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DEPARTMENT OF
WATER RESOURCES

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
OPPOSITION TO IGWA'S PETITION
TO INTERVENE**

Falls Water Co., Inc. ("Falls Water"), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby files *Falls Water Co., Inc.'s Opposition to IGWA's Petition to Intervene*, which is submitted in response to *IGWA's Petition to Intervene* ("Petition") filed in the above-entitled matter. This *Response* is filed pursuant to IDAPA 37.01.01.354 and other applicable law.

I. ARGUMENT

The above-entitled matter is a contested case before the Idaho Department of Water

Resources (“IDWR” or “Department”) because it was protested by the Surface Water Coalition. Bonneville-Jefferson Ground Water District (“Bonneville-Jefferson”) filed a petition to intervene, which was not opposed because Falls Water is currently a patron of Bonneville-Jefferson, who has represented that its involvement concerns because approval of Falls Water’s mitigation plan will likely result in Falls Water removing itself from Bonneville-Jefferson.

A party may intervene in an IDWR contested case proceeding under certain circumstances. IDAPA 37.01.01.350. IDAPA 37.01.01.353.01 provides:

Timely-Filed Petitions. If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant’s interest is adequately represented by existing parties.

Based on this rule, the analysis of a petition to intervene requires consideration of: (a) whether the *Petition* is timely, (b) whether the potential intervenor shows a “direct and substantial interest in any part of the subject matter of a proceeding,” (c) a showing that the intervention would “not unduly broaden the issues,” and (d) whether the potential intervenor’s “interest is adequately represented by existing parties.” *Id.*

While the *Petition* is timely under Rule 352 because no prehearing conference has been held, IGWA’s intervention should still be denied because (1) IGWA has not shown a direct and substantial interest in the issues that are the subject of Falls Water’s mitigation plan; (2) IGWA’s intervention would unduly broaden the issues; and (3) even if they satisfy these two criteria, the interests alleged are adequately represented by existing parties.

A. IGWA does not have a direct and substantial interest in subject matter of this proceeding.

IGWA first argues that it has direct and substantial interests in the matters in this contested case, specifically, IGWA argues that it is already a party to the SWC delivery call case,

and its member ground water districts already provide mitigation to the SWC. *Petition* at 2. However, IGWA’s involvement in the SWC delivery call case in and of itself does not demonstrate a direct and substantial interest.

First, IGWA may be a party to the SWC delivery call case, but that does not and should not grant them party status in all mitigation plan actions in the SWC delivery call. Falls Water’s mitigation plan does not implicate or involve IGWA’s plan in any way—it is independent. IGWA must show that it has some interest that could be implicated in Falls Water’s mitigation plan, but it has not identified what that interest may be. Party status to the SWC delivery call is not sufficient to meet the direct and substantial interest criterion of intervention.

Similarly, even though IGWA’s member ground water districts provide mitigation to the SWC, this likewise does not meet the direct and substantial interest criterion for intervention. IGWA negotiated its own mitigation plan and other parties should also be able to negotiate or seek approval of their own mitigation plans. There is nothing in IGWA’s approved plan that is implicated by what Falls Water is proposing, and in fact, there is nothing Falls Water’s mitigation plan that references or implicates IGWA’s approved plan.

Notably, IGWA only argues that Falls Water’s mitigation actions “**may** have direct or indirect impacts on the mitigation activities conducted by IGWA and its members.” *Id.* (emphasis added). The “may” language lacks specificity and any claim of a cognizable interest as to what will happen to IGWA’s plan if Falls Water’s mitigation plan is approved. IGWA cannot meet its burden in this claim alone.

IGWA’s claim of a direct and substantial interest amounts to a generalized interest in a water issue, and because water use may be connected in some way, it may affect IGWA’s rights. In another contested case before IDWR, in denying a petition to intervene, the hearing officer in

that case (retired Idaho Supreme Court Chief Justice Roger Burdick) held:

With respect to the argument that the Big Lost River Ground Water District has a direct and substantial interest in the proceeding because of its **potential** impact on water rights administration in the basin and the interaction between surface and ground water supplies in the basin, the Hearing Officer concludes **this is essentially the argument that all water is connected and, at some point, any change may affect another's right.** This argument would lead to the conclusion that, for example, any water delivery change BLRID makes will affect ground water supplies therefore BLRID cannot run its business without ground water users' intervention. Also, the Big Lost River Ground Water District's ground water management plan is fluid and carries no legal effect on water administration pursuant to the prior appropriation doctrine, but rather is a plan used for the internal operations of the ground water district.

With respect to the argument that the Big Lost River Ground Water District has a direct and substantial interest in the proceeding because of policy concerns, **if a general interest in the Department's water rights administration policies and hypothetical precedent setting were enough to warrant intervention, the intervention of water users in any contested case would be limitless.**

In the Matter of Water Right Nos. 34-182 and 34-381A (Moss Farms, Inc.), Order on Petitions to Intervene Filed by Moore Canal Users and the Big Lost River Ground Water District (October 9, 2024), at 5-6 (emphasis added). IGWA's arguments are similar, asserting potential impact and general interest, which is not enough for intervention. Otherwise, "the intervention of water users in any contested case would be limitless." *Id.* IGWA's *Petition* should be denied because it has not shown a direct and substantial interest in Falls Water's mitigation plan.¹

B. IGWA's intervention would unduly broaden the issues.

In its *Petition*, IGWA asserts that it "presently seeks intervention in these matters to enable IGWA to effectively monitor these matters and participate as needed. IGWA does not anticipate inserting new issues into these matters, nor broadening the issues that exist by rule

¹ While not relevant to the intervention factors, IGWA nevertheless argues that that the Coalition of Cities mitigation plan (which Falls Water's plan is similar to conceptually) "anticipates that other cities wishing to mitigate injury would participate in the plan" and that Falls Water should simply join the Coalition of Cities mitigation plan. *Id.* However, this argument is without merit. The Coalition of Cities plan is for municipalities. Falls Water is not a municipality. It is a private company that provides municipal water, but it is not a municipality or incorporated city, thereby making it ineligible for participating on the Coalition of Cities plan.

under CM Rule 43.” *Id.* First, monitoring can be done by IGWA as a non-party. But second, and more importantly, IGWA has not sufficiently asserted what its direct and substantial interest in this matter is to permit Falls Water to fully determine whether IGWA’s intervention will unduly broaden the issues. Consequently, IGWA’s Petition should be denied.

C. IGWA’s interests are adequately represented by Bonneville-Jefferson and the SWC.

One of IGWA’s member ground water districts—Bonneville-Jefferson—is already a party to this action. Without any further detail, IGWA asserts that Bonneville-Jefferson “does not represent the interests of all of IGWA’s member districts, however.” *Id.* at 2. However, at the same time, IGWA asserts that IGWA’s participation will not unduly broaden the issues. Further, again, IGWA has not stated what its interest in Falls Water’s mitigation plan is. Nevertheless, because one of IGWA’s member ground water districts is already an intervenor, IGWA’s interests are adequately represented.

Additionally, the other party to the IGWA-SWC agreement, the SWC, is already a party and can protect whatever interest IGWA may have in this proceeding.

Because IGWA’s interests are adequately represented by existing parties to the contested case, IGWA’s *Petition* must be denied.

II. CONCLUSION

For the foregoing reasons, Falls Water requests an order from the Hearing Officer denying IGWA’s *Petition*.

Dated this 2nd day of May, 2025.



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

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2025, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

DOCUMENT SERVED: FALLS WATER CO., INC.'S OPPOSITION TO PETITION TO INTERVENE.

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