

John K. Simpson, ISB #4242
 Travis L. Thompson, ISB #6168
 Abby R. Bitzenburg, ISB #12198
MARTEN LAW LLP
 163 Second Avenue West
 P.O. Box 63
 Twin Falls, Idaho 83303-0063
 Telephone: (208) 733-0700
 Email: jsimpson@martenlaw.com
thompson@martenlaw.com
abitzenburg@martenlaw.com

*Attorneys for A&B Irrigation District and
 Falls Irrigation District*

**BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO**

IN THE MATTER OF THE MITIGATION
 PLAN FILED BY A&B IRRIGATION
 DISTRICT FOR THE DISTRIBUTION OF
 WATER TO WATER RIGHTS HELD BY
 THE SURFACE WATER COALITION

Docket No.: CM-MP-2015-003

**JOINT NOTICE OF PARTICIPATION IN
 MITIGATION PLAN AND REQUEST
 FOR APPROVAL**

COME NOW, the Applicant A&B Irrigation District and Falls Irrigation District by and through their respective undersigned counsel of record, and hereby file this *Joint Notice of Participation in Mitigation Plan* in this matter.

In the Director’s Steps 1-3 Order dated April 18, 2024, said Order identifies that water right holders subject to curtailment may demonstrate they can join an approved mitigation plan. *See Order* at 6. The Order did not identify limitations or process in the opportunity to join existing mitigation plans. Hence, this notice and request for joinder attempts to provide a summary of the intent of Falls to comply with the storage water component of the A&B plan. Through this plan Falls can mitigate for its groundwater rights by delivering its proportionate share of the predicted in-

season demand shortfall with its own storage water.

A&B consents to Falls joining its approved mitigation plan in this matter in order to mitigate certain junior priority ground water rights held by Falls for the 2024 irrigation season (water right nos. 29-2262 et al) (for full list *see Falls Irrigation District's Rule 43 Mitigation Plan*). Like A&B, Falls holds storage water rights in the Upper Snake River Basin reservoir system that are expected to completely fill and can assign storage water to any injured Coalition member through Water District 01 during the irrigation season to mitigate for pumping impacts.

The members of the Surface Water Coalition have agreed to Falls' request to join A&B's mitigation plan this season and have communicated that consent through counsel to the Director. *See Travis L. Thompson and Kent Fletcher May 29, 2024 emails to Director Weaver*. Falls can and will execute a lease form and pay the respective administrative fees to Water District 01 once the Department identifies its proportionate share of the in-season demand shortfall that Falls needs to supply. Falls previously directed communications to the WD1 watermaster indicating the intent to utilize storage water through such a lease. *See John Simpson Letter to Craig Chandler dated April 30, 2024*. To date, IDWR has not provided that information to Falls.

Finally, in the event IDWR allows IGWA or the Districts to mitigate pursuant to the 2009 Plan, then Falls will not have any mitigation obligation as that plan covers all junior groundwater users. Falls further relies upon the Director's recent change in the curtailment date to February 16, 1970 first identified by order issued on May 10, 2024. *See also, Amended Order Determining Deficiency in Notices of Secured Water* (May 28, 2024) and reserves the right to request a hearing on any curtailment notice if this joint notice is denied for any reason.

DATED this 30th day of May, 2024.

MARTEN LAW LLP

/s/ Travis L. Thompson
Travis L. Thompson

Attorneys for A&B Irrigation District

MARTEN LAW LLP

/s/ John K. Simpson
John K. Simpson

Attorneys for Falls Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2024, I served a true and correct copy of the foregoing *Joint Notice of Participation in Mitigation Plan and Request for Approval* on the following by the method indicated:

<p>Director Mat Weaver Garrick Baxter Sarah Tschohl Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail mat.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov</p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234 *** service by electronic mail only mhoward@usbr.gov</p>	<p>Craig Chandler IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only craig.chandler@idwr.idaho.gov</p>
<p>T.J. Budge Elisheva Patterson Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only tj@racineolson.com elisheva@racineolson.com</p>	<p>Sarah A. Klahn Max C. Bricker Veva Francisco Somach Simmons & Dunn 1155 Canyon St., Suite 110 Boulder, CO 80302 *** service by electronic mail only sklahn@somachlaw.com mbricker@somachlaw.com vfrancisco@somachlaw.com</p>	<p>David Gehlert ENRD – DOJ 999 18th St. South Terrace, Ste. 370 Denver, CO 80202 *** service by electronic mail only david.gehlert@usdoj.gov</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83201 *** service by electronic mail only rdiehl@pocatello.us</p>	<p>William A. Parsons Parsons, Smith & Stone LLP P.O. Box 910 Burley, ID 83318 *** service by electronic mail only wparsons@pmt.org</p>	<p>Corey Skinner IDWR – Southern Region 650 Addison Ave W, Ste. 500 Twin Falls, ID 83301-5858 *** service by electronic mail only corey.skinner@idwr.idaho.gov</p>
<p>W. Kent Fletcher Fletcher Law Offices P.O. Box 248 Burley, ID 83318 *** service by electronic mail only wkf@pmt.org</p>		<p>Candice McHugh Chris M. Bromley McHugh Bromley, PLLC 380 South 4th Street, Ste. 103 Boise, ID 83702 *** service by electronic mail only cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>

<p>Robert E. Williams Williams, Meservy & Lothspeich, LLP P.O. Box 168 Jerome, ID 83338 *** service by electronic mail only rewilliams@wmlattys.com</p>	<p>Robert L. Harris Holden, Kidwell, Hahn & Crapo, PLLC P.O. Box 50130 Idaho Falls, ID 83405 *** service by electronic mail only rharris@holdenlegal.com</p>	<p>Michael A. Kirkham City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 *** service by electronic mail only mkirkham@idahofallsidaho.gov</p>
<p>Skyler Johns Steven Taggart Nathan Olsen Olsen Taggart PLLC P.O. Box 3005 Idaho Falls, ID 83403 *** service by electronic mail only sjohns@olsentaggart.com staggart@olsentaggart.com nolsen@olsentaggart.com</p>	<p>Dylan Anderson Dylan Anderson Law PLLC P.O. Box 35 Rexburg, ID 83440 *** service by electronic mail only dylan@dylanandersonlaw.com</p>	



Travis L. Thompson