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DEPARTMENT OF
WATER RESOURCES

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Attorney for Jerry D. Bingham and Valerie H. Bingham

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

Water Rights of Jerry D. Bingham and)
Valerie H. Bingham,)
1675 W 400 N)
Blackfoot, ID 83221-5051)
Water Rights No: 35-12226, 35-2202B,)
35-2205E, 35-2266, 35-2269G, and)
35-2183D,)
_____)

Docket No. CM-MP-2026-004

**BINGHAMS' RESPONSE AND
MOTION TO STRIKE IGWA'S
NOTICE OF PROTEST**

Jerry D. Bingham and Valerie H. Bingham ("Binghams"), by and through the undersigned counsel, hereby file Binghams' Response and Motion to Strike IGWA's Notice of Protest, pursuant to IDAPA 37.01.01.210, IDAPA 37.01.01.353 and other applicable law.

I. ARGUMENT

The above-entitled matter is a contested case before the Idaho Department of Water Resources ("IDWR") because Idaho Ground Water Appropriators, Inc. ("IGWA") filed its Notice of Protest on June 16, 2026.

IGWA has identified itself as a "protestant" pursuant to IDAPA 37.01.01.154. Rule 154 defines protestants as: "Persons who oppose or seek to alter an application and **who have a**

statutory right to contest or seek to alter the right, license, or authority sought by an applicant.” [Emphasis added]. In this case, IGWA does not meet the definition of protestant under Rule 154. The Bingham’s Fifth Mitigation Plan seeks to mitigate injury to the Surface Water Coalition (“SWC”), and does not involve any statutory right, claim or interest by IGWA.

IGWA’s Notice of Protest renders it clear that they have no substantial right, claim or interest in this proceeding. The Notice of Protest does not assert any interest that IGWA may have in Bingham’s Mitigation Plan, instead it makes several generalized claims, including a claim that the Bingham’s should not be allowed to submit a one year mitigation plan; that individual water right holders should not be allowed to submit mitigation plans outside of a water district; and that the Bingham’s mitigation plan does not comply with statutory framework established by the Ground Water District Act, chapter 52, title 42, Idaho Code. IGWA’s generalized interests are not enough to qualify as it a protestant. Furthermore, its generalized or nonexistent interests show that it does not have legal standing to participate in this matter.

Any party who seeks to participate in a legal proceeding must demonstrate legal standing in the proceeding before the party's participation may be granted. *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 124, 15 P.3d 1129, 1132 (2000). "To satisfy the case or controversy requirement of standing, a litigant must 'allege or demonstrate an injury in fact and a substantial likelihood the relief requested will prevent or redress the claimed injury.'" *Boundary Backpackers v. Boundary County*, 128 Idaho 371, 375, 913 P2d 1141, 1145 (1996). Under Idaho law, only parties who can demonstrate that they have a property interest that may be affected by the issuance or denial of a permit authorizing development have a right to challenge an administrative action. *Evans v. Teton County*, 131 Idaho 71, 75-76, 73 P.3d 84, 88-89 (2003). IGWA does not have a "distinct,

palpable injury" to allow it to participate in this proceeding, and it has not claimed interests demonstrating injury that would be redressed by the outcome of the proceeding; nor does it specify how the approval of Bingham's Fifth Mitigation and Curtailment Plan would substantively affect its members.

In the case of *Cities of Bliss, et al. v. Spackman et al.* (Minidoka County Case No. CV-2015-172), Judge Eric J. Wildman, who performed a judicial review of IDWR's final order regarding approval of the Cities of Bliss Second Mitigation Plan, in his Memorandum Decision & Order, stated as follows:

Mitigation in the context of conjunctive management permits a junior, who is causing injury to a senior by way of his diversion, to take an action to offset that injury in order to continue his water use. *See e.g., ID APA 37.03.11.010.15.* Essential to this concept is that an offending junior is only responsible for mitigating that portion of the senior's material injury attributable to his offending diversion. If successful, the mitigating junior has satisfied his legal obligation to the senior and may avoid curtailment as a matter of law. Considerations of equity to other junior users are irrelevant.

Id., at p. 10.

In sum, the SWC has claimed injury through its Delivery Call. Bingham now seeks to mitigate that injury. IGWA has no standing to protest the Bingham's mitigation based upon general issues of water law dispute or some hypothetical injury to its member districts.

Furthermore, IGWA and its member districts have a mitigation plan that has already been implemented for the 2026 irrigation season. Bingham's proposed Fifth Mitigation and Curtailment Plan is for the 2026 irrigation season only, and Bingham's have been completely curtailed for the majority of the season. The SWC is the only party that could conceivably suffer any palpable injury in 2026, and SWC has declined to intervene in this matter. Again, with IGWA's mitigation for 2026

already in place, there is no possibility that the storage water obligation of IGWA's member districts will increase, or any other injury could be claimed by IGWA.

Not only should IGWA not be considered a protestant in this matter, its protest also should not be considered a petition to intervene, because it does not meet the standard set forth in Rule 353. Rule 353 governs petitions to intervene and states:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. (emphasis added.)

In this case, as stated previously, IGWA has not asserted any interest in this matter other than its general claims that Bingham's should not be allowed to submit a one year mitigation plan; that individuals should not be allowed to submit mitigation plans outside of an organized ground water district; and that the Bingham's' mitigation plan does not comply with statutory framework established by the Ground Water District Act, chapter 52, title 42, Idaho Code. This does not present a direct and substantial interest. Furthermore, allowing IGWA to join the proceeding will unduly broaden the issue.

Although IGWA may argue that it has direct and substantial interests in this case because it is a party to the SWC delivery call case, its involvement in the SWC delivery call case does not demonstrate a direct and substantial interest. The Bingham's' mitigation plan does not implicate or involve IGWA's mitigation plan in any way and IGWA has not identified any interest that could be implicated in Bingham's' mitigation plan. Party status to the SWC delivery call is not sufficient to meet the direct and substantial interest criterion of intervention.

The simple fact of IGWA's member ground water districts providing mitigation to the SWC, likewise does not meet the direct and substantial interest criterion for intervention. IGWA negotiated its own mitigation plan and other parties should also be able to negotiate or seek approval of their own mitigation plans as expressly provided by Idaho law.

In another contested case before the IDWR, in denying a petition to intervene, the hearing officer in that case (retired Idaho Supreme Court Chief Justice Roger Burdick) held:

With respect to the argument that the Big Lost River Ground Water District has a direct and substantial interest in the proceeding because of its potential impact on water rights administration in the basin and the interaction between surface and ground water supplies in the basin, the Hearing Officer concludes **this is essentially the argument that all water is connected and, at some point, any change may affect another's right.** This argument would lead to the conclusion that, for example, any water delivery change BLRID makes will affect ground water supplies therefore BLRID cannot run its business without ground water users' intervention. Also, the Big Lost River Ground Water District's ground water management plan is fluid and carries no legal effect on water administration pursuant to the prior appropriation doctrine, but rather is a plan used for the internal operations of the ground water district. With respect to the argument that the Big Lost River Ground Water District has a direct and substantial interest in the proceeding because of policy concerns, **if a general interest in the Department's water rights administration policies and hypothetical precedent setting were enough to warrant intervention, the intervention of water users in any contested case would be limitless.**

In the Matter of Water Right Nos. 34-182 and 34-381A (Moss Farms, Inc.), Order on Petitions to Intervene Filed by Moore Canal Users and the Big Lost River Ground Water District (October 9, 2024), at 5-6 [emphasis added].

Finally, IGWA's intervention would unduly broaden the issues. The SWC, which is the only party that could stand to suffer any injury by Bingham's proposed 2026 plan, has chosen not to intervene or protest Bingham's proposed Fifth Mitigation and Curtailment Plan, and no other entities have intervened or protested. IGWA has by its protest made this a contested case, despite a complete

failure to assert its standing to protest, a failure to present any palpable injury to the IGWA as a result of Bingham's 2026 plan, and a failure to present any direct and substantial interest whatsoever that would give it standing as an intervenor.

II. CONCLUSION

For the foregoing reasons, IGWA's Notice of Protest should be stricken and it should 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.

DATED this 4th day of August, 2026.

COOPER & LARSEN, CHARTERED

By /s/ Reed W. Larsen
REED W. LARSEN
*Attorney for Jerry D. Bingham and
Valerie H. Bingham*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2026, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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