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DEPARTMENT OF  
WATER RESOURCES

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*Attorneys for the American Falls-Aberdeen Ground Water District*

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

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

**Docket No. CM-MP-2016-001**

**AMERICAN FALLS-ABERDEEN  
GROUND WATER DISTRICT'S  
PETITION TO INTERVENE**

IN THE MATTER OF IGWA'S  
SETTLEMENT AGREEMENT MITIGATION  
PLAN

COMES NOW American Falls-Aberdeen Ground Water District ("AFAGWD"), by and through its undersigned counsel, and hereby files this *Petition to Intervene* in the above-captioned matter pursuant to IDAPA 37.01.01.350. AFAGWD has a direct and substantial interest in the proceeding because its constituents' interests may be affected by the outcome of this formal proceeding. The undersigned counsel certify that they have conferred with counsel for both the Surface Water Coalition ("SWC") and Idaho Ground Water Appropriators, Inc. ("IGWA") on this *Petition to Intervene*. The SWC has indicated it will

not oppose AFAGWD’s participation in this matter as a party; IGWA has not taken a position as of yet.

### **BACKGROUND**

1. AFAGWD is a member of the Idaho Ground Water Appropriators (“IGWA”).
2. AFAGWD is a party to the *Settlement Agreement* entered into June 30, 2015, between participating members of the Surface Water Coalition and participating members of the Idaho Ground Water Appropriators, Inc. (“2015 SWC-IGWA Settlement Agreement”), including all amendments and addendums thereto.
3. Pursuant to *Final Order Approving Amendment to Stipulated Mitigation Plan* issued May 9, 2017 (“2017 Mitigation Order”) that is the subject of this proceeding, AFAGWD is among the ground water districts that have committed to satisfy the obligations of the 2017 Mitigation Order as a condition of receiving safe harbor from curtailment under the ongoing SWC Delivery Call.
4. AFAGWD has endeavored, and continues to endeavor, to satisfy its obligations under the *2017 Mitigation Order*. For example, the director’s August 2, 2023, *Final Order Regarding IGWA’s 2022 Mitigation Plan Compliance* quantified shortfalls in compliance with the *2017 Mitigation Order* for a number of IGWA members, including a shortfall for AFAGWD of 1,352 acre-feet. AFAGWD satisfied that obligation through additional recharge made before the end of the 2023 irrigation season, and on

November 7, 2023, AFAGWD filed a *Notice of Satisfaction of American Falls-Aberdeen Ground Water District 2022 Mitigation Obligation*.

5. AFAGWD remains committed to compliance with the *2017 Mitigation Order* notwithstanding the various petitions for approval of separate mitigation plans filed by other IGWA members since December 18, 2023. AFAGWD intends to protest those petitions as needed, as these proposed mitigation plans appear to be inconsistent with Idaho law, the *2017 Mitigation Order*, and the underlying *2015 Settlement Agreement* and amendments. If adopted, as proposed, the separate mitigation plans are likely to increase the mitigation burdens on AFAGWD.

#### **STANDARDS FOR INTERVENTION IN IDWR CONTESTED CASES**

6. Regarding petitions to intervene, the Department's Rules of Procedure provide that prospective parties "to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party." IDAPA 37.01.01.350.
7. If the prospective party's timely-filed petition "shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties." IDAPA 37.01.01.353.01. A prospective party's late petition may be granted "for good cause shown," but may be denied "for failure to state good cause for the late filing, to prevent disruption, to prevent

prejudice to existing parties, to prevent undue broadening of the issues, or for other reasons.” IDAPA 37.01.01.353.02.

8. AFAGWD has a direct and substantial interest in the issues in this proceeding, including issues regarding interpretations of the *2017 Mitigation Plan Order* and underlying 2015 Settlement Agreement, because the resolution of those issues may impact AFAGWD’s mitigation obligations moving forward. AFAGWD’s Proposed Statement of Issues is filed concurrently with this Motion.<sup>1</sup>
9. Further, AFAGWD’s participation will not unduly broaden the issues because AFAGWD’s issues are substantially similar to those disclosed by SWC and IGWA and pertain to the interpretation to be given the *2017 Mitigation Plan Order* and related documents. Finally, as shown by the filing of petitions for approval of separate mitigation plans by its other members, as well as the framing of issues in *IGWA’s Statement of Proposed Issues*, filed December 19, 2023, AFAGWD’s interests are not adequately represented by IGWA.
10. “Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice.” IDAPA 37.01.01.352.

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<sup>1</sup> AFAGWD is not yet filing a response to SWC’s and IGWA’s statements of proposed issues, which the Hearing Officer ordered the parties file by December 26, 2023, in his *Notice of Second Continued Scheduling Conference; Order Setting Deadlines* dated December 14, 2023. AFAGWD will be prepared to promptly file its responses to the parties’ statements upon the Hearing Officer’s granting of this *Petition to Intervene*.

11. The scheduling conference has not yet concluded due to being continued, and no dates for hearing have been set in this matter. Thus, AFAGWD's petition is timely, and AFAGWD is entitled to intervene.
12. Alternatively, AFAGWD should be permitted to intervene because its participation will not disrupt this formal proceeding or prejudice the parties. Further, given the positions taken in *IGWA's Statement of Proposed Issues*, filed December 19, 2023, and the other IGWA members' filings of petitions for approval of separate mitigation plans since December 18, 2023, there are new grounds for AFAGWD's intervention. Thus, there is good cause for AFAGWD to petition to intervene at this time.

Based on the foregoing, AFAGWD satisfies the requirements for intervention and respectfully requests that its *Petition to Intervene* be granted.

DATED this 27th day of December 2023.

SOMACH SIMMONS & DUNN, P.C.



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Sarah A. Klahn, ISB # 7928  
Maximilian C. Bricker, ISB #12283

*Attorneys for the American Falls-  
Aberdeen Ground Water District*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of December, 2023, I caused a true and correct copy of the foregoing document to be filed and served on the persons below via email:

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