

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-2026-004

**ORDER DENYING IN PART AND
GRANTING IN PART BINGHAMS'
MOTION FOR SUMMARY JUDGEMENT;
and**

**NOTICE OF INTENT TO TAKE
OFFICIAL NOTICE**

BACKGROUND

A. Subject Contested Case

On May 28, 2026, Jerry D. Bingham and Valerie H. Bingham (the "Binghams") submitted *Binghams' Fifth Mitigation and Curtailment Plan* ("*Fifth Plan*") to the Idaho Department of Water Resources ("Department"). Notice of the Binghams' *Fifth Plan* was published in accordance with the Department's Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"). See IDAPA 37.03.11.043.02. The deadline for filing protests to its approval was June 29, 2026. *Notice of Prehr's Conf.; Order Appointing Hr's Officer* at 1. Idaho Ground Water Appropriators, Inc. ("IGWA") filed *IGWA's Notice of Protest* ("*Protest*") with the Department on June 18, 2026.

On August 4, 2026, the Binghams filed a motion to strike asking that the *Protest* be struck and that IGWA "not be permitted to participate in this proceeding as it has presented no standing to protest, or direct and substantial interest in any part of the subject matter to allow intervention." *Binghams' Resp. & Mot. to Strike IGWA's Notice of Protest* at 6. IGWA filed a response with a declaration in support on August 11. On August 26, 2026, Hearing Officer Burdick issued an *Order Denying Binghams' Motion to Strike* concluding that:

IGWA qualifies as a protestant under Rule of Procedure 154 because it has satisfied the requirements of the notice pleading, thereby establishing a right to fully participate in this contested case. To the extent the Binghams' objection sounds in the weight of IGWA's interest, that is a factual matter for the hearing, not a precondition to participation.

Order Den. Binghams' Mot. to Strike at 3.

On August 4, 2026, concurrently with the *Motion to Strike*, the Binghams also filed *Binghams' Motion for Summary Judgment*, *Memorandum in Support of Binghams' Motion for Summary Judgment*, and a supporting *Declaration of Reed W. Larsen*. The Binghams' motion moves for summary judgment on "the issues raised" in IGWA's *Protest*. *Binghams' Mot. for*

Summ. J. at 1; *see also Bingham's Mem.* at 7. The Bingham's memorandum in support goes on to request the Hearing Officer make "two findings": (1) "that there is no legal basis or standard that a one-year mitigation plan is not allowable"; and (2) "that there is no requirement under Idaho law that an individual mitigation plan is improper for an irrigator who was formerly a member of a ground water district." *Bingham's Mem.* at 4.

On August 13, 2026, IGWA filed *IGWA's Amended Response to Bingham's Motion for Summary Judgment* ("*IGWA's Response*") and *Declaration of Alan Jackson in Support of IGWA's Response to Bingham's Motion for Summary Judgment*. Included in *IGWA's Response* is a request for the Hearing Officer to take official notice, pursuant to IDAPA 37.01.01.062, of the approved 2024 Stipulated Mitigation Plan under Department Docket No. CM-MP-2024-003. *IGWA's Response* at 2 n.1.

B. Underlying Delivery Call

This contested case arises within the context of the long-running Surface Water Coalition ("SWC") delivery call matter, assigned Department Docket No. CM-DC-2010-001. *Bingham's Mem.* at 1; *see also Fifth Plan* at 4.

On judicial review, the SWC delivery call and the Department's resulting methodology have been described as follows:

The Surface Water Coalition call is described as an ongoing call. This is meant to denote that it does not present a one and done situation. Rather, the nature of the call is ongoing in that the underlying source problem of diminished ground water levels in the Aquifer, the culmination of which has occurred over a time span of decades, cannot be restored in a single year. The result is yearly reductions in the natural flow of the Snake River which may, in turn, result in material injury to surface water users.

....

Understanding that the call is ongoing in nature, the methodology order provides water users direction as to how the Director will administer the call into the future. It does this by providing nine steps to be undertaken annually. Through these steps, the Director determines whether the Coalition's water rights are suffering material injury and whether that injury will be addressed via mitigation and/or curtailment.

Memorandum Decision and Order at 11–12, *Idaho Ground Water Appropriators Inc. v. Idaho Dep't of Water Res.*, No. CV01-23-13173 (Ada Cnty. Dist. Ct. Idaho May 31, 2024);¹ *see also Memorandum Decision and Order* at 2, *City of Idaho Falls v. Idaho Dep't of Water Res.*, No. CV01-23-13238 (Ada Cnty. Dist. Ct. Idaho May 31, 2024).

¹ In No. CV01-23-13173, one challenge remains pending because the matter was stayed during proceedings on reconsideration.

LEGAL STANDARD

The Department's Rules of Procedure, IDAPA 37.01.01, govern motions in this contested case. Rule of Procedure 220.03 authorizes motions for summary judgment, stating that "Rule 56(a), (c), (d), (e), and (f) of the Idaho Rules of Procedure, apply to such motions before the agency." IDAPA 37.01.01.220.03.

Summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. When applying this standard, all facts and inferences from the record will be viewed in favor of the nonmoving party to determine whether the motion should be granted. If the evidence reveals no disputed issues of material fact, then only a question of law remains

Radford v. Van Orden, 175 Idaho 813, 571 P.3d 472, 476 (2025) (citation modified).

APPLICABLE LAW

A. On Summary Judgment

For purposes of Chapter 52, Title 42, Idaho Code, a "ground water irrigator" holds a ground water right "for irrigation purposes within a ground water district." I.C. § 42-5201(9). Idaho Code § 42-5214(1) states that "[a]ll ground water irrigators within the boundaries of the district shall be members of the district and subject to assessments, rights and responsibilities established by the district" The district board "may apportion among district members mitigation plan obligations requiring district members to limit the amount of water diverted under their respective ground water rights or perform other actions to mitigate material injury to senior priority water rights caused by ground water use within the district." I.C. § 42-5244A(1).

However, Idaho Code § 42-5251 allows an irrigator who is irrigating lands within a ground water district to petition the district and "request that the lands either be excluded for all purposes or be excluded for all purposes except mitigation." I.C. § 42-5251(1). The district shall act on such a petition after considering the following factors: (1) whether the irrigator's ground water diversions "have no depletive effect on any water source, either individually or cumulatively when considered in conjunction with other similar diversions"; (2) whether the "only ground water use associated with the lands sought to be excluded by the petition is a domestic or stock water use"; (3) whether the exclusion will "impair the district's ability to repay debt or carry out mitigation plans"; (4) whether the "exclusion is in the best interests of the district and its members"; and (5) any "other compelling reasons." I.C. § 42-5251(1)–(2).

Additionally, Idaho Code § 42-5259 allows that "[u]pon written request from any ground water user who is not a member of a district, a district board of directors may enter a contract with such nonmember pursuant to which the nonmember shall be allowed to participate fully in, and obtain all benefits of, any mitigation plan, purpose or activity the district currently has in force or is developing, pursuant to terms and conditions acceptable to both parties"

CM Rule 43.03 provides a non-comprehensive list of factors that may be considered by the Director when reviewing mitigation plans submitted for approval, including: “Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions.” IDAPA 37.03.11.043.03.o.

B. Concerning Official Notice of Documents

Department Rule of Procedure 602 states in pertinent part:

The presiding officer may take official notice of any facts that could be judicially noticed in the courts of Idaho, of generally recognized technical or scientific data or facts within the agency’s specialized knowledge and records of the agency. . . . The presiding officer shall notify the parties of specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. This notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed.

IDAPA 37.01.01.602.

ANALYSIS

A. The request for summary judgment against IGWA’s *Protest* in its entirety is denied.

The Hearing Officer has already determined that IGWA qualifies as a protestant with the right to fully participate in this contested case, and that the weight of IGWA’s interest “is a factual matter for the hearing, not a precondition to participation.” *Order Den. Bingham’s Mot. to Strike* at 3. A protest functions as notice pleading, not an evidentiary submission. As the proponents of the *Fifth Plan*, the Bingham’s bear the burden of establishing that the plan satisfies CM Rule 43 and that they are entitled to approval as a matter of law. The Bingham’s summary judgment motion does not make that showing, and the sufficiency of the *Fifth Plan* turns on disputed factual questions that must be decided on the evidence at hearing. The broad request for summary judgment against the *Protest* is therefore denied.

The Hearing Officer further notes that the Bingham’s *Fifth Plan* is an individual plan and that no evidence of any stipulation to the plan by the SWC, consistent with CM Rule 43.03.o, has been supplied in this contested case.

B. Summary judgment is granted on the two discrete legal issues identified by the Bingham.

i. One-year mitigation plans are not categorically prohibited.

Nothing in CM Rule 43 requires that a mitigation plan span multiple years or precludes a one-year plan. IGWA does not contend otherwise. *IGWA's Response* at 3. Summary judgment is granted on this narrow legal issue.

ii. An individual mitigation plan is not improper as a matter of law for an irrigator who was formerly a member of a ground water district.

The exclusion of an irrigator from a ground water district is permitted pursuant to Idaho Code § 42-5251. Both parties supplied evidence of Bingham Ground Water District ordering the exclusion of the Bingham's irrigated lands from their district after receipt of a request for exclusion. *Larsen Dec. Ex. A; Jackson Dec. Ex. 1*. Because the Bingham's lands (described in the District's order as the subject six water rights in this matter) were excluded "for all purposes", they are no longer ground water irrigators within the Bingham Ground Water District who are required to be members pursuant to Idaho Code § 42-5214(1). *See Jackson Dec. Ex. 1; Larsen Dec. Ex. A.*²

Given the Bingham's exclusion, the Ground Water District Act's district-channeling provisions cannot compel the Bingham to mitigate through the Bingham Ground Water District. Additionally, the contract path in Idaho Code § 42-5259 is permissive, providing that a district "may enter a contract" with a nonmember for district coverage; it does not make the district the exclusive route or preclude an individual plan. Further, CM Rule 43.03.j identifies the public interest as a factor the Director may consider in reviewing a plan; it does not, as a matter of law, categorically bar a former member's individual plan. Neither the Ground Water District Act nor the CM Rules categorically bar a former district member from submitting a mitigation plan for the Director's consideration. Therefore, summary judgment on this narrow legal issue is also granted in the Bingham's favor.

C. The Hearing Officer intends to take official notice of the 2024 Stipulated Mitigation Plan and its order of approval.

This contested case arises within the SWC delivery call, and the parties have implicitly and explicitly referenced facts from that matter and related mitigation plan matters. *See e.g., Bingham's Mem.* at 1–2, 7; *IGWA's Response* at 2. Those orders and mitigation plans are records of the Department. IGWA has requested the Hearing Officer take official notice of the approved 2024 Stipulated Mitigation Plan under Department Docket No. CM-MP-2024-003. *IGWA's Response* at 2 n.1. Official notice under Rule of Procedure 602 of the records identified in the notice below is appropriate.

² The *Declaration of Reed W. Larsen* omits the exhibits identified in the District's order; Exhibit A to the District's order, which was included in *Declaration of Alan Jackson in Support of IGWA's Response to Bingham's Motion for Summary Judgment*, clearly identifies the subject water rights.

ORDER

IT IS HEREBY ORDERED that the Bingham's motion for summary judgment is DENIED IN PART and GRANTED IN PART, consistent with the above analysis.

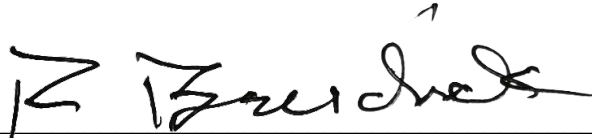
NOTICE

Pursuant to Rule of Procedure 602, the Hearing Officer hereby notifies the parties that he intends to take official notice of the following:

- (1) The 2024 Stipulated Mitigation Plan approved under Department Docket No. CM-MP-2024-003, a copy of which is attached hereto as Attachment A.
- (2) The *Amended Final Order Approving Stipulated Mitigation Plan*, dated February 7, 2025, issued under Department Docket No. CM-MP-2024-003, a copy of which is attached hereto as Attachment B.

Any party wishing to contest and rebut the facts or material intended to be officially noticed shall be provided with the opportunity to do so at the start of the hearing set for September 9, 2026.

DATED this 28th day of August 2026.

A handwritten signature in black ink, appearing to read "R. Burdick", is written over a horizontal line.

ROGER S. BURDICK
Hearing Officer

CERTIFICATE OF SERVICE

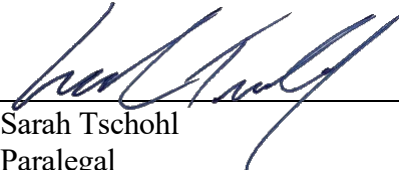
I HEREBY CERTIFY that on this 28th day of August 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

Reed W. Larsen COOPER & LARSEN, CHARTERED PO Box 4229 Pocatello, ID 83205-4229 reed@cooper-larsen.com	☐ U.S. Mail, postage prepaid ☒ Email
Thomas J. Budge RACINE OLSON, PLLP PO Box 1391 Pocatello, Idaho 83204 tj@racineolson.com	☐ U.S. Mail, postage prepaid ☒ Email

Courtesy copy via email:

Travis L. Thompson
Abby R. Bitzenburg
PARSONS BEHLE & LATIMER
tthompson@parsonsbehle.com
abitzenburg@parsonsbehle.com

Norman M. Semanko
Garrett M. Kitamura
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Sarah Tschohl
Paralegal

2024 STIPULATED MITIGATION PLAN

This 2024 Stipulated Mitigation Plan (“Plan”) is entered into between the parties defined in section 1. The parties agree as follows:

1. Parties. The parties to this Plan are (a) the members of the SWC, (b) ground water districts that sign this Plan by November 14, 2024, pursuant to section 2, and (c) ground water districts and other entities representing groundwater users that subsequently participate in this Plan pursuant to section 10. Parties may be referred to individually in this Plan as a “party.”

1.1 Surface Water Coalition. The members of the SWC are A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (individually, a “SWC member,” collectively, the “SWC”). Each SWC member is a party to this Plan.

1.2 Ground Water Districts. The ground water districts initially invited to participate in this Plan are Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Henry’s Fork Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District. Only those ground water districts who sign this Plan by November 14, 2024, pursuant to section 2, or who participate in this Plan pursuant to section 10, are parties to this Plan. Ground water districts and other entities who participate in this Plan are referred to herein individually as “District” and collectively as the “Districts.” Any ground water district who does not sign this Plan by November 14, 2024, or who does not participate in this Plan pursuant to section 10, shall not be a party to this Plan, shall not be bound by the terms of this Plan, and shall not benefit from this Plan. The failure of any ground water district to participate in this Plan shall not alter the proportionate obligations of any District.

2. Approval Process and Effective Date. This Plan shall be submitted to the boards of the SWC and the ground water districts identified in sections 1.1 and 1.2 for review by November 1, 2024. Ground water districts that elect to participate in this Plan pursuant to section 1.2 will have until November 14, 2024, to sign this Plan. The SWC will have until November 15, 2024, to sign this Plan. This Plan shall be effective once it is signed by all members of the SWC and at least five of the nine ground water districts identified in section 1.2. The SWC shall not enter into a separate stipulated mitigation plan or agreement with any ground water district that does not participate in this Plan during the term of this Plan.

3. Term.

3.1 Initial Term. The initial term of this Plan is four years, beginning January 1, 2024, and ending December 31, 2027. Compliance with section 4 (groundwater conservation) shall begin January 1, 2024. Compliance with all other sections shall begin November 1, 2024.

3.2 Renewal Terms. This Plan shall automatically renew for successive four-year terms unless a party provides written notice of termination to the other parties by September 15 prior to the end of the term then in effect, in which case this Plan will terminate at the end of such term.

4. Groundwater Conservation. During the term of this Plan, each District will conserve, at a minimum, the volume of groundwater set forth in the “Conservation Obligation” column in Appendix A, on an average annual basis over four-year periods, as measured from the District’s baseline groundwater diversion set forth in Appendix A.

4.1 Compliance Periods. Groundwater conservation shall be measured over four-year periods known as “compliance periods.” Each four-year term of this Plan is a compliance period; thus, the first compliance period is 2024-2027, the second compliance period is 2028-2031, and so on until Plan termination.

4.2 District Conservation Obligations. As of November 15, 2024, the conservation obligations of the Districts collectively total 205,000 acre-feet annually as initially shown in Appendix A. The Districts’ collective conservation of 205,000 acre-feet equates to a total annual divertible volume of 1,590,034 acre-feet as initially shown in Appendix A. Each District’s proportionate share of the annual divertible volume is also set forth in Appendix A. Appendix A will be updated annually by the Districts to reflect additions and removals of groundwater rights participating in this Plan through the Districts. Groundwater rights added to a District after November 15, 2024, shall proportionately increase the District’s baseline diversion volume, annual conservation obligation, annual divertible volume, and compliance period allocation in Appendix A, and groundwater rights removed from a District after November 15, 2024, shall proportionately decrease the District’s baseline diversion volume, annual conservation obligation, annual divertible volume, and compliance period allocation in Appendix A. If a groundwater right is added to or removed from a District for only part of a compliance period, the adjustment to the District’s baseline diversion volume, annual conservation obligation, annual divertible volume, and compliance period allocation shall be prorated based on the portion of the compliance period in which the groundwater right participates in this Plan.

4.3 Compliance Period Allocations. At the beginning of each compliance period, each District will be allocated a volume of water that may be diverted during that four-year period, calculated by multiplying the District’s annual divertible volume by four, plus surplus allocation carried over from the prior compliance period in accordance with section 4.7, if any. The Districts’ four-year compliance period allocations are set forth in Appendix A. Districts are not restricted to the use of one-fourth of their compliance period allocation during each year of the compliance period; rather, Districts may divert more or less than one-fourth of their compliance period allocation in any given year so long as the total amount diverted during a compliance period does not exceed the District’s total compliance period allocation. Each District shall independently comply with its individual compliance period allocation in accordance with sections 4.4 and 4.5.

4.4 Patron Allocations. Each District will apportion its compliance period allocation to the District’s patrons in the form of a diversion allocation in accordance with Idaho Code § 42-5244A. Districts may allow patrons with multiple groundwater rights to pool their individual water right allocations for purposes of compliance. Districts may also allow patrons to exchange or transfer patron allocations within the District, so long as such patrons do not divert water in excess of the maximum rate or volume authorized under their water rights. District patrons may use their diversion allocation over a compliance period as they choose; however, when a District patron depletes their allocation, that patron will not receive any additional allocation until the next compliance period starts, unless the patron acquires additional allocation from (a) other patrons within the District in accordance with this section 4.4, or (b) the District as a result of managed aquifer recharge in accordance with section 4.5. If a District patron diverts more than their allocation and does not acquire additional allocation, the provisions of section 9.1 apply.

4.5 District Aquifer Recharge. Districts may supplement their compliance period allocation by performing managed aquifer recharge in accordance with standards set forth in Appendix C and with section 4 of the Memorandum of Agreement executed contemporaneously with this Plan. Credit for the managed aquifer recharge shall be determined as follows:

4.5.1 In-District Site. Recharge accomplished at a site within the boundaries of the District performing the recharge or at a site within 12 miles of the boundary of the

District (“In-District Site”) will count 1:1 as a reduction in groundwater use within the District performing the recharge.

4.5.2 Out-of-District Site. Recharge performed at a site other than an In-District Site (“Out-of-District Site”) will be modeled using the current version of the Eastern Snake Plain Aquifer (“ESPA”) Model to quantify the steady-state impact to the Near Blackfoot to Minidoka reach of the Snake River. The impact of recharging the same volume of water at the In-District Site nearest to the Near Blackfoot to Minidoka reach will also be modeled using the ESPA Model to quantify the steady-state impact to the Near Blackfoot to Minidoka reach. The modeled steady-state impact of recharge at the Out-of-District Site will be divided by the modeled steady-state impact of recharge at the In-District Site. If the calculated ratio is less than two (the steady-state impact of recharge at the Out-of-District site is less than twice the steady-state impact of recharge at the In-District Site), the credit towards reduction in groundwater use will be equal to the calculated ratio multiplied by the volume of water recharged. If the calculated ratio is greater than two (the steady-state impact of recharge at the Out-of-District Site is greater than twice the steady-state impact of recharge at the In-District Site), the credit towards reduction in groundwater use will be limited to twice the volume of water recharged.

4.6 Measurement.

4.6.1 Groundwater. Measurement and reporting of non-irrigation diversions will occur on an annual basis. The Districts will develop and implement methods to read irrigation diversions monthly. Irrigation diversions shall be read from June to October, with the June reading including diversions from the start of the irrigation season. The Districts will have functioning programs by the start of the 2026 irrigation season to read irrigation diversions monthly. The Districts’ methods may include telemetry, self-reporting with photo evidence, or other reliable techniques to report water diversions. Measurements shall be made available to the appropriate watermaster and the watermaster will make the measurement data publicly available upon request.

4.6.2 Surface Water. The SWC will continue to support the measurement and reporting of the SWC’s surface water diversion by Water District 1 and the measurement and reporting of the SWC’s return flows by the Idaho Department of Water Resources (“Department”).

4.6.3 Reach Gains. Reach gains to the Near Blackfoot to Minidoka reach of the Snake River shall be measured based on calendar year reach gains from the ESPA as reported by the Department to the Idaho Water Resource Board.

4.7 Conservation Carryover. If a District has remaining allocation (*i.e.* the District performs surplus groundwater conservation) at the end of the first compliance period (2024-2027), the surplus will be carried over to the second compliance period (2028-2031). At the annual meeting held in 2031 pursuant to section 7, the parties shall commence discussions to determine the minimum reach gain conditions and other water supply factors that must be maintained to allow surplus allocation to be carried over from one compliance period to the next, which determination shall be documented by a written amendment to this Plan executed by the parties by September 15, 2031.

4.8 Annual Report. By February 15 annually, the Districts will submit a report to the SWC and the Department documenting the Districts' compliance with section 4 during the previous calendar year.

5. Reach Gain Mitigation Fund. The parties understand that the Idaho Water Resource Board ("Board") will contribute \$5,000,000 to develop projects that will target and maximize benefits to the reach gains in the Near Blackfoot to Minidoka reach. The projects will be selected by the Board with input from the parties as to the criteria for ranking proposed projects. The Board will make the final decision on projects. Beginning in 2035, the Districts will collectively deposit \$250,000 annually into a bank account maintained by the Districts to fund development and implementation of projects designed to further increase reach gains to the Near Blackfoot to Minidoka reach of the Snake River. If, during the second compliance period (2028-2031) or any subsequent compliance period, the average annual reach gains to the Near Blackfoot to Minidoka reach of the Snake River for that compliance period drops below the 2023 reach gains, the Districts will then deposit \$500,000 annually, until average annual reach gains over the most recent compliance period equal or exceed the 2023 reach gains. Each District shall be independently responsible to deposit its proportionate share of the \$250,000 or \$500,000 in proportion to its respective steady-state impacts to the Near Blackfoot to Minidoka reach of the Snake River under the current version of the Model (ESPAM 2.2) as set forth in Appendix B.

6. Storage Water Component. The Districts will collectively secure the volume of storage water required by section 6.1 to meet irrigation needs and carryover storage of the SWC in accordance with section 6.4.

6.1 Storage Water Volume. The Districts will secure 75,000 acre-feet of storage water for the 2025 and 2026 irrigation seasons. In 2027, the maximum volume of storage water the Districts are required to secure is capped at 82,500 acre-feet. If reach gains to the Near Blackfoot to Minidoka reach of the Snake River in 2026 are greater than 2023 reach gains, the Districts will secure 75,000 acre-feet of storage for the 2027 irrigation season. If reach gains to the Near Blackfoot to Minidoka reach of the Snake River in 2026 are less than or equal to 2023 reach gains, the Districts will secure 82,500 acre-feet of storage for the 2027 irrigation season. At the annual meeting held in 2027 pursuant to section 7, the parties shall commence discussions to determine the amount of storage the Districts will be required to secure in 2028 and subsequent years, which determination shall be documented by a written amendment to this Plan executed by the parties by September 15, 2027.

6.2 Storage Water Allocation. Each District will secure its proportionate share of the storage water required by section 6.1 based on their respective steady-state impact to the Near Blackfoot to Minidoka reach of the Snake River as defined by the current version of the ESPA Model. The Districts' respective steady-state impacts under the current version of the Model (ESPAM 2.2) are set forth in Appendix B. If the Districts' respective steady-state impacts set forth in Appendix B change due to Model updates adopted by the Department, or due to changes in the universe of water rights participating in this Plan (e.g., additions or removals of groundwater participating in this Plan through the Districts), the parties will revise Appendix B to reflect the most up-to-date calculation of their respective steady-state impacts. If additional organized groundwater groups join this Plan as contemplated in section 10, they will provide a proportionate share of the storage water required by this section 6.1, thereby reducing the proportionate obligations of the Districts, and the parties will revise Appendix B to reflect the most up-to-date calculation of the proportionate shares of the Districts and additional organized groundwater groups participating in this Plan.

6.3 Acquisition of Storage. Within twenty-one (21) days after the Water District 1 "day of allocation," the Districts will secure, to the satisfaction of the Department, leases or options to lease the volume of storage water required by section 6.1, or demonstrate the ability to supply water under alternative

mitigation actions pursuant to section 6.7. Within seven (7) days thereafter, the Districts will supply copies of such agreements to the SWC.

6.4 Delivery of Storage. If the Water District 1 storage water account of any SWC member drops below the reasonable carryover volume listed in Appendix D between the Water District 1 day of allocation and November 10, the SWC member may draw on the secured storage for in-season irrigation needs and to maintain its reasonable carryover volume by notifying the Districts no later than November 15, and the Districts shall assign storage to such SWC member in the amount needed to maintain its reasonably carryover volume, up to the maximum volume required by section 6.1. The SWC shall not draw down their storage water accounts unnecessarily.

6.5 SWC Lease Adjustment. If a SWC member requesting delivery of storage water pursuant to section 6.4 leases storage water to another person or entity during an irrigation season, other than to the U.S. Bureau of Reclamation for flow augmentation as assigned by Water District 1 or as required rentals by Water District 1 to participate in the rental pool, such water shall be deducted from the volume of storage water the Districts are required to deliver to that SWC member under section 6.4.

6.6 2024 Storage Delivery. The Districts supplied 60,000 acre-feet of storage to the SWC for mitigation purposes pursuant to the *2024 Stipulation* dated June 24, 2024. Any portion of such storage that is not diverted by the SWC during the 2024 irrigation season or delivered to maintain reasonable carryover shall revert to the Districts.

6.7 Alternative Mitigation Actions. The Districts may take alternative actions to deliver water to the SWC, including but not limited to acquiring natural flow, in lieu of securing and delivering storage water. To the extent alternative actions deliver water to the SWC in accordance with state law (including Water District 1 procedures), they shall offset the amount of storage water the District implementing such alternative actions is required to secure under section 6.1 or deliver under section 6.4.

7. Oversight Committee. There will be an oversight committee (“Committee”) established to review implementation of this Plan. The Committee shall be made up of the chairs (or their designees) of each party. Additional groundwater groups who join this Plan pursuant to section 10 will have a position on the Committee. Committee meetings will be co-chaired by one representative of the SWC and one representative of the Districts. By February 15 annually, the Committee shall meet to review (a) the annual report submitted by the Districts in accordance with section 4.8; (b) carryover storage from the prior irrigation season; (c) the reach gains to the Near Blackfoot to Minidoka reach of the Snake River; (d) the delivery of storage water to the SWC pursuant to section 6; (e) progress of any alternative mitigation actions taken pursuant to section 6.7; (f) progress of the Board’s managed recharge program and the Cooperative Cloud Seeding Program; (g) changes to Appendix A pursuant to section 4.2; and (h) additional groundwater users joining this Plan pursuant to section 10 and the corresponding adjustment to Appendix B. The Committee is advisory in nature, has no authority to bind any party, but may submit recommendations to the Department upon unanimous agreement of Committee members.

8. Safe Harbor. Districts and their patrons that comply with this Plan shall receive safe harbor from the SWC delivery call (IDWR Docket No. CM-DC-2010-001) during the term of this Plan.

9. Enforcement. Each District is independently responsible for complying with its proportionate obligations under sections 4, 5 and 6. If a District does not comply, such non-compliance shall not adversely affect any other District that is in compliance with its proportionate obligations under this Plan.

9.1 Groundwater Conservation. If a District patron fails to comply with their patron allocation, the District shall report the patron to the Department for enforcement under Idaho Code § 42-5244B. Non-compliance shall result in curtailment by the Department, pursuant to Idaho Code § 42-5244B. District

patrons are independently responsible to comply with their respective patron allocations, such that non-compliance by one patron shall not adversely affect any other patron that is in compliance with its patron allocation. If a District reports a non-compliant patron to the Department for enforcement, that patron's allocation under section 4.4 will be deducted from the District's compliance period allocation under section 4.3, and the non-compliant patron's diversions will be deducted from a District's diversions when the District documents compliance under section 4.8, until the non-compliance is remedied. Non-compliant patrons subject to enforcement under this section 9.1 shall not be considered a participant in this Plan until the non-compliance is remedied.

9.2 Storage Water. If a District fails to secure its proportionate share of storage water in accordance with section 6.3, or deliver its proportionate share of storage water in accordance with section 6.4 or deliver water under alternative mitigation actions in accordance with section 6.7, the non-compliant District shall lose safe harbor under section 8, and patrons of the non-compliant District shall be subject to administration pursuant to Conjunctive Management Rule 40.05 unless and until such non-compliance is remedied.

9.3 Reach Gain Mitigation Fund. If a District fails to contribute its proportionate share of funding for projects to improve Near Blackfoot to Minidoka reach gains in accordance with section 5, patrons of the non-compliant District shall be subject to administration pursuant to Conjunctive Management Rule 40.05 until such non-compliance is remedied.

10. Additional Organized Ground Water Groups May Join Plan. Ground water districts or other entities representing groundwater users brought into the area of common ground water supply through the passage of Senate Bill 1341 (2024) or brought in through expansion of the area of common ground water supply as allowed by Senate Bill 1341 (2024) may seek to join this Plan. Upon the written consent of all parties, which consent shall not be unreasonably withheld, the parties and the entity joining this Plan shall execute an addendum to this Plan whereby the joining entity agrees to (a) perform groundwater conservation equivalent to the Districts, which conservation shall be in addition to the 205,000 acre-feet required under section 4; (b) contribute pro rata toward the reach gain fund under section 5; (c) contribute pro rata toward the storage water obligation under section 6, which shall proportionately reduce the storage obligation of the Districts; (d) perform such other obligations as may reasonably be required as a consequence of joining this Plan; and (e) consent to be bound by all other terms of this Plan on the same terms and conditions as the Districts.

11. Mitigation Plan Approval. Within ten (10) days after the Effective Date, the parties will submit this Plan to the Department for approval as a stipulated mitigation plan under rule 43 of the Conjunctive Management Rules. Upon approval, this Plan shall (a) supersede and replace the stipulated mitigation plan previously approved in IDWR Docket No. CM-MP-2016-001, and such plan, together with the agreements upon which it is predicated,¹ shall be null and void; (b) supersede and replace the mitigation plans previously approved in IDWR Docket Nos. CM-MP-2009-006 and CM-MP-2009-007, which shall be null and void. The parties acknowledge that all terms of the *2024 Stipulation* dated June 19, 2024, have been satisfied except for the groundwater conservation obligation in paragraph 5 which is superseded and replaced by section 4 of this Plan.

12. Miscellaneous.

¹ The mitigation plan approved in IDWR Docket No. CM-MP-2016-001 is predicated upon the *Settlement Agreement Entered Into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of Idaho Ground Water Appropriators, Inc.*, which was amended and clarified by the *Agreement* dated October 7, 2015, the *Addendum to Settlement Agreement* dated October 19, 2015, and the *Second Addendum to Settlement Agreement* dated December 14, 2016.

12.1 Amendment. This Plan may be amended only by a written instrument signed by all parties and approved by the Department.

12.2 Notices. Notices required or permitted to be given to any party under this Plan shall be in writing and shall be effective (a) when personally delivered, (b) three days after mailing via U.S. Postal Service certified mail, (c) upon delivery by a reputable overnight courier, or (d) upon delivery via email to an authorized representative of the party. Notices sent by email shall be deemed received when the designated recipient acknowledges receipt via reply email.

12.3 Appendices. All appendices cited in, and attached to, this Plan are incorporated into this Plan by reference as if set forth fully herein.

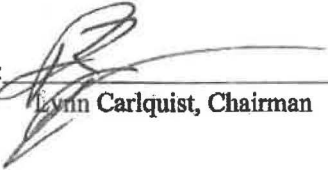
12.4 Counterparts. This Plan may be executed in counterparts which, when taken together, shall constitute one and the same document.

12.5 Digital Signatures. Digital and scanned signatures to this Plan shall be valid and effective to bind the party so signing.

[End of text; signature pages below]

GROUND WATER DISTRICT SIGNATURES

North Snake Ground Water District

By:  _____
Lynn Carlquist, Chairman

Date: Nov. 12, 2024

Magic Valley Ground Water District

By: _____
Dean Stevenson, Chairman

Date: _____

Carey Valley Ground Water District

By: _____
Leta Hansen, Chairwoman

Date: _____

Aberdeen-American Falls Ground Water District

By: _____
Tim Deeg, Chairman

Date: _____

Bingham Ground Water District

By: _____
Connie Christensen, Chairwoman

Date: _____

Bonneville-Jefferson Ground Water District

By: _____
Stephanie Mickelsen, Chairwoman

Date: _____

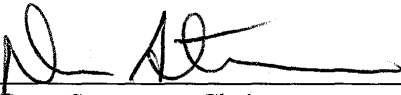
GROUND WATER DISTRICT SIGNATURES

North Snake Ground Water District

By: _____
Lynn Carlquist, Chairman

Date: _____

Magic Valley Ground Water District

By:  _____
Dean Stevenson, Chairman

Date: 11/12/2024

Carey Valley Ground Water District

By: _____
Leta Hansen, Chairwoman

Date: _____

Aberdeen-American Falls Ground Water District

By: _____
Tim Deeg, Chairman

Date: _____

Bingham Ground Water District

By: _____
Connie Christensen, Chairwoman

Date: _____

Bonneville-Jefferson Ground Water District

By: _____
Stephanie Mickelsen, Chairwoman

Date: _____

GROUND WATER DISTRICT SIGNATURES

North Snake Ground Water District

By: _____
Lynn Carlquist, Chairman

Date: _____

Magic Valley Ground Water District

By: _____
Dean Stevenson, Chairman

Date: _____

Carey Valley Ground Water District

By: Leta Hansen
Leta Hansen, Chairwoman

Date: 11/8/2024

Aberdeen-American Falls Ground Water District

By: _____
Tim Deeg, Chairman

Date: _____

Bingham Ground Water District

By: _____
Connie Christensen, Chairwoman

Date: _____

Bonneville-Jefferson Ground Water District

By: _____
Stephanie Mickelsen, Chairwoman

Date: _____

GROUND WATER DISTRICT SIGNATURES

North Snake Ground Water District

By: _____
Lynn Carlquist, Chairman

Date: _____

Magic Valley Ground Water District

By: _____
Dean Stevenson, Chairman

Date: _____

Carey Valley Ground Water District

By: _____
Leta Hansen, Chairwoman

Date: _____

Aberdeen-American Falls Ground Water District

By:  _____
Tim Deeg, Chairman

Date: 11-13-2024

Bingham Ground Water District

By: _____
Connie Christensen, Chairwoman

Date: _____

Bonneville-Jefferson Ground Water District

By: _____
Stephanie Mickelsen, Chairwoman

Date: _____

GROUND WATER DISTRICT SIGNATURES

North Snake Ground Water District

By: _____
Lynn Carlquist, Chairman

Date: _____

Magic Valley Ground Water District

By: _____
Dean Stevenson, Chairman

Date: _____

Carey Valley Ground Water District

By: _____
Leta Hansen, Chairwoman

Date: _____

Aberdeen-American Falls Ground Water District

By: _____
Tim Deeg, Chairman

Date: _____

Bingham Ground Water District

By: Connie Christensen
Connie Christensen, Chairwoman

Date: 11-13-24

Bonneville-Jefferson Ground Water District

By: _____
Stephanie Mickelsen, Chairwoman

Date: _____

GROUND WATER DISTRICT SIGNATURES

North Snake Ground Water District

By: _____
Lynn Carlquist, Chairman

Date: _____

Magic Valley Ground Water District

By: _____
Dean Stevenson, Chairman

Date: _____

Carey Valley Ground Water District

By: _____
Leta Hansen, Chairwoman

Date: _____

Aberdeen-American Falls Ground Water District

By: _____
Tim Deeg, Chairman

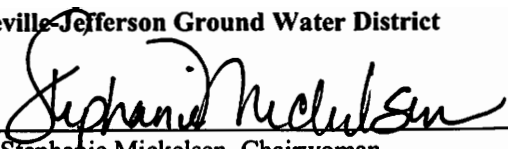
Date: _____

Bingham Ground Water District

By: _____
Connie Christensen, Chairwoman

Date: _____

Bonneville-Jefferson Ground Water District

By: 
Stephanie Mickelsen, Chairwoman

Date: 11/13/2024

Jefferson-Clark Ground Water District

By: Kirk M Jacobs
Kirk Jacobs, Chairman

Date: 11/13/24

Madison Ground Water District

By: _____
Bevan Jeppsen, Chairman

Date: _____

Henry's Fork Ground Water District

By: _____
Jeff Raybould, Chairman

Date: _____

Jefferson-Clark Ground Water District

By: _____
Kirk Jacobs, Chairman

Date: _____

Madison Ground Water District

By:  _____
Bevan Jeppsen, Chairman

Date: 11-13-24

Henry's Fork Ground Water District

By: _____
Jeff Raybould, Chairman

Date: _____

Jefferson-Clark Ground Water District

By: _____
Kirk Jacobs, Chairman

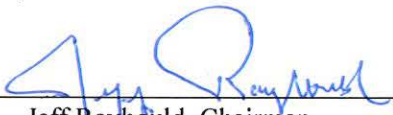
Date: _____

Madison Ground Water District

By: _____
Bevan Jeppsen, Chairman

Date: _____

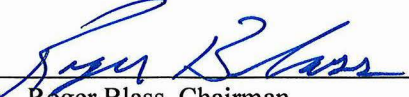
Henry's Fork Ground Water District

By:  _____
Jeff Raybould, Chairman

Date: 11-11-24

SURFACE WATER COALITION SIGNATURES

Twin Falls Canal Company

By: 
Roger Blass, Chairman

Date: 11/12/24

North Side Canal Company

By: 
Mike Elliott, Chairman

Date: 11/13/2024

American Falls Reservoir District No. 2

By: _____
Ellis Gooch, Chairman

Date: _____

Milner Irrigation District

By: _____
Scott Breeding, Chairman

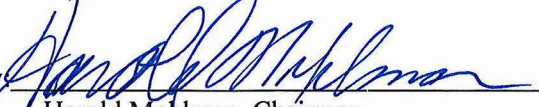
Date: _____

Burley Irrigation District

By: _____
Clifford Searle, Chairman

Date: _____

A&B Irrigation District

By: 
Harold Mohlman, Chairman

Date: 11-12-24

Minidoka Irrigation District

By: _____
Ronald D. Kowitz, Chairman

Date: _____

SURFACE WATER COALITION SIGNATURES

Twin Falls Canal Company

By: _____
Roger Blass, Chairman

Date: _____

North Side Canal Company

By: _____
Mike Elliott, Chairman

Date: _____

American Falls Reservoir District No. 2

By: Ellis Gooch
Ellis Gooch, Chairman

Date: 11-15-24

Milner Irrigation District

By: _____
Scott Breeding, Chairman

Date: _____

Burley Irrigation District

By: _____
Clifford Searle, Chairman

Date: _____

A&B Irrigation District

By: _____
Harold Mohlman, Chairman

Date: _____

Minidoka Irrigation District

By: Ronald D. Kowitz
Ronald D. Kowitz, Chairman

Date: 11 12 24

SURFACE WATER COALITION SIGNATURES

Twin Falls Canal Company

By: _____ Date: _____
Roger Blass, Chairman

North Side Canal Company

By: _____ Date: _____
Mike Elliott, Chairman

American Falls Reservoir District No. 2

By: _____ Date: _____
Ellis Gooch, Chairman

Milner Irrigation District

By:  _____ Date: 11-12-24
Scott Breeding, Chairman

Burley Irrigation District

By: _____ Date: _____
Clifford Searle, Chairman

A&B Irrigation District

By: _____ Date: _____
Harold Mohlman, Chairman

Minidoka Irrigation District

By: _____ Date: _____
Ronald D. Kowitz, Chairman

SURFACE WATER COALITION SIGNATURES

Twin Falls Canal Company

By: _____
Roger Blass, Chairman

Date: _____

North Side Canal Company

By: _____
Mike Elliott, Chairman

Date: _____

American Falls Reservoir District No. 2

By: _____
Ellis Gooch, Chairman

Date: _____

Milner Irrigation District

By: _____
Scott Breeding, Chairman

Date: _____

Burley Irrigation District

By:  _____
Clifford Searle, Chairman

Date: 11/12/24

A&B Irrigation District

By: _____
Harold Mohlman, Chairman

Date: _____

Minidoka Irrigation District

By: _____
Ronald D. Kowitz, Chairman

Date: _____

APPENDIX A

Groundwater Conservation Allocations

District	Baseline Diversion Volume	Annual Conservation Obligation	Annual Divertible Volume	Compliance Period Allocation
American Falls-Aberdeen	286,111	34,132	251,979	1,007,916
Bingham	274,578	32,756	241,822	967,287
Bonneville-Jefferson	161,987	16,500	145,487	581,948
Carey	5,545	661	4,883	19,533
Jefferson-Clark	445,393	53,134	392,259	1,569,037
Henry's Fork	76,241	9,095	67,146	268,583
Madison	78,095	3,000	75,095	300,380
Magic Valley	258,203	30,803	227,400	909,601
North Snake	208,881	24,919	183,962	735,849
	1,795,034	205,000	1,590,034	6,360,135

APPENDIX B

Storage Water Allocations Based on Initial 75,000AF Obligation

District	Baseline Diversion Volume	NB-M SS Baseline Impact	% of total SS Impact	Share of 75k Storage
American Falls-Aberdeen	286,111	210,298	28.6%	21,420.0
Bingham	274,578	173,258	23.5%	17,647.0
Bonneville-Jefferson	161,987	79,000	10.7%	8,047.0
Carey	5,545	2,714	0.4%	277.0
Jefferson-Clark	445,393	109,276	14.8%	11,130.0
Henry's Fork	76,241	3,528	0.5%	359.0
Madison	78,095	2,949	0.4%	300.0
Magic Valley	258,203	123,758	16.8%	12,605.0
North Snake	208,881	31,566	4.3%	3,215.0
	1,795,034	736,347	100%	75,000

APPENDIX C

Managed Aquifer Recharge Standards

1. Natural flow water rights used for recharge must have “recharge” listed as an authorized beneficial use.
2. Water must be recharged in the calendar year of the irrigation season in which mitigation credit is claimed.
3. In-canal recharge will be accounted for in accordance with Idaho Water Resource Board standards taking into consideration historical diversion rates.
4. The following information must be provided by the entity conducting the recharge:
 - 4.1 Water source.
 - 4.2 Water right number or storage spaceholder providing storage.
 - 4.3 If storage water is leased, a copy of the lease contract.
 - 4.4 Copy of the recharge contract with the entity that performed the recharge.
 - 4.5 Location(s) where recharge occurred.
 - 4.6 Dates recharge was performed.
 - 4.7 Total volume recharged at each recharge site.
 - 4.8 Daily or weekly measurement data supporting the total volume recharged.
 - 4.9 Description of measurement device and accuracy

APPENDIX D

Reasonable Carryover Volumes

SWC Member	Carryover Volume
A&B Irrigation District	22,700
American Falls Reservoir Dist. #2	16,700
Burley Irrigation District	0
Milner Irrigation District	16,100
Minidoka Irrigation District	0
North Side Canal Company	113,300
Twin Falls Canal Company	37,400

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, AND TWIN FALLS
CANAL COMPANY

Docket No. CM-MP-2024-003

**AMENDED FINAL ORDER
APPROVING STIPULATED
MITIGATION PLAN**

IN THE MATTER OF THE SURFACE
WATER COALITIONS' AND THE
GROUND WATER DISTRICTS' 2024
STIPULATED MITIGATION PLAN

This order amends and replaces the *Final Order Approving Stipulated Mitigation Plan* (“*Approval Order*”) issued on January 3, 2025, under the above caption.

The Director of the Idaho Department of Water Resources (“Department”) finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On November 15, 2024, A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively, the “Surface Water Coalition” or “SWC”), and Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Henry’s Fork Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District (collectively, the “Districts”) fully executed the *2024 Stipulated Mitigation Plan* (“*Mitigation Plan*”). The previously listed entities are collectively known as the “Stipulating Parties.”

2. On November 19, 2024, the Stipulating Parties filed the *Mitigation Plan* with the Department as Appendix A of their *Joint Motion for Order Approving 2024 Stipulated Mitigation Plan* (“*Joint Motion*”). The *Mitigation Plan* was submitted 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.

3. The *Mitigation Plan* is designed to mitigate material injury to water rights held by members of the SWC and is intended to satisfy the Districts' obligations under the ongoing SWC delivery call case, No. CM-DC-2010-001. See *Joint Motion*, at 3.

4. The initial term of the *Mitigation Plan* is four years, beginning January 1, 2024, and ending December 31, 2027. *Mitigation Plan*, § 3.1. The plan automatically renews for successive four-year terms unless terminated as described in the plan. *Id.* § 3.2

5. Through the *Mitigation Plan*, the SWC and the Districts agree that:

- (a) during the term of the plan, “each District will conserve, at a minimum, the volume of groundwater set forth in the ‘Conservation Obligation’ column in Appendix A” of the *Mitigation Plan*, *id.* § 4, on an average annual basis over four-year periods known as compliance periods, *id.* §§ 4–4.1;
- (b) as of November 15, 2024, the Districts’ conservation obligations collectively total 205,000 acre-feet annually, which equates to a total annual divertible volume of 1,590,034 acre-feet, *id.* § 4.2;
- (c) “[a]t the beginning of each compliance period, each District will be allocated a volume of water that may be diverted during that four-year period, calculated by multiplying the District’s annual divertible volume by four, plus surplus allocation carried over from the prior compliance period,” if allowed, *id.* § 4.3;
- (d) each District’s “four-year compliance period allocations are set forth in Appendix A” of the *Mitigation Plan*, *id.* § 4.3, which “will be updated annually by the Districts to reflect additions and removals of groundwater rights participating in [the *Mitigation Plan*] through the Districts,” *id.* § 4.2;
- (e) “[e]ach District will apportion its compliance period allocation to the District’s patrons in the form of a diversion allocation in accordance with Idaho Code § 42-5244A,” *id.* § 4.4;
- (f) the “Districts may supplement their compliance period allocation by performing managed aquifer recharge” in accordance with certain standards set forth in the *Mitigation Plan*, *id.* § 4.5;
- (g) the “[m]easurement and reporting of non-irrigation diversions will occur on an annual basis” and “[t]he Districts will develop and implement methods to read irrigation diversions monthly” as set forth in the *Mitigation Plan*, *id.* § 4.6.1;
- (h) “[r]each gains to the Near Blackfoot to Minidoka reach of the Snake River shall be measured based on calendar year reach gains from the ESPA as reported by the Department to the Idaho Water Resource Board,” *id.* § 4.6.3;
- (i) “[b]y February 15 annually, the Districts will submit a report to the SWC and the Department documenting the Districts’ compliance with section 4 [(concerning groundwater conservation)] during the previous calendar year,” *id.* § 4.8 (emphasis omitted);

- (j) “[b]eginning in 2035, the Districts will collectively deposit \$250,000 annually into a bank account maintained by the Districts to fund development and implementation of projects designed to further increase reach gains to the Near Blackfoot to Minidoka reach of the Snake River” and this amount may increase under certain circumstances described in the plan, *id.* § 5;
- (k) “[t]he Districts will collectively secure the volume of storage water required by section 6.1 to meet irrigation needs and carryover storage of the SWC in accordance with section 6.4” of the *Mitigation Plan*, *id.* § 6 (emphasis omitted);
- (l) “[t]he Districts may take alternative actions to deliver water to the SWC, including but not limited to acquiring natural flow, in lieu of securing and delivering storage water,” *id.* § 6.7;
- (m) “[t]here will be an oversight committee [] established to review implementation of [the *Mitigation Plan*],” *id.* § 7;
- (n) the “Districts and their patrons that comply with [the *Mitigation Plan*] shall receive safe harbor from the SWC delivery call” during the term of the plan, *id.* § 8;
- (o) “[e]ach District is independently responsible for complying with its proportionate obligations under sections 4, 5 and 6” of the *Mitigation Plan*, and “[i]f a District does not comply, such non-compliance shall not adversely affect any other District that is in compliance with its proportionate obligations” under the plan, *id.* § 9 (emphasis omitted); and
- (p) “[g]round water districts or other entities representing groundwater users brought into the area of common ground water supply through the passage of Senate Bill 1341 (2024) or brought in through expansion of the area of common ground water supply as allowed by Senate Bill 1341 (2024) may seek to join [the *Mitigation Plan*],” *id.* § 10.

6. The *Mitigation Plan* will supersede and replace previously approved mitigation plans in Department Docket Nos. CM-MP-2009-006, CM-MP-2009-007, and CM-MP-2016-001. *Id.* § 11.

7. Notice of the proposed *Mitigation Plan* was advertised in the Idaho Statesman, Mountain Home News, Idaho Mountain Express, Post Register, and Idaho State Journal on December 4 and 11, 2024; the Times News and Lewiston Tribune on December 5 and 12, 2024; and the Rexburg Standard Journal on December 6 and 13, 2024, in accordance with Idaho Code § 42-222(1) and CM Rule 43. No protests were received.

8. On January 3, 2025, the Director issued a final order approving the *Mitigation Plan*. However, the Director concluded that sections 4.6.1 and 4.6.3 of the *Mitigation Plan* should be revised to avoid future misunderstandings. *Approval Order* ¶¶ 10–12. Accordingly, the *Approval Order* was issued with certain alterations to sections 4.6.1 and 4.6.3. *Id.* at 5.

9. On January 17, 2025, pursuant to Idaho Code § 67-5246(4), the SWC filed for reconsideration of the *Approval Order*. *Pet. for Recons./Req. for Hr’g*, at 1–2 [hereinafter *SWC Petition*]. No responses to the *SWC Petition* were filed with the Department.

10. On reconsideration, the Director found the SWC's argument for an alternate revision of section 4.6.3 reasonable. *Order Granting Pet. for Recons. & Den. Req. for Hr'g*, at 3 [hereinafter *Order Granting Reconsideration*]. Therefore, exercising his discretion, the Director granted the SWC's petition for reconsideration and now amends Conclusion of Law 11 and the order below to be consistent with the concurrently issued *Order Granting Reconsideration*. See *id.*

CONCLUSIONS OF LAW

1. Idaho Code § 42-602 grants authority to the Director to supervise water distribution within water districts:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director.

The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

2. Idaho Code § 42-1805(8) authorizes the Director “[t]o promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department.”

3. Idaho Code § 42-603 grants the Director authority to adopt rules governing water distribution.

4. In accordance with chapter 52, title 67, Idaho Code, the Department adopted rules regarding the conjunctive management of surface and ground water that were last updated on March 31, 2022. IDAPA 37.03.11.000. “The [CM Rules] prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply.” IDAPA 37.03.11.001.

5. CM Rule 42.02 states: “The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan.” IDAPA 37.03.11.042.02.

6. CM Rule 43.01.a–d sets forth the criteria for submission of a mitigation plan to the Director.

7. CM Rule 43.03 establishes the “[f]actors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights” IDAPA 37.03.11.043.03(a)–(o). One such factor the Director may consider is “[w]hether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions.” IDAPA 37.03.11.043.03(o).

8. The SWC and the Districts have entered into an agreement on a mitigation plan in accordance with CM Rule 43.03(o). The SWC stipulates that the *Mitigation Plan* “is designed to mitigate material injury to water rights held by members of the Surface Water Coalition.” *Joint Motion*, at 3. The SWC and the Districts agree that “Districts and their patrons that comply with [the *Mitigation Plan*] shall receive safe harbor from the SWC delivery call” during the term of the plan. *Mitigation Plan*, § 8.

9. The *Mitigation Plan* describes numerous ongoing activities including: (a) setting conservation obligations and compliance periods; (b) setting individual patron level allocation and compliance requirements; (c) allowing aquifer recharge to supplement the Districts’ compliance period allocation; (d) requiring measurement and reporting obligations; (e) allowing conservation carryover; (f) establishing a reach gain mitigation fund; (g) securing and assigning storage water; (h) permitting alternative mitigation actions; (i) establishing an oversight committee; (j) providing safe harbor; and (k) establishing enforcement procedures. *Id.* §§ 4–10.

10. Section 4.6.1 of the *Mitigation Plan* uses more precise language to describe the measurement actions required for non-irrigation diversions than irrigation diversions. It states that non-irrigation diversions shall be “measure[d] and report[ed]” but that irrigation diversions shall be “read.” To avoid ambiguity and the potential for future misunderstanding, the need to measure and report all ground water diversions should be clarified and the term “read” should be replaced with “measure,” “report,” or both in section 4.6.1.

11. Section 4.6.3 of the *Mitigation Plan* states that “[r]each gains to the Near Blackfoot to Minidoka reach of the Snake River shall be measured based on calendar year reach gains from the ESPA as reported by the Department to the Idaho Water Resource Board.” The problem with this statement is that it is inaccurate. In fact, the Department measures and reports Near Blackfoot to Minidoka reach gains to the Idaho Water Resource Board based on a water year schedule, not a calendar year schedule. To ensure accuracy and avoid the potential for future misunderstanding, while still preserving the intent of the stipulating parties, “as reported by the Department to the Idaho Water Resource Board” should be stricken from section 4.6.3.

12. Having reviewed the *Mitigation Plan* and the CM Rules, the Director will approve the *Mitigation Plan* with alterations to sections 4.6.1 and 4.6.3, consistent with paragraphs 10 and 11 above.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the *2024 Stipulated Mitigation Plan* is APPROVED with the following alterations in strikeout/underline:

- (a) **4.6.1 Groundwater.** Measurement and reporting of non-irrigation diversions will occur on an annual basis. The Districts will develop and implement methods to ~~read~~ measure irrigation diversions monthly. Irrigation diversions shall be ~~read~~ measured and reported from June to October, with the June ~~reading~~ reporting including diversions from the start of the irrigation season. The Districts will have functioning measurement and reporting programs by the start of the 2026 irrigation season to ~~read~~ measure and report irrigation diversions monthly. The Districts' methods may include telemetry, self-reporting with photo evidence, or other reliable techniques to report water diversions. Measurements shall be ~~made available~~ reported to the appropriate watermaster and the watermaster will make the measurement data publicly available upon request.
- (b) **4.6.3 Reach Gains.** Reach gains to the Near Blackfoot to Minidoka reach of the Snake River shall be measured based on calendar year reach gains from the ESPA ~~as reported by the Department to the Idaho Water Resource Board.~~

Dated this 7th day of February 2025.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

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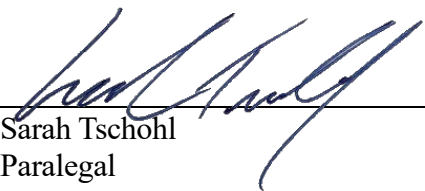
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¹ Through informal means and the receipt of undelivered mail, the Department has been made aware that the mailing address for counsel of McHugh Bromley, PLLC has changed from the service address the Department has on record in this matter: 380 South 4th Street, Suite 103, Boise, ID 83702. To avoid additional unnecessary expense, the Department has updated the mailing address for McHugh Bromley, PLLC in this matter. However, this update does not remove any duty that counsel of McHugh Bromley, PLLC may have to formally notify the Department and the parties of their change of mailing address for service in this matter.

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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.

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 Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to Idaho Code § 42-1701A(3). A written petition to the Director contesting this final order and requesting a hearing must be filed with the Department by any aggrieved person **within fifteen (15) days after service of this final order.**

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 proceedings in accordance with Rules of Procedure 53 and 202.