

RECEIVED

Feb 02, 2024

DEPARTMENT OF
WATER RESOURCES

CANDICE MCHUGH
IDAHO STATE BAR NO. 5908
CHRIS M. BROMLEY
IDAHO STATE BAR NO. 6530
MCHUGH BROMLEY, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
cmchugh@mchughbromley.com
cbromley@mchughbromley.com

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

*IN THE MATTER OF BINGHAM
GROUND WATER DISTRICT'S
MITIGATION PLAN FOR 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 *~~

Fee Category Exempt: I.C. § 67-2301

~~CM-DC-2010-001~~

CM-MP-2024-001

**COALITION OF CITIES PROTEST
TO BINGHAM GROUND WATER
DISTRICT'S MITIGATION PLAN
FOR THE SURFACE WATER
COALITION**

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

The cites 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 Bingham Ground Water District’s Mitigation Plan for the Surface Water Coalition*.

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. IGWA and SWC had previously entered into their own *Settlement Agreement* (“IGWA-SWC Settlement Agreement”) to which the Coalition of Cities were not party. The Director approved the IGWA-SWC Settlement Agreement as a CM Rule 43 mitigation plan.

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.

Final Order Approving Stipulated Mitigation Plan, CM-MP-2016-001 (May 2, 2016) (“IGWA Mitigation Plan”). The *IGWA-SWC Settlement Agreement* and *IGWA Mitigation Plan* requires certain mitigation activities by IGWA to allow out-of-priority pumping. Notably, the *Cities Settlement Agreement* states:

In the event IGWA’s required annual mitigation obligation as set forth in paragraph 3.1.i. of the IGWA-SWC Settlement Agreement equals or exceeds 340,000 AF/y and the goals as set forth in paragraph 3.e. of the IGWA-SWC Settlement Agreement are not met, the Signatory Cities’ collective annual mitigation obligation will increase from 7,650 AF/y to 9,640 AF/y commencing January 1 following notice of the increase.

Cities Settlement Agreement at 4 (emphasis added).

5. There is currently uncertainty surrounding IGWA’s volumetric obligations under the *IGWA-SWC Settlement Agreement* and *IGWA Mitigation Plan*. See e.g. *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).

6. At the time of the *Cities Settlement Agreement* and *Cities Mitigation Plan*, IGWA was taking on the responsibility to mitigate for its member ground water districts; thus, it was not anticipated that individual ground water districts would file separate CM Rule 43 mitigation plans.

7. Because it is unknown how the filing of separate CM Rule 43 mitigation plans by the ground water districts will or will not impact the *Cities Settlement Agreement*, the *IGWA-SWC Settlement Agreement*, the *Cities Mitigation Plan*, the *IGWA Mitigation Plan*, and the Coalition of Cities’ mitigation obligations arising therefrom, the Coalition of Cities files this Protest.

8. 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
McHugh Bromley, PLLC
Attorneys for the Coalition of Cities

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:

IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720
file@idwr.idaho.gov

Garrick L. Baxter
Deputy Attorney General
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700
garrick.baxter@idwr.idaho.gov

Dylan Anderson
Dylan Anderson Law PLLC
PO Box 35
Rexburg, ID 83440
dylan@dylanandersonlaw.com



CHRIS M. BROMLEY