

Sarah A. Klahn, ISB #7928  
Maximilian C. Bricker, ISB #12283  
SOMACH SIMMONS & DUNN, P.C.  
1155 Canyon Blvd., Suite 110  
Boulder, CO 80302  
[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)  
[mbricker@somachlaw.com](mailto:mbricker@somachlaw.com)  
*Attorneys for American Falls-Aberdeen  
Ground Water District*

RECEIVED

Feb 05, 2024

DEPARTMENT OF  
WATER RESOURCES

**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-2023-002

**AMERICAN FALLS-ABERDEEN  
GROUND WATER DISTRICT'S  
PROTEST**

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

COMES NOW American Falls-Aberdeen Ground Water District ("AFAGWD"), by and through its undersigned counsel, and hereby files this *Protest* to the *Petition for Approval of Bonneville-Jefferson Ground Water District's Mitigation Plan for the Surface Water Coalition* ("Petition") dated December 19, 2023, pursuant to IDAPA 37.01.01.210 and IDAPA 37.03.11.043.02.

The initial bases for AFAGWD's *Protest* are as follows:

1. AFAGWD is a member of Idaho Ground Water Appropriators, Inc. ("IGWA").
2. Members of IGWA are subject to *Surface Water Coalition's and IGWA's Stipulated*

*Mitigation Plan and Request for Order* dated March 9, 2016 (“2016 Mitigation Plan”), which was approved by the Director’s *Final Order Approving Stipulated Mitigation Plan* dated May 2, 2016 (“2016 Mitigation Order,” and collectively “2016 Mitigation Plan and Order”).<sup>1</sup> The *2016 Mitigation Plan and Order* are existing legal obligations to which IGWA members are bound, and which have not been terminated.

3. If the *Petition* is intended to be **additive**—in other words, Bonneville-Jefferson Ground Water District’s (“BJGWD”) intention is to comply with **both** the terms of the proposed mitigation plan and the existing *2016 Mitigation Plan and Order*—AFAGWD does not object.
4. However, AFAGWD objects to the *Petition* to the extent BJGWD’s intention is to replace, or otherwise provide an alternative to complying with the terms of, the *2016 Mitigation Plan and Order*.<sup>2</sup>
5. The legal effect of a party operating under multiple mitigation plans is currently at issue in other matters before the Department, including the 2022 Breach Case (IDWR Docket No. CM-MP-2016-001). Litigating the same issue in multiple active matters runs the risk of different outcomes and is a waste of agency and litigants’ resources.
6. Because the *Petition* raises issues being litigated elsewhere, the Department should issue an order setting a scheduling conference in this matter, to be held 90 days after a final, unappealable order has been entered in the other matter(s) regarding the effect of multiple

---

<sup>1</sup> The parties subsequently filed *Surface Water Coalition’s and IGWA’s Stipulated Amended Mitigation Plan and Request for Order* dated February 7, 2017, which was approved by the Director through a *Final Order Approving Amendment to Stipulated Mitigation* dated May 9, 2017. For purposes of this *Protest*, AFAGWD will refer to the mitigation plan and corresponding order, notwithstanding amendments, as the “2016 Mitigation Plan” and “2016 Mitigation Order.”

<sup>2</sup> This seems the likely intention, given BJGWD’s positions in other active matters before the Department or on judicial review. See IDWR Docket No. CM-MP-2016-001; *IGWA v. IDWR*, Case No. CV01-23-07893 (4th Dist. Ct., Ada County).

mitigation plans.

This *Protest* is continuing in nature and AFAGWD reserves the right to raise additional and specific technical or legal issues related to the actual substantive resolution of this *Petition* when and if the time comes.

Respectfully submitted this 5<sup>th</sup> day of February 2024.

**SOMACH SIMMONS & DUNN, P.C.**



---

Sarah A. Klahn, ISB #7928  
Maximilian C. Bricker, ISB #12283  
*Attorneys for American Falls-Aberdeen  
Ground Water District*


## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of February 2024, I served the foregoing document on the persons below via email as indicated:

<p>Mathew Weaver, Director                  Garrick Baxter, Deputy Attorney General                  Sarah Tschohl                  IDAHO DEPT. OF WATER RESOURCES                  P.O. Box 83720                  Boise, Idaho 83720-0098</p>	<p><a href="mailto:file@idwr.idaho.gov">file@idwr.idaho.gov</a>  <a href="mailto:mathew.weaver@idwr.idaho.gov">mathew.weaver@idwr.idaho.gov</a>  <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a>  <a href="mailto:sarah.tschohl@idwr.idaho.gov">sarah.tschohl@idwr.idaho.gov</a></p>
<p>Dylan Anderson                  DYLAN ANDERSON LAW                  P.O. Box 35                  Rexburg, Idaho 83440</p>	<p><a href="mailto:dylan@dylanandersonlaw.com">dylan@dylanandersonlaw.com</a></p>
<p>Skyler C. Johns                  Nathan M. Olsen                  Steven L. Taggart                  OLSEN TAGGART PLLC                  1449 E 17th St, Ste A                  P.O. Box 3005                  Idaho Falls, Idaho 83403</p>	<p><a href="mailto:sjohns@olsentaggart.com">sjohns@olsentaggart.com</a>  <a href="mailto:nolsen@olsentaggart.com">nolsen@olsentaggart.com</a>  <a href="mailto:staggart@olsentaggart.com">staggart@olsentaggart.com</a></p>
<p>John K. Simpson                  Travis L. Thompson                  Marten Law LLP                  P.O. Box 2139                  Boise, Idaho 83701-2139                  Travis L. Thompson                  Marten Law LLP                  163 Second Ave. W.                  P.O. Box 63                  Twin Falls, Idaho 83303-0063</p>	<p><a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a>  <a href="mailto:tthompson@martenlaw.com">tthompson@martenlaw.com</a>  <a href="mailto:jnielsen@martenlaw.com">jnielsen@martenlaw.com</a></p>
<p>W. Kent Fletcher                  FLETCHER LAW OFFICE                  P.O. Box 248                  Burley, ID 83318</p>	<p><a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>
<p>Kathleen Marion Carr                  US DEPT. INTERIOR                  960 Broadway Ste 400                  Boise, ID 83706</p>	<p><a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>

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	<a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a>
Matt Howard US BUREAU OF RECLAMATION 1150 N Curtis Road Boise, ID 83706-1234	<a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a>
Sarah A Klahn Maximilian C. Bricker SOMACH SIMMONS & DUNN 2033 11th Street, Ste 5 Boulder, Co 80302	<a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:mbricker@somachlaw.com">mbricker@somachlaw.com</a> <a href="mailto:vfrancisco@somachlaw.com">vfrancisco@somachlaw.com</a>
Rich Diehl CITY OF POCATELLO P.O. Box 4169 Pocatello, ID 83205	<a href="mailto:rdiehl@pocatello.us">rdiehl@pocatello.us</a>
Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83 702	<a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a>
Robert E. Williams WILLIAMS, MESERVY, & LOTH SPEICH, LLP P.O. Box 168 Jerome, ID 83338	<a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a>
Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405	<a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a>
Michael Kirkham City Attorney CITY OF IDAHO FALLS P.O. Box 50220 Idaho Falls, ID 83405	<a href="mailto:mkirkham@idahofallsidaho.gov">mkirkham@idahofallsidaho.gov</a>

William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318	<a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a>
Thomas J. Budge Elisheva M. Patterson RACINE OLSON, PLLP 201 E. Center St. / P.O. Box 1391 Pocatello, Idaho 83204	<a href="mailto:tj@racineolson.com">tj@racineolson.com</a> <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a>

  
\_\_\_\_\_  
Sarah A. Klahn, ISB #7928