RECEIVED
Apr 02, 2026
DEPARTMENT OF
WATER RESOURCES

Thomas J. Budge (ISB# 7465)
RACINE OLSON, PLLP
201 E. Center St. / P.O. Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
tj@racineolson.com

Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR FOR THE BENEFIT OF A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALLS CANAL COMPANY	~~Docket No. CM-DC-2010-001~~ ~~Docket No. CM-MP-2015-003~~ Docket No. CM-MP-2026-003 **IGWA'S RESPONSE IN OPPOSITION TO JOINT MOTION FOR ORDER APPROVING 2026-2027 INTERIM STIPULATION; NOTICE OF PROTEST**
IN THE MATTER OF THE MITIGATION PLAN FILED BY A&B IRRIGATION DISTRICT FOR THE DISTRIBUTION OF WATER TO WATER RIGHTS HELD BY THE SURFACE WATER COALITION	

Idaho Ground Water Appropriators, Inc. ("IGWA"), by and through counsel, acting for and on behalf of its members, submits this response in opposition to the *Joint Motion for Order Approving 2026-2027 Interim Stipulation* ("Joint Motion") filed by A&B Irrigation District ("A&B") and the Surface Water Coalition ("SWC") on March 24, 2026, in this matter. This response also serves as IGWA's notice of protest of the 2026-2027 Interim Stipulation attached to the Joint Motion.

Background

A&B filed *A&B Irrigation District's Amended Rule 43 Mitigation Plan* with the Idaho Department of Water Resources ("IDWR" or "Department") on May 21, 2015 (the "2015 Plan").

It provides that A&B will "mitigate for any shortfalls caused by [A&B's] junior priority ground water that are subject to curtailment." It relies first on conversions and CREP acres to mitigate for A&B's share of demand shortfall calculations under the Methodology Order. To the extent those actions are insufficient, it requires A&B to deliver storage to the SWC to fully mitigate A&B's share of demand shortfall calculations.

The Joint Motion asks the Director to approve a new mitigation plan titled 2026-2027 Interim Stipulation (the "Interim Stipulation") that will replace the 2015 Plan for the 2026 and 2027 irrigation season. Unlike the 2015 Plan, the Interim Stipulation is a stipulated agreement between A&B and the SWC proposing two mitigation actions.

First, the Interim Stipulation proposes that A&B deliver surface water to 3.576 acres that were historically irrigated with groundwater. IGWA has no objection to this component of the Interim Stipulation.

Second, the Interim Stipulation proposes that A&B deliver storage water to the SWC. However, instead of providing the amount storage required to mitigate A&B's proportionate share of demand shortfall calculations under the Methodology Order, the Interim Stipulation fixes A&B's storage water obligation at 120 acre-feet. IGWA objects to the adequacy of this component of the Interim Stipulation.

Argument

As discussed below, IDWR should not address the Joint Motion until the Interim Stipulation has been advertised as required by Rule 43 and Idaho Code § 42-222.

If IDWR elects to address the Joint Motion without advertisement, it should be denied because it is not supported by admissible evidence as required under the summary judgment standard required by IDAPA 37.01.01.220.03 and I.R.C.P. 56.

If IDWR addresses the substance of the Joint Motion on the present record, it should be denied because (a) it is predicated on the false assertion that A&B's 1948 water right is exempt from curtailment under the Methodology Order, (b) the Interim Stipulation does not represent A&B's proportionate obligation under the Methodology Order, (c) the Interim Stipulation is not comparable with mitigation obligations of other junior-priority groundwater irrigators with stipulated mitigation plans, and (d) the Interim Stipulation may injure other water users.

I. IDWR should not address the Joint Motion until the Interim Stipulation is advertised.

CM Rule 43 provides that, upon receipt of a proposed mitigation plan, "the Director will provide notice, hold a hearing as determined necessary, and consider the plan under the procedural provisions of Section 42-222, Idaho Code, in the same manner as applications to transfer water rights." Section 42-222 requires notice to be provided in the manner required by Section 42-203A, and Section 42-203A requires newspaper publication.

A stipulated mitigation plan inherently raises different issues than a non-stipulated plan. Whereas a non-stipulated plan must strictly comply with the material injury factors set forth in Conjunctive Management Rule 43, a stipulated plan may not. IDAPA 37.03.11.043.03.o. Deviations from the standard factors may cause a stipulated plan to produce ancillary impacts on other water users that would not occur with a non-stipulated plan. The Interim Stipulation must be published because of its potential to adversely affect other water users in ways that were not possible under the 2015 Plan.

In addition, the Interim Stipulation is materially different from the 2015 Plan. Unlike the 2015 Plan, which requires A&B to provide variable amounts of storage water according to A&B's share of demand shortfall calculations under the Methodology Order, the Interim Stipulation fixes A&B's storage water obligation at 120 acre-feet. This fixed obligation is a significant departure from the 2015 Plan's variable, Methodology Order-driven structure. Publication is necessary because the terms of the Interim Stipulation are materially different.

If the Department publishes notice of the Interim Stipulation, the Director or hearing officer need not address the remaining arguments in this response brief. The remaining arguments can be addressed later when the Department takes up the merits of the Interim Stipulation following publication and the protest period.

II. If IDWR elects to address the Joint Motion on the present record, it should be denied because it is not supported by admissible evidence.

This is a contested case governed by the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code ("APA"). The APA provides that parties must receive notice and an opportunity to present evidence and argument at hearing in a contested case. Idaho Code § 67-5242. It further provides that "the agency record constitutes the exclusive basis for agency action in contested cases." Idaho Code § 67-5249(4).

The APA authorizes state agencies to promulgate rules implementing the APA. Idaho Code § 67-5206. Procedural rules promulgated by IDWR allow contested cases to be decided on summary judgment in accordance with rule 56 of the Idaho Rules of Civil Procedure. IDAPA 37.01.01.220.03.

Under I.R.P.C. 56(a), summary judgment may be issued only if there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The moving party bears the burden of proving the absence of genuine issues of fact, and that it is entitled to judgment as a matter of law. *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 923 P.2d 416, 420 (1996). The nonmoving party is entitled to the benefit all reasonable inferences that can be drawn from evidentiary facts. *Ambrose by & ex rel. Ambrose v. Buhl Joint Sch. Dist. #412*, 126 Idaho 581, 584, 887 P.2d 1088 (Ct.App. 1994). A motion for summary judgment must be denied if the evidence, when construed in the light most favorable to the nonmoving party, presents a genuine issue of material fact or if the moving party is not entitled to judgment as a matter of law. *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009).

Here, the Joint Motion seeks approval of a fixed storage water obligation (120 acre-feet) for two irrigation seasons. Whether that request can be approved under the Conjunctive Management Rules and other applicable law depends on factual assertions regarding, among other things, the impact of A&B's junior-priority groundwater use on the SWC, how the mitigation actions required by the Interim Stipulation compare to A&B's obligations under the Methodology Order and to the mitigation obligations of other junior groundwater users with stipulated mitigation plans, and whether the Interim Stipulation may adversely affect other users.

No affidavits or declarations have been filed in support of the Joint Motion. Consequently, there is no evidence in the record establishing the material facts necessary for IDWR to approve the Interim Stipulation without a hearing. Therefore, if IDWR elects to address the Joint Motion prior to republication, it should be denied as unsupported by admissible evidence under the summary judgment standard pursuant to IDAPA 37.01.01.220.03.

III. If IDWR reaches the substance of the Joint Motion, it should be denied on the merits because it is predicated on false assertions of fact and is contrary to Idaho law.

If IDWR reaches the substance of the Joint Motion on the present record, it should be denied because (a) the Interim Stipulation is predicated on the false assertion that A&B's 1948 water right is exempt from curtailment under the Methodology Order; (b) the Interim Stipulation

is predicated on the false assertion that 120 acre-feet represents A&B's proportionate obligation under the Methodology Order; (c) the 120 acre-foot obligation is not comparable with Methodology Order requirements or other stipulated mitigation plans; and (d) the Interim Stipulation may injure other water users.

A. The Interim Stipulation is predicated on the false assertion that A&B's 1948 water right is exempt from curtailment under the Methodology Order.

The Interim Stipulation claims that 120 acre-feet of storage "represents the estimated proportionate share" attributable to acres irrigated by A&B groundwater rights "with priorities junior to September 9, 1948 (i.e. 36-16749 et al.)." It asserts that A&B should not have to mitigate for its 1948 priority water right "until IDWR determines which junior priority ground water rights are responsible to mitigate for in-season demand shortfall (i.e. material injury)."

The notion that IDWR has not yet determined which groundwater rights are responsible to mitigate for in-season demand shortfalls is mistaken. The Methodology Order determines which junior-priority ground water rights will be curtailed in response to demand shortfall calculations. The method employed in the current Methodology Order has been in place since 2023, and A&B has already had its opportunity to appeal. Thus, the question of "which junior priority ground water rights are responsible" has already been answered.

The notion that A&B's 1948 right is exempt from curtailment is also mistaken. Applying the Methodology Order, the Director issued the *Order Revising April 2025 Forecast Supply and Continuing May 15, 2025, Curtailment* on July 10, 2025 ("July 2025 As-Applied Order"), which predicted an in-season demand shortfall of 75,300 acre-feet and it ordered curtailment of groundwater rights junior to October 11, 1900. Contrary to the Interim Stipulation, A&B's 1948-priority water right is in fact subject to curtailment.

Therefore, if IDWR addresses the Interim Stipulation on the merits, it should be denied because it is predicated on false assertions that the Methodology Order does not decide which groundwater rights are subject to curtailment and that pre-1948 water rights are exempt from curtailment.

B. The Interim Stipulation is predicated on the false assertion that 120 acre-feet represents A&B's proportionate obligation under the Methodology Order.

The Interim Stipulation, Addendum A, asserts that "[t]he stipulated mitigation storage obligation (120 acre-feet) represents the estimated proportionate share of any in-season demand

shortfall that could be attributed to acres irrigated by A&B's groundwater rights … with priorities junior to September 9, 1948."

Even if A&B's 1948 right were exempt from curtailment, the record demonstrates that 120 acre-feet does not represent A&B's proportionate share of demand shortfall calculations. In the *Final Order Regarding April 2025 Forecast Supply* issued April 16, 2025 ("April 2025 As-Applied Order"), the Director predicted an in-season demand shortfall of 63,000 and ordered curtailment of water rights junior to August 28, 1955. Under that scenario, A&B's proportionate share of the predicted demand shortfall was 384 acre-feet—more than three times greater than the 120 acre-feet proposed in the Interim Stipulation.

When A&B's 1948 right is curtailed, A&B's proportionate share is far greater. The July 2025 As-Applied Order imposed a curtailment date of October 11, 1900, which caused A&B's proportionate mitigation obligation to increase from 384 acre-feet to 5,039 acre-feet. The 120 acre-feet proposed by the Interim Stipulation represents less than three percent of A&B's mitigation obligation during the driest years when its 1948 right is subject to curtailment.

Since the Interim Stipulation's stated rationale for allowing A&B a fixed mitigation obligation of 120 acre-feet is false, and since A&B's actual proportionate share is much higher, the Interim Stipulation should be denied.

C. The Interim Stipulation is not comparable with the mitigation obligations of other junior-priority groundwater irrigators with stipulated mitigation plans.

The Joint Motion requests that the Interim Stipulation be approved under Conjunctive Management Rule 43.03.o, which allows seniors to enter into a stipulated mitigation plan "even though such plan may not otherwise be in full compliance with these provisions." This provision allows considerable flexibility in developing mitigation plans that more effectively meet long-term water management objectives than may occur under the Methodology Order. However, it does not allow the SWC to play king by holding some groups of junior-priority water users to arduous mitigation standards while giving others a free ride.

Idaho's water is a public resource, and administration is governed by state law, under the direction of the Department. The first section of Idaho's water code instructs the Department, in performing its duties, to "equally guard all the various interests involved." Idaho Code § 42-101. This is consistent with Article I, Section 2 of the Idaho Constitution which provides that government is instituted "for their equal protection and benefit," and that "no special privileges

or immunities shall ever be granted" beyond what the legislature prescribes. It is also consistent with the Equal Protection Clause of the U.S. Constitution which provides that "[n]o State shall … deny to any person within its jurisdiction the equal protection of the laws."

The Interim Stipulation proposes to allow A&B to avoid curtailment by providing a fraction of the mitigation required by other junior-priority groundwater users with stipulated mitigation plans. To illustrate, 120 acre-feet represents less than one tenth of one percent of A&B's average annual groundwater use. By contrast, the 2024 Stipulated Mitigation Plan approved in CM-MP-2024-003 requires IGWA's member districts to reduce their groundwater use by 205,000 acre-feet and to provide 75,000 acre-feet, which collectively represents more than 15 percent of their average annual groundwater use.

Allowing the SWC to pick and choose who has to provide meaningful mitigation and who does not would give the SWC de facto control over administration of Idaho's water resources and subvert the Department's statutory duty to "equally guard all the various interests involved."

Therefore, if IDWR addresses the Interim Stipulation on the merits, it should be denied because it is contrary to Idaho law.

D. The Interim Stipulation may harm other water users.

Finally, the Interim Stipulation should be denied because the sweetheart deal given to A&B will effectively shift the burden of A&B's junior-priority groundwater use to other water users. The 2024 Stipulated Mitigation Plan approved in Docket No. CM-MP-2024-003 ties the mitigation obligations of IGWA's member ground water districts to carryover storage of SWC members and to Snake River reach gains between Blackfoot and Minidoka Dam. The SWC cannot subsequently enter into stipulated mitigation plans with other groundwater users that effectively shifts the burden of their pumping onto IGWA's members by directly or indirectly diminishing SWC carryover storage and Snake River reach gains.

Allowing A&B to provide a fraction of the storage required by the Methodology Order and other stipulated mitigation plans will negatively effect the storage water accounts of SWC members, which will, in turn, require IGWA's members to deliver more storage to the SWC under the 2024 Stipulated Mitigation Plan, effectively shifting the effect of A&B's pumping onto IGWA members.

In addition, by allowing A&B to mitigate without any conservation of groundwater, Snake River reach gains are more likely to drop below the 2023 threshold prescribed by the 2024

Stipulated Mitigation Plan, which will, in turn, require IGWA's members to rent additional storage for the SWC, effectively shifting the effects of A&Bs pumping onto IGWA members.

Therefore, if IDWR addresses the Interim Stipulation on the merits, it should be denied because it may harm other water users.

Conclusion

On one hand, the Interim Stipulation is encouraging because the SWC's acceptance of 120 acre-feet of storage from A&B—rather than the 5,039 acre-feet required under the Methodology Order or comparable amounts to what would be required under the 2024 Stipulated Mitigation Plan—demonstrates that the SWC is receiving enough water to meet their irrigation needs, even during the driest years.

Still, to the extent established mitigation actions provide sufficient water to meet the needs of the SWC, the mitigation burden must be borne equitably among junior groundwater users. One group cannot be held to an arduous standard while another gets a free pass.

For the foregoing reasons, IGWA respectfully requests that IDWR decline to address the Joint Motion unless and until the Interim Stipulation is advertised. If IDWR publishes notice, IGWA reserves the right to protest any aspect of the Interim Stipulation, and the remaining arguments in this response brief can be addressed later in the proceeding.

If the Department elects to address the substance of the Joint Motion now, it should be denied because it is not supported by admissible evidence as required under the summary judgment pursuant to IDAPA 37.01.01.220.03 and I.R.P.C. 56.

If IDWR nonetheless reaches the substance of the Joint Motion on the present record, it should be denied because (a) the Interim Stipulation is predicated on false assertions that the Methodology Order does not decide which groundwater rights are subject to curtailment, and that pre-1948 water rights are exempt from curtailment; (b) the Interim Stipulation is predicated on the false assertion that 120 acre-feet represents A&B's proportionate obligation under the Methodology Order; (c) the 120 acre-foot obligation is not comparable with Methodology Order requirements or other stipulated mitigation plans; and (d) the Interim Stipulation will injure IGWA's member ground water districts and their patrons.

Respectfully submitted this 2nd day of April, 2026.

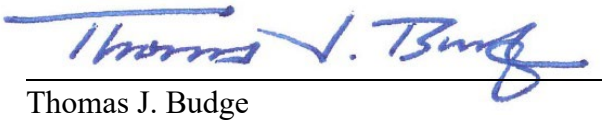
RACINE OLSON, PLLP

By: 

Thomas J. Budge
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2026, I cause the foregoing document to be served on the persons below via the method below:



Thomas J. Budge

Director Mathew Weaver Garrick Baxter Sarah Tschohl Idaho Department of Water Resources 322 E Front St. Boise, ID 83720-0098	mathew.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov
Gail McGarry U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234	emcgarry@usbr.gov
John K. Simpson Travis L. Thompson Abby B. Bitzenburg MARTEN LAW P. O. Box 63 Twin Falls, ID 83303-0063	tthompson@martenlaw.com jsimpson@martenlaw.com abitzenburg@martenlaw.com jnielsen@martenlaw.com
Norman M. Semanko Garrett M. Kitamura PARSONS BEHLE & LATIMER 800 W. Main St. Suite 1300 Boise, Idaho 83702	nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com
Dylan Anderson DYLAN ANDERSON LAW PO Box 35 Rexburg, Idaho 83440	dylan@dylanandersonlaw.com

Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC 1449 E 17th St, Ste A PO Box 3005 Idaho Falls, ID 83403	sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202	david.gehlert@usdoj.gov
Michael A. Kirkham City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405	mkirkham@idahofallsidaho.gov
Sarah A Klahn Max C. Bricker Somach Simmons & Dunn 2033 11th Street, Ste 5 Boulder, Co 80302	sklahn@somachlaw.com mbricker@somachlaw.com vfrancisco@somachlaw.com
Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205	rdiehl@pocatello.us
Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702	cbromley@mchughbromley.com cmchugh@mchughbromley.com
Robert E. Williams WILLIAMS, MESERVY, & LOTHSPEICH, LLP P.O. Box 168 Jerome, ID 83338	rewilliams@wmlattys.com
Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405	rharris@holdenlegal.com

COURTESY COPY TO:	
Andrew J. Waldera Sawtooth Law Offices, PLLC 1101 W. River Street, Ste. 110 Boise, ID 83702	andy@sawtoothlaw.com
Jerry R. Rigby Rigby, Andrus & Rigby Law, PLLC P.O. Box 250 Rexburg, ID 83440	jrigby@rex-law.com
Corey Skinner IDWR-Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033	corey.skinner@idwr.idaho.gov
Craig Chandler IDWR – Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402	craig.chandler@idwr.idaho.gov
William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318	wparsons@pmt.org wparsons@magicvalley.law