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DEPARTMENT OF
WATER RESOURCES

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**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-2024-001

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

IN THE MATTER OF BINGHAM 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 Bingham Ground Water District's Mitigation Plan for the Surface Water Coalition* ("Petition") dated January 2, 2024, 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, Bingham Ground Water District’s (“BGWD”) 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 BGWD’s intention is to replace, or otherwise provide an alternative to complying with the terms of, the *2016 Mitigation Plan and Order*.²
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.”

² This seems the likely intention, given BGWD’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).

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.



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*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:

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