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Attorneys for the City of Pocatello

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

IN THE MATTER OF THE DISTRIBUTION OF)	Docket No. CM-MP-2016-001
OF WATER TO VARIOUS WATER RIGHTS)	
HELD BY AND FOR THE BENEFIT OF A&B)	
IRRIGATION DISTRICT, AMERICAN FALLS)	
RESERVIOR DISTRICT #2, BURLEY)	
IRRIGATION DISTRICT, MILNER)	
IRRIGATION DISTRICT, MINIDOKA)	
IRRIGATION DISTRICT, NORTH SIDE CANAL)	CITY OF POCATELLO'S
COMPANY, AND TWIN FALLS CANAL)	PROTEST
COMPANY)	
_____)	
)	
IN THE MATTER OF IGWA'S SETTLEMENT)	
AGREEMENT MITIGATION PLAN)	
_____)	

Comes now, the City of Pocatello (“Pocatello”) by and through its attorneys, and files this Protest to *Surface Water Coalition’s and IGWA’s Stipulated Mitigation Plan and Request for Order* (“Mitigation Plan”) filed with the Idaho Department of Water Resources (“Department”) on March 9, 2016.

The initial bases for Pocatello's Protest are as follows:

1. Pocatello is not a member of IGWA or located within a Ground Water District, has filed its own Mitigation Plan in CM-MP-2015-01 and is not participating either actively or passively in IGWA's Mitigation Plan;
2. The Mitigation Plan does not meet the requirements of Rule 43.03 of the Rules for Conjunctive Management of Surface and Ground Water Resources ("CMR") (IDAPA 37.03.11.43.03);
3. The Mitigation Plan and its published notice does not identify the water rights of junior users who are participating in the Mitigation Plan, making it impossible to determine the adequacy of the plan, including whether the plan will sufficiently "offset the depletive effect of ground water withdrawal on the water available" to the SWC and "[w]hether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use" (CMR 43.03.b, g);
4. IGWA's proposed mitigation activities, including reduced pumping and recharge, are not described with any particularity, i.e. the location of such activities, water rights involved, and the estimated benefits that might accrue from such projects;
5. The Mitigation Plan fails to provide any information regarding how the Plan will be implemented to achieve the terms of the Agreement found at Exhibit B to the Mitigation Plan, making it impossible to evaluate under CMR 43.03, including, *inter alia*, whether its technical bases are sound and will in fact result in mitigation for all injury from IGWA's junior pumping;
6. The Mitigation Plan does not provide a technical basis to support the contention that the activities described therein will have the effect of "stabiliz[ing] and ultimately revers[ing] the trend of declining ground water levels," (Exhibit B to the Mitigation Plan at 3), and fails to establish "whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal" (CMR 43.03.e);
7. The Plan does not describe how reducing "total ground water diversion[s]" by 240,000 acre-feet annually will accomplish a reduction in depletions to the aquifer, or how credits would be determined from reduced groundwater pumping, making it impossible to evaluate the Plan, including whether the plan will sufficiently "offset the depletive effect of ground water withdrawal on the water available" to the SWC (Exhibit B to the Mitigation Plan at 2(emphasis added)); (CMR 43.03.b);
8. The Plan does not describe with any particularity how groundwater recharge would be accomplished, including the projected benefits to the SWC from state-sponsored managed recharge, the source of water used for groundwater water recharge, how credit might be obtained from groundwater recharge, or a technical basis to support its conclusion that recharge will mitigate injury to the SWC and achieve agreed-upon ground

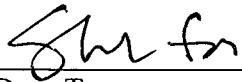
water level benchmarks, making it impossible to determine whether the plan will sufficiently “offset the depletive effect of ground water withdrawal on the water available” to the SWC (CMR 43.03.b);

9. The Mitigation Plan fails to establish that it will not “transfer or impose upon [another] junior any portion of the total mitigation obligation attributable to the stipulating junior’s diversion.” *Memorandum Decision and Order*, Case No. CV-2015-172, at 8 (Fifth Jud. Dist., Minidoka County, Sept. 8, 2015). Further, the Mitigation Plan provides safe harbor to participating ground water users so long as the plan is being “implemented,” but such safe harbor is not expressly contingent on success of the plan, calling into question whether this plan will shift a portion of participating juniors’ mitigation obligation to other junior water users (Exhibit B to the Mitigation Plan at 5);
10. The Mitigation Plan requests the Director require non-participating juniors to “secure Director approval of an individual mitigation plan which complies with CMR 43 and provides adequate mitigation to help achieve the groundwater level goal and benchmarks set forth in the SWC-IGWA Settlement Agreement” (Mitigation Plan at 4 (emphasis added)) which is, *inter alia*:
 - a. inconsistent with the standards applicable to mitigation plans pursuant to CMR 43.03, the doctrine of prior appropriation, and principles of due process; and
 - b. unlawful as it would shift the burden to other junior ground water users to ensure that the IGWA-SWC Settlement Agreement is satisfied. *Memorandum Decision and Order* at 10-11 (Fifth Jud. Dist., Minidoka County, Sept. 8, 2015).
11. The Mitigation Plan requests the Director “[t]ake the necessary management actions to address declining ESPA groundwater levels, water supply and sustainability issues in order that the benefits contemplated in the SWC-IGWA Settlement Agreement are realized” (Mitigation Plan at 4).
 - a. This relief is, *inter alia* inconsistent with the Director’s current authority under the law of conjunctive management in Idaho, and violates the doctrine of prior appropriation and principles of due process.
 - b. This relief also appears to seek imposition of a Ground Water Management Area (“GWMA”) without satisfying the notice and procedural requirements of a GWMA announced in statute and regulation. *See, e.g.*, I.C. §42-233b; CMR 50.01.d.

Pocatello reserves the right to protest the Mitigation Plan on other grounds as issues arise in this proceeding.

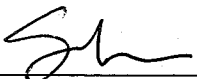
Respectfully submitted this 4th day of April, 2016.


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Sarah A. Klahn

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2016, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Protest** in **Docket No. CM-MP-2016-001** upon the following by the method indicated:



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