

BEFORE THE IDAHO 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 DENYING MOTION FOR STAY
OF ORDER OF CURTAILMENT**

BACKGROUND

On August 19, 2025, Jerry and Valerie Bingham (the “Binghams”) submitted a *Mitigation and Curtailment Plan* (“*Original Mitigation 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 Mitigation Plan*, and the Idaho Ground Water Appropriators, Inc. (“IGWA”) moved to intervene.

On October 16, 2025, the Director issued an order appointing Roger S. Burdick as the hearing officer in the matter to consider the *Original Mitigation Plan. Notice of Prehearing Conf.; Order Appointing Hearing Officer*, at 2.

On November 24, 2025, Hearing Officer Burdick issued an *Order on Intervention, on Scheduling, and Authorizing Discovery and Email Service; Notice of Status Conference and Hearing* (“*Scheduling Order*”) related to the *Original Mitigation Plan*.

On February 17, 2026, the Binghams and SWC submitted a *Stipulation to Interim Mitigation Plan* (“*Second Mitigation Plan*”). The *Second Mitigation Plan* differed materially from the *Original Mitigation Plan*.

On February 18, 2026, the Binghams submitted a *Request for Status Conference* to the Department. The Hearing Officer held a status conference on February 20, 2026. During the conference, and at the parties’ request, the Hearing Officer vacated the hearing on the *Original Mitigation Plan* scheduled for March 16–18, 2026.

On March 5, 2026, the Binghams and SWC submitted an *Amended Stipulation to Interim Mitigation Plan* (“*Third Mitigation Plan*”) to the Department. The *Third Mitigation Plan* purported to “supersede” the *Second Mitigation Plan. Third Mitigation Plan*, at 2.

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 *Third Mitigation 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, 2026, the Director returned the *Third Mitigation Plan* to the Bingham because it was not signed by the identified parties and did not “provide sufficient information necessary to evaluate the minimum criteria for mitigation plans.” *Order Returning Amended Stipulation to Interim Mitigation Plan*, at 1–2.

On March 12, 2026, after the Director returned the *Third Mitigation Plan*, the Hearing Officer vacated the deadline for parties to execute the *Third Mitigation Plan* or file a non-opposition and stayed proceedings of the contested case. *Order Vacating Deadlines and Status Conference; Order Staying Proceedings*, at 3 [hereinafter “*Order Staying Proceedings*”]. The Hearing Officer further concluded that the *Original Mitigation Plan*—the subject of the contested case before him—was “moot” and that “no further proceedings concerning that plan are warranted” because “the Bingham no longer seek approval of the *Original [Mitigation] Plan . . .*” *Id.*

On March 25, 2026, the Bingham submitted an *Amended Mitigation and Curtailment Plan* (“*Fourth Mitigation Plan*”) to the Department.

On April 9, 2026, the Director returned the *Fourth Mitigation Plan* to the Bingham because it did not include “the information necessary to evaluate whether it meets the minimum criteria for mitigation plans.” *Order Returning Amended Mitigation and Curtailment Plan*, at 1.

On April 20, 2026, the Bingham submitted a *Motion for Stay of Order of Curtailment* (“*Motion for Stay*”) seeking “a stay of the order of curtailment under the SWC Delivery Call, Docket No. CM-DC-2010-001, until such time as the Bingham’s mitigation plan is processed” *Motion for Stay*, at 1. The Bingham state they “are currently in the process of having a ‘clear and detailed’ mitigation analysis prepared to fully satisfy the Director’s issues with their *Fourth Mitigation Plan*, and they intend to increase volume reduction to more fully address their mitigation obligations.” *Id.* at 3.

The Director has reviewed the *Motion for Stay* and will deny it for the reasons described below.

ANALYSIS

The Department’s Rule of Procedure 780 provides that the Director has discretionary authority to grant or deny a stay of a curtailment order. IDAPA 37.01.01.780 (“Any party may petition the agency to stay any order The agency may stay any interlocutory or final order on its own motion.”). In *Platz v. State*, while discussing a nearly identical administrative rule,¹

¹ The Attorney General’s Rule of Procedure 780 was the administrative rule discussed in *Platz*, which was repealed after the establishment of the Office of Administrative Hearings; the Office of Administrative Hearings later promulgated a similar rule regarding staying agency orders. Compare IDAPA 04.11.01.780 (repealed 2024) (“Any party or person affected by an order may petition the agency to stay any order The agency may stay any interlocutory or final order on its own motion.”), with IDAPA 62.01.01.632 (“Any party or person affected by an order may file a motion to stay any order A presiding officer may stay any interlocutory, preliminary, or recommended order on their own motion, and an agency head may stay any final order on their own motion.”); see I.C. § 67-5280 (establishing the Office of Administrative Hearings in 2022 and outlining the powers and duties of the office).

the Idaho Court of Appeals confirmed that “it is within the hearing officer's discretion to either grant or deny a stay” of an administrative decision. *Platz v. State*, 154 Idaho 960, 969, 303 P.3d 647, 656 (Ct. App. 2013). As supportive authority for granting the stay of an agency order, the Bingham’s *Motion for Stay* cites to Idaho Code § 67-5274 and Idaho Rule of Civil Procedure 84(m). *Motion for Stay*, at 1–3. Both grant the agency and reviewing court discretionary authority to stay the enforcement of an agency order under judicial review “upon appropriate terms.” I.C. § 67-5274; I.R.C.P. 84(m). While the Bingham’s cite to an order issued by former Director Spackman applying the “upon appropriate terms” standard to a stay request, this standard is not appropriate because the request was not made in connection with a pending petition for judicial review.² Given the facts presented here, granting the Bingham’s request for stay of curtailment would not be reasonable when the Bingham’s do not have a proposed mitigation plan pending.

The Bingham’s argue that a stay is appropriate because they “have been trying in good faith to prepare a mitigation plan acceptable to IDWR,” because denial of a stay would allegedly result in “significant negative and potentially irreversible effects” on their farming operation, and because any harm to the SWC would purportedly be “negligible if [the stay] only lasts until a decision is issued on the mitigation plan.” *Motion for Stay*, at 3–4. The Director acknowledges these concerns and recognizes that curtailment under Idaho’s prior appropriation doctrine can impose substantial burdens on junior water users. However, such administration remains necessary to protect senior water rights.

The Bingham’s currently have no mitigation plan pending before the Department. The *Original Mitigation Plan* is moot because it only contemplated mitigation for the 2025 irrigation season and the Bingham’s “no longer seek approval” of the *Original Mitigation Plan*. *Order Staying Proceedings*, at 2–3. The *Second Mitigation Plan* was superseded by the *Third Mitigation Plan*. The *Third Mitigation Plan* and the *Fourth Mitigation Plan* were returned because they lacked the information necessary for the Director to evaluate whether the plans were sufficiently protective of senior water users. *Order Returning Amended Stipulation to Interim Mitigation Plan*, at 2; *Order Returning Amended Mitigation and Curtailment Plan*, at 1. While the Bingham’s stated in their *Motion for Stay* that they are in the process of preparing another mitigation plan, it has been more than a month since the Director issued his most recent return order on April 9, and no such plan has been submitted to the Department.

The Bingham’s have long been aware that their water rights are vulnerable to curtailment. Department records show that the Bingham’s received notice of the SWC delivery call proceedings as far back as 2014. The Bingham’s most junior ground water rights were subject to

² But even if “upon appropriate terms” was the correct standard, other sections of the Idaho Rules of Civil Procedure make clear that “appropriate terms” means terms which are sufficiently protective of the opposing party’s security. Rule 62(b) states “[o]n appropriate terms for the opposing party’s security, the court may stay the execution of a judgment” Similarly, Rule 62(a) provides that execution of a judgment may issue immediately “unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.” The statutes do not require consideration of “appropriate” factors when deciding whether to grant or deny a stay. Rather, the statutes require that when the Director in his discretion grants a stay, the terms must be appropriate for all parties. While this is not the standard applicable here, if it was, the Director would conclude that granting the Bingham’s stay of curtailment would not be appropriate for all parties when the Bingham’s do not have a proposed mitigation plan pending.

curtailment in 2014, 2017, and 2022. All of the Bingham's ground water rights were subject to curtailment during the 2025 irrigation season. *See Final Order Curtailing Ground Water Rights Junior to October 11, 1900* Attach. A, at 2, No. CM-DC-2010-001 (July 25, 2025). Despite notice and repeated curtailments, the Bingham's still do not have a mitigation plan pending, much less approved.³

Under the facts presented here, granting a stay would permit out-of-priority water use for an indefinite amount of time without a mechanism to prevent or resolve injury. Idaho's prior appropriation doctrine relies upon the enforcement of priority rights, and the Department's curtailment order serves the public purpose of protecting senior water rights and ensuring timely compliance with Idaho water law. Granting a stay to the Bingham's in the absence of a pending mitigation plan would undermine those interests by permitting continued out-of-priority diversion without a demonstrated plan to prevent or resolve injury to senior users.⁴ This is not to say that the submission of any mitigation plan would justify a stay. The facts of the proposed mitigation plan would need to be evaluated. But where the Bingham's have long been aware that their water rights are vulnerable to curtailment, have had their water rights previously curtailed, have previously submitted mitigation plans that failed to obtain approval, and currently have no plan pending pursuant to the CM Rules, the Director declines to grant a discretionary stay.

ORDER

IT IS HEREBY ORDERED that the *Bingham's Motion for Stay of Order of Curtailment* is DENIED.

Dated this 14th day of May 2026.



MATHEW WEAVER
Director

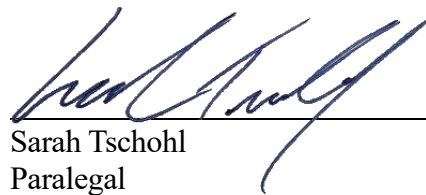
³ In the *Motion for Stay*, the Bingham's state that they have been "trying in good faith" to submit a mitigation plan that meets the minimum criteria of the CM Rules and "any delays of the acceptance of a mitigation plan have not been caused by any bad conduct on Bingham's part." *Motion for Stay*, at 3. Whether the Bingham's have been trying in good faith or not, the reality is that their failure to act timely has caused the delay, and the failure to act timely should not be a defense against curtailment.

⁴ The Department's preliminary analysis indicates that depletions to the Snake River due to pumping associated with the Bingham's ground water pumping for the 2026 irrigation season would be at least 236 acre-feet.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May 2026, the above and foregoing, was served by the method indicated below, and addressed to the following:

Reed W. Larsen COOPER & LARSEN, CHARTERED reed@cooper-larsen.com	<input checked="" type="checkbox"/> Email
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Sarah Tschohl
Paralegal

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

The accompanying document is a “**Final Order**” issued by the Idaho Department of Water Resources (“Department”) pursuant to Idaho Code § 67-5246. The following statements describe the procedures and time limits for seeking reconsideration or other administrative relief as required by Idaho Code § 67-5248.

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5246(4))

Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The presiding officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

REQUEST FOR HEARING

(See Idaho Code § 42-1701A(3))

Unless the right to a hearing before the Director or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order, or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Director to contest the action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. **Note: The request must be received by the Department within this fifteen (15) day period.**

CERTIFICATE OF SERVICE

(See IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Department in connection with a petition for reconsideration or a request for hearing of this final order shall be served on all other parties to the proceeding in accordance with Rules 53 and 202 of the Department’s Rules of Procedure.