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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**

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

CM-MP-2024-002

**JOINT REPLY IN SUPPORT OF
MOTION TO APPROVE STIPULATION
REGARDING FALLS IRRIGATION
DISTRICT’S RULE 43 MITIGATION
PLAN**

COME NOW, Falls Irrigation District (“Falls” or “District”), by and through its counsel of record, IdaH20, PLLC, and American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively “Surface Water Coalition,” “SWC,” or “Coalition”) by and through their respective undersigned counsel of record at Parsons Behle & Latimer, and hereby submit this joint reply to the Protestant IGWA’s response to the joint motion for the Hearing Officer to approve the stipulation in the above-captioned matter.

As detailed below, diversion of groundwater under Falls’ groundwater rights subject to any future curtailment orders issued by the Director in response to the Surface Water Coalition delivery call will be fully mitigated so long as the terms of the attached Stipulation between Falls

and SWC are fully complied with by the parties.

BACKGROUND

Falls originally filed its proposed mitigation plan on May 7, 2024. On August 28, 2025 Falls and SWC filed a joint motion for approval of a stipulated Agreement/mitigation plan intended to provide safe harbor to Falls' junior groundwater pumping under the identified junior groundwater rights so long as certain conditions are met. The caption to the joint motion clearly identified the pleading as a CM Rule 43 plan. Protestant, IGWA filed a response objecting to the agreement based upon alleged procedural deficiencies and alleging the agreement amounts to a "sweet heart" deal.

ARGUMENT

CM Rule 42.02 states: "The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan." IDAPA 37.03.11.042.02.

CM Rule 43.03 establishes factors the Director may consider "in determining whether a proposed mitigation plan will prevent injury to senior rights." IDAPA 37.03.11.043.03(a-o).

CM Rule 43.03(0) states: "Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions." IDAPA 37.03.11.043.03(0).

The crux of IGWA's response is that there is no specific rule identified in the joint motion; nor is there a standard by which to judge the stipulation. As noted, the joint motion identified the filing as a CM Rule 43 mitigation plan. Hence the identified standard and factors for the Department to consider are set forth in Rule 43.

Further, what IGWA cites to is that under its groundwater modeling Falls' pumping would have an estimated steady state impact of over 5,500 ac-ft on the Near Blackfoot to Minidoka reach of the Snake River and that apparently, the agreement fails to mitigate for all of the impact that may occur from Falls' historic pumping. *See Declaration of Jaxon Higgs* at 2, ¶ 6. The stipulated agreement between the SWC and Falls is an acknowledgement of a historical concession by SWC that it would not call for the future administration of Falls' junior rights because of certain consideration provided at the time of the Falls Irrigation District project authorization, then commonly known as the Michaud Flats Project. Further, SWC acknowledges that no other junior rights should be burdened with any calculated impacts from Falls' pumping should administrative determinations so determine. In essence, if an administrative methodology order were to assign impact to Falls' pumping, SWC is acquiescing to a reduction of injury by that amount in exchange for the continued surface water irrigation and identified returns to the Snake River and/or storage delivery if necessary. In other words, the SWC is accepting the identified mitigation from Falls due to the unique status of the surface water project and the fact that the groundwater pumping impacts are outweighed by the surface water irrigation benefits. If SWC agrees to this proposed mitigation and no other junior groundwater rights are impacted IGWA has no standing to object.

Additionally, as the joint motion pointed out, the circumstances associated with the federal authorization and approval of the Michaud Flats project (Falls Irrigation District) are factually very unique, as is SWC's acceptance of the mitigation consistent with Falls' compliance with the plan.

IGWA' objection to a so-called "sweetheart deal" is perplexing given IGWA's agreement with Buckeye Farms in the Mitigation plan MP-2017-002, approved by the Director pursuant to

CM Rule 43.03(0). IGWA was able to buy-off a delivery call by the terms of an agreement. Apparently, IGWA can take advantage of the Rule, reach an agreement with the senior right holder and avoid potential curtailment, but other water right holders like Falls apparently do not have that same ability. Factually, but for Falls' delivery of surface water to the irrigable lands, the return flows wouldn't be present at the time and locations identified. Moreover, if pumping by IGWA's members wasn't occurring, there would be in excess of 1,000,000 ac-ft of steady state benefits to reaches of the Snake River. *See Ex. A (Sukow presentation dated November 15, 2022).*

Further, the fact that IGWA voluntarily tied its mitigation plan to reach gains is of no consequence to other plans such as Falls, the Cities or the Processors. They should not be burdened with decisions of IGWA, nor should any other ground water users that are not a part of the ground water districts' plan.

Regardless, Rule 43.03(o) contemplates that the injured party can and may reach an agreement with "an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions." Here, there is a clear historical basis for the agreement and mitigation plan which in good faith SWC recognizes. This desire should be recognized through the approval of the mitigation plan, recognizing that the approval of IGWA is not a condition. Especially, given SWC's acknowledgement made regarding the Falls' irrigation project over 70 years ago.

CONCLUSION

Falls and SWC hereby request that the hearing officer approve this joint motion to approve the Stipulation for Falls' mitigation plan

DATED this 23rd day of September, 2025.

IdaH20, PLLC

/s/ John K. Simpson

John K. Simpson
Attorney for Falls Irrigation District

PARSONS BEHLE & LATIMER

/s/ Travis L. Thompson

Travis L. Thompson
Attorneys for A&B Irr. Dist. et al.

PARSONS BEHLE & LATIMER

/s/ Norman M. Semanko

Norman M. Semanko
Attorneys for AFRD#2 and Minidoka Irr. Dist.

Exhibit

A



SWC methodology – calculation of priority dates for curtailment of junior groundwater users

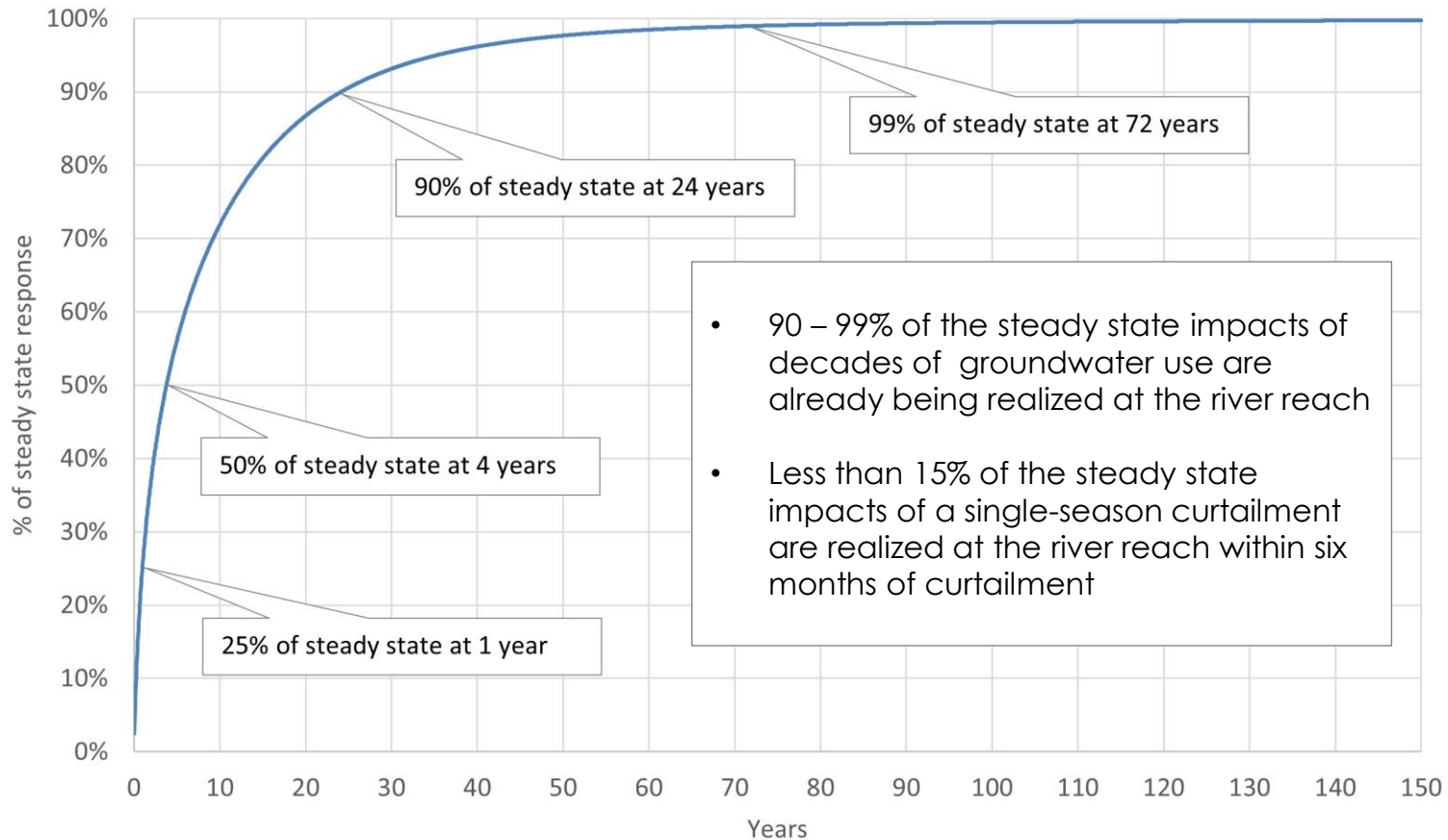
Presented to the SWC Methodology Technical Working Group

Jennifer Sukow, P.E., P.G.

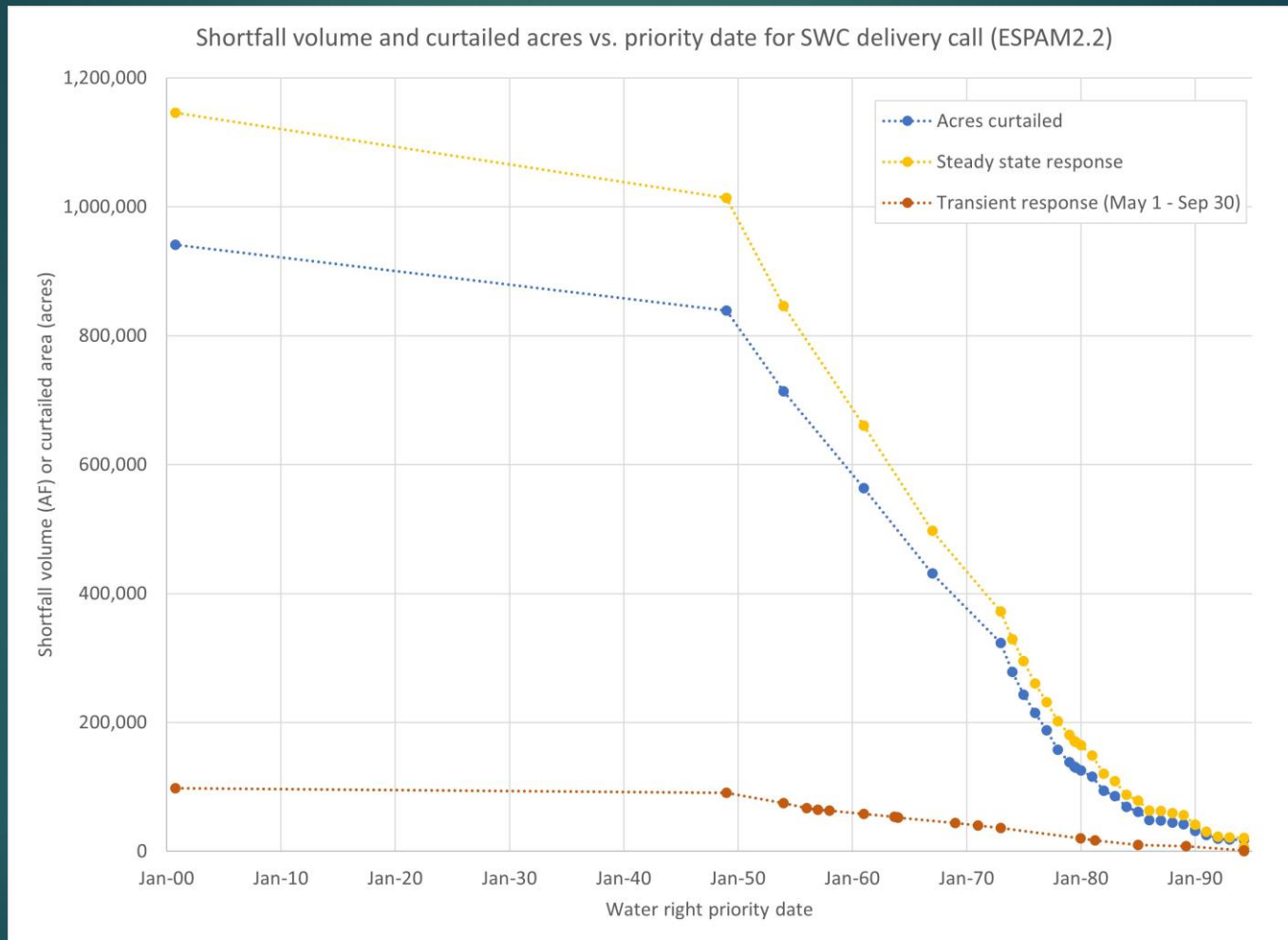
November 28, 2022

How long does it take to approach steady state conditions?

Time to reach steady state response to ACGW groundwater use (or curtailment) at near Blackfoot to Minidoka reach



Comparison of priority dates calculated for April DS forecasts (May 1 curtailment)



Comparison of priority dates calculated for April DS forecasts (May 1 curtailment)

