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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

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

**IGWA’s Response to A&B’s and FID’s
 Joint Notice of Participation in Mitigation
 Plan and Request for Approval**

Idaho Ground Water Appropriators, Inc. (“IGWA”), by and through counsel, hereby responds to the *Joint Notice of Mitigation Plan and Request or Approval* (“*Joint Notice*”) filed May 30, 2024, by A&B Irrigation District (“A&B”) and Falls Irrigation District (“FID”).

The *Joint Notice* requests that FID be permitted to “comply with the storage water component of the A&B plan.” (*Joint Notice*, p. 1.) The storage water component of the A&B mitigation plan filed May 21, 2015, allows A&B to utilize storage water owned by A&B “to mitigate for any shortfalls caused by the District’s junior priority ground water [rights] that are subject to curtailment.” (A&B Plan, p. 3.)

In actuality, the *Joint Notice* does not seek to allow FID to comply with the storage water component of the A&B plan; rather, it proposes that FID be allowed to mitigate on terms that mirror the storage water component of the A&B plan. Unlike the A&B plan, which uses storage water owned by A&B for mitigation, the *Joint Notice* proposes use of storage water owned by FID. Also, unlike the A&B plan, which mitigates for material injury caused by A&B’s water rights, the *Joint Notice* proposes to mitigate for material injury caused by FID’s water rights. Thus, the *Joint Notice* is, in fact, a request for FID to mitigate on terms that mirror the A&B plan, not to comply with the A&B plan itself.

IGWA does not object to FID using storage water to mitigate for material injury caused by its own groundwater rights. Since the Department has already approved the A&B plan, thereby determined that the use of storage water to mitigate material injury caused by junior's own groundwater use satisfies Conjunctive Management Rule 43, the Department has no legal basis for preventing any other junior groundwater user from using storage water to mitigate for material injury caused by its own groundwater use. To do so would violate the equal protection clause of the United States Constitution, which "is essentially a mandate or direction that all persons similarly situated should be treated alike." 16B Am. Jur. 2d Constitutional Law § 817.

In keeping with the equal protection clause, the Department should issue an order allowing all junior groundwater users to use storage water to mitigate for material injury caused by their own groundwater use. Such an order would allow FID and others to avoid curtailment without wasting time and resources preparing, publishing, and processing mitigation plans that the Department is legally obligated to approve.


If the Department declines to issue such an order, it leaves FID with no ability to avoid curtailment until (a) the A&B Plan is amended to incorporate FID's water rights, or (b) the Department completes processing of FID's mitigation plan filed May 7, 2024, in Docket No CM-MP-2024-002. Both options will presumably take many months, considering Jefferson-Clark Ground Water District, North Snake Ground Water District, and A&B Ground Water District each filed mitigation in plans in December of 2023 that mirror the storage water component of the A&B plan, yet have not been approved by the Department.

A&B cannot be permitted to pick and choose which juniors are allowed to mitigate on the same terms as the A&B plan. Determining whether a mitigation plan complies with Conjunctive Management Rule 43 is the prerogative of the Department, not A&B or the SWC.

Therefore, IGWA suggests that the Department issue an order allowing all groundwater users to use storage water to mitigate for material injury caused by their own groundwater use. In any case, the Department should deny the *Joint Notice* because it effectively seeks to amend the A&B plan without complying with Conjunctive Management Rule 43.


RESPECTFULLY SUBMITTED this 4th day of June, 2024.

RACINE OLSON, PLLP

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2024, I cause the foregoing document to be served on the persons below via the method below:


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