

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 BINGHAMS'
MOTION TO STRIKE**

BACKGROUND

On May 28, 2026, Jerry D. Bingham and Valerie H. Bingham (the “Binghams”) submitted *Binghams’ Fifth Mitigation and Curtailment Plan* (“*Fifth Plan*”) to the Idaho Department of Water Resources (“Department”). Notice of the Binghams’ *Fifth Plan* was published in accordance with the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”). See IDAPA 37.03.11.043.02. The deadline for filing protests to its approval was June 29, 2026. *Notice of Prehr’s Conf.; Order Appointing Hr’s Officer* at 1. Idaho Ground Water Appropriators, Inc. (“IGWA”) filed *IGWA’s Notice of Protest* (“*Protest*”) with the Department on June 18, 2026—before the deadline.

On July 28, 2026, Hearing Officer Burdick held a prehearing conference on this matter. During the prehearing conference, counsel for the Binghams objected to IGWA’s participation on standing grounds, and the Hearing Officer directed briefing be submitted on the issue. *Order Authorizing Disc. & Email Service; Scheduling Order; & Notice of Hr’s* at 1. The Binghams were given a deadline of August 4, 2026, “to file a brief on the issue of IGWA’s standing to participate in this matter” and IGWA was given a deadline to respond of August 14, 2026. *Id.* at 2. The Binghams filed *Binghams’ Response and Motion to Strike IGWA’s Notice of Protest* (“*Motion to Strike*”) on August 4, 2026, asking that the *Protest* be struck and that IGWA “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.” *Motion to Strike* at 6. IGWA filed *IGWA’s Response to Binghams’ Motion to Strike Notice of Protest* (“*Response to Motion to Strike*”) on August 11, along with a declaration of Thomas J. Budge in support.

ANALYSIS

Ultimately, in this matter, the Binghams seek relief from curtailment during the 2026 irrigation season via approval of their proposed mitigation plan. *Fifth Plan* at 4–5. At the forefront, it is important to clarify that the continuation of these contested case proceedings is not dependent on IGWA’s ongoing participation in the matter. In their filings, both parties make the mistake of asserting that IGWA’s protest initiated this contested case. *Motion to Strike* at 1, 5; *Response to Motion to Strike* at 2. That is incorrect. “[T]here are only two elements to a contested case: (1) the agency must be empowered to determine the particular issue, and (2) the action must fit the statutory definition of an “order.” *Laughy v. Idaho Dep’t of Transp.*, 149 Idaho 867, 872, 243 P.3d 1055, 1060 (2010) (citations omitted). The Binghams’ filing triggered the Director’s independent duty to evaluate the *Fifth Plan* and approve or reject it in accordance with CM Rule 43, not IGWA’s filing of a protest. See I.C. § 67-5240; IDAPA 37.03.11.043.02. This

“contested case” exists with or without IGWA’s participation. So, IGWA’s status governs only whether IGWA is allowed to participate fully in these proceedings, not the categorization of this matter as a contested case.

I. IGWA meets the Rule of Procedure 154 definition of protestant.

The Bingham’s lead argument is that IGWA “does not meet the definition of protestant under Rule 154” because the *Fifth Plan* would mitigate injury to the Surface Water Coalition (“SWC”) and “does not involve any statutory right, claim or interest by IGWA.” *Motion to Strike* at 2. That misreads Rule of Procedure 154, which in this matter requires two things: opposition to an application and “a statutory right to contest.” IDAPA 37.01.01.154. IGWA plainly opposes the plan. The statutory right comes from CM Rule 43.02, which directs that mitigation plans be considered “under the procedural provisions of Section 42-222, Idaho Code, in the same manner as applications to transfer water rights.” IDAPA 37.03.11.043.02. Idaho Code § 42-222 provides for “anyone who desires to protest the proposed change [to] file notice of protests with the department” Therefore, § 42-222 supplies the “statutory right to contest” required to satisfy the Department’s definition of protestant. *See* IDAPA 37.01.01.154.

The Bingham’s argue the *Protest* states only “generalized claims” and asserts no interest of IGWA’s own. *Motion to Strike* at 2. But nothing in CM Rule 43 or Rule of Procedure 300.02 requires a protestant to plead a property interest or prove injury at the threshold. Rule of Procedure 300.02 only requires a pleading include a statement of facts, governing law, and relief sought. IDAPA 37.01.01.300.02.a–c. IGWA noted that its *Protest* was made pursuant to CM Rule 43.02 and Rule of Procedure 154 and objected to the approval of the *Fifth Plan* on three grounds—incomplete offset, absence of durable long-term mitigation, and improper individual plan approval where an approved district plan exists. *Protest* at 1–2. That satisfies the notice function of a protest. Disagreement with those grounds is a merits dispute, not a basis to strike the *Protest* or bar IGWA’s participation. IGWA is a proper protestant pursuant to Rule of Procedure 154.

II. Because IGWA qualifies as a protestant, it is a party with full participation rights; standing is not a separate gate to a hearing.

The Bingham’s argue that IGWA lacks legal standing to participate in this matter because IGWA has no “distinct, palpable injury” and cannot show how approval of the *Fifth Plan* would affect its members. *Motion to Strike* at 2. The Bingham’s reading conflates protestant status with common-law standing and would read the CM Rule 43.02 incorporation of § 42-222 out of the rule. The only interest-type showing the Rules of Procedure require is specific to those seeking intervenor status. A nonparty must show a “direct and substantial interest” under Rules of Procedure 350 and 353, whereas a protestant’s corresponding requirement is the “statutory right to contest” discussed previously. *See* IDAPA 37.01.01.154. Under Rule of Procedure 150, a protestant is a party, not a nonparty seeking leave to participate. Every party “may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in a contested case.” IDAPA 37.01.01.156. Where the legislature supplies a discrete standing/participation standard, that standard governs. *See Crookham v. Cnty. of Canyon*, 176 Idaho 848, 582 P.3d 1071, 1077–79 (2026) (confirming that

Idaho's standing doctrine is non-constitutional, "leaving it susceptible to legislative displacement" and partially overruling *Evans v. Teton Cnty.*, 139 Idaho 71, 75, 73 P.3d 84, 88 (2003)). Requiring a qualifying protestant to clear an additional injury-in-fact showing would add an element the protestant definition does not contain. IGWA qualifies as a protestant under Rule of Procedure 154 because it has satisfied the requirements of the notice pleading, thereby establishing a right to fully participate in this contested case. To the extent the Bingham's objection sounds in the weight of IGWA's interest, that is a factual matter for the hearing, not a precondition to participation.

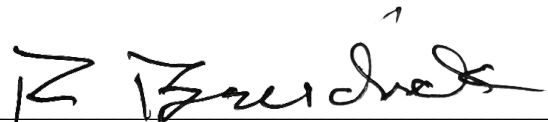
III. IGWA does not need to satisfy Rule of Procedure 353.

IGWA is not seeking intervention in accordance with Rules of Procedure 350 and 353. As discussed above, the "direct and substantial interest" showing applies to those seeking intervenor status under Rule of Procedure 353 and does not govern a party, such as IGWA, who participates as a protestant.

ORDER

IT IS HEREBY ORDERED that the Bingham's motion to strike *IGWA's Notice of Protest* is DENIED.

DATED this 25th day of August 2026.



ROGER S. BURDICK
Hearing Officer

CERTIFICATE OF SERVICE

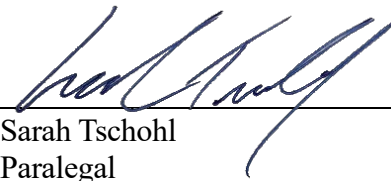
I HEREBY CERTIFY that on this 25th day of August 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

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