BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF FALLS WATER CO., INC.'S MITIGATION PLAN FOR THE SURFACE WATER COALITION	Docket No. CM-MP-2026-002 **FINAL ORDER GRANTING IGWA'S PETITION TO INTERVENE; DENYING FALLS' MOTION TO DISMISS; AND CONDITIONALLY APPROVING STIPULATED MITIGATION PLAN**

BACKGROUND

On November 22, 2024, Falls Water Co., Inc. ("Falls") submitted *Falls Water Co., Inc.'s CM Rule 43 Mitigation 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")[1] protested the *Original Plan*. Bonneville-Jefferson Ground Water District and Idaho Ground Water Appropriators, Inc. ("IGWA") were granted intervention on the *Original Plan* matter, assigned Docket No. CM-MP-2024-004.

On February 4, 2026, Falls submitted the *First Amended Falls Water Co., Inc.'s CM Rule 43 Mitigation Plan* ("*Amended Plan*") pursuant to CM Rule 43. Falls indicated on the face of the plan that it "intended to completely supersede and replace Falls Water's first mitigation plan." *Amended Plan*, at 1. This constituted a withdrawal of the *Original Plan* and Docket No. CM-MP-2024-004 was dismissed. *Preliminary Order Acknowledging Withdrawal and Dismissing Contested Case*, at 2 (Mar. 20, 2026).

On March 16, 2026, the Department received *IGWA's Petition to Intervene*. IGWA asserted that its petition was timely, that it has a substantial interest in the matter because Falls' mitigation activities may affect IGWA members, that it will not broaden the issues since it intends to monitor and participate as needed, and that no existing party represents its interests. *IGWA's Petition to Intervene*, at 2–3.

On March 18, 2026, Falls and the SWC filed a *Joint Motion for Order Approving Falls Water's Stipulated Mitigation Plan* ("*Stipulated Plan*"). The *Stipulated Plan* is identical to the *Amended Plan*. *Stipulated Plan*, at 1.

On May 1, 2026, the Hearing Officer issued a *Preliminary Order Approving Falls Water's Stipulated Mitigation Plan; Order Denying IGWA's Petition to Intervene* ("*Preliminary Order*"). The Hearing Officer approved the *Stipulated Plan* and denied *IGWA's Petition to Intervene*,

[1] The SWC is comprised of A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company, American Falls Reservoir District #2, and Minidoka Irrigation District.

concluding that IGWA had not provided sufficient information to show a direct and substantial interest in the proceeding. *Preliminary Order*, at 2–3.

On May 5, 2026, IGWA filed a *Petition for Reconsideration of Preliminary Order; Notice of Conditional Withdrawal of Protest* ("*Petition for Reconsideration*"). IGWA requested that the Hearing Officer reconsider the denial of intervention and approval of the *Stipulated Plan*. *Petition for Reconsideration*, at 1. IGWA also stated it would withdraw its opposition to the *Stipulated Plan* if the Department includes four conditions in an order approving the *Stipulated Plan*. *Petition for Reconsideration*, at 6.

The SWC filed a response opposing reconsideration on May 8, 2026 ("*SWC Response*"), and Falls filed a response opposing reconsideration on May 12, 2026 ("*Falls Response*"). The SWC and Falls argued, among other things, that IGWA had not demonstrated a substantial interest in its original *Petition to Intervene* and could not use reconsideration to cure that deficiency. *SWC Response*, at 3; *Falls Response*, at 9.

On May 22, 2026, the Hearing Officer issued an *Order Denying Petition for Reconsideration* ("*Reconsideration Order*"), declining to reconsider the denial of *IGWA's Petition to Intervene* or the approval of the *Stipulated Plan*. *Reconsideration Order*, at 2.

On June 5, 2026, IGWA filed *IGWA's Exceptions to Preliminary Order and Reconsideration Order* ("*Exceptions*"). IGWA asked the Director to grant intervention and approve the *Stipulated Plan* subject to the four conditions proposed in its *Petition for Reconsideration,* or to grant such other relief as appropriate. *Exceptions*, at 7.

On June 22, 2026, the Department received *Falls Water Co., Inc.'s Motion to Dismiss IGWA's Exceptions to Preliminary Order and Reconsideration Order or in the Alternative Response to Exceptions* ("*Motion to Dismiss*"). Falls argues that IGWA is not a party entitled to file exceptions because its *Petition to Intervene* was denied and, alternatively, that IGWA's *Exceptions* should be denied on the merits and the *Preliminary Order* affirmed. *Motion to Dismiss*, at 6, 9.

STANDARD OF REVIEW

The Hearing Officer's *Preliminary Order* is subject to review by the Director under Idaho Code § 67-5245 and IDAPA 37.01.01.730. When reviewing a preliminary order, the Director "shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing." I.C. § 67-5245(7). Accordingly, the Director has independently reviewed the issues presented by IGWA's *Exceptions*, including whether IGWA satisfied the requirements for intervention under Rule 353 and whether the *Stipulated Plan* should be approved under IDAPA 37.03.11.043.03.o.

ANALYSIS

I. IGWA demonstrated a direct and substantial interest sufficient to support intervention.

The threshold question is whether IGWA's *Petition to Intervene* satisfies Rule 353 of the Department's Rules of Procedure (IDAPA 37.01.01). Rule 353 states that "[i]f a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties." IDAPA 37.01.01.353.01.

The parties have devoted substantial briefing to whether IGWA retained party status from Docket No. CM-MP-2024-004 and whether IGWA's failure to timely protest the *Amended Plan* affects its ability to participate in this proceeding. Neither issue is relevant as to whether IGWA is entitled to intervene under Rule 353. The *Amended Plan* was sufficiently different from the *Original Plan* to warrant readvertisement, was assigned a new docket number, and expressly superseded the *Original Plan*. IGWA therefore did not automatically retain party status from the *Original Plan* proceeding. But IGWA's failure to protest the *Amended Plan* did not foreclose IGWA from seeking intervention under Rules 350 through 354. Intervention is a separate procedural mechanism for obtaining party status after a contested case has commenced.

IGWA's March 16, 2026 *Petition to Intervene* was timely under Rule 352 because no formal hearing or prehearing conference had yet occurred. The *Petition to Intervene* also stated that IGWA intended to monitor the proceeding and participate as needed, thereby avoiding undue expansion of the issues, and no party identified an existing party that adequately represented IGWA's asserted interests. *Petition to Intervene*, at 3. The dispute therefore centers on whether the *Petition to Intervene* showed a direct and substantial interest.

IGWA's *Petition to Intervene* stated that IGWA is a party to the SWC delivery call; that its member ground water districts provide mitigation to the SWC; that Falls' mitigation activities may directly affect the mitigation activities conducted by IGWA members; and that if mitigation activities do not sustain or increase gains to the Near Blackfoot-Minidoka reach of the Snake River, IGWA members may incur larger mitigation obligations. *Petition to Intervene*, at 3. Thus, IGWA did not merely assert that its members might be injured by the proceeding, it asserted that Falls' mitigation activities may affect reach gains and, in turn, the mitigation obligations of its members. Those allegations identify a substantial interest and explain how that interest may be affected. They are sufficient to satisfy the threshold showing required by Rule 353.

Falls argues that IGWA's *Petition for Reconsideration* and *Exceptions* improperly attempted to cure deficiencies in the original *Petition to Intervene*, relying on authority recognizing that reconsideration is not intended to permit a party to correct inadequate initial submissions. *Motion to Dismiss*, at 8. Falls' argument fails because IGWA's original petition to intervene provided sufficient detail to satisfy Rule 353. IGWA's later filings did not assert a new theory or interest. Its later filings supplied additional detail concerning the same asserted relationship identified in the original *Petition to Intervene*: Falls' mitigation activities may affect reach gains and, in turn, the mitigation obligations of IGWA's member ground water districts.

The later filings simply provided additional detail concerning an interest that was sufficiently identified in IGWA's original petition to intervene.

The SWC similarly argues that IGWA's asserted interest is too speculative to support intervention. The SWC contends that IGWA made only generalized claims that Falls' mitigation activities could affect its members, failed to produce admissible evidence documenting that potential impact, and did not establish that any reduction in reach gains attributable to Falls would actually increase IGWA members' mitigation obligations under the 2024 Plan. *SWC Response*, at 4–5. These arguments demand more than Rule 353 requires at the intervention stage. Whether Falls' mitigation activities will actually reduce reach gains, whether any such reduction will increase IGWA members' mitigation obligations, and the extent of any resulting impact are questions distinct from whether IGWA has identified a direct and substantial interest that may be affected by this proceeding. IGWA's original *Petition to Intervene* identified that interest and the asserted connection between Falls' mitigation activities, Near Blackfoot-Minidoka reach gains, and its members' mitigation obligations. Rule 353 requires no more at the intervention stage.

The Director concludes that the Hearing Officer applied Rule 353 too narrowly. Rule 353 requires a petitioner to show a direct and substantial interest in the subject matter of the proceeding. It does not require the petitioner to prove that the anticipated impact will occur or to produce evidence sufficient to prevail on the merits of the underlying claim. IGWA met the threshold and was entitled to intervene pursuant to Rule 353. Because the Director concludes IGWA was entitled to intervention, Falls' *Motion to Dismiss* the exceptions on the ground that IGWA lacked party status is denied.

The conclusion that IGWA demonstrated sufficient interest to intervene does not require a determination that the impacts identified in its petition will occur. Whether Falls' mitigation activities will affect reach gains or increase the mitigation obligations of IGWA's members is addressed below in considering IGWA's objections to the *Stipulated Plan*.

II. The *Stipulated Plan* is approved subject to three of IGWA's proposed conditions.

The Director finds that three of IGWA's proposed conditions are reasonable and consistent with the temporary and stipulated nature of the plan. Their inclusion does not reflect a determination that the *Stipulated Plan* is deficient or that it shifts Falls' mitigation obligation to another ground water user. Nor do the conditions alter Falls' substantive mitigation obligations for 2026 or 2027. Instead, they clarify the limited scope and effect of this approval and preserve the ability of the Department and interested parties to evaluate any future mitigation plan based on the record and circumstances then presented.

The *Stipulated Plan* is therefore approved subject to the following conditions:

1. Temporary and interim approval only. The *Stipulated Plan* is approved solely as a temporary, interim mitigation plan applicable only to the 2026 and 2027 irrigation seasons, and only to Falls Water Co., Inc. under the specific facts and circumstances presented in this proceeding.

2. No precedential effect. Approval of the *Stipulated Plan* has no precedential effect and may not be relied upon or cited as establishing a lawful, reasonable, or acceptable mitigation standard for Falls Water Co., Inc. or for any other ground water user in any other proceeding.

3. **Without prejudice and reservation of rights.** Approval of the *Stipulated Plan* is without prejudice to IGWA's objections and legal positions raised in this proceeding. IGWA retains the right to assert those objections and positions in any future proceeding involving a similar or identical mitigation plan proposed by Falls Water Co., Inc. or another ground water user.

III. IGWA's requested burden-shifting condition will not be included.

IGWA also asks the Director to condition approval based on the inclusion of a statement that, to the extent the *Stipulated Plan* does not maintain an equivalent or better standard of mitigation as other similarly situated ground water users, the effects of the plan may not be shifted to other ground water users. *Exceptions*, at 6. The Director agrees that such burden shifting would not be permissible under *Cities of Bliss, et al. v. Spackman.* However, the Director finds that the requested condition is unnecessary given the existing prohibition against burden shifting and the circumstances surrounding the parties' respective mitigation obligations.

Under the *2024 Stipulated Mitigation Plan* between IGWA's member ground water districts and the SWC, the districts must provide 75,000 acre-feet of storage water in 2027 if 2026 Near Blackfoot-Minidoka reach gains exceed 2023 reach gains, and 82,500 acre-feet if they do not. These amounts do not represent the IGWA ground water districts' mitigation obligations under the methodology, which are established by the determination of a shortfall volume and the calculation of their proportionate shares of that shortfall. Rather, these amounts were established by the *2024 Stipulated Mitigation Plan* as an alternative means of satisfying those obligations, negotiated between IGWA and the SWC. The mitigation obligations of other junior ground water users should not be evaluated based on the terms of a separate agreement to which they are not parties.

The proposed condition also lacks an administrable standard. The terms "equivalent or better" and "similarly situated" are undefined and provide no standard for determining which ground water users or mitigation plans should be compared or how their respective mitigation obligations should be evaluated. The SWC notes that the Department has approved several separate mitigation plans in connection with the SWC delivery call, that those plans contain different requirements, and that CM Rule 43.03.o does not require stipulated mitigation plans to mirror one another. *SWC Response*, at 6. The Director therefore declines to impose IGWA's requested condition.

ORDER

IT IS HEREBY ORDERED that *Falls Water Co., Inc.'s Motion to Dismiss IGWA's Exceptions to Preliminary Order and Reconsideration Order or in the Alternative Response to Exceptions* is DENIED.

IT IS FURTHER ORDERED that IGWA's *Petition to Intervene* is GRANTED. IGWA has demonstrated a direct and substantial interest in the subject matter of this proceeding, its intervention will not unduly broaden the issues, and its interests are not adequately represented by the existing parties.

IT IS FURTHER ORDERED that the *Preliminary Order Approving Falls Water's Stipulated Mitigation Plan; Order Denying IGWA's Petition to Intervene* is MODIFIED as subsequently set forth in this Final Order.

IT IS FURTHER ORDERED that the March 18, 2026 *Stipulated Plan* submitted by Falls Water Co., Inc. and the Surface Water Coalition is APPROVED, subject to the following conditions:

1. The *Stipulated Plan* is approved solely as a temporary, interim mitigation plan applicable only to the 2026 and 2027 irrigation seasons, and only to Falls Water Co., Inc. under the specific facts and circumstances presented in this proceeding.

2. Approval of the *Stipulated Plan* has no precedential effect and may not be relied upon or cited as establishing a lawful, reasonable, or acceptable mitigation standard for Falls Water Co., Inc. or for any other ground water user in any other proceeding.

3. Approval of the *Stipulated Plan* is without prejudice to IGWA's objections and legal positions raised in this proceeding. IGWA retains the right to assert those objections and positions in any future proceeding involving a similar or identical mitigation plan proposed by Falls Water Co., Inc. or another ground water user.

Except as expressly modified by the conditions stated above, the terms, calculation methods, mitigation requirements, and delivery options contained in the *Stipulated Plan* remain in effect according to their terms.

IT IS FURTHER ORDERED that IGWA's request for an additional condition prohibiting the shifting of mitigation burdens to other ground water users is DENIED for the reasons stated in this Final Order.

DATED this 19th day of October 2026.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

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EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with Final Orders issued by the Director when a hearing was held or when decided on summary judgment and all Final Orders issued by the Board)

The accompanying document is a "**Final Order"** issued by the agency head of the Idaho Department of Water Resources ("Department") or the Idaho Water Resource Board ("Board") 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 filed with the Agency within this fourteen (14) day period.** The presiding officer will issue a written order disposing of the petition for reconsideration within twenty-one (21) days of its filing, or the petition will be considered denied by operation of law.

APPEAL TO DISTRICT COURT

(*See* Idaho Code §§ 67-5270 through 67-5279)

Within twenty-eight (28) days after: (a) the service date of this final order, (b) the service date of the presiding officer's decision on a petition for reconsideration, or (c) the failure of the presiding officer to dispose of a petition for reconsideration within twenty-one (21) days, any party may file a petition for judicial review of this final order with a district court. Filing an appeal to a district court does not in itself stay the effectiveness or enforcement of the final order appealed.

FILING AND SERVICE

(*See* IDAPA 37.01.01.053; I.R.C.P. 84(d))

All documents filed with the Department or Board in connection with a petition for reconsideration of this final order shall be filed and served in accordance with the Rules of Procedure of the Department and the Board.

Any petition for judicial review filed in connection with an appeal of this final order shall be served on the agency and all parties to the administrative proceeding in accordance with Idaho Rule of Civil Procedure 84.