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DEPARTMENT OF
WATER RESOURCES

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Attorney for Falls Irrigation District

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

2024-002

CM-MP-~~2015-~~_____

IN THE MATTER OF THE MITIGATION
PLAN FILED BY FALLS IRRIGATION
DISTRICT FOR THE DISTRIBUTION OF
WATER TO WATER RIGHTS HELD BY
THE SURFACE WATER COALITION

**FALLS IRRIGATION DISTRICT'S
RULE 43 MITIGATION PLAN**

COMES NOW, Falls Irrigation District (“Falls” or “District”), by and through its counsel of record, Marten Law LLP, and hereby submits this Mitigation Plan (“Plan”) pursuant to Rule 43 of the Department’s Conjunctive Management Rules (37.03.11.43) in the above-captioned matter for Falls’ ground water rights: 29-2262, 29-2267, 29-2288, 29-2306, 29-2307, 29-2310, 29-2341, 29-2568, 29-2614, 29-11167, 29-11168, 29-11169, 29-13388, 29-13389, 29-13426, and 29-13427.

As detailed below, diversion of groundwater under Falls’ water rights subject to any future curtailment orders issued by the Director in response to the Surface Water Coalition delivery call can be fully mitigated with various actions undertaken by the District.

INTRODUCTION

Historically, Falls was studied as and authorized under the Michaud Flats Project

("Project"). Authorization of the Project occurred in August, 1954. One of the critical aspects of the feasibility report and study concerned water availability for the Project and the determination that ground water use would not impact water supplies then relying upon flows in the Snake River. *See* Definite Plan Report, Michaud Flats Project, March 1956. ("Report")

The Report summarized the Project Plan as follows:

- 11,400 acres gravity irrigated with surface water.
- Approximately 9,300 acres irrigated from deep wells, of which 3,300 acres use gravity distribution and 6,000 acres use sprinklers.
- The consumptive use of ground water to be pumped will be less than the return flow from surface water; therefore, such pumping would not interfere with existing downstream rights on the Snake River.
- After full irrigation of Michaud Flats Project, total return flow amounts to about 19,864 acre-feet annually. This exceeds the total groundwater pumping (14,965 acre-feet) by 4,899 feet and exceeds the portion of the ground water consumptively used (9,934) by 9,930 acre-feet.

Definite Plan Report, Michaud Flats Project, March 1956.

Therefore, given the unique ownership circumstances of Falls' surface and ground water, the offset of groundwater pumping by surface natural flow and storage returns to the aquifer and Snake River, Falls should not be subject to administration. Current Project ground water rights allow for a total volume of 12,028 acre-feet to be used between April 1 and October 31. As detailed below, should diversion of ground water under Falls' water rights be subject to any future curtailment orders issued by the Director in response to the Surface Water Coalition ("SWC" or "Coalition") delivery call or other administrative action, such diversions can be fully

mitigated and deemed in compliance with such orders through the various actions undertaken by the District.

Since the Project's inception, the District has been making more efficient use of its water rights through various actions. From 1960 to 1970, over a ten-year historical period, the District used an average of 7,695 acre feet of ground water. During the next decade, on average over one-thousand-acre feet of ground water pumping was reduced. From 2010 to 2019, the District used an average of 6,602 acre feet of groundwater. Along with lands no longer being irrigated, more efficient irrigation practices, better equipment, and excess water charges mitigate the Districts' usage. In addition, Falls has entered into leases for private ground water rights to utilize as supplemental water or as mitigation depending upon need and delivery issues.

I. MITIGATION PLAN

All correspondence regarding this Mitigation Plan should be sent to:

Name and Address of Applicants to Receive Mitigation Benefits:

| | |
|--------------------------------|-------------------------|
| Falls Irrigation District | John K. Simpson |
| c/o Shawn Tischendorf, Manager | Marten Law LLP |
| 310 Valdez St. | P.O. Box 2139 |
| American Falls, Idaho 83211 | Boise, Idaho 83701-2139 |
| (208) 226-5227 | (208) 336-0700 |

II. WATER RIGHTS TO BE MITIGATED BY PLAN

Through this Mitigation Plan, it is Falls' intent to mitigate all of its junior-priority ground water rights (as listed below), including any other future junior priority ground water rights obtained, that are found to be causing material injury to the senior-priority natural flow, storage and reasonable carryover held by the SWC or require mitigation in compliance with an administrative order.

29-2262
29-2267

29-2288
29-2306
29-2307
29-2310
29-2341
29-2568
29-2614
29-11167
29-11168
29-11169
29-13388
29-13389
29-13426
29-13427

III. DESCRIPTION OF PLAN

A. Lands No Longer Irrigated

Approximately 812 acres within the District are no longer irrigated with ground water diverted under junior priority ground water rights due to voluntary reduction in pumping, subdivisions being built, the interstate running through the well area, etc. Additionally, one of the District's patrons, Snake River Cattle has 320 assessed acres for which the assessments are paid, but the cattle operation does not irrigate the land.

In 2016-2017, two of Falls' patrons entered into an agreement with American Falls Solar, Inc. to develop 40 megawatts of solar photovoltaic facilities which resulted in approximately 380 acres of land no longer being irrigated. Falls has leased these rights as mitigation.

Over the course of the Project's history, land has also been lost to erosion around the American Falls reservoir and is no longer irrigated. Current figures reflect approximately 112.28 acres that are no longer irrigated due to reservoir erosion. This began in 1960 with Well 10, 3.3 acres; Well 4 in 1962, 32.88 acres; Well A in 1982, 19.18 acres; Well 1 in 1982, 33.33 acres; Well 10 in 1988, 6.91 acres; Well G in 1988, 16.68 acres.

B. Recharge through Canals

The ESPA ground water model assumes an average depletion of the aquifer of 1.6 acre-feet per acre on land irrigated with ground water. Between the years 2016 to 2021, Falls discharged an average of 2,155 acre-feet at the end of Falls' delivery system. Most, if not all, of this water is natural flow and storage water as the majority of ground water pumped is now in closed systems. Falls proposes to reduce/eliminate these discharges and instead recharge storage water not otherwise consumed. Over the course of the irrigation season, Falls will measure the amount of water entering the end of system ponds and any releases.

C. Reduction in Pumping

Pursuant to the 2015 SWC/IGWA Agreement, junior ground water users agreed to reduce depletions on the ESPA. The priority dates for Falls' water rights vary between 1/24/1946 to 5/16/1962. Given the relative seniority of the water rights and the on-going actions by water users within the District, Falls seeks credit for the historical reductions taken. Individual reduction in pumping due to more efficient irrigation methods should be credited to Falls.

In addition, Falls has applied for and received an Aging Infrastructure Grant from the Idaho Water Resource Board to rehabilitate the American Falls Pump Station. It is anticipated that 1,684 AF/year of water will be saved, which will improve the District's water supply stability and sustainability by extending the District's surface water storage later into the season. More efficient pumps will decrease over-pumping from the reservoir.

D. Reduction in Wastewater (holding ponds)

Should a finding of material injury be made to members of the SWC that results in Falls' junior-priority ground water rights being subject to curtailment, Falls may provide direct delivery of storage water to those materially injured members of the SWC. Falls seeks approval from the

Director to implement this mitigation activity on an as needed basis. The amount of water needed to mitigate material injury will be determined when this mitigation activity is commenced, and may be reinforced by measurements, such as any reasonable conveyance or carry losses, as well as through contracts with water right users, storage right holders, and others, and may include modeling results and/or other technical information that reflects the benefits of the direct delivery of storage water to injured members of the SWC.

E. Storage Delivery

Falls holds rights to storage water in American Falls Reservoir (27,121.5 acre-feet) and has the ability to participate in Water District 01's Rental Pool. Available storage, if necessary, can be delivered to injured Coalition members to mitigate any shortfalls caused by the District's junior priority ground water deliveries that are subject to curtailment. This action would only be necessary if the benefits of the above conversions, recharge and other identified actions, do not satisfy the injury caused by Falls' ground water rights that are found to be subject to curtailment.

A&B Irrigation District has stipulated Falls joining A&B's approved mitigation plan. Falls would rely upon such action until a separate plan is in place. As detailed above, it is anticipated that Falls' actions will completely mitigate the depletions resulting from the use of any District ground water rights subject to curtailment. The Mitigation Plan provides water "at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy" injured senior surface water rights held by the Coalition. *See* CMR 43.03.b.

The District reserves the right to develop approved procedures with IDWR to identify and determine the respective percentage obligation of its junior priority rights subject to

curtailment and the required mitigation.

IV. REQUEST FOR RELIEF

Falls hereby requests IDWR to process this plan as soon as possible. The District further requests the Director to approve this plan in conformance with the procedures and criteria set forth in CMR 43.

DATED this 7th day of May, 2024.

MARTEN LAW LLP



John K. Simpson
Attorney for Falls Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2024, the above and foregoing **FALLS IRRIGATION DISTRICT'S RULE 43 MITIGATION PLAN** was sent to the following by the method indicated:

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- U.S. Mail, postage prepaid
- Hand Delivery
- Facsimile
- Overnight Mail
- Email



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