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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 AMENDED 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. This motion is supported by the Declaration of Alan Jackson in Support of IGWA's Response to Bingham's Motion for Summary Judgment ("Jackson Declaration") filed contemporaneously herewith.

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 Binghams' 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' request for wholesale denial of IGWA's protest should therefore be denied.

In addition to the wholesale request for denial, 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 located within a ground water district with an approved mitigation plan 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 within an organized district to avoid the district's assessment, cost-sharing, and compliance structure while seeking separate mitigation coverage for the same delivery call already addressed through an approved district plan.

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. (Jackson Decl., Ex. 1.) 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. (Jackson Decl., Ex. 2.)

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

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.

of procedure requires that, nor is that the customary practice. A protest is a notice pleading, not an evidentiary submission.

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. 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 argued 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 decide whether the Bingham Mitigation Plan satisfies Rule 43, or resolve IGWA's factual and legal objections to the plan's sufficiency. Those issues remain for hearing.

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 Bingham also request summary judgment "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 of farmland located within Bingham Ground Water District when the District participates in an approved plan

for the same delivery call and the Bingham have the ability to participate in that approved plan. 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 groundwater irrigation on lands within Bingham Ground Water 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. 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. When multiple provisions bear on the same subject, they must be read together, harmonized, and applied in a way 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 explicitly forbid an irrigator within a ground water district from filing their own 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 water rights within an organized district is to be developed, funded, implemented, and administered through the district framework—not splintered into separate individual plans for irrigators subject to the same delivery call.

The Act establishes a collective framework for mitigation of irrigation water rights within organized ground water 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 authorizes 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 irrigation water rights.

Idaho Code section 42-5244A confirms that irrigator mitigation is to proceed through the district framework. It expressly authorizes non-irrigators to file a separate mitigation plan, without including a comparable authorization for irrigators. Idaho Code § 42-5244A(4). That omission is important. Under the rule of statutory construction *expressio unius est exclusio alterius*, the expression of one thing implies the exclusion of another. By expressly authorizing non-irrigators to

file separate mitigation plans, while omitting any similar authorization for irrigators, the Legislature confirmed that irrigators' mitigation obligations are to be addressed through the district.

The Act's membership provisions confirm this structure. The Legislature required irrigators within a district to be members, while allowing non-irrigators to participate voluntarily. Idaho Code § 42-5214. Accordingly, irrigators are allowed to exit the district only with board approval under the limited conditions. Idaho Code § 42-5251(1). A non-irrigator is not required to make the same showing. Idaho Code § 42-5251(2). These distinctions reinforce the statutory design: irrigation mitigation within an organized ground water district is handled through the district, while non-irrigators receive separate treatment.

Notably, the Act provides a path for nonmembers who do not have their own mitigation plan to obtain mitigation through the district by contract. Upon written request from a groundwater user who is not a district member, the district may contract with that 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 that to the Bingham. (Jackson Decl., Ex. 2.) Thus, the Bingham is not left without mitigation coverage even though they exited the District.

Read together, these provisions draw a practical and coherent line. Irrigators located within a ground water district with an approved mitigation plan receive mitigation coverage through the district, either as members or by contract. Non-irrigators are treated differently under the Act, and they may pursue separate mitigation plans under section 42-5244A(4).

That reading is compelled not only by the text but by the practical purpose of the Act. The ESPA contains thousands of groundwater 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 provides express authority for the Director to deny any mitigation plan that is not "in compliance with Idaho law." IDAPA 37.03.11.043.03.a. In addition, the Director may consider whether the plan "is in the public interest." IDAPA 37.03.11.043.03.j. Even if the Act did not categorically preclude an individual irrigator plan, it is not in the public interest to allow irrigators located within a ground water district with an approved mitigation plan for the same delivery call to avoid the district's assessment, cost-sharing, accounting, and compliance structure while seeking separate approval for the same mitigation obligation. Allowing that practice would encourage fragmentation, increase administrative burden, undermine collective mitigation planning, and create unequal treatment among similarly situated irrigators subject to the same delivery call. Rule 43.03.j gives the Director authority to prevent that result.

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 located within a ground water district with an approved mitigation plan to bypass available district mitigation coverage under Idaho Code section 42-5259 and obtain separate individual mitigation approval for the same delivery call. Alternatively, the Director should deny the Bingham Mitigation Plan under CM Rule 43.03.j because fragmented individual irrigator mitigation is not in the public interest where district mitigation coverage is already available.

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 the legal issues discussed above. For example, the Binghams 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 Binghams' plan to compare to other mitigation plans," "IGWA goes on to falsely, and without any basis whatsoever, allege that, 'the Binghams 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 Binghams 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 not tied to the legal issues identified in the Motion, and they seek advisory rulings that should be reserved for hearing. The hearing officer should therefore disregard them for purposes of summary judgment.

CONCLUSION

For these reasons, IGWA respectfully requests that the Director deny the Binghams' 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 Binghams have not established entitlement to wholesale summary judgment against IGWA's Notice of Protest. The Director should grant summary judgment in IGWA's favor on the legal issue presented in Section C and rule that Idaho law, read as a whole and harmonized with CM Rule 43, does not allow an irrigator located within a ground water district with an approved mitigation plan to bypass district mitigation coverage available through the district and obtain separate individual mitigation approval for the same delivery call. Alternatively, the Director should deny the Bingham Mitigation Plan under CM Rule 43.03.j because fragmented individual irrigator mitigation is not in the public interest where district mitigation coverage is already available.

Dated this 13th day of August, 2026.

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By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th 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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