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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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-MP-2026-003 ~~Docket No. CM-DC-2010-001~~ ~~Docket No. CM-MP-2015-003~~ **AMERICAN FALLS-ABERDEEN GROUND WATER DISTRICT'S JOINDER IN SUPPORT OF *IGWA'S RESPONSE 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	

COMES NOW American Falls-Aberdeen Ground Water District ("AFA"), by and through its undersigned counsel, and hereby joins in support of *IGWA's Response in Opposition to Joint Motion for Order Approving 2026-2027 Interim Stipulation; Notice of Protest* ("*IGWA Response*") filed in the captioned matters on April 2, 2026. In addition, AFA states as follows.

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, seeks approval of a *2026-2027 Interim Stipulation* that materially changes the terms of A&B's mitigation plan in IDWR Docket No. CM-MP-2015-003.[1] The *Joint Motion* seeks to fix A&B's storage water obligation at 120 acre-feet ("AF") per year in both 2026 and 2027, rather than keep the obligation variable based on A&B's proportionate share of the SWC's demand shortfall as determined by the Idaho Department of Water Resources ("IDWR"). *See, e.g., Order Revising April 2025 Forecast Supply and Continuing May 16, 2025 Curtailment Order (Methodology Steps 5 & 6)* (Jul. 10, 2025) ("*2025 Steps 5-6 Order*"). The asserted legal basis for the *Joint Motion* is that it "complies with CM Rule 43.03.o …." *Joint Motion* at 2.

A&B and the SWC fail to recognize that CM Rule[2] 43.03.o is but one of <u>fifteen</u> "factors" for the Director to consider when reviewing a proposed mitigation plan. Other relevant factors include whether the mitigation plan:

> will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source

CM Rule 43.03.b, and whether the mitigation plan "is consistent with the conservation of water resources, the public interest or injures other water rights …." CM Rule 43.03.j.

Regarding CM Rule 43.03.b, the *Joint Motion* does not provide sufficient information for the Director to evaluate whether 120 AF/year provides sufficient replacement water. Contrary to

[1] Because it materially changes the terms of A&B's mitigation plan, the *Joint Motion* should be advertised to the public, just as IDWR did previously in the matter. *See Notice of Stipulation Regarding A&B Irrigation District's Amended Mitigation Plan in Response to the Surface Water Coalition Water Delivery Call*, IDWR Docket No. CM-MP-2015-003 (Jan. 17, 2024); *see also* CM Rule 43.02.

[2] IDAPA 37.03.11.

what Addendum A states, IDWR annually determines "which junior priority ground water rights are responsible to mitigation for in-season demand shortfall"—last year, when IDWR predicted the SWC's demand shortfall to be 75,300 AF, IDWR determined A&B's proportionate share to be 5,039 AF. *2025 Steps 5-6 Order* at 11 n.6. If the SWC's demand shortfall in 2026 is equal to or greater than that in 2025, then 120 AF of storage water is clearly inadequate. Similar to Jerry and Valerie Bingham's *Amended Stipulation to Interim Mitigation Plan,* IDWR Docket No. CM-MP-2025-003 (March 5, 2026), IDWR should decline to process the *Joint Motion* because it "fails to provide sufficient information necessary to evaluate the minimum criteria for mitigation plans," *Order Returning Amended Stipulation to Interim Mitigation Plan,* IDWR Docket No. CM-MP-2025-003 (Mar. 11, 2026), and also because it is based on the false premise that A&B's 1948 water right is not responsible for mitigating. *See Joint Motion* at Addendum A.

As for CM Rule 43.03.j, the *Joint Motion* is not consistent with the public interest and injures other water rights, particularly those of the Ground Water Districts ("GWDs"). For example, in 2026, the GWDs must deliver 75,000 AF of storage water to the SWC if it is needed for an SWC member to "maintain its reasonable carryover volume …." *Joint Motion for Order Approving 2024 Stipulated Mitigation Plan* at 5 (¶ 6.4), IDWR Docket No. CM-MP-2024-003 (Nov. 19, 2024). There is no justification for IDWR to approve a stipulation whereby the SWC agrees to forgo receiving as much as (if not more than) 5,000 AF to which it is entitled under A&B's existing mitigation plan while IDWR still requires the GWDs to deliver 75,000 AF to the SWC. If IDWR were inclined to approve the *Joint Motion*, at minimum it should add a condition that reduces the GWDs' 75,000 AF obligation by the amount of forgone A&B storage water.

In conclusion, that a mitigation plan is stipulated does not make it dispositive under CM Rule 43.03. The CM Rules do not authorize the SWC to dictate how IDWR administers its delivery call; they do require IDWR to consider many factors when reviewing a mitigation plan, including whether it is consistent with the public interest or injures other ground water users. The *2026-2027 Interim Stipulation* is defective because it fails to provide sufficient information to IDWR and would allow the SWC to pick and choose which ground water users must deliver storage water, and in what amounts, based on the whims of the SWC or their relationship with a given user—but not based on A&B's proportionate share of a demand shortfall, which is the status quo. Accordingly, AFA respectfully requests that IDWR return the *Joint Motion* or, if IDWR decides to process it, advertise the *Joint Motion*; if IDWR proceeds without advertisement, AFA requests that IDWR deny the *Joint Motion* or approve the *Joint Motion* only on the condition that any amounts of storage water the SWC forgoes receiving from A&B are deducted from the GWDs' obligation.

DATED this 7th day of April, 2026.

SOMACH SIMMONS & DUNN

By 
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Attorneys for American Falls-Aberdeen Ground Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2026, I caused a true and correct copy of the foregoing document to be filed and served via electronic mail to the following:

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