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DEPARTMENT OF
WATER RESOURCES

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**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

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| 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~~<br>~~Docket No. CM-MP-2015-003~~<br>Docket No. CM-MP-2026-003<br><br>**REPLY IN SUPPORT OF JOINT MOTION FOR ORDER APPROVING 2026-2027 INTERIM STIPULATION** |
| 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 | |

COME NOW, 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, by and through their undersigned attorneys of record, and file this *Reply* in

support of the joint motion for order approving 2026-27 Interim Stipulation. This reply responds to *IGWA's Response in Opposition to Joint Motion for Order Approving 2026-2027 Interim Stipulation; Notice of Protest* ("*IGWA Br.*") filed on April 2, 2026.

**ARGUMENT**

IGWA's response is the latest effort in its crusade to have the Director deny any other stipulated mitigation, other than the Ground Water Districts' 2024 Stipulated Plan. IGWA believes that its members' plan is the "gold standard" and that the SWC should not, and cannot, stipulate with any other groundwater user. To the contrary, A&B's mitigation plan has been previously approved by IDWR multiple times, and the fact that A&B and SWC have stipulated to a defined quantity of storage water for the next two years does not change the components of that approved plan or require re-publication. Although IGWA may want to initiate additional litigation and see A&B's landowners curtailed in the next two years, that is not the goal of SWC and A&B with respect to the present interim plan.

Further, where the Director recently indicated he was willing to entertain an informal process to address mitigation plan standards and guidance, the SWC and A&B wish to see that the process come to fruition this year, rather than spend considerable time and effort on additional litigation over multiple mitigation plans. If IGWA is truly concerned about the proper mitigation standard that junior ground water users must meet, including its own members, then it should welcome that effort and process.

## I. Publication of the Joint Motion and Interim Stipulation is Unnecessary.

IGWA wrongly asserts that publication of the parties stipulated plan is necessary because it "inherently raised different issues" than a non-stipulated plan and that it may "produce ancillary impact on other water users that would not occur with a non-stipulated plan." *IGWA*

*Br.* at 3. To the contrary, A&B has an approved mitigation plan that provides for conversion of certain groundwater acres and delivery of storage to the SWC. Whereas A&B and the SWC have stipulated to a defined quantity of storage for mitigation for 2026-2027, that program is no different than the 2024 Stipulated Plan with the nine ground water districts, the stipulated plan with the Cities, the stipulated plan with the Water Mitigation Coalition, and the stipulated plan with Southwest Irrigation District.

Moreover, the fact that SWC stipulated with A&B to a quantity of storage in 2025 that was approved by the Director, and that stipulation was not published, is grounds for the Director to take the same action for purposes of the *Interim Stipulation* for 2026-27. Nothing in the CM Rules requires the Department to re-publish a mitigation plan just because the senior water user agrees to a defined quantity of storage mitigation. Further, nothing in the stipulated plan between SWC and A&B affects IGWA's members or their stipulated plan that has been approved. Indeed IGWA's claim that stipulated plans may "produce ancillary on other water users" has not been a criteria that has been evaluated for any of the stipulated plans listed above.

Perhaps IGWA has changed its position and now believes that all of these stipulated plans needs to be re-published for review under new undefined standards and for a determination on whether or not those plans affect its members? Regardless, the Director has authority to accept and approved the stipulated plan consistent with prior action in this delivery call, including the approval of the 2025 interim stipulation.

Finally, the Director should approve the stipulated plan consistent with prior district court precedent on such issues. *See Memorandum Decision and Order*, *Cities of Bliss et al. v. Spackman*, Minidoka County Dist. Ct., Fifth Jud. Dist., Case No. CV-2015-172 (Sept. 8, 2015) ("*Memorandum Decision*").

## II. The Joint Motion is Not a Summary Judgment Motion.

IGWA erroneously asserts that the *Joint Motion* is a "summary judgment motion" to be evaluated under I.R.C.P. 56. Contrary to IGWA's claim, the joint motion for the Director to approve the interim stipulation is not a Rule 56 motion for summary judgment. The parties are simply stipulating to a defined quantity of storage for the next two years consistent with the approved actions under A&B's mitigation plan. The alleged questions of fact IGWA raises are "red herrings" that have no relevance to the parties' stipulation and should be disregarded. *See IGWA Br.* at 4. In other words, IGWA is asking the Director to evaluate and review this stipulation under new standards and criteria that have not been applied to any other stipulated plan in an effort to have A&B's groundwater rights curtailed over the next two years.

In short, the request to approve the stipulated plan is not a summary judgment motion and IGWA's attempt to create more litigation with parties that have agreed to a mitigation plan should be rejected.

## III. The Interim Stipulation Complies with the Department's CM Rules.

CM Rule 43 allows the Director to consider "whether the petitioners [SWC] and respondents [A&B] have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions." CM Rule 43.03.o; *see also*, *Memorandum Decision* at 8-10. IGWA reads this rule as allowing "considerable flexibility in developing mitigation plans that more effectively meet long-term water management objectives than may occur under the Methodology Order." *IGWA Br.* at 6. Stated another way, IGWA argues that CM Rule 43.03.o allows the Director to approve the Ground Water Districts' plan but no one else's.

Contrary to IGWA's misguided interpretation, the Director has previously approved several stipulated mitigation plans in the SWC Delivery Call matter (Water Mitigation Coalition, SWID, Coalition of Cities, A&B, etc.). Many plans have defined storage quantities that may not equal the injury or proportionate share of the injury that the Director determines under the Sixth Methodology Order. *See Order Revising April 2025 Forecast Supply and Continuing May 16, 2025 Curtailment Order (Methodology Steps 5 & 6)* (July 10, 2025) at 11, n. 6 ("Due to the nature of the mitigation plans for SWID, the Ground Water Districts, the Coalition of Cities, and the Water Mitigation Coalition, these entities do not need to establish that they can mitigate for their proportionate share of the IDS"); *see also*, *Final Order Establishing 2025 Reasonable Carryover (Methodology Step 9)* (Nov. 30, 2025) at 5, n. 10 ("Participants in the mitigation plans approved for the Ground Water Districts, SWID, the Coalition of Cities, and the Water Mitigation Coalition do not need to establish their ability to mitigate for their proportionate share of the reasonable carryover shortfall"). That fact does not disqualify such stipulated plans from being approved. *See Memorandum Decision* at 9-10.

The fact that a stipulated plan may not fully mitigate the Director's determined material injury, or a proportionate share thereof, does not mean that it must be outright denied as IGWA suggests. Notably, the 2024 Stipulated Plan filed by IGWA's member ground water districts provided a defined quantity of storage water (75,000 acre-feet) even though it did not fully mitigate the final 2025 in-season demand shortfall (49,100 acre-feet) and the reasonable carryover storage injury (86,756 acre-feet). *See Final Order Establishing 2025 Reasonable Carryover (Methodology Step 9)* (Nov. 30, 2025).

As such IGWA's claims that A&B's stipulated plan is inadequate or constitutes a "free ride" are baseless and should be denied.[1] Finally, there is no rule that all mitigation plans have to the same or "comparable" under some misguided "equal protection" analysis. *See IGWA Br.* at 6-7. IGWA implies that all junior users with stipulated plans must provide similar amounts of mitigation in order for IDWR to "equally guard the various interests involved." *Id.; see* I.C. § 42-101. Whereas the SWC has stipulated to various mitigation plans with varying actions and quantities, the Director has not applied an "equal protection" standard under the constitution to determine which stipulations get approved or denied. IGWA misreads the statute as imposing a constitutional standard that is wholly inapplicable. *See e.g. Nelson v. City of Pocatello*, 170 Idaho 160, 167, 508 P.3d 1234, 1241 (2022) ("When addressing equal protection claims, we apply a three-step analysis: '(1) identifying the classification under attack; (2) identifying the level of scrutiny under which the classification will be examined; and (3) determining whether the applicable standard has been satisfied.'").

IGWA has failed to show how the Director's approval of a stipulated mitigation plan creates a "suspect class" or infringes upon its members' "fundamental rights" in any way. IGWA's members have "safe harbor" and are not subject to curtailment provided they comply with their approved plan. Yet, IGWA insists on demanding curtailment of others whose plans they believe are insufficient. IGWA's arguments are simply their belief that what SWC and A&B have stipulated to is "not enough" or is somehow "unfair." This is not the legal standard under the CM Rules and Idaho water law, and IGWA does not get to play "judge and jury" on the stipulated mitigation plans of other groundwater users. *See Memorandum Decision* at 10-11 ("The Court finds that the Director's consideration of, and reliance on, such factors in effectively

[1] The Interim Stipulation does not "exempt" A&B's water rights from administration rather it provides an agreed upon mitigation plan including conversions and storage water to avoid curtailment for 2026 and 2027.

rejected the Cities' mitigation plan with respect to the first mitigation year was misplaced and consequently an abuse of discretion").

Finally, IGWA wrongly alleges the stipulated plan with A&B "will effectively shift the burden of A&B's junior-priority groundwater use to other water users." *IGWA Br.* at 7. IGWA provides no analysis to this claim other than to allege that A&B's pumping will "diminish" "SWC carryover storage and Snake River reach gains." IGWA's members have a stipulated plan that operates pursuant to its terms. The requirement to deliver storage water to the SWC is not dependent or conditioned on the actions of other groundwater users in any way. IGWA is not required to deliver more storage to SWC as a result of the pumping by other groundwater users, including A&B. Again, this argument is a "red herring" in an attempt to have the Director curtail A&B's groundwater rights in 2026 and 2027.

## CONCLUSION

The SWC and A&B have agreed to a stipulated amount of storage for purposes of 2026 and 2027 to avoid uncertainty during that period. The action is part of A&B's approved plan and IGWA should not be allowed to file what is effectively an untimely protest contrary to the deadlines in the CM Rules and Idaho statutes. A&B is not getting a "free pass" as it continues to implement its surface water conversion deliveries and is providing storage water to the SWC. IGWA's members have "safe harbor" pursuant to the Ground Water Districts' 2024 Plan, and their insistence that other juniors must follow suit or be curtailed is unreasonable and without merit.

Again, if IGWA wants to have the Director evaluate proper standards and criteria for all stipulated plans, including its own, then the SWC and A&B would welcome the informal process the Director is open to conducting this year. While IGWA would rather litigate the issue in a

series of contested cases with various groundwater users (Falls Water Co, Falls Irrigation Dist, Jerry Bingham, etc.), the SWC and A&B believe the parties' time and effort could be better spent on identifying acceptable mitigation guidance and defined standards that could be agreed to by consensus.

The SWC and A&B respectfully request the Director to approve the Joint Motion accordingly.

DATED this 3rd day of April, 2026.

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*/S/: Travis L. Thompson*

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## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2026, I served a true and correct copy of the foregoing *Reply in Support of Joint Motion for Order Approving 2026-2027 Interim Stipulation* on the following by the method indicated:

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