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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE 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-MP-2016-001

**COALITION OF CITIES' AND
CITY OF POCATELLO'S
RESPONSE TO SWC'S
OBJECTION TO CITIES'
PETITION TO INTERVENE**

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

COME NOW the cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Coalition of Cities”) and the City of Pocatello (collectively “Cities”) and hereby file this brief in support of their *Petition to Intervene* (“Petition”), dated December 28, 2023, and to specifically respond to the arguments set forth in the Surface Water Coalition’s (“SWC”) brief in opposition thereto (“Objection”), dated January 2, 2024.

INTRODUCTION

On December 28, 2023, the Hearing Officer held a scheduling conference in this matter, in which the Hearing Officer stated that any petitions to intervene must be filed by 5:00 pm on December 28, 2023, to be considered timely. *Order Authorizing Discovery; Scheduling Order; Order Suspending IDAPA 37.01.01.354; Notice of Prehearing Conference and Hearing* (Dec. 29, 2023) (“Scheduling Order”) at 2. The Hearing Officer also set deadlines for objections to petitions, and responses to the objections, on January 2, 2024, and January 4, 2024, respectively. *Id.* at 3.

On December 28, 2023, the Cities timely filed their *Petition*. *Scheduling Order* at 2. On January 2, 2024, the SWC filed an *Objection* to the *Petition*, arguing, *inter alia*, that the Cities lack a “direct and substantial interest” in this proceeding and that, if the Cities’ *Petition* were granted, it should be limited upon “reasonable conditions.”

ARGUMENT

As stated in the *Petition*, the Cities have a direct and substantial interest in this proceeding because its mitigation obligations, under the Cities-SWC Agreement and corresponding 2019 Mitigation Plan,¹ may change depending on Idaho Ground Water Appropriators, Inc.’s (“IGWA”) compliance with the SWC-IGWA Agreement and corresponding 2016 Mitigation Plan.² As such, the Cities may be impacted by the outcome of this contested case, particularly a resolution to the third issue for hearing: “Can the 2009 mitigation plan be used to cure the ground water districts’ 2022 breach of the 2016 Mitigation Plan?” *Scheduling Order* at 4. Thus, the Cities have a direct and substantial interest in the

¹ See IDWR Docket No. CM-MP-2019-001.

² The 2016 Mitigation Plan incorporates the SWC-IGWA Agreement. See *Scheduling Order* at 4 n.1.

question of whether IGWA can breach the 2016 Mitigation Plan, yet cure any breach by delivering water pursuant to a separate mitigation plan(s), because, as the SWC identifies, if IGWA were to commit a particular breach of the 2016 Mitigation Plan, the Cities' mitigation obligations would increase. *See Objection* at 5-6. As a result, the Cities' primary (but not only) interest in this matter is the resolution of Issue #3. Because the *Petition* was timely filed, and their participation would not unduly broaden the issues, the Cities are entitled to intervene under IDAPA 37.01.01.353.01.

The SWC requests that, if the *Petition* is granted, the Cities' "participation be limited to responding to legal issues in any dispositive motions, similar to amicus curiae status in an appeal." *Objection* at 7. The Cities object to being limited to amicus curiae status. The issues in this matter are novel and, as a result, the Cities want to be able to participate as parties but would agree to some limitations: exclusion from discovery (both serving and answering); exclusion from filing of expert reports; and limiting their participation at hearing to cross-examining witnesses. These limitations should put to rest any concerns of prejudice or expansion of the issues.

CONCLUSION

Based on the foregoing, the Cities respectfully request that their *Petition* be granted, and if so, that any conditions on their intervention be consistent with, and no more restrictive than, those described above.

DATED this 3rd day of January 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January 2024, I caused a true and correct copy of the foregoing document to be filed and served on the persons below via email:

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