

Aug 11, 2026

DEPARTMENT OF
WATER RESOURCES

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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF JERRY D. AND
VALERIE H. BINGHAM'S MITIGATION
PLAN FOR THE SURFACE WATER
COALITION

Docket No. CM-MP-2026-004

**DECLARATION OF ALAN JACKSON IN
SUPPORT OF IGWA'S RESPONSE TO
BINGHAMS' MOTION TO STRIKE
NOTICE OF PROTEST**

I, Alan Jackson, declare as follows:

1. I am the manager of Bingham Ground Water District (the "District"). I have served in that role since April 2017. I make this declaration based on my personal knowledge, my work for and with the District, and my review of District records maintained in the ordinary course of District business.

2. Bingham Ground Water District is a ground water district organized under Idaho law. The District's responsibilities include representing and administering the interests of groundwater users within the District and participating in mitigation activities and mitigation plans intended to address delivery calls and water administration involving groundwater diversions from the Eastern Snake Plain Aquifer.

3. As manager of the District, my responsibilities include assisting the District's board of directors in administering District business; communicating with District members, nonmembers, counsel, and other interested persons regarding District matters; helping prepare and administer District assessments and budgets; maintaining and reviewing District records; coordinating implementation of District mitigation obligations; and assisting with compliance, reporting, and operational matters associated with the District's participation in mitigation plans and related water administration proceedings.

4. Jerry Bingham previously petitioned the District to exclude certain lands and water rights from the District. The District's board granted the exclusion by order dated September 3, 2021. A true and correct copy of the District's September 3, 2021 order granting the exclusion petition is attached as ***Exhibit 1***. The order stated that, upon exclusion, the petitioned lands would not be part of or entitled to receive benefits from the District, and that the excluded lands remained subject to statutory requirements for repayment of amounts due and other obligations associated with the exclusion process.

5. The District participates in mitigation activities intended to provide mitigation coverage for groundwater users subject to administration in response to delivery calls. The District's mitigation-related assessments and obligations are imposed and administered through the District's coordinated mitigation structure, including assessments and requirements applicable to District participants.

6. After Jerry Bingham's exclusion from the District, the District informed Mr. Bingham, through counsel, that groundwater users who are not members of a ground water district and do not have an approved mitigation plan may request to participate in the District's mitigation activities by contract pursuant to Idaho Code § 42-5259. A true and correct copy of the March 31, 2026 letter from Dylan Anderson, counsel for Bingham Ground Water District, to Reed Larsen, counsel for Mr. Bingham, is attached as ***Exhibit 2***.

7. The March 31, 2026 letter explained that, under Idaho Code § 42-5259, a nonmember groundwater user may request to participate in a district's mitigation plan, purpose, or activity by entering into a contract with the district on terms acceptable to both parties. The letter further stated that the District had required other nonmember groundwater users who wished to participate only in mitigation efforts to pay an assessment-equivalent going back to the 2024 season and to comply with the mitigation plan.

8. The District has not refused to allow Mr. Bingham to seek mitigation coverage through the District's existing mitigation framework. To my knowledge, Mr. Bingham has been informed that he may request to participate in the District's mitigation program by contract as a nonmember, subject to terms and conditions acceptable to both the District and Mr. Bingham.

9. Allowing a nonmember groundwater user to participate by contract preserves the District's ability to administer mitigation on a coordinated basis while requiring the nonmember participant to bear an assessment-equivalent share of the costs and obligations associated with

mitigation coverage. In my view, that approach protects the District and its remaining members from having mitigation costs shifted to them by a user who has been excluded from District membership but still seeks mitigation coverage for groundwater diversions.

10. I understand that Jerry and Valerie Bingham have filed an individual mitigation plan in IDWR Docket No. CM-MP-2026-004. Based on my role with the District and my understanding of the District's mitigation program, the District's contract-participation option remains available as a mechanism for Mr. Bingham to seek mitigation coverage through the District's coordinated mitigation structure rather than through a separate individual mitigation plan.

I declare under the penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Dated this 11th day of August, 2026.

By: 

Alan Jackson

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 2026, I caused the foregoing document to be served on the persons listed below by email at the addresses indicated:


Thomas J. Budge

Roger S. Burdick Garrick Baxter, Deputy Attorney General IDAHO DEPT. OF WATER RESOURCES P.O. Box 83720 Boise, Idaho 83720-0098	file@idwr.idaho.gov Roburd47@gmail.com garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov
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EXHIBIT 1



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BEFORE THE BINGHAM GROUND WATER DISTRICT BOARD OF DIRECTORS

In Re: Petition for Exclusion	)	
Six Properties and Water Rights Within	)	
The Bingham Ground Water District,	)	
	)	ORDER
	)	
	)	
Jerry Bingham,	)	
	)	
Petitioner	)	
	)	

The District received six petitions from Jerry Bingham ("Petitioner") requesting the exclusion of six properties and water rights that are within the Bingham Ground Water District ("District") more particularly described in Exhibit A. Upon receiving these petitions, the Bingham Ground Water District Board of Directors ("Board") granted a hearing in accordance with Idaho Code § 42-5251. The hearing date was set for June 22, 2021. The Board met at that hearing, but the Petitioner was not present. After making contact with the Petitioner, it was understood that Petitioner's attorney was out of town, and the hearing was rescheduled for July 6, 2021.

The hearing was attended by Jerry Bingham, represented by Reed Larsen, and members of his family. The Board heard argument from Mr. Larsen, Jerry, and members of his family. The Board deliberated on the petition after the hearing, and requested that their discussions be documented by the District's attorney. The Board met again on July 20th, 2021, to further discuss the petitions. The Board came to some consensus, but asked for their thoughts and points of discussion to be written up for final approval. The Board met again on August 10th, 2021, and unanimously approved this decision. For the reasons outlined below, Petitioner's request to be excluded from the District will be granted in accordance with the conditions outlined by statute, and this Order.

Petitioner requested to exclude his lands and water rights from the District citing Idaho Code § 42-5251(1). Idaho Code § 42-5251 outlines the criteria that should be used when a request for exclusion is requested. It reads:

...continued inclusion of the irrigated lands in the district is inappropriate or unwarranted:

- a) *Because the diversions of ground water under the ground water irrigator's water right have no depletive effect on any water source, either individually or cumulatively when considered in conjunction with other similar diversions;*
- b) *Because the only ground water use associated with the lands sought to be excluded by the petition is a domestic or stock water use as defined by sections 42-111 and 42-1401A, Idaho Code;*
- c) *Because the exclusion of the lands will not impair the district's ability to repay debt or carry out mitigation plans;*
- d) *Because the exclusion is in the best interests of the district and its members; or*
- e) *For other compelling reasons.*



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Petitioner seeks exclusion citing Factors A, C, D, and E as outlined in the code. It was conceded during oral arguments that Factor B does not apply because the groundwater use is not domestic or stockwater as defined by section 42-111 and 42-1401A, Idaho Code. During discussion, it was also concluded that these properties are in the same close geographic location, and have similar uses and priority dates. Because of the homogenous nature of all the properties and water rights, the Board's reasoning applies to all properties petitioned for in this action. The Board will address each factor relating to exclusion below.

FACTOR A

Petitioner states that he is "... entitled to exclusion for the reason that excluding [his] water rights shall have no depletive effect on any water source either individually or cumulatively..." This statement appears to address I.C. § 42-5251(1)(a). The code states that his water right may be excluded because ground water diversions under his rights have no depletive effect on any water source either individually or cumulatively when considered in conjunction with other similar diversions. Petitioner seems to be suggesting that his water rights have no depletive effect on any water source, which is inaccurate. Petitioner's water comes from the Eastern Snake Plain Aquifer ("ESPA"). Any use of this water would have a depletive effect on the aquifer, even if that effect may be minimal, the cumulative effect of ground water pumpers on the ESPA is substantial.

According to Rule 50 of the Conjunctive Management of Surface & Ground Water Resources, everything within the ESPA defined area, which includes all of Petitioner's water rights, is determined to have a common ground water supply. Rule 50 further states that "The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River." Therefore, the Petitioner's diversion of ground water under his rights not only has a depletive effect on the ESPA but also the Snake River and as such is subject to the same water calls brought upon ground water users by surface water users in southern Idaho. The Board is unpersuaded in Petitioner's reasons related to factor A.

FACTOR C

Petitioner claims that the exclusion of his lands would not impair the District's ability to repay debt or carry out mitigation plans. The District's financial obligations are fixed and would not be reduced with the exclusion of the Petitioner's lands. The only meaningful source of income to the District is the annual assessment from the members, therefore, any lands that are excluded from the District would usually impact the District's ability to repay debt and carry out mitigation plans by increasing the burden on the remaining members. The components of the assessment are categorized as Maintenance and Operations (M&O), Mitigation, and Fish Farms. The District budget is prepared each year based on the total anticipated costs for the coming fiscal year. This total cost is divided by all of the water rights in the district to determine each members' proportional assessment.

Maintenance and Operations

The M&O portion of the assessment covers basic district operational costs associated with well measurements and staff. It also covers efforts to study and better understand the hydrology and geology of the ESPA especially in the Bingham County area. One member does not benefit more than another for M&O so the assessment is a flat rate multiplied by the acres or cfs of each water right.



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Mitigation

The Mitigation portion of the assessment currently covers the cost of carrying out mitigation plans associated with the SWC/IGWA Settlement Agreement. Since the implementation of the Settlement Agreement, starting in 2016, this part of the assessment has been tiered based on water right priority dates. Those rights in the oldest tier pay half the assessment rate, rights in the middle tier pay the full assessment rate, and rights in the youngest tier pay one and a half times the assessment rate.

Fish Farms

The District has participated in various settlement agreements, mitigation plans, and purchases involving aquaculture facilities in southern Idaho over the years. The remaining costs to the District concerning aquaculture are payments for bonds and loans related to the purchase of several facilities. These facilities represent an asset to the District and the benefit of that asset is equal for all members. Therefore, the District assesses water rights at a flat rate multiplied by the acres or cfs of each water right.

However, the Petitioner has never paid an assessment, and states that he does not belong to the District. The District has, thus far, been able to pay its bills and mitigation costs without any payment from petitioner. Therefore, while the Petitioner's exclusion may have some effect on the District's finances, it is hard to see how exclusion would "impair" the District considering the District has operated without payment from petitioner for almost three decades. Because the Petitioner has acknowledged past debt to the District, and that exclusion from the District requires the payment of past assessments, exclusion may actually have a net positive effect on the District's ability to pay its debts. The possibility would be amplified if future resources must be allocated to litigation regarding the Petitioner's claims.

FACTOR D

The petition does not provide any set reasoning related to Factor D, however, at the hearing held on July 6, 2021, petitioner testified that he has always stated that he was not part of the District, and cited several instances where he believes that the District was deficient in its duties when it was established, or related to establishing its members.

While the Board is concerned about accusations of previous shortcomings of the District, no specific evidence was presented showing the District was derelict in its duties, or otherwise in violation of the statute. Furthermore, Idaho Code § 42-5215 limits any action or defense made that affects the validity or organization of the district to two years after it is formed. It should be noted that petitioner wished they had taken more decisive action to assert their position that they were not in the district. Therefore, the Board finds that he is part of the district, and has been since the beginning. No evidence was presented showing the Petitioner was ever legally exempt or excluded from the District. Nevertheless, the board does find that Petitioner is unique in that he has constantly, and vocally asserted his position that he is not part of the District, and never was part of the District. Although petitioner never followed the proper steps to be excluded from the District, he is attempting to follow the proper steps now, and his consistent position is persuasive.

FACTOR E

Factor E acts as a sort of "catchall" factor, which allows a Petitioner to present argument that is not anticipated by the other factors, but is otherwise "compelling." Petitioner claims that his water rights



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are senior to any and all water rights within the District. While Petitioner's water rights are relatively early, he is not "senior to any and all water rights" within the district. Upon analysis 97% of Jerry's water rights are priority date 1950 to 1952 which is senior to 76% of the irrigation water rights District. There are also 6% of the irrigation water rights in the District which are senior to anything Jerry owns. While he does own relatively senior water rights in the District, he is not senior to any and all others.

Further, Petitioner is far junior to the SWC water rights which have a standing call against ESPA pumpers. Due to this call the Director of IDWR has used a 'methodology order' to determine the ground water priority dates which would be curtailed if not for mitigation. The methodology order is a complicated formula constructed in order to avoid massive curtailments on the ESPA and only curtail as many water rights as are estimated to be necessary to restore the senior water rights. It is unknown what impact it would have on the Petitioner if he were to withdraw from the district. This is something for Petitioner to consider, however, as it would not impact the District, but the District does not find Petitioner's statement that his water rights are senior to any and all water rights within the District compelling.

Although, not in the petition, Petitioner further testified that he desires to transfer his farm to his children, and that District liens are preventing this from happening. Although not specific to ground water, the District is devoted to agriculture, and the continued operation of family farms in the area. The Board is sympathetic to the nature of the community, and the place the Petitioner occupies within that community. However, these liens are a result of Petitioner's non-payment. The Board feels a desire to reach a just resolution, but simply forgiving all liens as petitioner seemed to request at the hearing, is not a just outcome for the District.

The board's discussions have yielded further compelling reasons, including a desire to bring this issue to a close. The District has spent considerable time and resources trying to resolve the Petitioner's issues and concerns, and believes that exclusion at this point might be the best method for all parties to finalize and move forward. The board does feel like the Petitioner's position is unique, in that he has been the only member of the district to consistently question his membership. Although many of the Petitioner's arguments are not persuasive to the board, the board ultimately feels that the District is best served by excluding the lands set forth by petitioner, therefore:

The Board, having heard testimony and reviewed the records, orders unanimously that all six petitions to exclude lands from the District are GRANTED as follows:

1. In accordance with Idaho Code § 42-5253, this order will exclude the petitioned lands as described, and attached as Exhibit A of this decision, from the District, and for all purposes shall not be a part of or be entitled to receive any benefits from the District.
2. Excluded lands are subject to the requirements of Idaho Code § 42-5257, requiring repayment of due amounts and authorizing the District the use of all provisions which could be used to compel the payment by excluded lands of its portion of the outstanding obligations had the exclusion not occurred.
3. The amount to be paid as a remaining balance is \$78,745.17 as outlined and explained in Exhibit B.
4. Petitioner may also be liable for any and all costs associated with the exclusion process as outlined in Idaho Code § 42-5255 and any surveying costs as outlined in Idaho Code § 42-5254.



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5. Upon payment of this balance, all liens will be removed, and the District will issue a certificate of full payment in accordance with Idaho Code § 42-5257.

Dated this 3 day of September, 2021

A handwritten signature in black ink that reads 'Connie Christensen'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Connie Christensen, Board Chairperson



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Exhibit A

Water Right	Effective Priority Date	Effective Acres	Effective CFS	Parcels
35-12226 ✓	4/11/1994	35	0.59	RP0115200, RP0113001
35-2183D ✓	9/4/1950	156	1.73	RP0119700
35-2202B ✓	8/8/1951	250	4.8	RP0115200, RP0113001
35-2205E	11/8/1951	207	2.44	RP0118100, RP0116205, RP0116204
35-2266 ✓	10/8/1952	155	3.1	RP0117300, RP0117601, RP0117702, RP0117602
35-2269G ✓	10/22/1952	236	4.35	RP0117300, RP0117601, RP0117702, RP0117602



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Exhibit B

Because the Board has offered other members the opportunity to become current by paying all outstanding assessments starting with the year 2016, (when mitigation was first assessed) the Board has instructed staff to total the outstanding assessments from the year 2016-2021, which is seventy-eight thousand, seven hundred forty-five dollars and seventeen cents (\$78,745.17). The previous assessments up to and including year 2015 assessment totaling fifty-four thousand, five hundred twenty-five dollars and fifty-three cents (\$54,525.53), will not be charged.

EXHIBIT 2



1350 Parkway Drive Suite 24 – PO Box 168 – Blackfoot, ID 83221 – (208) 684-9634

Reed W. Larsen
COOPER & LARSEN, CHARTERED

SENT VIA EMAIL reed@cooper-larsen.com

March 31, 2026

Mr. Larsen,

The Bingham Groundwater District Board has asked me to share the following information. Groundwater users who are not members of a groundwater district and do not have an approved mitigation plan may mitigate under the provisions of Idaho Code 42-5259, which states:

PARTICIPATION BY NONMEMBER IN DISTRICT SOLELY FOR MITIGATION PURPOSES. Upon 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.

The provisions of this statute allow groundwater users who are not members of the district to apply to participate in mitigation only. This is accomplished through a contract agreed upon by the District and the groundwater user. There have been a few other groundwater users who have applied under this provision. The District has required those wishing to participate in mitigation efforts only to pay an assessment-equivalent going back to the 2024 season and comply with the mitigation plan.

A handwritten signature in blue ink, appearing to read "Dylan Anderson", written over a horizontal line.

Dylan Anderson – Attorney for BGWD

CC

Travis Thompson, attorney for Surface Water Coalition
TJ Budge, attorney for IGWA