

RESOLUTION NO. 174-2018

A RESOLUTION OF THE CITY OF WENDELL, IDAHO
AUTHORIZING THE NEGOTIATION OF A SETTLEMENT
AGREEMENT TERM SHEET IN RESPONSE TO THE
SURFACE WATER COALITION WATER DELIVERY CALL
AND THE DESIGNATION OF THE EASTERN SNAKE PLAIN
AQUIFER GROUND WATER MANAGEMENT AREA

WHEREAS since 2005, the City of Wendell, Idaho ("City") has been identified as one of the water users affected by the ongoing Surface Water Coalition ("SWC") conjunctive administration water delivery call affecting the City's water rights; and

WHEREAS since 2016, the City has been identified by the Director of the Idaho Department of Water Resources ("IDWR") as falling within the boundaries of the designated Eastern Snake Plain Aquifer ("ESPA") Ground Water Management Area ("GWMA"); and

WHEREAS the City finds it necessary to protect, defend, and preserve its water rights in response to the SWC delivery call and IDWR's designation of the ESPA GWMA; and

WHEREAS the cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell ("Local Cities") have appeared in the SWC and ESPA GWMA proceedings through the law firms of Williams, Meservey, & Lothspeich, LLP ("WML LLP"), and McHugh Bromley, PLLC ("MB PLLC");

WHEREAS the Local Cities desire to work together to achieve their legal objectives in the SWC and ESPA GWMA proceedings; and

WHEREAS a settlement framework agreement ("Term Sheet") has been negotiated by WML LLP and MB PLLC on behalf of the Local Cities in the SWC and ESPA GWMA matters; and

WHEREAS the Term Sheet will serve as a vehicle from which the Local Cities will negotiate a binding settlement agreement in response to the SWC and ESPA GWMA proceedings.

NOW, THEREFORE,

BE IT RESOLVED by the Council and Mayor of the City of Wendell:

The City agrees the Term Sheet contains acceptable terms from which to negotiate a binding settlement agreement in response to the SWC and ESPA GWMA proceedings. The City agrees to allow WML LLP and MB PLLC to negotiate the terms of a binding settlement agreement on its behalf. Any settlement agreement that is ultimately reached must then be presented to the City for approval.

DATED this 15 day of February 2018

PASSED Feb. 15, 2018

APPROVED Feb. 15, 2018



MAYOR

ATTEST:



CITY CLERK

CITIES¹, IGWA, AND SWC
SETTLEMENT FRAMEWORK
(January 25, 2018 Working)

1. The term of the settlement agreement will be until the ~~Cities'~~ average annual ESPA pumping of all cities that participate in this settlement agreement reaches 120,000 acre-feet on a five-year rolling average, or 35 years, whichever is earlier.
2. All cities which divert water from the ESPA will be provided an opportunity to participate in this settlement agreement. Terms for such participation will be negotiated as part of the final settlement agreement, including a deadline for electing to participate in the settlement agreement.
3. The participating cities to this settlement agreement (collectively "Cities") collective annual mitigation obligation will be 7,650 acre-feet per year; provided, however, if (i) 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 acre-feet per year and (ii) the goals as set forth in paragraph 3.e. of the IGWA-SWC Settlement Agreement are not met, the Cities' collective annual mitigation obligation will increase to 9,640 acre-feet per year. If IGWA's annual mitigation obligation equals or exceeds 340,000 acre-feet per year, but then is subsequently reduced below 340,000 acre-feet per year, the Cities' annual mitigation obligation will be reduced back down to 7,650 acre-feet per year.
4. Performance by the Cities in providing mitigation in an amount designated per year under this settlement agreement will be measured using a five-year rolling average.
5. Cities will provide mitigation by either undertaking aquifer enhancement projects or providing water for recharge. The Cities will pay for all costs (i.e., wheeling fees) related to aquifer enhancement projects and recharge. Parties will negotiate terms in the final settlement agreement of how projects or how providing recharge water will be implemented.
6. Prior to April 1 of each year, the Cities will submit to the other parties and IDWR data demonstrating compliance with the terms of this settlement agreement.
7. This settlement agreement will be submitted to IDWR for approval, and will be supported by IGWA and the SWC, as a mitigation plan in the SWC delivery call proceedings. Cities, SWC, and IGWA acknowledge and agree that performance under this Agreement is fully contingent upon approval of this settlement agreement by the Director of the Idaho Department of Water Resources as an acceptable mitigation plan in the SWC delivery call proceedings.
8. During the term of this settlement agreement, IGWA waives its ability to assert a delivery call requesting priority administration against the Cities based on any of IGWA's and/or its member ground water districts' spring water rights.
9. ESPA Ground Water Management Area.
 - a. All parties to this settlement agreement will withdraw their opposition to the creation of the ESPA Ground Water Management Area that is subject to a

¹ Cities includes the Coalition of Cities, Pocatello and Idaho Falls. The "Coalition of Cities" includes the cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone and Wendell.

contested case before the Idaho Department of Water Resources (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. In the event the creation of the ESPA Ground Water Management Area is not accomplished for any reason, it shall have no effect upon this settlement agreement as an approved mitigation plan for the SWC delivery call proceeding.
 - c. In the event the creation of the ESPA Ground Water Management Area is accomplished upon final resolution of the contested case, this settlement agreement will be submitted to IDWR for approval, and will be supported by IGWA and the SWC, as a management plan for Cities under the ESPA Ground Water Management Area. The parties will thereafter work collaboratively in any process or proceeding to develop a Ground Water Management Plan(s) to advocate for and support a plan that includes the terms of this settlement agreement.
 - d. In the event the creation of the ESPA Ground Water Management Area is accomplished and the terms of this settlement agreement are included in the approved Ground Water Management Plan(s), the SWC will withdraw its delivery call against the Cities so long as the Cities comply with the terms of the Ground Water Management Plan(s).
 - e. In the event the terms of this settlement agreement are not included in a Ground Water Management Plan(s), this settlement agreement shall be void and of no further effect, unless the SWC, IGWA, and Cities agree otherwise.
10. This settlement agreement does not waive, obligate or determine any re-negotiation or cancelling of assessments by any individual cities and their respective ground water districts and/or IGWA as to existing Thousand Springs delivery calls' obligation. **By entering into this agreement, cities that are members of a ground water district shall no longer be responsible for future monetary assessments associated with the SWC delivery call proceedings.**
 11. **Parties will work to identify and pass legislative changes needed to support the objectives of this settlement agreement.**
 12. The Parties agree that the framework set forth herein is not a binding contract, but the Parties will work together in good faith to prepare a detailed settlement agreement consistent with the terms of this Agreement, the final details of which will be subject to approval by the Parties' respective city councils, boards, etc.