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Feb 02, 2024

**DEPARTMENT OF
WATER RESOURCES**

*IN THE MATTER OF THE
MITIGATION PLAN FILED BY A&B
IRRIGATION DISTRICT FOR THE
DISTRIBUTION OF WATER TO
WATER RIGHTS HELD BY THE
SURFACE WATER COALITION

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

~~IN THE MATTER OF THE 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
IRRIGATION CANAL COMPANY, AND
TWIN FALLS CANAL COMPANY *~~

~~IN THE MATTER OF IGWA'S SETTLEMENT
AGREEMENT MITIGATION PLAN~~

Fee Category Exempt: I.C. § 67-2301

~~CM-DC-2010-001~~

CM-MP-2015-003

**COALITION OF CITIES PROTEST
TO A&B IRRIGATION DISTRICT'S
AMENDED MITIGATION PLAN
FOR THE SURFACE WATER
COALITION**

The cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (collectively the "Coalition of 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”) and Rule 154 of IDWR’s *Procedure Rules*, IDAPA 37.01.01, hereby file this Protest to the *Petition for Approval of A&B Irrigation District’s Amended Mitigation Plan for the Surface Water Coalition* (“Petition”).

BASES FOR PROTEST

1. At various times during the on-going Surface Water Coalition (“SWC”) delivery call, various junior ground water users have received approval from the Director for CM Rule 43 mitigation plans to allow out-of-priority pumping, including but not limited to the Coalition of Cities, as part of a larger group composed of the City of Pocatello, City of Idaho Falls, and a number of participating cities. *See Final Order Approving Stipulated Mitigation Plan*, CM-MP-2019-001 (April 9, 2019) (“Cities Mitigation Plan”).

2. The *Cities Mitigation Plan* authorizes the cities to supply mitigation water in the amount of 7,650 acre-feet to the SWC through direct delivery of storage water, recharge, ground water to surface water conversions, temporary or permanent dry-ups, or other agreed to activities.

3. The *Cities Mitigation Plan* was the result of a *Settlement Agreement* (“Cities Settlement Agreement”) between the SWC and the Idaho Ground Water Appropriators, Inc. (“IGWA”), effective January 1, 2019.¹

4. The Surface Water Coalition is composed of 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.

¹ At the time, the participating members of IGWA were: Aberdeen-American Ground Water District, Bingham Ground Water District, Benneville-Jefferson Ground Water District, Carey Valley Ground Water District, Henry’s Fork Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, and Southwest Irrigation District.

5. The A&B Irrigation District is composed of Unit A which relies on surface water for irrigation and Unit B which relies on ground water for irrigation (“Unit B”). *See Paslay v. A&B Irr. Dist.*, 162 Idaho 866, 867, 406 P.3d 878, 879 (2017).

6. On December 16, 2015, the Director entered a *Final Order Approving Mitigation Plan* in CM-MP-2015-003. The *Final Order Approving Mitigation Plan* authorizes Unit B to undertake four mitigation strategies in order to authorize out-of-priority ground water pumping from the Eastern Snake Plain Aquifer: (1) conversions from ground water to surface water; (2) enrollment of acres in the Conservation Reserve Enhancement Program; (3) approval of a future pumping plant from the Snake River for additional conversions; and (4) use and rental of A&B Irrigation District’s storage water in American Falls Reservoir and Palisades Reservoir.

7. According to the *Petition*, the SWC and Unit B are “filing the current stipulation . . . so that [Unit B] does not have to submit new documentation every year showing that it can mitigate for its proportionate share of a predicted demand shortfall. *See Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* at 5, n. 5.” Emphasis added.

8. As articulated in footnote 5 to the *Final Order Regarding April 2023 Forecast Supply*, and with the exception of the Coalition of Cities, among others, there is presently uncertainty surrounding the ability for ground water users to mitigate for their “proportionate share” of the predicted demand shortfall to certain members of the SWC:

⁵ There are seven approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District, 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, “SWID”), 3) the Idaho Ground Water Appropriators, Inc. (“IGWA”), 4) certain cities commonly referred to as the “Coalition of Cities”, and 5) certain entities commonly referred to as the “Water Mitigation Coalition.” A&B Irrigation District’s proportionate share of the predicted DS of 75,200 acre-feet is 458 acre-feet. Due to the nature of the mitigation plans for SWID, the Coalition of Cities and the Water Mitigation Coalition, these entities do not need to establish that they can mitigate for their proportionate share of the predicted DS. IGWA has two approved mitigation plans. If IGWA is in compliance with mitigation plan CM-MP-2016-001, IGWA does not need to establish that it can mitigate for its proportionate share of the predicted DS. If IGWA seeks to provide mitigation by delivery of storage water as approved in mitigation plan CM-MP-2009-007, IGWA’s proportionate share of the predicted DS of 75,198 acre-feet is 63,645 acre-feet.

9. If Unit B fails to mitigate for its “proportionate share” of demand shortfall to certain members of the SWC, it is unknown whether the *Cities Mitigation Plan* will be affected.

10. Given the ongoing uncertainty associated with ground water users, like Unit B, mitigating for their “proportionate share,” among other things, the Coalition of Cities hereby files this Protest. *See also Memorandum Decision and Order*, Ada County Case No. CV01-23-7893 (November 16, 2023) (discussing IGWA’s 240,000 acre-feet obligation); *Order Appointing Hearing Officer*, CM-MP-2016-001 (December 12, 2023) (appointment of former Chief Justice Roger Burdick as hearing officer in *IGWA Mitigation Plan* compliance).

11. The Coalition of Cities requests that this Protest be considered continuing in nature and reserves the right to amend as necessary as additional grounds become apparent during the court of this proceeding.

DATED this 2nd day of February, 2024.



Chris M. Bromley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2024, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by electronic service:

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