RECEIVED
May 14, 2024
DEPARTMENT OF
WATER RESOURCES

Dylan Anderson (ISB# 9676)
Dylan Anderson Law PLLC
P.O. Box 35
Rexburg, Idaho 83440

Phone - (208) 684-7701
Email - dylan@dylanandersonlaw.com

Attorney for Bingham Ground Water District (BGWD)

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY AND 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-DC-2010-001 **BRIEF IN SUPPORT OF IGWA's CONDITIONAL NOTICE OF MITIGATION COMPLIANCE; PETITION FOR RECONSIDERATION; AND REQUEST FOR EXPEDITED DECISION.**

Bingham Ground Water District, through counsel, files the following brief in support of IGWA's Conditional Notice of Mitigation Compliance; Petition for Reconsideration; and Request for Expedited Decision.

The *Order Determining Deficiency in Notices of Secured Water ("Order Determining Deficiency")* was troubling to Bingham Ground Water District for many reasons, not the least of which was the complete disregard for what Bingham presented to the Department and the attempt to label Bingham as a "Free Rider." Bingham presented to the department a willingness and desire to mitigate, along with many steps taken toward that effort, but simply pointed out to the department that according to previous rulings, the 2009 mitigation plan was not available to individual districts, but must be mitigated by IGWA as a whole. Bingham also pointed out that because American Falls Aberdeen was not involved, IGWA was not able to participate as a whole. This position was reinforced and reiterated in the Departments recent Order Determining Deficiency.

Rather than acknowledge the conundrum, the department chose to mischaracterize Bingham's legitimate and ultimately correct concern as an attempt to somehow avoid mitigation. The Director called out Bingham specifically as a "Free Rider" for not being able to mitigate under the 2009 plan, though no district was able to mitigate under the 2009 plan. It seems lately that the department has a propensity to meet earnest concern with contempt, deliberate misconstruction, and the unnecessarily labeling of groundwater districts as disingenuous or otherwise untrustworthy. This notion was witnessed again this past hearing when groundwater users were unnecessarily questioned about whether they would deliver water according to the 2021 breach settlement. They paid last year, and such an obligation has nothing to do with the

current mitigation. Still, despite representations on the record that we had an agreement and would pay what we owe, the department still required further assurance in writing that we would do so. Groundwater districts vehemently disagree with the department regarding certain rulings and interpretations. However, for such differences of opinion to present in outright distrust and disparaging labels in not only unfair, but it is also detrimental to any possible resolution to current conflicts. As frustrating and unnecessary as it was to have our concerns mischaracterized and to be called a "Free Rider," the rationale for justifying such an attack is far more troubling.

The department has reiterated the position that districts cannot mitigate for their proportionate shares individually, but only for the whole amount as IGWA, collectively. However, the department seems willing to take a district's otherwise deficient mitigation storage water and unilaterally use it to mitigate for the oldest groundwater rights, regardless of whether these rights contributed to the mitigation effort, are members of a particular district, members of IGWA, or even covered by a mitigation plan at all. They then return to the districts with a demand for more water to avoid curtailment. Such a policy, along with encouraging other groundwater districts to turn on each other, would have very similar anatomy to a "shakedown." As stated in IGWA's motion, Idaho Code § 42-5224(11) allows districts to only mitigate "material injury caused by ground water use within the district…" This limitation is backed by statute, but it is also reinforced by innate fairness and reason. If this type of contribution is what the Director was asking for in the hearing, then Bingham is unaware by what plan, authority, or rational the department can just apply a districts mitigation against the shortfall at large. It does not seem to be part of the 2009 mitigation plan.

If the Director is not satisfied with the district's mitigation under the 2009 plan, he can reject it. However, the Director cannot accept district mitigation storage water and use it to mitigate other water rights then demand more from a district to avoid curtailment. Storage water that was purchased with district funds cannot be used to mitigate others outside a district, especially while those in a district would still face curtailment.

Additionally, a ruling from the department regarding the 2009-006 mitigation plan and the mitigation represented by Bingham would potentially impact the amount required to mitigate under the 2009 plan. Bingham wonders if that ruling will come before the deadline on Friday, May 17.

The Department should allow IGWA to mitigate for their proportionate share under the methodology order, as was done last year.

DATED this 14th day of May 2024,

/s/ Dylan Anderson .
Dylan Anderson
Attorney for Bingham Ground Water District

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2024, I served the foregoing document on the persons below via email or as otherwise indicated:

/s/ Dylan Anderson .
Dylan Anderson
Attorney for Bingham Ground Water District

Director Mat Weaver Garrick Baxter Kayleen Richter Sarah Tschohl Idaho Department of Water Resources 322 E. Front St. Boise, ID 83720-0098	mat.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov kayleen.richter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov
Andrew J Waldera SAWTOOTH LAW OFFICES, PLLC P.O. Box 250 Rexburg, ID 83440	andy@sawtoothlaw.com
Thomas J. Budge Elisheva M. Patterson RACINE OLSON, PLLP 201 E. Center St. / P.O. Box 1391 Pocatello, Idaho 83204	tj@racineolson.com elisheva@racineolson.com
Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC 1449 E 17th St, Ste A PO Box 3005 Idaho Falls, ID 83403	sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com
John K. Simpson Travis L. Thompson Abigail R. Bitzenburg MARTEN LAW P. O. Box 63 Twin Falls, ID 83303-0063	tthompson@martenlaw.com jsimpson@martenlaw.com abitzenburg@martenlaw.com jnielsen@martenlaw.com

W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318	wkf@pmt.org
Sarah A Klahn Maximilian C. Bricker SOMACH SIMMONS & DUNN 2033 11th Street, Ste 5 Boulder, Co 80302	sklahn@somachlaw.com mbricker@somachlaw.com vfrancisco@somachlaw.com

Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83 702	cbromley@mchughbromley.com cmchugh@mchughbromley.com
Robert E. Williams WILLIAMS, MESERVY, & LOTHSPEICH, LLP P.O. Box 168 Jerome, ID 83338	rewilliams@wmlattys.com
Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405	rharris@holdenlegal.com
Michael A. Kirkham City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83402	mkirkham@idahofallsidaho.gov
Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205	rdiehl@pocatello.us
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202	david.gehlert@usdoj.gov
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234	mhoward@usbr.gov

Jerry Rigby RIGBY, ANDRUS & RIGBY LAW, PLLC P.O. Box 250 Rexburg, ID 83440	jrigby@rex-law.com
Corey Skinner IDWR-Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033	corey.skinner@idwr.idaho.gov
William A. Parsons PARSONS, LOVELAND, SHIRLEY & LINDSTROM, LLP P.O. Box 910 Burley, ID 83318	wparsons@magicvalley.law