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DEPARTMENT OF  
WATER RESOURCES

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*Attorneys for Falls Water Co., Inc.*

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF THE MITIGATION  
PLAN OF FALLS WATER CO., INC.

Docket No. CM-MP-2024-004

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

**FALLS WATER CO., INC.'S  
CM RULE 43 MITIGATION PLAN**

Falls Water Co., Inc. ("Falls Water"), an Idaho corporation and municipal provider of water, by and through its above-identified counsel, hereby submits *Falls Water Co. Inc.'s CM Rule 43 Mitigation Plan* (the "Plan") in response to the Surface Water Coalition's (the "SWC")<sup>1</sup> delivery call (hereinafter, the "SWC Call"). The SWC Call was initially filed in January of 2005

<sup>1</sup> The SWC consists of the A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

and is ongoing. The SWC Call has resulted in certain administrative orders from the Director of the Idaho Department of Water Resources (“IDWR” or “Department”) which quantifies material injury to the SWC’s senior surface water rights resulting from junior ground water diversions from the Eastern Snake Plain Aquifer (“ESPA”). The methodology to determine and quantify material injury to each individual member of the SWC is now described in the Director’s July 19, 2023 *Sixth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (the “Methodology Order”).

The Plan is submitted pursuant to Rule 43 of the Idaho Department of Water Resources’ *Rules for Conjunctive Management of Surface and Ground Water Resources* found at IDAPA<sup>2</sup> 37.03.11 (hereinafter, the “CM Rules”). Rule 43 of the CM Rules is hereafter referred to as “CM Rule 43.”

Falls Water is a municipal provider of water supplied primarily to residential properties, but also to several commercial and industrial businesses within its three separate service areas located east and south of Idaho Falls in Bonneville County, and south of Rigby in Jefferson County. As set forth below, diversion of ground water under Falls Water’s water rights, subject to any future curtailment orders under the *Methodology Order*, can be fully mitigated with various actions undertaken by Falls Water. This Plan is being submitted to mitigate for Falls Water’s impacts to the SWC’s senior water rights and to avoid any disruption in Falls Water’s operations and the secondary disruption to the homes and businesses who rely upon Falls Water’s water supply.

## I. MITIGATION PLAN

CM Rule 43 describes the information that must be contained in a mitigation plan. In

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2 “IDAPA” is an acronym for rules promulgated pursuant to the Idaho Administrative Procedure Act (Chapter 52 of Title 67 of the Idaho Code). The IDAPA administrative rules can be accessed at <http://adminrules.idaho.gov/rules/current/index.html>

accordance with CM Rule 43, Falls Water submits the following information.

**A. Name and Mailing Address the Person or Persons Submitting the Plan.**

The names and mailing address of those individuals who are submitting the Plan, and who are to receive correspondence in regards to this Plan, are as follows:

<p>Scott Bruce <b>Falls Water Co., Inc.</b> 2180 N Deborah Dr. Idaho Falls, ID 83401 <a href="mailto:scott1@fallswater.com">scott1@fallswater.com</a></p>	<p>Robert L. Harris <b>Holden, Kidwell, Hahn &amp; Crapo, PLLC</b> 1000 Riverwalk Dr. Suite 200 P.O. Box 50130 Idaho Falls, ID 83405 <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>
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**B. Identification of the Water Rights for Which Benefit the Mitigation Plan is Proposed.**

Through submission of this plan, it is Fall Water’s intent to mitigate all of its water rights set forth on **Exhibit 1** and any other junior priority ground water rights obtained by Falls Water in the future.

**C. Description of the Plan.**

**1. Plan Structure.**

Falls Water’s proposed mitigation plan is structurally consistent with the joint mitigation plan filed by the Coalition of Cities, the City of Idaho Falls, and the City of Pocatello in response to the Surface Water Coalition Delivery Call approved on April 9, 2019 by IDWR<sup>3</sup> (the “Cities’ Mitigation Plan”). The *Cities’ Mitigation Plan* is only available to municipalities and is therefore unavailable for Falls Water to mitigate through because while it is a municipal provider of water, Falls Water is not a municipality.

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3 See <https://idwr.idaho.gov/legal-actions/mitigation-plan-actions/SWC/Cities/>

Under the *Cities' Mitigation Plan*, the protected cities are collectively obligated to engage in aquifer enhancement activities of 7,650 acre-feet per year measured on a five-year rolling average. The 7,650 acre-feet mitigation amount remains in place until December 31, 2053, or until the average annual ESPA pumping of the protected cities reaches 120,000 acre-feet per year as determined on a five-year rolling average. Additionally, the 7,650-acre-foot amount can increase to 9,640 acre-feet if the Idaho Ground Water Appropriator's ("IGWA") mitigation obligation increases under a currently approved mitigation plan (stemming from a 2015 settlement agreement) from 240,000 acre-feet per year to 340,000 acre-feet per year.

For ease of calculation and administration of Falls Water's mitigation, Falls Water's annual mitigation amount is proposed to be determined by taking Falls Water's annual measured collective ground water pumping (measured in acre-feet) from the prior year and multiplying this amount by 0.0765 as long as the 7,650-acre-foot amount remains in place under the *Cities' Mitigation Plan*.<sup>4</sup> The 0.0765 amount is calculated by taking 7,650 acre-feet and dividing this value by 100,000 acre-feet, which is the median amount between 80,000 acre-feet (the approximate amount of the protected cities' pumping at the commencement of the *Cities' Mitigation Plan*) and 120,000 acre-feet (the maximum amount provided under the *Cities' Mitigation Plan*).

For example, Falls Water's collective pumping for 2023 was 5,051 acre-feet. The calculated amount of Falls Water's mitigation amount for 2024 would have been 386 acre-feet under the Plan.

In the event the provision of the *Cities' Mitigation Plan* providing for an increase of the

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4 The calculated amount will be rounded to the nearest acre-foot under this Plan.

total mitigation amount from 7,650 acre-feet to 9,640 acre-feet, Falls Water's annual mitigation amount multiplier will be increased from 0.0765 to 0.0964 (calculated by taking 9,640 acre-feet and dividing this value by 100,000 acre-feet). For example, if Falls Water's collective pumping in a future year was also 5,051 acre-feet, the increased calculated amount of Falls Water's mitigation amount for the following year would therefore be 487 acre-feet.

Falls Water's performance under the Plan will be measured on a five-year rolling average and all mitigation activities for each calendar year will be reported to IDWR by April 1<sup>st</sup> of the year following such calendar year.

## **2. Sources of Mitigation Water**

There are four sources of Falls Water's mitigation water supply.

### **a. Progressive Irrigation District Storage Water**

Falls Water has entered into the *Storage Water Lease Agreement* (the "Lease") with Progressive Irrigation District ("Progressive"), which holds various contracts which entitle it to receive storage water that yields to storage space in the upper Snake River basin storage system of reservoirs operated by the United States Bureau of Reclamation. The *Lease* for Progressive storage water is for an initial term of five (5) years, with one automatic five (5) year extension (unless either party opts out prior to the five (5) year extension). A copy of the lease is attached to this pleading.

Falls Water will recharge Progressive storage water to mitigate for Falls Water's ground water pumping. The recharge will either be accomplished by Progressive (which has the first option to recharge under the Lease) in Progressive recharge facilities or, after assignment for delivery to the Idaho Water Resource Board (the "Board") will be recharged in Board recharge

sites. Progressive has received necessary approvals for several recharge sites.<sup>5</sup> Recharge within Progressive’s recharge sites is ideal. The largest of Falls Water’s service areas is within the service area of Progressive where recharge will occur in relative close proximity to the location of Falls Water’s municipal wells.

As for limitations on the use of Progressive storage water, the use of Progressive storage water for recharge will be transacted through Water District 1 and will be subject to the most recent iteration of the *Water District 1 Rental Pool Procedures*. See <https://www.waterdistrict1.com/media/qwjbwh5e/2024-rental-pool-procedures.pdf>.

**b. Progressive Irrigation District Storage Water**

Falls Water will file *Applications for Temporary Approval of Water Use* as provided in Idaho Code § 42-202A to opportunistically recharge water under high water conditions. It is anticipated that water authorized for ground water recharge under temporary approvals will be recharged at Progressive’s recharge sites and/or Progressive’s canal system.

**c. Ground Water to Surface Water Conversions and/or Temporary or Permanent Dry Up**

Falls Water will receive credit under the Plan for ground water to surface water conversions within the boundaries of the ESPA and/or temporary or permanent dry up (i.e. retirement) of irrigated lands within the boundaries of the ESPA.

**d. Recharge of Treated Municipal Effluent**

Falls Water will receive credit under the Plan for recharge of ground water diverted by Falls Water (i.e., municipal effluent) which is subsequently recharged.

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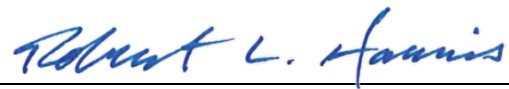
<sup>5</sup> For example, See [https://www.postregister.com/news/local/stakeholders-host-ribbon-cutting-for-southfork-aquifer-recharge-basin/article\\_fb621076-753c-11ef-9d52-ab4cdebb2bcc.html](https://www.postregister.com/news/local/stakeholders-host-ribbon-cutting-for-southfork-aquifer-recharge-basin/article_fb621076-753c-11ef-9d52-ab4cdebb2bcc.html)

## II. REQUEST FOR RELIEF

Falls Water hereby requests that the Director:

1. Advertise this Plan as required under the CM Rules;
2. If necessary, hold a hearing regarding this Plan pursuant to CM Rule 43.02; and
3. Enter an order approving the Plan upon such terms and conditions as may be reasonable and necessary to comply with CMR 43.

DATED this 22<sup>nd</sup> day of November, 2024.



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Robert L. Harris,  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

**Exhibit 1**  
**Falls Water Co., Inc.'s Water Rights**

25-7148  
25-7191  
25-7418  
25-7509  
25-14035  
25-14055  
25-14114  
25-14326  
25-14327  
25-14482  
25-14483  
25-14516  
25-14517  
25-7090  
25-14440  
25-14287  
25-14301  
25-14304  
25-14313  
25-14383  
25-14385  
25-14442  
25-7593  
25-14199  
25-14236  
25-7086



# STORAGE WATER LEASE AGREEMENT

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THIS STORAGE WATER LEASE AGREEMENT (this “Agreement”) is made and entered into to be effective as of the 1<sup>st</sup> day of April, 2025 (the “Effective Date”), by and between **Progressive Irrigation District**, an irrigation district duly organized under the laws of State of Idaho, of 2585 N. Ammon Rd., Idaho Falls, Idaho 83401 (hereinafter “District”), and , **Falls Water Company, Inc.**, an Idaho corporation, whose address is 2180 N. Deborah Dr., Idaho Falls, ID 83401 (hereinafter “Company”). District and Company are individually a “party” and together the “parties”.

## RECITALS:

- A. District is the holder of various contracts which entitle it to receive storage water that yields to storage space in the upper Snake River basin storage system of reservoirs operated by the United States Bureau of Reclamation.
- B. Company is the owner and operator of three municipal provider water systems located in eastern Idaho, generally referred to as the (1) Falls Water Company water system; (2) Morningview water system; and (3) Taylor Mountain Water System.
- C. Company currently participates in the Bonneville-Jefferson Groundwater District to mitigate for its ground water diversions in response to a water call asserted by the Surface Water Coalition.<sup>1</sup>
- D. For various reasons, Company has decided to seek approval from the Idaho Department of Water Resources (“IDWR” or “Department”) of its own mitigation plan under the Conjunctive Management Rules (“CMRs”) found at IDAPA 37.03.11 (the “Plan”).
- E. A necessary component to the mitigation plan is a reliable source of water. Subject to the provisions below, District is willing to lease storage water to Company for its Plan.

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

## AGREEMENTS:

1. **Contingencies and Conditions Precedent.** The parties expressly acknowledge and agree that performance under this Agreement is fully contingent upon issuance of a final order from IDWR approving the Company’s mitigation plan under the CMRs. In the event the

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<sup>1</sup> The individual members of the Surface Water Coalition are A&B Irrigation District, Burley Irrigation District, Minidoka Irrigation District, Milner Irrigation District, American Falls Reservoir District #2, Twin Falls Canal Company, and North Side Canal Company.

Plan is disallowed and/or no final order approving the mitigation plan is issued, this Agreement shall be null and void and of no further effect and the parties shall be relieved of any obligations in the Agreement.

**2. Storage Water Leased.**

(a) **Storage Water Yield Contingency.** In the event District receives a storage water yield allocation of 60% or less to its reservoir space, District, in its sole discretion and at its sole option, may elect not to lease any storage water to Company for the current irrigation season. District must provide notice to Company before June 23<sup>rd</sup> of the current irrigation season as to whether it has elected not to lease water for the current irrigation season. If no notice is provided by District, then storage water will be leased for the current irrigation season.

(b) **Minimum Storage Water Leased.** In the event District receives a storage water yield greater than 60%, District will lease to Company 600 acre-feet per year of District's storage water for the Term described below to be solely used for mitigation purposes under the Plan.

(c) **Additional Storage Water Leased.** Notwithstanding the foregoing, at Company's option, and provided that Company provides notice to District on or before July 1<sup>st</sup> of the current irrigation season, Company shall have the right to lease up to an additional 600 acre-feet (for a total of 1,200 acre-feet) per year for mitigation purposes under the Plan in a year where the District receives a storage water allocation equal to or greater than 80% yield to its storage space. District may, in its sole discretion, designate with Water District 01 which storage water reservoir the storage water leased under this Agreement is leased from. In the event additional storage water is leased as provided herein, District shall only be obligated to lease, in the following lease year, the difference between 600 acre-feet and the additional storage water leased under this provision in the then-current water year.<sup>2</sup>

3. **Term:** The Term of this Agreement shall be five (5) years, commencing on the Effective Date, and expiring on April 1, 2030, with an automatic 5 year renewal unless either party provides written notice on or before February 1, 2030, that such party does not want to renew the Agreement.

**4. Lease Price.**

The Lease Price for each year of the Term shall vary depending on the yield to District's storage space as described in the following table:

Percentage Yield	Lease Price
80% - 100%	██████████
60% - 79.99%	██████████

<sup>2</sup> As an example, if 1,000 AF is leased in 2024 (600 AF + 400 AF (additional storage water)), then Company shall only be obligated to lease 200 AF in 2025 under this Agreement.

5. **Payment of Lease Price.** The Lease Price per year shall be paid by Company on or before April 1<sup>st</sup> of the current applicable irrigation season based on the 80% to 100% yield price. Notwithstanding the foregoing, once the actual storage yield is known, the parties will adjust the lease price as necessary and shall pay the additional lease amount or refund any overpayment of the lease amount as necessary.
6. **District's First Option to Recharge Leased Storage Water.** District shall have the first option to recharge the storage water leased under this Agreement at any of District's approved recharge sites, and by signing below, herein exercises such first option to recharge. District may charge Company a carrying/recharge fee of [REDACTED] per acre-foot to accomplish the recharge (to be paid at the same time as the Lease Price), which carrying/recharge fee may be adjusted from time to time, but in no event, shall the carrying/recharge fee shall be greater than the amount charged by District for carrying/recharge of water for any other water user by District. In the event District elects to waive the first right to recharge the leased storage water for a lease year, District shall notify Company in writing on or before April 15<sup>th</sup> of such lease year. Such waiver shall only be effective for one year. In the event District commits to recharge water under this Agreement but later determines District does not have the physical capacity/ability to perform such recharge, District shall notify Company immediately, refund any paid carrying fee for the storage water not yet recharged, and provide any necessary authorization for Company to recharge storage water leased under this Agreement elsewhere.
7. **Application For Temporary Approval of Water Use.** In a year with available water supply during the Term, Company may file with the Department an *Application for Temporary Approval of Water Use* as provided in Idaho Code § 42-202A. District hereby provides authorization for Company to submit such application and describe the point of diversion and place of use under such application as District's system. In the event water is diverted under such application, District may charge Company a carrying/recharge fee of [REDACTED] per acre-foot to accomplish the recharge (to be paid at the same time as the Lease Price), which carrying/recharge fee may be adjusted from time to time, but in no event, shall the carrying/recharge fee shall be greater than the amount charged by District for carrying/recharge of water for any other water user by District. In the event water diverted under such application is accomplished, Company may deduct the amount recharged from the minimum amount of storage water leased under this Agreement as provided in Paragraph 2.
8. **Indemnification.** District shall obtain all necessary approvals for use of the recharge sites where storage water leased under this Agreement is recharged. District shall and does hereby indemnify Company against, and agrees to hold Company harmless from, any claim, demand or suit for any claim against Company associated with or in any way related to recharge of water under this Agreement based on any act by or agreement or contract with District, or any individual or entity affiliated with District, and for all losses, obligations, costs, expenses, and fees (including attorneys' fees) incurred by Company on account of or arising from any such claim, demand, or suit.

9. **Water District Determination on Last-to-Fill Provision Concerning Use of Storage Water.** In the event there is a determination that storage water leased under this Agreement is subject to any last-to-fill rule or procedure assessed and/or applied against District the following storage water year, District agrees to the imposition/application of such rules or procedures and no additional financial assessment or charge shall be made to the Company.
10. **Water District 1 Fees.** Company shall pay any fees charged by Water District 1 for lease of storage water described herein.
11. **Water District 1 Lease Form.** District and Company agree to execute Water District's 1's standard form for leases of storage water for ground water recharge in addition to this Agreement.
12. **Miscellaneous.**
  - (a) **Merger.** This Agreement supersedes any and all other written or verbal agreements between the parties hereto regarding the lease of storage water for the Plan. Neither Company nor District shall be bound by any understanding, agreement, promise, representation, or stipulation, express or implied, not specifically contained herein.
  - (b) **Further Documents.** The parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.
  - (c) **Enforceability.** The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement, or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.
  - (d) **Counterparts.** This Agreement may be executed in any number of counterparts for all the convenience of the parties, all of which, when taken together and after execution by all parties hereto, shall constitute one and the same Agreement.
  - (e) **Governing Law.** This Agreement shall be governed by the laws of the State of Idaho.
  - (f) **Successors.** This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.
  - (g) **Essence of Time.** Time is of the essence in this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

**“DISTRICT”**

Progressive Irrigation District

Dated: May 7, 2024

By: 

Its: Chairman

**“COMPANY”**

NW Natural Water Company, LLC

Dated: 6/25/2024

By: 

Its: President