

Candice M. McHugh, ISB # 5908
Chris M. Bromley, ISB # 6530
MCHUGH BROMLEY, PLLC
380 S. 4th St., Ste. 103
Boise, ID 83702
(208) 287-0991
cbromley@mchughbromley.com
cmchugh@mchughbromley.com
*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

**COALITION OF CITIES'
UNOPPOSED MOTION TO
INTERVENE**

COME NOW, Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (hereafter collectively referred to as "Coalition of Cities"), by and through their attorneys of record, and hereby seek leave to intervene as Defendant-Intervenors in the above captioned case pursuant to Idaho Rule of Civil Procedures 24(a) & 24(b). This motion is supported by the *Declaration of Candice M. McHugh*, filed concurrently herewith.

The Coalition of Cities move as follows:

1. The Coalition of Cities own surface and groundwater rights on the Eastern Snake Plaine. Their groundwater rights divert from the Eastern Snake Plain Aquifer that is the subject of several delivery calls, including a delivery call by seven canal companies, A&B Irrigation District, American Falls Reservoir District No. 2, Bingham Irrigation District, Burley Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company, (collectively the “SWC”). The on-going delivery call results in certain years a finding of shortage to certain SWC members requiring mitigation from junior users. The Coalition of Cities’ water rights are junior to the surface water rights held by the SWC. A true and correct copy of a summary of the Coalitions water rights is attached as Exhibit A to the Declaration of Candice McHugh filed contemporaneously herewith.

2. The Coalition of Cities have executed *A Settlement Agreement Entered Into June 30, 2015 Between Participating Members Of The Surface Water Coalition1 And Participating Members Of The Idaho Ground Water Appropriators, Inc.* (“Cities SWC Agreement”) to address injury to the SWC members, a true and correct copy of which is attached hereto as Exhibit B to the Declaration of McHugh filed contemporaneously herewith.

3. The City of Pocatello’s storage water is the source of the Coalition of Cities’ water to meet its obligations under the Cities SWC Agreement. The Coalition of Cities specifically seek to challenge the Water District (“WD”) 01 Rental Pool Procedures that subject Pocatello’s storage rights in Palisades to the “last to fill” provision Rule 7.3 relating to leasing water for mitigation and recharge purposes thereby making the storage right less reliable. *See* Complaint Counts 1, 2, 3.

4. The Coalition of Cities have a significant, protectable interests in the subject matter of this litigation because it involves the protection of and reliability of Pocatello’s storage

water contract and the application of the Water District (“WD”) 01 Rental Pool Procedures. The Coalition of Cities ability to lease storage water rights administered by WD01 and the subject matter of this litigation has the potential of immediate and future impacts upon their water rights because it affects their source of supply to mitigate for their water rights under the Cities SWC Agreement. The Cities SWC Agreement has been approved as a mitigation plan by the Idaho Department of Water Resources. *Final Order Approving Stipulated Mitigation Plan*, CM -MP- 2019-001, Idaho Department of Water Resources (April 9, 2019). (“Mitigation Plan Order”)

5. This motion is timely as the State’s *Amended Answer* was filed less than a month ago on May 16, 2023. And, a hearing on other motions to intervene is set on June 28, 2023. There has been no substantive decision made in this case.

6. Because the Court has not yet, substantively considered any issues in this pending matter; thus, the Coalition of Cities’ intervention and participation in this case would not cause undue delay.

7. The Coalition of Cities satisfy the requirements for intervention of right under I.R.C.P. 24(a) for the following reasons:

a. The Coalition of Cities hold water rights and an obligation under the Cities SWC Agreement and Mitigation Plan Order to mitigate for those water rights and the subject matter of this litigation potentially has immediate and future impacts upon the storage water relied upon by the Coalition of Cities.

b. The Coalition of Cities have a significant, protectable interest in the subject matter of this litigation, because it involves a matter of first impression concerning the adoption and validity of the WD01 Rental Pool Procedures and specifically the “last to fill” rule that impacts the source of its mitigation water.

c. Disposition of the action has the potential to impair or impede the Coalition of

Cities’ ability to protect their water rights, which are real property right interests in

the State of Idaho.

d. The Coalition of Cities' interests are not adequately protected by the Parties, because:

- 1) Pocatello's use of its own water for mitigation purposes is not subject to a lease and thus not subject to "last to fill" thereby making the application of the WD01 Rental Pool Procedures of great concern to the Coalition of Cities because their leases are subject to the rules in question;
- 2) Idaho Water Resources Board ("IWRB"), the Idaho Department of Water Resources ("IDWR"), the Director of IDWR, Gary Spackman and the Watermaster of Water District 01, Tony Olenichak are state agencies and employees of state agencies with a particular duty and mandate to the citizens of the State of Idaho in general, and not the Coalition of Cities interest in particular.

8. Alternatively, the Coalition of Cities also satisfy the requirements for permissive intervention under I.R.C.P. 24(b). The Coalition of Cities' interest and position has a question of fact or law in common with the main action, and intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

The undersigned counsel has communicated with counsel for named Defendants, Ann Yribar and she has indicated that the named Defendants will not oppose the Coalition of Cities' intervention and also represented that the undersigned can represent the same to the Court.

Declaration of McHugh ¶ 6. Also the undersigned left a message with the "Spaceholders" counsel as a courtesy that said motion was being filed unopposed and copies of the same provided to them.

DATED this 21st day of June, 2023.

McHUGH BROMLEY, PLLC

/s/ Candice McHugh

Candice McHugh

Attorney for Coalition of Cities

