

May 09, 2025

DEPARTMENT OF  
WATER RESOURCES

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## STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES

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

**IGWA'S RESPONSE TO FALLS WATER  
 CO., INC'S OPPOSITION TO IGWA'S  
 PETITION TO INTERVENE**

Idaho Ground Water Appropriators, Inc. ("IGWA"), acting for and on behalf of its members, hereby responds to *Falls Water Co., Inc's Opposition to IGWA's Petition to Intervene* ("Falls Water's Opposition") filed May 2, 2025, in this matter. This response is filed pursuant to rule 354 of the rules of procedure of the Idaho Department of Water Resources ("Department").

**A. Falls Water failed to serve its mitigation plan upon IGWA.**

Rule 53.02.a of the Department's rules of procedure states: "All documents filed with the agency must be sent by mail or delivered personally to the representatives of each party concurrently with filing the original with the agency." (IDAPA 37.01.01.053.02.a.) Fall Water's mitigation plan was filed *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*, to which IGWA is a party. Therefore, Falls Water

should have filed its mitigation plan upon IGWA. Falls Water's failure to do so can be remedied by granting IGWA's petition to intervene in this matter.

**B. IGWA has demonstrated a direct and substantial interest.**

Falls Water asserts "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," that "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," and that "there is nothing in Falls Water's mitigation plan that references or implicates IGWA's approved plan." (Falls Water's Opposition, 3.) This is simply not accurate. As stated in *IGWA's Petition to Intervene* ("IGWA's Petition"), "mitigation activities conducted by Falls Water may have direct or indirect impacts on the mitigation activities conducted by IGWA and its members ... if mitigation activities do not sustain or increase gains to the Near Blackfoot-Minidoka reach of the Snake River." (IGWA's Petition, 2.)

To elaborate, the 2024 Stipulated Mitigation Plan ("2024 Plan") provides that the storage water obligation of IGWA's member ground water districts will increase if gains to the Near Blackfoot-Minidoka reach of the Snake River decline. (2024 Plan § 6.1.)<sup>1</sup> Falls Water has been contributing to the 2024 Plan through Bonneville-Jefferson Ground Water District. As such, its mitigation activities have, to date, reduced ESPA groundwater diversions and contributed toward stabilization and recovery of Near Blackfoot-Minidoka reach gains. By contrast, Falls Water's new mitigation plan does nothing to mitigate the effect of its pumping on reach gains to the near Blackfoot-Minidoka Reach of the Snake River. Therefore, if Falls Water's plan is approved, it will negatively impact on reach gains to the near Blackfoot-Minidoka reach, thereby increasing the likelihood that the storage water obligation of IGWA's member districts will increase. This demonstrates a direct and substantial interest in Falls Water's plan.

Falls Water argues that it is not enough that its mitigation plan "may" impact the mitigation obligations of IGWA's member ground water districts. (Falls Water's Opposition, 3.) However, the Idaho Supreme Court has ruled that intervention is warranted even where a party "may" be affected by a judgment. *Duff v. Draper*, 96 Idaho 299 (1974).

**C. IGWA's interests are not adequately represented by Bonneville-Jefferson Ground Water District and the SWC.**

Falls Water argues that because one of IGWA's member ground water districts (Bonneville Jefferson Ground Water District) is already a party to this action, the interests of IGWA's other member districts are adequately represented. However, Bonneville-Jefferson Ground Water District's interests are distinct from other IGWA members because Falls Water is a member of Bonneville-Jefferson and not others. Further, Bonneville-Jefferson is free to withdraw from this matter at any time, leaving IGWA's other members unrepresented in this proceeding. Therefore, the interests of IGWA's member ground water districts as a collective are not adequately represented by Bonneville-Jefferson Ground Water District.

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<sup>1</sup> The 2024 Plan is on file with the Department in Docket No. CM-MP-2024-003. Rather than resubmit the 2024 Plan to the Department in this matter by declaration or affidavit, IGWA requests that the Department take official notice of the 2024 Plan.

### **Conclusion**

Rule 51 of the Department's rules of procedure states: "The rules in this chapter really liberally construe to ensure just, speedy and economical determination of all issues presented to the agency." (IDAPA 37.01.01.051.) It is in the interest of justice, and consistent with rule 351, to allow IGWA's intervention in this matter. Therefore, For the foregoing reasons and those set forth in IGWA's Petition, IGWA respectfully requests its petition to intervention be granted.

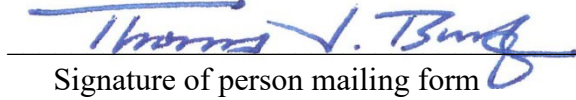
DATED this 9<sup>th</sup> day of May, 2025.

RACINE OLSON, PLLP

By:   
Thomas J. Budge  
*Attorneys for IGWA*

## CERTIFICATE OF MAILING

I certify that on this 9<sup>th</sup> day of May, 2025, the foregoing document was served on the following persons in the manner indicated.

  
Signature of person mailing form

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