

RECEIVED

Feb 05, 2024

DEPARTMENT OF
WATER RESOURCES

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
mbricker@somachlaw.com
*Attorneys for 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-2023-005

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

IN THE MATTER OF MAGIC VALLEY
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 Magic Valley Ground Water District's Mitigation Plan for the Surface Water Coalition* ("Petition") dated December 20, 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”).¹ 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, Magic Valley Ground Water District’s (“MVGWD”) 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 MVGWD’s intention is to replace, or otherwise provide an alternative to complying with the terms of, the *2016 Mitigation Plan* and *Order*.
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 mitigation plans.

¹ 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.”

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 5th 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 5th day of February 2024, I caused a true and correct copy of the foregoing document to be filed and served on the persons below via email:

Mathew Weaver, Director Garrick Baxter, Deputy Attorney General Sarah Tschohl IDAHO DEPT. OF WATER RESOURCES P.O. Box 83720 Boise, Idaho 83720-0098	file@idwr.idaho.gov mathew.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov
Dylan Anderson DYLAN ANDERSON LAW P.O. Box 35 Rexburg, Idaho 83440	dylan@dylanandersonlaw.com
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	sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com
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	jsimpson@martenlaw.com tthompson@martenlaw.com
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318	wkf@pmt.org
Kathleen Marion Carr US DEPT. INTERIOR 960 Broadway Ste 400 Boise, ID 83706	kathleenmarion.carr@sol.doi.gov

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

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



Sarah A. Klahn, ISB #7928