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

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

CITY OF POCA TELLO,

Plaintiff,

vs.

IDAHO WATER RESOURCES BOARD,  
IDAHO DEPARTMENT OF WATER  
RESOURCES, GARY SPACKMAN, in his  
capacity as Director of the Idaho Department  
of Water Resources, and TONY  
OLENICHAK, in his capacity as Water  
District 01 Watermaster,

Defendants.

**Case No. CV42-23-1668**

**DECLARATION OF CANDICE  
MCHUGH**

I, Candice McHugh hereby declare and state as follows:

1. I am over the age of 18 and state the following based upon my own personal knowledge.
2. I am one of two owners of McHugh Bromley, PLLC, the law firm that represents the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell commonly referred to as the Coalition of Cities as their interests relate to the on-going Surface Water Coalition ("SWC") Delivery Call and mitigation thereof.

3. Attached hereto as Exhibit A is a true and correct copy of a summary of the members of the Coalition of Cities water rights that divert from the Eastern Snake Plain Aquifer.
4. Attached hereto as Exhibit B is a true and correct copy of the document *A Settlement Agreement Entered Into June 30, 2015 Between Participating Members Of The Surface Water Coalition And Participating Members Of The Idaho Ground Water Appropriators, Inc.* which is the settlement agreement entered into by my clients and others to mitigate for the SWC Delivery. This agreement was then approved as a stipulated mitigation in the *Final Order Approving Stipulated Mitigation Plan*, CM -MP-2019-001, Idaho Department of Water Resources (April 9, 2019) for the SWC Delivery Call.
5. The City of Pocatello's storage water in Palisades is the source of water that the members of the Coalition of Cities' lease to meet their obligations under Ex. B and April 9, 2019 Final Order referenced in paragraph 4 above.
6. On June 15, 2023 I left a message for Ann Yribar, counsel for Defendants asking if the Defendants would oppose the Coalition of Cities' intervention. By email on June 16, 2023, Ms. Yribar said that she consulted with other counsel for Defendants, Garrick Baxter and "[w]e won't oppose" and that I can file the motion as unopposed.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED this 21st day of June, 2023.

**McHUGH BROMLEY, PLLC**

/s/ Candice McHugh

Candice McHugh

*Attorney for Coalition of Cities*

## CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2023, the foregoing was filed electronically using the Court's e-file system, and upon such filing the following parties were served electronically.

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/s/ Candice McHugh  
Candice McHugh

**Table 1-1**  
**List of Water Rights Held by**  
**Coalition of Cities**

<b>Owner</b>	<b>Water Right No.</b>	<b>Priority Date</b>	<b>Rate (cfs)</b>	<b>Source</b>	<b>Use</b>
Bliss	37-4305	8/1/1960	0.12	Ground Water	Municipal
Bliss	37-4306	2/1/1960	0.15	Ground Water	Municipal
Bliss	37-8886	11/24/1998	0.45	Ground Water	Municipal
Burley	45-4097	4/14/1905	0.89	Ground Water	Municipal
Burley	45-4095	4/1/1917	1.11	Ground Water	Municipal
Burley	45-4096	12/31/1917	1.34	Ground Water	Municipal
Burley	45-13895	10/30/1926	0.89	Ground Water	Municipal
Burley	45-4092	4/1/1928	1.34	Ground Water	Municipal
Burley	45-2179	9/22/1930	1.51	Ground Water	Irrigation
Burley	45-4093	12/31/1934	2.00	Ground Water	Municipal
Burley	45-14083	3/31/1939	1.34	Ground Water	Municipal
Burley	45-4088	6/1/1939	0.04	Ground Water	Domestic
Burley	45-4087	6/1/1940	0.12	Ground Water	Municipal
Burley	45-4099	12/31/1941	2.67	Ground Water	Municipal
Burley	45-4090	4/1/1943	2.01	Ground Water	Municipal
Burley	45-14290	4/1/1944	0.44	Ground Water	Municipal
Burley	45-4089	5/31/1947	1.23	Ground Water	Municipal
Burley	45-4094	12/31/1949	1.66	Ground Water	Municipal
Burley	45-11133	12/31/1954	0.89	Ground Water	Municipal
Burley	45-4091	4/1/1955	1.72	Ground Water	Municipal
Burley	45-4085	12/31/1959	0.89	Ground Water	Municipal
Burley	45-4098	9/30/1960	2.67	Ground Water	Municipal
Burley	36-4080	8/7/1961	0.91	Ground Water	Municipal
Burley	36-4180	8/1/1962	0.02	Ground Water	Irrigation
Burley	36-4181	9/8/1962	0.02	Ground Water	Irrigation
Burley	36-4182	10/1/1962	0.02	Ground Water	Industrial
Burley	36-2729	3/3/1964	0.56	Ground Water	Industrial
Burley	36-2648A	4/6/1966	1.96	Ground Water	Industrial
Burley	36-2648B	4/6/1966	0.70	Ground Water	Industrial
Burley	45-2719	5/9/1966	0.30	Ground Water	Industrial
Burley	45-11847	12/31/1966	0.50	Ground Water	Industrial
Burley	45-7002	8/24/1967	4.00	Ground Water	Commercial, Domestic, Irrigation
Burley	45-7092	3/10/1972	0.44	Ground Water	Municipal
Burley	45-7114	12/7/1972	0.18	Ground Water	Municipal
Burley	45-7269	5/25/1976	3.56	Ground Water	Municipal
Burley	45-7436	2/15/1980	0.69	Ground Water	Municipal
Burley	1-7082	2/24/1983	1.60	Snake River	Water Quality
Burley	36-8154	2/24/1983	1.20	Ground Water	Industrial
Burley	1-10243	4/1/1983	1.90	Snake River	Irrigation
Burley	1-7099	6/20/1989	1.19	Snake River	Irrigation
Burley	45-7686	2/11/1991	0.54	Ground Water	Fire Protection
Burley	45-7735	9/3/1996	4.46	Ground Water	Municipal
Burley	45-13411	10/22/2001	4.07	Ground Water	Fire Protection

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<b>Owner</b>	<b>Water Right No.</b>	<b>Priority Date</b>	<b>Rate (cfs)</b>	<b>Source</b>	<b>Use</b>
Carey	37-7766	2/21/1979	0.71	Ground Water	Municipal
Carey	37-20384	3/20/2001	0.70	Ground Water	Municipal
Carey	37-21243	12/25/2003	0.60	Ground Water	Municipal
Carey	37-21355	9/23/2004	1.29	Ground Water	Municipal
Carey	37-22661	8/18/2011	1.45	Ground Water	Municipal
Declo	45-11024	12/31/1945	0.15	Ground Water	Irrigation
Declo	45-2676	12/8/1961	1.11	Ground Water	Municipal
Declo	45-7726	2/16/1995	2.23	Ground Water	Municipal
Dietrich	37-20729	12/31/1910	0.37	Ground Water	Municipal
Dietrich	37-22751	6/1/2012	0.20	Ground Water	Municipal
Gooding	37-282	4/1/1877	1.00	Little Wood River	Ground Water Recharge
Gooding	37-271A	6/30/1882	0.32	Little Wood River	Ground Water Recharge
Gooding	37-262A	2/22/1883	3.16	Little Wood River	Ground Water Recharge
Gooding	37-709A	2/22/1883	0.74	Little Wood River	Ground Water Recharge
Gooding	37-960A	4/1/1883	0.57	Little Wood River	Ground Water Recharge
Gooding	37-662	6/15/1885	1.42	Little Wood River	Ground Water Recharge
Gooding	37-4080	9/28/1928	2.80	Ground Water	Municipal
Gooding	37-4087	6/1/1948	0.04	Ground Water	Domestic
Gooding	37-11221	4/20/1977	5.90	Ground Water	Municipal
Gooding	37-7597	5/5/1977	1.07	Ground Water	Irrigation
Gooding	37-22850	8/27/2013	7.21	Ground Water	Municipal
Gooding	37-23059	6/26/2017	300.00	Little Wood River	Ground Water Recharge
Hazelton	36-4250	6/21/1917	0.28	Ground Water	Domestic, Municipal
Hazelton	36-2282	4/25/1955	0.20	Ground Water	Domestic, Municipal
Hazelton	36-7634A	7/23/1976	0.19	Ground Water	Domestic
Hazelton	36-7634B	7/23/1976	0.14	Ground Water	Irrigation
Hazelton	36-7858	6/12/1979	1.00	Ground Water	Domestic, Municipal
Heyburn	36-11510	12/31/1906	0.04	Ground Water	Domestic, Stockwater
Heyburn	36-11573	12/31/1915	0.04	Ground Water	Domestic, Stockwater
Heyburn	35-14680	12/24/1948	2.67	Ground Water	Irrigation
Heyburn	36-4210	7/1/1953	0.03	Ground Water	Irrigation
Heyburn	36-4233	3/1/1963	0.20	Ground Water	Domestic, Irrigation
Heyburn	35-14683	5/27/1974	1.48	Ground Water	Irrigation
Heyburn	36-7970	3/10/1981	0.20	Ground Water	Domestic
Heyburn	36-7970	3/10/1981	0.20	Ground Water	Domestic
Heyburn	36-8332	10/12/1987	0.04	Ground Water	Commercial
Heyburn	36-8550	5/29/1990	6.67	Ground Water	Municipal
Heyburn	36-8738	5/22/1995	3.30	Ground Water	Municipal
Heyburn	36-8744	12/22/1995	0.07	Ground Water	Domestic, Irrigation
Heyburn	36-17185	12/22/1995	0.05	Ground Water	Domestic
Jerome	36-4195	12/31/1907	0.39	Ground Water	Municipal
Jerome	36-15361	12/31/1930	2.87	Ground Water	Municipal
Jerome	36-4196	7/4/1957	5.68	Ground Water	Municipal
Jerome	36-2518	9/14/1961	1.11	Ground Water	Municipal

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Owner	Water Right No.	Priority Date	Rate (cfs)	Source	Use
Jerome	36-2526	10/27/1961	5.68	Ground Water	Municipal
Jerome	36-8111	8/20/1982	0.53	Ground Water	Municipal
Jerome	36-8237	12/22/1983	2.71	Ground Water	Municipal
Jerome	36-8234	1/11/1984	1.23	Ground Water	Commercial, Domestic, Irrigation, Recreation
Paul	36-4083	4/27/1920	0.67	Ground Water	Municipal
Paul	36-12179	1/1/1942	0.22	Ground Water	Domestic
Paul	36-7206	8/9/1971	1.06	Ground Water	Municipal
Paul	36-7899	2/27/1980	0.78	Ground Water	Municipal
Paul	36-8763	10/18/1999	2.75	Ground Water	Municipal
Richfield	37-4084	6/1/1914	0.15	Ground Water	Municipal
Richfield	37-4085	6/1/1956	0.14	Ground Water	Municipal
Richfield	37-8402	9/22/1988	1.63	Ground Water	Municipal
Richfield	37-22431	1/13/2009	1.19	Ground Water	Municipal
Rupert	36-15488	4/10/1913	0.67	Ground Water	Municipal
Rupert	36-15489	11/29/1917	2.95	Ground Water	Municipal
Rupert	36-15491	12/31/1934	6.00	Ground Water	Municipal
Rupert	36-15490	4/1/1952	0.07	Ground Water	Aesthetic, Irrigation
Rupert	36-4075	12/31/1955	27.00	Ground Water	Municipal
Rupert	36-7656	9/18/1962	3.44	Ground Water	Municipal
Rupert	36-7115	3/15/1970	2.40	Ground Water	Municipal
Rupert	36-7863	6/30/1979	3.83	Ground Water	Municipal
Rupert	36-8198	7/1/1979	4.83	Ground Water	Irrigation from Storage, Irrigation Storage
Rupert	36-7862	7/2/1979	5.83	Ground Water	Municipal
Shoshone	37-560A	11/28/1882	0.40	Little Wood River	Irrigation
Shoshone	37-560B	11/28/1882	0.14	Little Wood River	Irrigation
Shoshone	37-606C	11/28/1882	1.00	Little Wood River	Irrigation
Shoshone	37-691G	4/1/1885	1.14	Little Wood River	Irrigation
Shoshone	37-4173	10/1/1951	4.12	Ground Water	Municipal
Shoshone	37-7432	5/6/1975	2.00	Ground Water	Municipal
Shoshone	37-7662	8/30/1977	2.01	Ground Water	Municipal
Wendell	36-8421	12/31/1929	0.67	Ground Water	Municipal
Wendell	36-8764	4/27/1951	1.33	Ground Water	Municipal
Wendell	36-11277	8/25/1961	1.50	Ground Water	Irrigation
Wendell	36-11276	2/6/1974	0.22	Ground Water	Industrial
Wendell	36-2509	6/20/1977	2.67	Ground Water	Municipal
Wendell	36-7722	3/28/1997	1.27	Ground Water	Municipal
Wendell	36-7440	9/14/1998	2.76	Ground Water	Municipal

**Notes:**

Water rights from IDWR's Water Right and Adjudication Search. Available from:  
<https://research.idwr.idaho.gov/apps/waterrights/wrajsearch/SearchPage.aspx>  
 Last Accessed: May 31, 2023.

**SETTLEMENT AGREEMENT (“AGREEMENT”) BETWEEN THE SURFACE WATER COALITION<sup>1</sup>, PARTICIPATING MEMBERS OF IDAHO GROUND WATER APPROPRIATORS, INC.<sup>2</sup>, AND SIGNATORY CITIES<sup>3</sup>**

WHEREAS, Idaho water rights are constitutional property rights defined by the prior appropriation doctrine; and

WHEREAS, the Idaho Department of Water Resources (“IDWR”) administers ground water and surface water rights under the prior appropriation doctrine, the Conjunctive Management Rules (“CM Rules”; IDAPA 37.03.11 et seq.), statutes, and decisional law; and

WHEREAS, the SWC owns surface water rights for irrigation purposes; and

WHEREAS, IGWA’s members own ground water rights for irrigation and other purposes; and

WHEREAS, IGWA owns spring water rights for fish propagation; and

WHEREAS, the Cities own municipal ground water rights, some of which are junior to water rights owned by the SWC or IGWA; and

WHEREAS, the SWC filed a delivery call in 2005 with IDWR under the CM Rules; and

WHEREAS, ground water rights of the Cities and IGWA members have been subject to IDWR administration, including curtailment, as a result of the SWC delivery call; and

WHEREAS, in the Rangen, Inc. delivery call as part of assessing an individual city’s mitigation obligation, IDWR determined the amount of a city’s pumping that was junior to the curtailment date, if any, based on the city’s 5-year average annual pumping volume less the

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<sup>1</sup> The Surface Water Coalition (“SWC”) consists 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.

<sup>2</sup> The participating members of Idaho Ground Water Appropriators, Inc. are Aberdeen-American Ground Water District, Bingham Ground Water District, Bonneville-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. The acronym “IGWA” is used in this Agreement to refer to all of these Districts collectively.

<sup>3</sup> The cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Idaho Falls, Jerome, Paul, Pocatello, Richfield, Rupert, Shoshone, and Wendell are referred to in this Agreement individually as a “Signatory City” and collectively as the “Signatory Cities.” The Signatory Cities and additional cities who participate in this Agreement in the future, pursuant to section I.B, are referred to herein individually as a “City” and collectively as the “Cities.” The SWC, IGWA, and Signatory Cities are referred to herein individually as “Party” and collectively as the “Parties.”

maximum annual diversion volume authorized by the city's water rights that were senior to the curtailment date<sup>4</sup>; and

WHEREAS, pursuant to Idaho Code § 42-233(b) IDWR designated the Eastern Snake Plain Aquifer ("ESPA")<sup>5</sup> as a Ground Water Management Area ("GWMA") on November 2, 2016—the largest GWMA established to date; and

WHEREAS, the Cities perceive substantial uncertainty regarding IDWR's administration of municipal water rights in the ESPA-GWMA; and

WHEREAS, IGWA and the SWC entered into a settlement agreement on June 30, 2015, to mitigate the obligations of IGWA members under the SWC delivery call. This agreement was the subject of addenda on October 19, 2015, and December 14, 2016, and was approved by the Director of IDWR as a CM Rule 43 mitigation plan ("CM Rule 43 Plan") on May 9, 2017. Collectively these documents are referred to herein as the "IGWA-SWC Settlement Agreement"; and

WHEREAS, the Cities are not parties to the IGWA-SWC Settlement Agreement; and

WHEREAS, the Cities desire to implement a long-term resolution to mitigation obligations under both the SWC Delivery Call and the ESPA-GWMA that allows for cities to continue to grow and develop and use additional water;

NOW THEREFORE, in settlement of litigation involving the distribution of water to the members of the SWC and the establishment of the ESPA-GWMA pursuant to Idaho Code § 42-233b, the Parties agree as follows:

**I. CITIES OBLIGATED UNDER THIS AGREEMENT:**

- A. The cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Idaho Falls, Jerome, Paul, Pocatello, Richfield, Rupert, Shoshone, and Wendell ("Signatory Cities") are obligated to satisfy the terms of this Agreement. In the Signatory Cities' sole discretion, they shall determine the proper distribution of this Agreement's obligations among themselves.
- B. Additional cities that divert water from the ESPA may participate in this Agreement upon written notice to IDWR and the Parties. Such notice must be

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<sup>4</sup> Memorandum from Jennifer Sukow, P.E., P.G. to Director Gary Spackman, *Technical Review of Coalition of Cities' Second Mitigation Plan*, January 2015. Available at <https://idwr.idaho.gov/files/legal/CM-MP-2014-007/CM-MP-2014-007-20150123-Staff-Memo-Cities-2nd.pdf> (last visited August 28, 2018).

<sup>5</sup> For purposes of this Agreement the ESPA is the aquifer as designated by the IDWR Director's November 2, 2016 ESPA- GWMA Order.



given by January 15 for a city to participate in a given year. These cities are referred to herein individually as a “Participating City” and collectively as the “Participating Cities”. The Signatory Cities at their sole discretion shall establish the terms by which any Participating City, may participate in the obligations of the Signatory Cities under this Agreement.

## **II. SIGNATORY CITIES’ MITIGATION OBLIGATION:**

- A. Initial Mitigation Obligation: The Signatory Cities will collectively supply average annual mitigation water in the amount of 7,650 acre-feet per year (“AF/y”), with a minimum requirement to supply 1,000 AF/y, commencing January 1, 2019, with compliance as set forth in section II.C.
1. All mitigation water will be used for aquifer enhancement projects on the ESPA unless the Parties agree otherwise in writing.
  2. The following activities will count 1:1 towards meeting the Signatory Cities’ mitigation obligations:
    - a. Delivery of water to the Idaho Water Resource Board (“IWRB”) for managed aquifer recharge of the ESPA;
    - b. Managed aquifer recharge of the ESPA accomplished by entities other than IWRB provided: (1) a minimum of 50% of the volume is recharged east of the Great Rift; (2) the recharge occurs at any of the sites identified in Table 12 of the McVay Report<sup>6</sup> or any other recharge site having an average minimum simulated retention period greater than or equal to 17.5% after five years consistent with analysis methods in the McVay Report; and (3) the water to be recharged pursuant to this subsection would not otherwise incidentally recharge the ESPA, excluding municipal wastewater;
    - c. Ground water to surface water conversions within the boundaries of the ESPA;
    - d. Temporary or permanent dry up (i.e. retirement) of irrigated lands within the boundaries of the ESPA; or
    - e. Other activities agreed to by the Parties.
  3. The Signatory Cities’ decisions regarding aquifer enhancement activities described in section II.A.2 is in their sole discretion.

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<sup>6</sup> Michael McVay, P.E., P.G., *Incorporating Recharge Limitation into the Prioritization of Aquifer Recharge Sites Based on Hydrologic Benefits Using ESPAM 2.1*, November 2015.

4. Aquifer enhancement activities performed by the Signatory Cities under this Agreement shall be in addition to aquifer enhancement activities performed by IGWA under the IGWA-SWC Settlement Agreement or by the IWRB under Idaho Senate Concurrent Resolution no. 136 (2016).

B. Changes in Mitigation Obligation:

1. In the event IGWA's required annual mitigation obligation as set forth in paragraph 3.a.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.
2. In the event IGWA's annual mitigation obligation equals or exceeds 340,000 AF/y, but then is subsequently reduced below 340,000 AF/y, the Signatory Cities' annual mitigation obligation will be reduced back down to 7,650 AF/y commencing on January 1 following notice of the decrease.

C. Compliance with Average Annual Mitigation Obligation: The Cities will be judged to be in compliance with the mitigation requirement set forth herein so long as the five-year rolling average mitigation volume computed each year equals or exceeds the average annual Mitigation Obligation. The Cities will commence reporting under section III beginning in 2020 but compliance with the average annual mitigation obligation will first be assessed in 2024 for the period 2019-2023. Thereafter, compliance with the average annual mitigation obligation will be assessed annually.

D. Costs of activities: The Signatory Cities will pay for all costs (i.e., wheeling fees) related to aquifer enhancement projects and recharge.

**III. REPORTING AND INFORMATION SHARING:**

- A. Prior to April 1 of each year, the Signatory Cities will compile and share with IGWA, the SWC and IDWR an annual report that includes: (1) the volume of ground water diverted by each City individually and the Cities collectively in each of the prior five calendar years, (2) the average annual volume of ground water diverted by the Cities collectively during the prior five calendar years, (3) a description of the mitigation activities accomplished by the Cities during the prior calendar year, (4) the volume of mitigation water provided by the Cities in each of the prior five calendar years, (5) the average annual volume of mitigation water provided by the Cities during the prior five calendar years, and (6) anticipated mitigation activities to be undertaken by the Cities during the current year.
- B. The Parties will request that IDWR analyze the data contained in the Signatory Cities' annual report to confirm the accuracy of the data. IDWR's analysis shall be provided to the Parties no later than July 1 following the Signatory Cities' April 1 submittal of the annual report.

- C. For purposes of sharing of information and coordinating aquifer enhancement activities, IGWA and SWC agree to: (1) deliver to the Signatory Cities the IGWA April 1 report required under the Second Addendum to the IGWA-SWC Settlement Agreement (“Report”); (2) deliver IDWR’s review of the Report to the Cities; (3) upon request of any Party, host a meeting to discuss implementation of this Agreement; and (4) invite the Signatory Cities to attend any Steering Committee meeting that discusses increasing IGWA’s mitigation obligation to equal or exceed 340,000 AF/y.

#### **IV. INCORPORATION INTO ESPA GROUND WATER MANAGEMENT PLAN:**

- A. The Signatory Cities will withdraw their opposition to the ESPA-GWMA Order that is subject to a contested case before IDWR (Docket No. AA-GWMA-2016-001), provided, however, that all Parties may remain as parties to the contested case to monitor the proceedings and participate as necessary.
- B. At such time as IDWR undertakes to develop a ground water management plan for the ESPA-GWMA, the mitigation obligations set forth in section II of this Agreement will be submitted to IDWR for approval as a ground water management plan for the Cities. The Parties agree to support a ground water management plan that incorporates such obligations.
  - 1. If the ground water management plan imposes mitigation obligations that are materially greater or more burdensome than the obligations set forth in section II of this Agreement, section IV of this Agreement shall be of no force and effect and the cities reserve all right to challenge the ESPA-GWMA ground water management plan.
- C. At such time as IDWR undertakes to develop a ground water management plan for the ESPA-GWMA, the mitigation obligations set forth in the IGWA-SWC Settlement Agreement will be submitted to IDWR for approval as a ground water management plan for IGWA members. The Parties agree to support a ground water management plan that incorporates such obligations.
- D. In the event a ground water management plan is not implemented for the ESPA-GWMA or the ESPA-GWMA is dissolved for any reason, such action or inaction shall have no effect upon this Agreement as an approved CM Rule 43 Plan for the SWC delivery call proceeding.

#### **V. SAFE HARBOR FROM IGWA SPRING RIGHTS:**

- A. During the term of this Agreement, IGWA agrees to not assert a delivery call requesting priority administration against any City based on any of IGWA’s spring water rights so long as the Signatory Cities are in compliance with the mitigation obligations set forth in section II of this Agreement.

**VI. CM RULE 43 MITIGATION PLAN:**

- A. This Agreement will be submitted to IDWR for approval, and will be supported by IGWA and the SWC, as a CM Rule 43 Plan in the SWC delivery call proceedings.
- B. In the event this Agreement is not approved as a CM Rule 43 Plan in the SWC delivery call proceedings, this Agreement shall be of no further effect unless the Parties agree otherwise.

**VII. EFFECT ON GROUND WATER DISTRICT ASSESMENTS:**

- A. This Agreement does not waive, cancel, or otherwise affect assessment obligations of any City that belongs to an IGWA ground water district with respect to existing mitigation plans and activities in the Thousand Springs area.
- B. Upon IDWR's approval of this Agreement as a CM Rule 43 Plan, Cities that are members of an IGWA ground water district or that participate in mitigation activities of an IGWA ground water district by contract under Idaho Code § 42-5259 shall have the right to be relieved from future monetary assessments associated with the SWC delivery call while this Agreement is in effect. Each City that desires to be relieved from such assessments shall, if the City is a member of the district, file a petition under Idaho Code § 42-5251, or shall, if the City has contracted with the district, file a written request with the district, to be excluded from the district for all purposes except for existing mitigation plans and activities in the Thousand Springs area, and the board of directors of such district will grant the petition or request. Any City may file such petition in advance of IDWR approval of this Agreement as a CM Rule 43 Plan, with such City's exclusion conditional upon IDWR approval of this Agreement as a CM Rule 43 Plan.
- C. This section VII does not otherwise affect any rights available to Cities under Chapter 52, Title 42, Idaho Code, including but not limited to the right to petition a ground water district to be excluded from existing mitigation plans and activities in the Thousand Springs area, which will be considered by the board of directors of such district on a case by case basis.

**VIII. LEGISLATION AND SUPPORT FOR STATE-SPONSORED RECHARGE:**

- A. Upon execution, the Parties shall provide this Agreement to Idaho's Senate Resources and Environment Committee. The Parties agree to use their best efforts to seek passage of a Senate Concurrent Resolution to approve this Agreement, similar to *Senate Concurrent Resolution 135* (2016).
- B. The Signatory Cities agree to support continued funding of state-sponsored managed aquifer recharge of the ESPA.

**IX. TERM:**

- A. The term of this Agreement shall be until the average annual ESPA pumping of the Cities reaches 120,000 AF/y as determined by a five-year rolling average, or December 31, 2053, whichever is earlier.
- B. This Agreement does not constitute a multi-year unconditional payment obligation. In the event it is determined that this Agreement does constitute a multi-year unconditional payment obligation, then the Parties agree to add additional language to this Agreement in accordance with State law.

**X. DISPUTE RESOLUTION:**

- A. Written notice of a dispute arising from or relating to this Agreement, or any alleged breach thereof, shall be provided to all Parties. The Parties shall thereafter attempt to resolve the matter within thirty (30) days of receiving written notice of the dispute through negotiations between the Parties. If the dispute is not resolved through negotiations, the Parties will attempt to resolve the dispute through non-binding mediation with the use of a mediator mutually agreed to by the Parties before resorting to litigation. If the Parties cannot agree to a mediator, the Director of IDWR shall appoint the mediator.

In the event the Parties cannot resolve their dispute via mediation, any one of them may seek judicial relief in district court to seek resolution of the dispute. The provision of this remedy shall not excuse the Parties from participating in good faith negotiations and mediation as set forth above.

**XI. GENERAL PROVISIONS:**

- A. Entire Agreement. This Agreement sets forth all understandings between the Parties with respect to the subject matter hereof. There are no understandings, covenants, promises, agreements, or conditions, either oral or written between the Parties other than those contained herein.
- B. Binding Date; Effective Date. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns, and shall be effective when it is signed by all of the Parties.
- C. Reservation of Rights. The Parties expressly reserve all rights not modified by this Agreement. In the event this Agreement is terminated, all rights modified by the Agreement will revert to their original condition.
- D. Headings. Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.
- E. Amendment. This Agreement may be amended at any time in writing signed by all Parties.

- F. Waiver. No term of this Agreement shall be deemed waived and no performance shall be excused hereunder unless prior waiver or consent shall be given in writing signed by the Party against whom it is sought to be enforced. Any waiver of any default by any Party shall not constitute a waiver of the same or different default on a separate occasion.
- G. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one and the same agreement.
- H. Electronic signatures. Signatures to this Agreement transmitted by facsimile or email shall be valid and effective to bind the Party so signing.

[End of Agreement; Signatures Below]


PARTICIPATING MEMBERS OF  
IDAHO GROUND WATER APPROPRIATORS, INC.

ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT

  
Nick Behrend, Chairman


9.13.18  
Date

BINGHAM GROUND WATER DISTRICT

  
Craig Evans, Chairman


11-20-18  
Date

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

  
Carl Taylor, Chairman

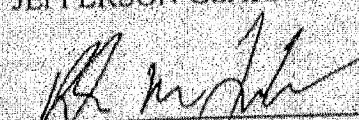
11/21/18  
Date

CAREY VALLEY GROUND WATER DISTRICT

  
Leta Hansen, Chairman

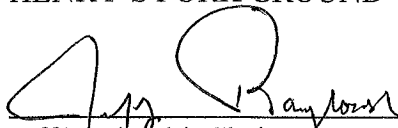
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JEFFERSON CLARK GROUND WATER DISTRICT

  
Kirk Jacobs, Chairman


11/21/18  
Date

HENRY'S FORK GROUND WATER DISTRICT

  
Jeff Raybould, Chairman


11-21-18  
Date

MADISON GROUND WATER DISTRICT

  
Jason Webster, Chairman

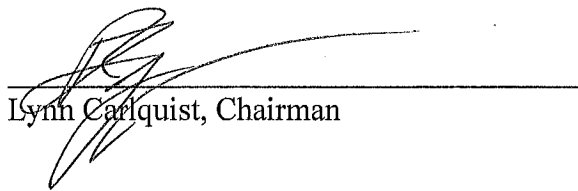
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MAGIC VALLEY GROUND WATER DISTRICT

  
Dean Stevenson, Chairman

9/12/18  
Date

NORTH SNAKE GROUND WATER DISTRICT

  
Lynn Carlquist, Chairman

11/20/18  
Date

SOUTHWEST IRRIGATION DISTRICT

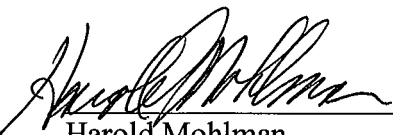
Randy Brown by George Seal Sec. 11/20/18  
Randy Brown, Chairman Date



AMERICAN FALLS RESERVOIR DISTRICT NO. 2

Ellis Gooch      9-11-18  
Ellis Gooch      Date  
Chairman

A&B IRRIGATION DISTRICT

 9-10-18  
Harold Mohlman                      Date  
Chairman

Dean Edgar Oct 9, 2018  
Dean Edgar Date  
Chairman

Date

MILNER IRRIGATION DISTRICT

Scott Breeding 9/11/18  
Scott Breeding Date  
Chairman

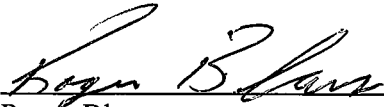

MINIDOKA IRRIGATION DISTRICT

Ron Kowitz 9-11-18  
Ron Kowitz Date  
Chairman

NORTH SIDE CANAL COMPANY

John Beukers 9-20-18  
John Beukers Date  
Chairman

TWIN FALLS CANAL COMPANY

   
\_\_\_\_\_  
Roger Blass                      Date  
Chairman

### SIGNATORY CITIES

Chris Pruett

11-14-18

CITY OF BLISS

Date

CITY OF IDAHO FALLS

Date

CITY OF BURLEY

Date

CITY OF JEROME

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CITY OF CAREY

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CITY OF PAUL

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CITY OF DECLO

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CITY OF POCA TELLO

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CITY OF DIETRICH

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CITY OF RICHFIELD

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11/22/18  
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*Don Hapson*  
CITY OF DIETRICH

*11-12-2018*

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CITY OF RICHFIELD

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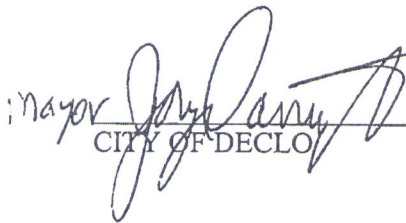
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<u>CITY OF BLISS</u> <u>                    </u> Date	<u>CITY OF IDAHO FALLS</u> <u>                    </u> Date
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<u>CITY OF HEYBURN</u> <u>                    </u> Date	
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*1/8/19*

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<u>CITY OF BURLEY</u>	<u>Date</u>	<u>David M. Davis</u> <u>12/12/18</u>	<u>Date</u>
<u>CITY OF CAREY</u>	<u>Date</u>	<u>CITY OF PAUL</u>	<u>Date</u>
<u>CITY OF DECLO</u>	<u>Date</u>	<u>CITY OF POCA TELLO</u>	<u>Date</u>
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*Blaine A. Hanfeld* 10/16/18

CITY OF DECLO

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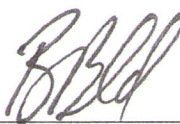
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Brian C. Blad, Mayor

10/4/18

CITY OF DIETRICH

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CITY OF BURLEY	Date	CITY OF JEROME	Date
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CITY OF CAREY	Date	CITY OF PAUL	Date
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CITY OF DECLO	Date	CITY OF POCA TELLO	Date
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CITY OF DIETRICH	Date	<i>Charles E. Burtane</i> 11-12-2018 CITY OF RICHFIELD	Date
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CITY OF BLISS	Date	CITY OF RUPERT	Date
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CITY OF GOODING	Date	CITY OF SHOSHONE	Date
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### SIGNATORY CITIES

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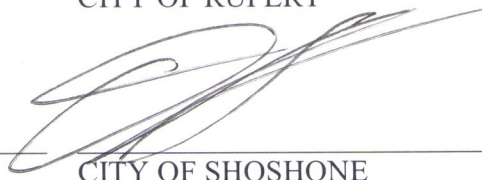
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11-6-18

## SIGNATORY CITIES

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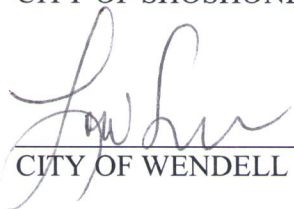
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