

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 PETITION FOR  
EXPEDITED HEARING AND FOR  
TEMPORARY STAY OF  
CURTAILMENT**

**BACKGROUND**

Between August 19, 2025, and March 25, 2026, Jerry and Valerie Bingham (the “Binghams”) submitted four different mitigation plans to the Director of 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 Director did not approve any of the four mitigation plans. The plans were either rendered moot by the filing of a subsequent plan or returned because they lacked information necessary to evaluate the minimum criteria under the CM Rules.

On April 20, 2026, the Binghams submitted a *Motion for Stay of Order of Curtailment* (“*Motion for Stay*”). The Binghams did not submit a new mitigation plan with the *Motion for Stay*, but stated that they were having a new mitigation plan prepared. *Motion for Stay*, at 3. The Binghams sought “a stay of the order of curtailment under the [Surface Water Coalition or “SWC”] Delivery Call, Docket No. CM-DC-2010-001, until such time as the Binghams’ mitigation plan is processed . . . .” *Motion for Stay*, at 1.

On May 14, 2026, the Director issued an *Order Denying Motion for Stay of Order of Curtailment* (“*Order Denying Stay*”) because there was no mitigation plan then pending that would prevent or resolve injury to senior water users.

On May 28, 2026, the Binghams submitted a *Fifth Mitigation and Curtailment Plan* (“*Fifth Mitigation Plan*”) and a *Petition for Expedited Hearing and Consideration of Fifth Mitigation and Curtailment Plan and for Temporary Stay of Curtailment* (“*Petition for Expedited Hearing and Stay*”). The *Petition for Expedited Hearing and Stay* requests the Department to: (1) grant a temporary stay of curtailment until the Director issues a decision on the *Fifth Mitigation Plan*, and (2) “expedite the hearing and consideration” of their *Fifth Mitigation Plan*. *Petition for Expedited Hearing and Stay*, at 3.

The Director has reviewed the *Petition for Expedited Hearing and Stay* and will deny both requests for the reasons described below.

## ANALYSIS

The Department’s Rule of Procedure 780 vests the Director with the discretion to grant or deny a request to stay 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*, 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).

The Bingham's submitted a *Fifth Mitigation Plan* concurrently with the *Petition for Expedited Hearing and Stay*. The *Fifth Mitigation Plan* applies only to the 2026 irrigation season and “proposes that three of Bingham's six water rights (totaling 430 irrigated acres, or 41% of the Bingham's total annual water usage), be completely curtailed for the 2026 season.” *Petition for Expedited Hearing and Stay*, at 2. The Bingham's estimate curtailment of the three water rights would provide an in-season benefit of at least 223 acre-feet (“AF”) *Fifth Mitigation Plan*, at 3.

The Bingham's contend that curtailing 41% of their water rights is a mitigation effort “in excess of any other known approved plan.” *Fifth Mitigation Plan*, at 3. While a reduction of 41% could be significant in some years, the percentage of water rights curtailed under a plan is not the only factor the Director must consider. Other approved mitigation plans are designed to be in effect for multiple years, rather than a single irrigation season, allowing for benefits to the aquifer to develop, accrue, and be measured over time. Multi-year plans can benefit senior water users even where the mitigation measures do not fully mitigate the impacts of diversions in a given year because benefits continue to accrue and carry forward over multiple years, including years when curtailment would not otherwise occur. Additionally, other approved plans include mitigation measures beyond voluntary curtailment, such as acquisition and delivery of storage water, aquifer recharge, ground water to surface water conversions, funding of surface water delivery system improvements, or other actions that provide measurable benefits to the water system and senior water users. Bingham's proposed reduction for a single year is one mitigation measure, but it should be evaluated in the context of the Bingham's existing curtailment obligations. Based on the information currently before the Director, it does not appear that the mitigation plan fully mitigates for the impacts of the Bingham's continued ground water use.<sup>1</sup>

The Bingham's state that they “have consulted with counsel for the [SWC] and formal approval by all of the members of the SWC is expected and pending.” *Petition for Expedited Hearing and Stay*, at 2. On May 30, 2026, counsel for the SWC emailed counsel for the Department and counsel for the Bingham's and stated that “[o]ur clients have indicated they do not want to stipulate to a stay. However, they have also noted that they are not planning to either stipulate to or oppose the mitigation plan filed by the Bingham's.” Email from Travis Thompson, counsel for SWC to Garrick Baxer, counsel for the Department, and Reed Larson, counsel for the Bingham's, May 30, 2026. Because the proposed mitigation plan does not appear on its face to fully mitigate for the impacts of Bingham's continued ground water use, and is not supported by

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<sup>1</sup> While the Director has concerns about the sufficiency of this plan, it does meet the minimum criteria for publication and the Director will move forward with publication of the plan.

a stipulation from the affected senior water users, the Director declines to exercise his discretionary authority to grant a stay of curtailment based on the *Fifth Mitigation Plan*.<sup>2</sup>

The Director also denies the Bingham's request to expedite the hearing and consideration of the *Fifth Mitigation Plan*. The *Fifth Mitigation Plan* constitutes a new mitigation proposal subject to the publication, notice, protest and hearing procedures established by CM Rule 43. Under the notice and hearing procedures, all affected parties must be allowed the opportunity to protest. The Director cannot reasonably ensure that all potentially affected parties would receive adequate notice of an expedited proceeding. The standard timing for notice and protest should be followed before a hearing on the merits of the *Fifth Mitigation Plan* occurs.

### ORDER

IT IS HEREBY ORDERED that the Bingham's *Petition for Expedited Hearing and Consideration of Fifth Mitigation and Curtailment Plan and for Temporary Stay of Curtailment* is DENIED.

Dated this 2<sup>nd</sup> day of June 2026.



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MATHEW WEAVER  
Director

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<sup>2</sup> If the Bingham's proposed mitigation measures which fully offset their proportionate share of depletions, such as the acquisition and delivery of storage water or if the SWC stipulated to the plan, the Director may find a temporary stay to be appropriate pending final review of the plan. That is not the situation presented here.

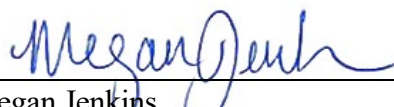
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of June 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 <a href="mailto:reed@cooper-larsen.com">reed@cooper-larsen.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
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*Courtesy copies to:*

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 Executive Assistant