxter 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"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318-0248 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
John K. Simpson Travis L. Thompson Paul L. Arrington Barker, Rosholt & Simpson 195 River Vista Place, Suite 204 Twin Falls, Idaho 83301-3029 <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a> <a href="mailto:tlr@idahowaters.com">tlr@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
Sarah Klahn Mitra Pemberton White Jankowski, LLP 511 16 <sup>th</sup> Street, Suite 500 Denver, Colorado 80202 <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a> <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail



A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, Idaho 83205 <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
Randall C. Budge T.J. Budge Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
Kathleen Carr U.S. Dept. of Interior 960 Broadway Ste. 400 Boise, ID 83706 <a href="mailto:Kathleenmarion.carr@sol.doj.gov">Kathleenmarion.carr@sol.doj.gov</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
David Gehlert Natural Resources Section Environment and Natural Res. Div. U.S. Dept. of Justice 999 18 <sup>th</sup> St., S. Terrace, Ste. 370 Denver, CO 80202 <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234 <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
William Parsons Parsons, Smith & Stone, LLP P.O. Box 910 Burley, ID 83318 <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail

Mike Creamer Jeff Fereday Givens Pursley, LLP P.O. Box 2720 Boise, ID 83701-2720 <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a> <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
Lyle Swank IDWR Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402 <a href="mailto:lyle.swank@idwr.idaho.gov">lyle.swank@idwr.idaho.gov</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail
Allen Merritt Cindy Yenter IDWR Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a> <a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a>	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivered <input checked="" type="checkbox"/> Electronic Mail

  


---

CHRIS M. BROMLEY