

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](mailto:jsimpson@martenlaw.com)  
[tthompson@martenlaw.com](mailto:tthompson@martenlaw.com)  
[abitzenburg@martenlaw.com](mailto: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](mailto: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 JEFFERSON CLARK  
GROUND WATER DISTRICT'S  
MITIGATION PLAN FOR THE SURFACE  
WATER COALITION

Docket No.: CM-MP-2023-003  
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 Jefferson Clark Ground Water District’s Storage Water Mitigation Plan for the Surface Water Coalition* (“Mitigation Plan”), filed with the Idaho Department of Water Resources (“Department”) by JEFFERSON CLARK GROUND WATER DISTRICT (“Jefferson Clark”) on December 20<sup>th</sup>, 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 SWC’s senior surface water rights caused by Jefferson Clark’s members’ junior priority ground water rights. The initial bases for 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 Jefferson Clarks’ 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, Jefferson Clark does not hold the right to use any storage water in the Upper Snake River Reservoir system. Accordingly, Jefferson Clark does not have any available storage to provide to SWC for direct mitigation in any given year, including 2024.

5. Jefferson Clark's proposed activities, including assigning storage water, reduced pumping, recharge, and others are not defined with 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 Jefferson Clark'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, provides no certainty that the mitigation water will be delivered to prevent injury, does not provide 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 Jefferson Clark's members' junior priority ground water rights.

10. For such other and further reasons as may be discovered or offered at the hearing on this matter.

DATED this 2<sup>nd</sup> 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 2<sup>nd</sup> 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:

Jerry R. Rigby  
Rigby, Andrus & Rigby Law. PLLC  
25 N. 2<sup>nd</sup> E.  
P.O. Box 250  
Rexburg, Idaho 83440  
[jrigby@rex-law.com](mailto:jrigby@rex-law.com)

/s/ Travis L. Thompson

Travis L. Thompson

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