

Aug 19, 2025

DEPARTMENT OF  
WATER RESOURCES

Reed W. Larsen (3427)  
COOPER & LARSEN, CHARTERED  
151 North 3<sup>rd</sup> Avenue, 2<sup>nd</sup> Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
reed@cooper-larsen.com

IDAHO DEPARTMENT OF RESOURCES

Water Rights of Jerry D. Bingham and	)	
Valerie H. Bingham,	)	<b>MITIGATION AND</b>
1675 W 400 N	)	<b>CURTAILMENT PLAN</b>
Blackfoot, ID 83221-5051	)	
	)	<b>Docket No. CM-MP-2025-003</b>
Water Rights No: 35-12226, 35-2202B,	)	
35-2205E, 35-2266, 35-2269G, and	)	
35-2186D,	)	
	)	
	)	

**TO: MATTHEW WEAVER**  
**DIRECTOR OF IDAHO DEPARTMENT OF WATER RESOURCES**

Jerry D. Bingham and Valerie H. Bingham, husband and wife, pursuant to IDAPA  
37.03.11.043(RULE 43) submits the following Mitigation Plan.

**I. MITIGATION PLAN**

A. The name and mailing address of Jerry D. Bingham and Valerie H. Bingham as  
provided above.

B. Identification of the water rights for which benefit by the mitigation plan as proposed:  
  
Water Rights No: 35-12226, 35-2202B, 35-2205E, 35-2266, 35-2269G, and  
  
35-2186D.

C. This plan deals with the ground water rights of the Binghams. And the proposed  
Mitigation Plan and curtailment involving the Bingham's water rights.

1. Shakey Farm, 35 acres, priority date 1987, Water Right# 35-12226. The mitigation curtailment plan is for that water right to be shut off. That 35 acres has not been watered pursuant to Bingham's mitigation and curtailment plan for the past 5 years.

2. Shakey Farm, 250 acres, priority date 1951, Water Right #35-2202B. This water right has a curtailment mitigation plan of 14.2% diminished use of water right starting in 2025. This 14.2% reduction has been achieved by Bingham's turning off all water on Sunday for a 24 hour period all during the irrigation season.

3. Havens Farm, 207 acres, priority date 1951, Water Right #35-2205E. This water right has a mitigation plan and curtailment plan and has been achieved by turning off this water on each Sunday of the irrigating season, for a 14.2% reduction in water usage.

4. Cinder Block Farm, 155 acres, priority date 1952, Water Right #35-2266. The curtailment mitigation plan for this water right has been achieved by 14.2% by shutting off the water on Sundays through the entire irrigation season.

5. Over the Hill, 240 acres, priority date 1952, Water Right #35-2269G. The curtailment mitigation plan for this water right has been achieved by shutting off the water on Sundays for the entirety of the water season. This is a 14.2% reduction in water consumption.

6. Home Place, 156 acres, priority date 1950, Water Right #35-2183D. The curtailment mitigation plan for this water right has been curtailed by 14.2% as a result of shutting off all watering on Sundays through the entirety of the water season.

D. Further, Bingham's have voluntarily curtailed the amount that they can pump during the regular irrigating season. This reduction is:

- a. Water right #35-2202B has an annual diversion volume of 1140 AF. In 2024 meter read 578.8 AF.
- b. Water right #35-2266 has an annual diversion volume of 1564 AF. In 2024 meter read 465.7 AF;
- c. Water right #35-22696G has an annual diversion volume of 1564 AF. In 2024 meter read 447 AF;
- d. Water right #35-2183D has annual diversion volume of 624 AF. In 2024 meter read 385 AF; and
- e. Water right #35-2205E has annual diversion volume of \_\_\_\_? \_\_\_\_\_. In 2024 meter read 312 AF.
- f. Further explanation of the reductions is Water right #35-0226 total CFS is 3.1. witch times 448 gallons per 1 CFS equals 1,338.8 gallons per minute. 1,338.8 minutes times 60 minutes equals 83,328 gallons per hour, times 24 hours equals 1,999,872 gallons. 1,999872 times 7 days equals 13,999,104 gallons per week. Total gallons that I could pump is 13,999,104 gallons per week. By shutting off pump on Sundays, I am only pumping 1,999,872 per day. So, pumping 6 days a week is a savings of 14.2%.

E. Bingham's believe that their mitigation plan is appropriate given the priority dates and seniority dates of their water rights. Readily available information from the Idaho Department of Water Resources indicates that water draw downs began to be noticed in the year of 1954. Bingham's water rights are senior to all water rights that would have been granted after 1954, with the exemption of water right 35-1226, which water right has been appropriately shut off as a junior water right.

F. The other water rights from 1950 to 1952 even though having a priority date that would be superior to all water rights granted after their time frame, have voluntarily been diminished and curtailed by 14.2% by virtue of shutting off all water on Sunday.

## **II. NOTICE OF HEARING**

Whether or not the Director determines a hearing is necessary is up to the director.

## **III. FACTORS TO BE CONSIDERED**

A. The Bingham's Mitigation Plan is compliance with Idaho Law and specifically Idaho

Law's on priority and the constitutional mandate on water rights and priority. This was sent out to the Idaho Department of Water Resources in attached Exhibit B, which is the August 5, 2025 correspondence which I sent to the Idaho Department of Water Resources, in response to the Department's July 30, 2025 correspondence.

B. This curtailment plan provides replacement water to the aquifer by virtue of the fact that water that the Bingham's are legally allowed to divert under their priority date as being left in the aquifer.

C. Because of the priority date of the Bingham's 1995 water right is curtailed completely and the remaining water rights have senior priority dates but have also been voluntarily curtailed.

D. There is no artificial recharge as factors A and B have been met for curtailment mitigation.

E. The determination for making these curtailments was based on Exhibit A and Exhibit C which are the Department's own records for use and depletion.

F. Bingham's methodology is generally accepted and appropriate for the specific yield and relevant factors because of the diminished pumping and the curtailment that has taken place.

G. The consumption use competent is taking into consideration by the mitigation plan by virtue of shutting of the 1985 water right and the 14.2% reduction in all other water rights.

H. Not Applicable.

I. There is no enlargement of rate of diversion. To the contrary, there is a diminished diversion and diminished use.

J. Bingham's believe that their mitigation plan is consistent with the conservation of water resources and the public interest, especially the public interest in following Idaho Law on



priority. If Bingham's approach were taken state wide, the entire state would be in compliance, simply by shutting off the water one day a week.

K. Bingham's pumps have appropriate monitoring that is subject to review.

L. There are no new wells that would be affected. The wells in question have been existing since the priority dates listed.

M. Bingham's are not a member of any water district. Therefore, their Mitigation Plan is unique and relies on their senior water right and acknowledges their junior water right.

N. Not Applicable.

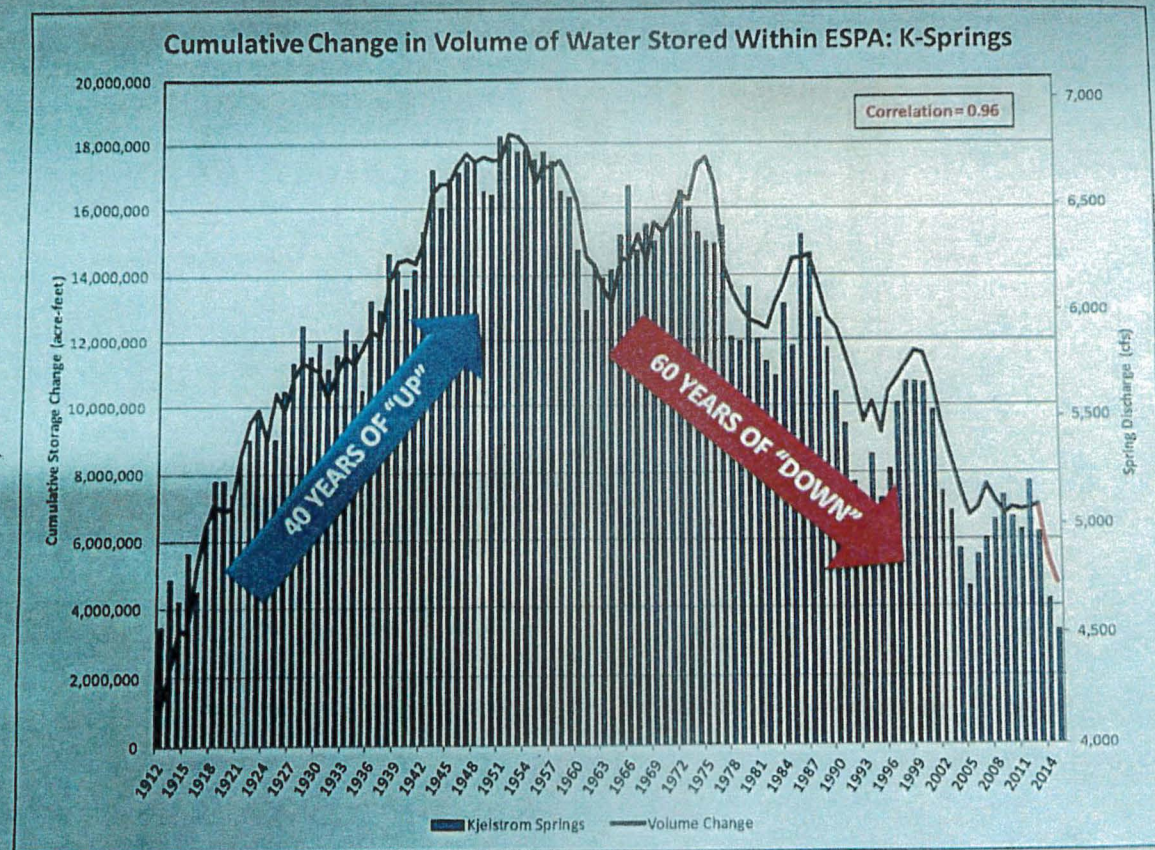
O. There are no other plans or agreements in place. The proposed Mitigation Plan was as set forth in the Exhibit B which was sent to Idaho Department of Ground Water Appropriators, Inc., and the Twin Falls Canal Company. There is no formal agreement from either of those entities at this time.

ACCORDINGLY, The Bingham's request that the Department accepts this Mitigation Plan, acknowledging its use in the 2025 irrigation system season and the Bingham's are committed to following this plan going forward as long as the Director's Order of July 25, 2025 is in place.

RESPECTFULLY SUBMITTED.

COOPER & LARSEN, CHARTERED

By /s/ Reed W. Larsen  
REED W. LARSEN  
Attorney for Jerry D. Bingham and  
Valerie H. Bingham



PENGAD 800-631-6989

EXHIBIT



REED W. LARSEN  
J.D. OBORN  
ANTHONY B. BUDGE

## COOPER & LARSEN

151 NORTH 3<sup>rd</sup> AVE. - 2<sup>nd</sup> FLOOR  
P.O. BOX 4229  
POCATELLO, ID 83205-4229

GARY L. COOPER of Counsel  
RON KERL of Counsel

reed@cooper-larsen.com  
jd@cooper-larsen.com  
tony@cooper-larsen.com

TELEPHONE (208) 235-1145  
FAX (208) 235-1182

gary@cooper-larsen.com  
ron@cooper-larsen.com

Attorneys at Law

August 5, 2025

Idaho Department of Water Resources 322 E Front Street Boise, ID 83702	Idaho Department of Ground Water Appropriators, Inc. PO Box 2624 Boise, ID 83701
Twin Falls Canal Company 357 6 <sup>th</sup> Ave W Twin Falls, ID 83301	

Re: Our Client: Jerry Bingham

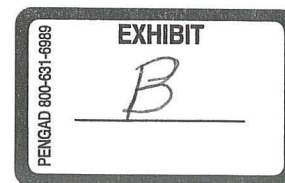
To Whom It May Concern:

This letter is to serve as notice that our office represents Jerry Bingham and Valerie Bingham in their farming interests and water right interests. We are in receipt of your July 30, 2025 letter. This letter is our response. Mr. Bingham's water right's are identified as follows:

1. Shakey Farm 35 acres priority date 1987, Water Right# 35-12226
2. Shakey Farm 250 acres priority date 1951, Water Right #35-2202B
3. Havens Farm 207 acres, priority date 1951, Water Right #35-2205E
4. Cinder Block Farm 155 acres, priority date 1952, Water Right #35-2266
5. Over the Hill 240 acres, priority date 1952, Water Right #35-2269G
6. Home Place 156 acres, priority date 1950, Water Right #35-2183D.

Mr. Bingham is not a member of any water district. His priority for water rights and use lies solely in the application of Idaho Law. With that in mind Article XV - Water Rights of the Idaho State Constitution, Section 5 gives Mr. Bingham priorities and limitation on use. His priority date is senior to a majority of the water users in his area. The doctrine of "First in Time and First in Right" has been reaffirmed over and over again in Idaho Water Law. Most recently in South Valley Ground Water District v Idaho Department of Water Resources, 173 Idaho 762 (2024) the Idaho Supreme Court continued to follow the doctrine of "First in Time First in Right" as it relates to Idaho's appropriation laws and priority dates including the issues of curtailment. Mr. Bingham has no intention of joining a water district and intends to rely on his Constitutional and Statutory Water Right.

VISIT OUR WEB SITE AT [HTTP://WWW.COOPER-LARSEN.COM](http://WWW.COOPER-LARSEN.COM)



Our mitigation and curtailment plan is very simple. We are asking the Idaho Department of Water Resources and IGWA to acknowledge our priority date and to accept that prior to any curtailment of Mr. Bingham's rights that are junior to Mr. Bingham. Junior water rights should be shut down before the Bingham's water rights are affected. Application of the law of priority will curtail all junior water right holder and satisfy the curtailment of 75.300 acre feet before Mr. Bingham's water rights are at issue.

From the information available, the issue of reduction of the water table and aquifer clearly begins to be noticed after 1980. Mr. Bingham acknowledges this and his 1987 water rights have been shut off for the past 5 years. Mr. Bingham does not believe that he should have any obligation to shut off his water or curtail his water until junior water rights have not only been curtailed but shut off in favor of senior water rights. We believe this is consistent with the Idaho Constitution and with the existing case law. Accordingly this is Mr. Bingham's mitigation and curtailment plan. We simply intend to follow the law and expect the Idaho Department of Water Resources to follow the law. I am confident that the Twin Falls Canal Company supports this position of priority.

If you have any questions please do not hesitate to contact me.

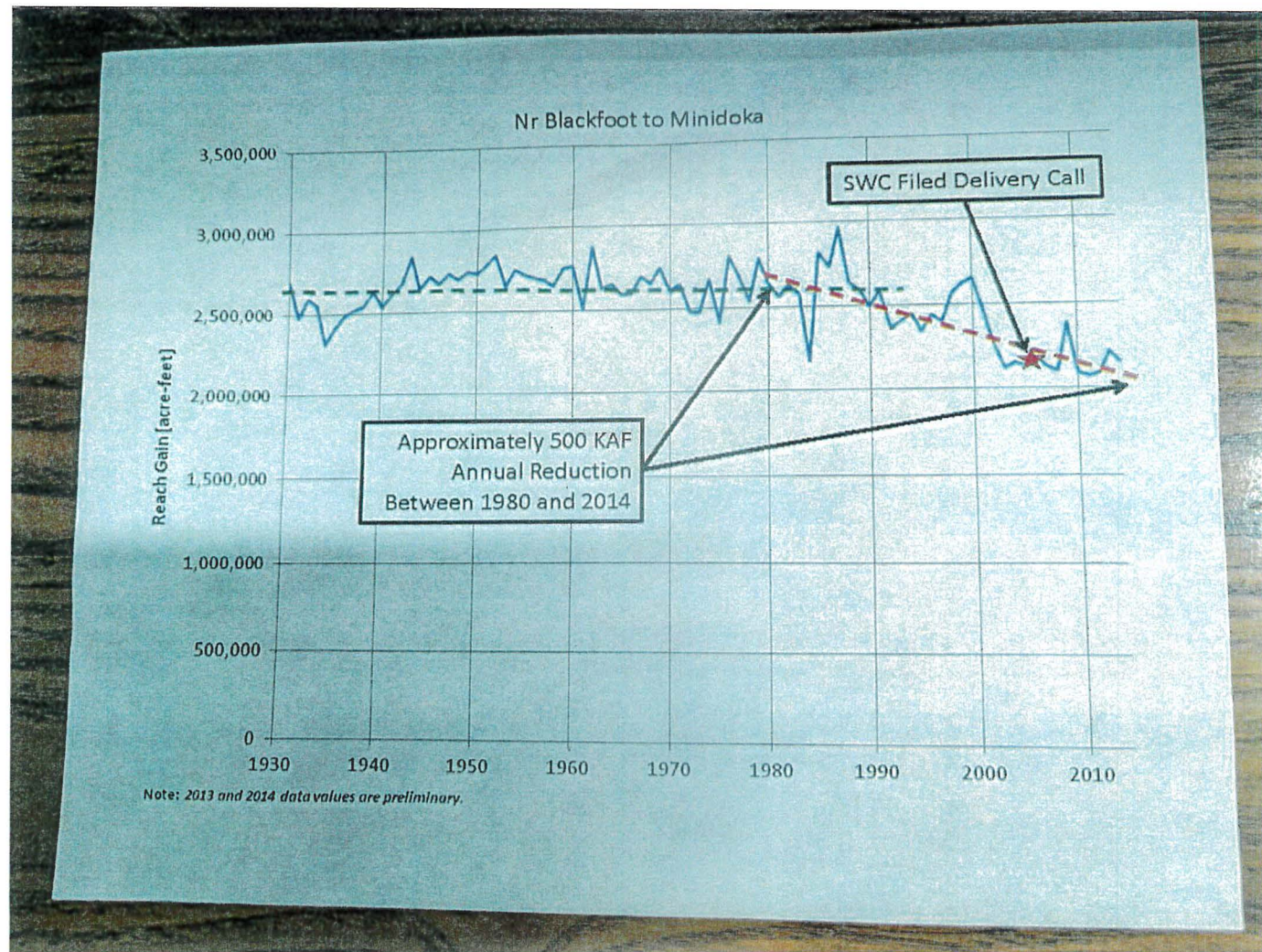
Sincerely,



REED W. LARSEN

RWL/cmw  
cc: Jerry Bingham  
22-281





PENGAD 800-631-6989

EXHIBIT