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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  
MOTION FOR  
RECONSIDERATION**

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”), by and through their undersigned counsel, pursuant to IDAPA 37.01.01.711, and hereby file this *Motion for Reconsideration* regarding the *Order Denying Cities’ Petition to Intervene* (“Order”), dated January 4, 2024.

**INTRODUCTION**

On December 28, 2023, the Cities timely filed their *Petition to Intervene* (“Petition”).

*Order* at 3. On January 2, 2024, the Surface Water Coalition (“SWC”) filed an *Objection* to the *Petition*. On January 3, 2024, the Cities filed a *Response* to the *Objection*. On January 4, 2024, the Hearing Officer issued the *Order*, which denied the *Petition* on grounds that the Cities “have failed to show a direct and substantial interest in any part of the subject matter of this contested case and because any indirect interest the Cities may have in this proceeding will be adequately represented by existing parties.” *Order* at 3.

### **ARGUMENT**

The Cities move for reconsideration on two bases. First, under Idaho law, they need only show they may be affected by the outcome of this matter. Second, the resolution of Issue #3 has the potential to impact the amount of mitigation the Cities are required to provide under their own mitigation plan.

The Cities are not required to show that their interests *will* be affected by the outcome of this proceeding, only that they “may” be affected. *Duff v. Draper*, 96 Idaho 299, 302 (1974) (“The language of Rule 24(a)(2) indicates that the drafters did not contemplate that the petitioner in intervention be required to show that . . . the petitioner in intervention “is” bound by the judgment in the main action. It was sufficient that the petitioner show that . . . the applicant ‘may’ be bound by a judgment in the action.”).

The Cities’ mitigation obligations are tied to IGWA members’ compliance with the 2016 Mitigation Plan. If IGWA members fail to comply with the 2016 Mitigation Plan, the Cities’ obligation increases from 7,650 AF/y to 9,640 AF/y. *See* Attachment 1 to *Petition*, at pdf pages 8-12, 19. This impact on the Cities’ mitigation amount is a virtual certainty if IGWA members forgo compliance with the 2016 Mitigation Plan and instead attempt to seek “safe harbor” under a different mitigation plan. In this contested case, Issue #3 speaks directly to the Cities’

interests: “Can the [IGWA] 2009 mitigation plan be used to cure the ground water districts’ 2022 breach of the 2016 Mitigation Plan?” *Order* at 3. The Cities seek to intervene to argue that IGWA members *cannot* seek safe harbor for the 2022 breach of the 2016 Mitigation Plan by alternatively providing water to the SWC under the 2009 Mitigation Plan.

### CONCLUSION

Based on the foregoing, the Cities respectfully request that the Hearing Officer reconsider and grant the *Petition* subject to the limitation on participation identified in the *Response*.

DATED this 8th day of January 2024.

**SOMACH SIMMONS & DUNN, P.C.**



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/s/ Candice M. McHugh

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th 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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