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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

**IGWA'S RESPONSE TO
BINGHAMS' MOTION FOR
SUMMARY JUDGMENT**

Idaho Ground Water Appropriators, Inc. ("IGWA"), by and through counsel and on behalf of its member ground water districts, submits this response to Jerry D. and Valerie H. Bingham's Motion for Summary Judgment (the "Motion") filed August 4, 2026.

INTRODUCTION

The Binghams' Motion initially asks for summary judgment on IGWA's protest as a whole, asserting that IGWA has a "complete failure of proof concerning the primary elements of its case." (Memo. in Supp. of Bingham's Mot. for Summ. J., p. 2.) But that argument misunderstands the nature of a protest and the burdens of proof in a mitigation plan case. A protest is a notice pleading; it need not be accompanied by supporting evidence. It is the Binghams' burden to prove that the Binghams' Fifth Mitigation and Curtailment Plan ("Bingham Mitigation Plan") satisfies Conjunctive Management ("CM") Rule 43. Until the Binghams make that prima facie showing—which the Motion does not purport to do—IGWA has no burden to come forward with countervailing facts. The Binghams' broad request for wholesale denial of IGWA's protest should therefore be denied.

In addition to the wholesale request for denial of IGWA's protest, the Motion presents two discrete legal issues. First, the Binghams seek a ruling that the CM Rules do not categorically prohibit one-year mitigation plans. IGWA does not dispute that narrow proposition. A one-year plan may be considered if it satisfies CM Rule 43.

Second, the Binghams seek a ruling that an individual irrigator formerly associated with a ground water district may obtain separate mitigation approval outside the district framework. That issue should be resolved in IGWA's favor. The Ground Water District Act (the "Act") does not

allow an irrigator to avoid district assessments, cost-sharing, and compliance obligations while seeking separate mitigation coverage for the same delivery call already addressed through an approved district plan and the nonmember contract mechanism in Idaho Code section 42-5259.

Lastly, the Motion contains several unsupported assertions that either attack IGWA for filing a protest or ask the hearing officer to decide merits questions without evidence. Those statements do not support the issues presented for summary judgment and should be disregarded.

STATEMENT OF UNDISPUTED FACTS

For purposes of the Motion, the material procedural facts are not disputed. Jerry D. and Valerie H. Bingham filed the Bingham Mitigation Plan in IDWR Docket No. CM-MP-2026-004 on May 28, 2026, seeking approval of an individual mitigation plan for ground water irrigation use formerly included within Bingham Ground Water District. Bingham Ground Water District participates in the 2024 Stipulated Mitigation Plan¹ approved in IDWR Docket No. CM-MP-2024-003, which addresses the same delivery call as the Bingham Mitigation Plan on behalf of ground-water irrigators within the District. The Binghams are former members of the District, but they petitioned for exclusion and thereafter operated outside the District's assessment, cost-sharing, and compliance structure. The District has notified the Binghams that they may contract for mitigation coverage under the 2024 Stipulated Mitigation Plan pursuant to Idaho Code section 42-5259. (Declaration of Thomas J. Budge, Ex. A.)

SUMMARY JUDGMENT STANDARD

IDWR contested cases are governed by the Department's Rules of Procedure, which authorize motions for summary judgment in accordance with Rule 56 of the Idaho Rules of Civil Procedure. IDAPA 37.01.01.220.03. Summary judgment is appropriate when the moving party shows that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(a).

ARGUMENT

A. The Binghams' broad request for summary judgment against IGWA's entire Notice of Protest should be denied.

The Binghams' broad request for summary judgment against IGWA's Notice of Protest fails because it rests on the wrong premise. The function of IGWA's protest is to provide notice of objections and trigger the contested-case process. IGWA was not required to prove its entire case or include all evidence supporting its objections. Nothing in the CM Rules or IDWR's rules of procedure requires that, nor is that the customary practice. A protest is a notice pleading, not an evidentiary submission.

¹ IGWA respectfully requests that the hearing officer take official notice of the 2024 Stipulated Mitigation Plan pursuant to the Department's Rule of Procedure governing official notice, IDAPA 37.01.01.602.

That matters because the Bingham are the proponents of the Bingham Mitigation Plan and the party seeking summary judgment. It is their burden to establish, through undisputed facts and supporting law, that the Bingham Mitigation Plan satisfies CM Rule 43 and that they are entitled to approval of the plan as a matter of law. IGWA has no obligation to disprove the plan or marshal its evidence in response until the Bingham first make that *prima facie* showing.

The Motion does not make that showing. It does not submit undisputed facts proving that the Bingham Mitigation Plan satisfies CM Rule 43.03, offsets the depletive effects of the Bingham's ground water use, prevents injury to senior water rights, includes adequate measurement and accounting, or provides enforceable mitigation obligations.

Because the Bingham have not satisfied their own burden, the hearing officer should deny the Motion to the extent it seeks wholesale summary judgment against IGWA's Notice of Protest. The sufficiency of the Bingham Mitigation Plan must be decided on the evidence presented under CM Rule 43, not on the mistaken assertion that IGWA was required to prove its entire case when it filed its Notice of Protest.

B. IGWA does not oppose a limited ruling that one-year mitigation plans are not categorically prohibited.

In addition to seeking wholesale summary judgment against IGWA's Notice of Protest, the Bingham seek summary judgment that "there is no legal basis or standard that a one-year mitigation plan is not allowable." (Memo. in Supp. of Bingham's Mot. for Summ. J., p. 4.) IGWA has never contended that one-year plans are categorically impermissible. If a one-year plan satisfies the requirements of CM Rule 43, it may be approved. IGWA's Notice of Protest cites concerns about the merits of the Bingham Mitigation Plan; it should not be construed as an assertion that one-year plans are categorically disallowed.

Accordingly, IGWA does not object to summary judgment limited to the conclusion that the CM Rules do not categorically preclude one-year mitigation plans. That limited ruling would not approve the Bingham Mitigation Plan, decide whether it satisfies Rule 43, or resolve IGWA's factual and legal objections to the plan's sufficiency. Those issues remain for hearing unless supported by a proper evidentiary showing on summary judgment.

C. Idaho law, read as a whole, does not allow an irrigator to bypass available ground water district mitigation coverage and obtain separate individual mitigation approval for the same delivery call outside the district framework.

The second issue on which the Bingham seek summary judgment is, "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." (Memo. in Supp. of Bingham's Mot. for Summ. J., p. 4.) The Bingham argue that because there is no express prohibition against individual mitigation plans in the Ground Water District Act or the CM Rules, such plans are necessarily allowed. That framing is too narrow. The question is not whether the Ground Water District Act uses magic words barring such a plan; the question is whether the Act, read as a whole and

harmonized with CM Rule 43, permits the Bingham to obtain approval of a separate individual mitigation plan for irrigation impacts formerly included within Bingham Ground Water District when the District participates in an approved mitigation plan for the same delivery call and the Bingham have the ability to participate in that approved plan through Bingham Ground Water District under Idaho Code section 42-5259. It does not. On this issue, summary judgment should be granted in IGWA's favor.

The material facts are undisputed: the Bingham Mitigation Plan concerns ground water irrigation on lands within Bingham Ground Water District that were formerly enrolled in the District; the District participates in an approved mitigation plan addressing the same delivery call; and the Bingham have the ability to mitigate through the District under the approved plan pursuant to Idaho Code section 42-5259. The legal question is whether the Bingham may reject that statutory path and obtain individualized mitigation approval outside the district-centric mitigation structure. This question is a matter of statutory interpretation.

Statutory interpretation is a question of law, and Idaho's compiled laws and proceedings must be liberally construed "with a view to effect their objects and to promote justice." Idaho Code § 73-102. Statutory language should be given its plain, usual, and ordinary meaning; where the statute is clear, the expressed legislative intent controls. Idaho Code § 73-113. Where a statute is capable of more than one conflicting construction, the statute must be construed as a whole, with interpretations that render provisions meaningless or produce absurd results disfavored. *Id.* When multiple statutory provisions are implicated, they must be compared, harmonized, and applied in a manner that gives effect to legislative intent, avoids absurd results, and promotes justice. *See Gomez v. Crookham Co.*, 166 Idaho 249, 457 P.3d 901 (2020).

The Bingham's argument rests on statutory silence. They assert that because neither the Ground Water District Act nor the CM Rules expressly says a former district member may not file an individual mitigation plan, the Director must allow one. But statutory silence is not permission to defeat the statutory framework. The Act must be read as a coherent whole, and when it is, the Legislature's design is apparent: mitigation for ground water irrigation impacts within an organized district is to be developed, funded, implemented, and administered through the district framework, including the specific contract mechanism the Legislature created for nonmembers who seek the benefits of district mitigation.

The Ground Water District Act establishes a collective framework for mitigation of irrigation impacts within organized districts. It authorizes district boards to develop, submit, and implement mitigation plans; acquire property and facilities necessary to exercise district powers; contract as necessary to carry out district purposes; and levy assessments to fund district operations and programs. Idaho Code § 42-5224. It then addresses mitigation obligations directly by authorizing the board to apportion "mitigation plan obligations" among district members, including obligations to limit diversions or perform other actions necessary to mitigate material injury to senior priority rights caused by ground water use within the district. Idaho Code § 42-5244A(1). Each member must bear a proportionate share of the district's total mitigation obligation. Idaho Code §

42-5244A(2). These provisions are the statutory machinery for developing, funding, implementing, and enforcing collective mitigation for district irrigation impacts.

Exclusion statutes allow lands to leave a district under limited conditions. Idaho Code §§ 42-5251 through 42-5254. But Idaho Code section 42-5259 preserves mitigation access for nonmembers by allowing a district, “[u]pon written request from any ground water user who is not a member of a district,” to contract with the nonmember so the nonmember may “participate fully in, and obtain all benefits of, any mitigation plan, purpose or activity the district currently has in force or is developing.” Idaho Code § 42-5259(1). Bingham Ground Water District has offered this to the Bingham. (Decl. of Thomas J. Budge, Ex. A.)

Read together, these provisions draw a practical and coherent line. Everyone residing within a ground water district has a path to mitigation through the district—either as a member or, for nonmembers, by contract. Non-irrigators are not required to be district members and may develop separate mitigation plans if they need mitigation. Irrigators, however, are required to participate in the district framework unless excluded under the limited statutory conditions governing exclusion. An excluded irrigator may choose to operate outside the district and without mitigation coverage if that is legally permissible. But if the excluded irrigator wants mitigation for a delivery call already addressed by the district’s approved plan, the Act requires participation through the district plan and the section 42-5259 contract mechanism.

That reading is compelled not only by the text but by the practical purpose of the Act. The ESPA contains thousands of ground water wells. IDWR cannot reasonably administer dozens or hundreds of individualized mitigation plans for similarly situated irrigators subject to the same delivery call, each with different requirements, standards, accounting protocols, compliance measures, enforcement mechanisms, and hydrologic assumptions. The Act avoids that administrative fragmentation by channeling irrigation mitigation through organized districts so mitigation can be planned, funded, measured, enforced, and administered collectively. Allowing excluded irrigators to obtain individualized plans for the same district irrigation impacts would frustrate that purpose and create the patchwork system the Act was designed to prevent.

CM Rule 43 does not authorize a different result. The rule allows mitigation plans to be proposed and evaluated, but it does not override the Ground Water District Act or permit approval of a plan inconsistent with Idaho law. To the contrary, Rule 43 requires the Director to consider whether “delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law.” IDAPA 37.03.11.043.03.a. The CM Rules also recognize that “[n]othing in these rules limits the Director’s authority to take alternative or additional actions relating to the management of water resources as provided by Idaho law.” IDAPA 37.03.11.002. Rule 43 must therefore be applied consistently with the district mitigation framework, not in a way that makes that framework optional for irrigators who prefer a separate plan.

Applied here, the statutory framework defeats the Bingham Mitigation Plan as a matter of law. The Bingham seek individual mitigation approval for irrigation uses formerly enrolled in Bingham Ground Water District, even though the District participates in an approved mitigation plan for the same delivery call and the Bingham can obtain mitigation coverage through the

District under Idaho Code section 42-5259. They may not reject that statutory path, avoid the associated cost-sharing and compliance obligations, and then obtain separate individual approval for the same mitigation need. That would give them mitigation coverage while denying the District and its members the protections the Legislature required.

For those reasons, the Director should find that Idaho law, read as a whole and harmonized with CM Rule 43, does not allow an irrigator to bypass available district mitigation coverage under Idaho Code section 42-5259 and obtain separate individual mitigation approval for the same delivery call outside the district framework.

D. The Motion’s unsupported assertions about IGWA’s protest go beyond the issues presented and should be disregarded.

The Motion also includes a series of unsupported statements that are not necessary to decide either discrete legal issue. For example, the Bingham argue that: “IGWA is not in the position to determine whether or not Bingham Mitigation Plan ... is sufficient to offset the depletive effect of ground water to prevent injury to the SWC,” “IGWA has no legal basis to require Bingham’s plan to compare to other mitigation plans,” “IGWA goes on to falsely, and without any basis whatsoever, allege that, ‘the Bingham seek to play Methodology Order risk on a year-to-year basis—providing no mitigation in years when curtailment is not ordered and only partial mitigation in years when their water rights would be fully curtailed,’” and “IGWA’s statement that Bingham would only provide ‘partial mitigation in years when their water rights would be fully curtailed’ should be disregarded.” *Id.* at 5-6.

These statements are not proper grounds for summary judgment. They are unsupported by evidence, are not tied to the two legal issues identified in the Motion, and seek advisory or merit rulings that should be reserved for hearing. The hearing officer should therefore disregard them for purposes of summary judgment.

CONCLUSION

The Bingham’s motion should be granted only in the narrow respect IGWA does not dispute: one-year mitigation plans are not prohibited as a matter of law and may be approved if they satisfy CM Rule 43. But the motion should be denied to the extent the Bingham seek a ruling that they may avoid the ground water district mitigation structure and obtain approval of their own mitigation plan for irrigation impacts already addressed by an approved district plan. Idaho’s Ground Water District Act does not expressly use the words “exclusive mitigation remedy,” but its text, structure, and specific provisions show that ground water irrigation mitigation within an organized district is to be developed, funded, implemented, and administered through the district framework, including the statutory contract mechanism for nonmembers under Idaho Code section 42-5259.

For these reasons, IGWA respectfully requests that the Director deny the Bingham’s Motion for Summary Judgment except to the limited extent it seeks recognition that one-year mitigation plans may be approved when they satisfy CM Rule 43. The Director should further rule that

the Bingham may not bypass the available ground water district mitigation framework and obtain approval of a separate individual mitigation plan for the same delivery call while district mitigation coverage remains available through Idaho Code section 42-5259.

Dated this 11th day of August, 2026.

RACINE OLSON, PLLP

By: 

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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:


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