

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Abigail 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
tthompson@martenlaw.com
abitzenburg@martenlaw.com

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Email: wkf@pmt.org

*Attorneys for American Falls Reservoir
District #2 and Minidoka Irrigation District*

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

RECEIVED
FEB 02 2024
DEPT OF WATER RESOURCES
SOUTHERN REGION

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

IN THE MATTER OF BONNEVILLE-
JEFFERSON GROUND WATER
DISTRICT'S CONSERVATION
MITIGATION PLAN FOR THE SURFACE
WATER COALITION

Docket No.: CM-MP-2023- 002
~~Docket No.: CM-DC-2010-001~~

**SURFACE WATER COALITION'S
JOINT PROTEST**

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

COME NOW, 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 (hereinafter referred to as the “Coalition” or “SWC”), by and through their attorneys of record, Marten Law LLP and Fletcher Law Office, and hereby file this *Joint Protest* to the approval of the *Petition for Approval of Bonneville-Jefferson Ground Water District’s Conservation Mitigation Plan for the Surface Water Coalition* (“Mitigation Plan”), filed with the Idaho Department of Water Resources (“Department” or “IDWR”) by BONNEVILLE-JEFFERSON GROUND WATER DISTRICT (“Bonneville-Jefferson”) on December 18, 2023 pursuant to the provisions of Conjunctive Management Rule 43, IDWR Procedural Rule 250, and other applicable law.

The SWC is authorized to oppose the Mitigation Plan because the Plan attempts to mitigate injury to the SWC’s senior surface water rights caused by Bonneville-Jefferson’s members’ junior priority ground water rights. The initial bases for the SWC’s *Protest* are as follows:

1. The proposed Mitigation Plan does not comply with the *2016 Stipulated Mitigation Plan* (March 9, 2016), as amended (February 7, 2017), and as approved by final orders of the Director (May 2, 2016 and May 9, 2017) (CM-MP-2016-001). *See Surface Water Coalition’s and IGWA’s Stipulated Mitigation Plan and Request for Order, Surface Water Coalition’s and IGWA’s Stipulated Amended Mitigation Plan and Request for Order, Final Order Approving Stipulated Mitigation Plan, Final Order Approving Amendment to Stipulated Mitigation.*

2. The Mitigation Plan does not identify, with particularity, the water rights of Bonneville-Jeffersons’ members proposed to benefit from the Mitigation Plan.

3. The Mitigation Plan does not identify, with particularity, any circumstances or limitations on the availability of the water supply proposed to be used for mitigation.

4. To the best of SWC’s knowledge, Bonneville-Jefferson does not hold the right to use storage water in the Upper Snake River Reservoir system. Accordingly, Bonneville-Jefferson does not have any available storage to provide to SWC for direct mitigation in any given year,

including 2024.

5. Bonneville-Jefferson's proposed activities, including reduced pumping, recharge, and others are not defined with any particularity, including location, water rights involved, and the estimated benefits that might accrue from such projects.

6. The Mitigation Plan does not identify that it will provide replacement water, at the time and place required by SWC's senior priority surface water rights, sufficient to offset the depletive effect of Bonneville-Jefferson's ground water withdrawals on the Snake River at such time and place necessary to satisfy SWC's senior priority water rights.

7. The Mitigation Plan contains no "contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable" and therefore violates CM Rule 43.03 c.

8. The Mitigation Plan does not identify how injury to SWC's right to reasonable carryover storage will be addressed.

9. In general, the Mitigation Plan is vague and ambiguous, does not provide for adequate mitigation, furnishes no certainty that the mitigation water will be delivered to prevent injury, does not supply a reliable source of replacement water, could result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge, and otherwise fails to adequately mitigate for injury caused by Bonneville-Jefferson's members' junior priority ground water rights.

10. For such other and further reasons as may be discovered.

DATED this 2nd day of February, 2024.

MARTEN LAW LLP

/s/ Travis L. Thompson _____

John K. Simpson
Travis L. Thompson
Abby R. Bitzenburg

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

FLETCHER LAW OFFICE

/s/ W. Kent Fletcher _____

W. Kent Fletcher

*Attorney for American Falls Reservoir
District #2 & Minidoka Irrigation District*

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2024, I served a copy of the foregoing NOTICE OF PROTEST, by hand-delivery to the following:

Idaho Department of Water Resources
Southern Region
650 Addison Ave W, Ste 500
Twin Falls, Idaho 83301-5858

Via Email to:

Skyler C. Johns
Olsen Taggart PLLC
P.O. Box 3005
Idaho Falls, Idaho 83403
sjohns@olsentaggart.com

/s/ Travis L. Thompson
Travis L. Thompson

<p>Received by SG Receipt amt. \$300.00 (total) Receipt No. S040078 Date 2-1-2024</p>
