

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF JERRY D. AND  
VALERIE H. BINGHAM’S MITIGATION  
PLAN FOR THE SURFACE WATER  
COALITION

Docket No. CM-MP-2025-003

**ORDER VACATING DEADLINES  
AND STATUS CONFERENCE;**

**ORDER STAYING PROCEEDINGS**

**BACKGROUND**

On August 19, 2025, Jerry Bingham and Valerie Bingham (“Binghams”) submitted a *Mitigation and Curtailment Plan* (“*Original Plan*”) to the Idaho Department of Water Resources (“Department”), pursuant to Rule 43 of the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”), IDAPA 37.03.11.043.

The Surface Water Coalition (“SWC”), American Falls-Aberdeen Ground Water District (“AFA”), Carey Valley Ground Water District (“Carey Valley”), and the Coalition of Cities (“Cities”) protested the *Original Plan*, and Idaho Ground Water Appropriators, Inc. (“IGWA”) intervened.

On October 16, 2025, the Director appointed Roger S. Burdick as the Hearing Officer to preside over the contested case concerning the *Original Plan*. *Notice of Prehearing Conf.; Order Appointing Hearing Officer*, at 1–2.

On February 17, 2026, the Binghams and the SWC submitted a *Stipulation to Interim Mitigation Plan* (“*Second Plan*”) to the Department and requested an expedited status conference regarding that filing.

On February, 20, 2026, the Hearing Officer held a status conference at which the parties requested that the hearing scheduled for March 16–18, 2026, be vacated in light of the *Second Plan* and the uncertainty regarding the appropriate procedural path forward.

On March 5, 2026, the Binghams submitted an *Amended Stipulation to Interim Mitigation Plan* (“*Amended Interim Plan*”) to the Department. The Binghams represented that the *Amended Interim Plan* would supersede the previously submitted *Second Plan*. *Amended Interim Plan*, at 2.

On March 6, 2026, the Hearing Officer held a previously scheduled status conference in the contested case concerning the *Original Plan* action.

On March 9, 2026, the Hearing Officer issued a *Notice of Continued Status Conference* (“*Notice*”), establishing a March 12, 2026 deadline for the parties identified in the *Amended*

*Interim Plan* to either execute the stipulation or file a notice of non-opposition, and setting a status conference for March 13, 2026. *Notice*, at 1–2.

On March 11, 2025, the Director issued an *Order Returning Amended Stipulation to Interim Mitigation Plan*. In that order, the Director returned the *Amended Interim Plan* to the Bingham's due to facial deficiencies and indicated that, if and when an acceptable amended plan is received, the Department will publish the plan and “assign a hearing officer to preside over the contested case.” *Id.* at 3.

## ANALYSIS

The procedural posture of this matter has materially changed since the filing of the *Original Plan*.

The contested case currently assigned to Hearing Officer Burdick concerns the Bingham's *Original Plan* filed August 19, 2025. However, the Bingham's have since submitted subsequent proposed mitigation plans.

In addition, the *Original Plan* itself only contemplated mitigation for the 2025 irrigation season as the Bingham's intended to follow the plan “as long as the Director’s Order of July 25, 2025 is in place.” *Original Plan*, at 5. The 2025 irrigation season has now concluded, and the Bingham's have indicated their intent to proceed under the *Amended Interim Plan* during the March 6 status conference. During that conference, the Hearing Officer asked the parties:

HEARING OFFICER: In your, in your original application, you indicate accordingly the Bingham’s request that the Department accepts the mitigation plan acknowledging its use in the 2025 irrigation system season and the Bingham's are committed to following this plan going forward as long as the Director’s order of July 25, 2025<sup>1</sup> is in place. It’s already been one time changed and it, as Travis has indicated, it may be changed in the future.

REED LARSEN:<sup>2</sup> You know, our mitigation plan will be the same. We just want to make sure that we’re in place, so we don’t get curtailed. We shouldn’t have to file a new mitigation plan with each successive curtailment. I mean, we’d end up chasing our tail completely if we had to do that. Yeah.

HEARING OFFICER: Well, and that was the argument in the city case too in front of the Supreme Court, so I’m just wondering, is there necessity to address that issue here or [do] you want to just go forward with this stipulation? And I will ask all the parties their thoughts in that regard.

REED LARSEN: *We wanted to go forward with this stipulation.*

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<sup>1</sup> This is in reference to the Director’s *Final Order Curtailing Ground Water Rights Junior to October 11, 1900* issued on July 25, 2025 in the Surface Water Coalition Delivery Call proceeding, Docket No. CM-DC-2010-001.

<sup>2</sup> Counsel for the Bingham's.

Hr’g Tr. 09:04–10:26 (emphasis added). Because the Bingham no longer seek approval of the *Original Plan* and have proposed the *Amended Interim Plan* in its place, the *Original Plan* has become moot and no further proceedings concerning that plan are warranted.

Moreover, the Hearing Officer does not presently have authority to proceed with the *Amended Interim Plan*. The Director has returned that plan to the Bingham for correction and has indicated that, if an acceptable amended plan is later submitted, the Department will publish the plan and assign a hearing officer to preside over any resulting contested case. Until such action occurs, the *Amended Interim Plan* is not properly before the Hearing Officer.

Because the *Original Plan* is moot and the Director has returned the *Amended Interim Plan*, further proceedings in this contested case serve no purpose at this time. Therefore, the appropriate course of action is to stay this contested case pending further direction from the Director regarding whether a revised mitigation plan will be submitted, accepted for publication, published, and assigned to a hearing officer.

### ORDER

IT IS HEREBY ORDERED that the status conference scheduled for March 13, 2026, and the March 12, 2026 deadline to execute the *Amended Interim Plan* or file a non-opposition are VACATED.

IT IS FURTHER ORDERED that this contested case is STAYED pending further direction from the Director.

DATED this 12th day of March 2026.

A handwritten signature in black ink, appearing to read "R. Burdick", is written above a horizontal line. The signature is stylized and cursive.

ROGER S. BURDICK  
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March 2026, the above and foregoing, was served by the method indicated below, and addressed to the following:

|   |   |
|---|---|
| Reed W. Larsen<br>COOPER & LARSEN, CHARTERED<br><a href="mailto:reed@cooper-larsen.com">reed@cooper-larsen.com</a>  | <input checked="" type="checkbox"/> Email |
| Sarah A. Klahn<br>Maximilian C. Bricker<br>SOMACH SIMMONS & DUNN, P.C.<br><a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a><br><a href="mailto:mbricker@somachlaw.com">mbricker@somachlaw.com</a>                      | <input checked="" type="checkbox"/> Email |
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Sara Ajeti  
Deputy Attorney General