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Sep 25, 2025

DEPARTMENT OF
WATER RESOURCES

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**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

Docket No. CM-MP-2024-002

**AMERICAN FALLS-ABERDEEN
GROUND WATER DISTRICT'S
PETITION TO INTERVENE AND
ALTERNATIVE REQUEST FOR
REPUBLICATION**

Exempt from filing fees under I.C. § 67-2301

COMES NOW American Falls-Aberdeen Ground Water District (“AFA”), by and through its undersigned counsel, and, pursuant to IDAPA 37.01.01.350, hereby files this *Petition to Intervene and Alternative Request for Republication* to become a party to the captioned matter. AFA requests that the Hearing Officer grant AFA’s intervention because AFA has a direct and substantial interest in this proceeding and can show good cause for the delay in filing this petition.

Alternatively, AFA requests that the Idaho Department of Water Resources (“Department”) republish notice of the *Stipulation* dated June 10, 2025 (“*Stipulated Mitigation Plan*”), and the *Joint Motion to Approve Stipulation Regarding Falls Irrigation District’s Rule 43*

Mitigation filed on August 28, 2025 (“*Joint Motion*”). The *Stipulated Mitigation Plan* is materially different from the original *Mitigation Plan* that FID filed with the Department on May 7, 2024, which triggers a republication requirement and entitles AFA to an opportunity to protest the same.

Undersigned counsel certify that they have conferred with counsel for Falls Irrigation District (“FID”), the Surface Water Coalition (“SWC”), and Idaho Ground Water Appropriators, Inc. (“IGWA”) on this petition. Counsel for IGWA consented to AFA’s intervention, but counsel for FID and SWC were not able to state a position as of the time of filing.

BACKGROUND

1. AFA is a party to the *2024 Stipulated Mitigation Plan* (“*2024 Plan*”) that was approved by the Director in Docket No. CM-MP-2024-003.
2. FID’s service area is entirely within the boundaries of AFA.
3. In 2024 for the first time FID sought protection of a portion of its ground water rights by joining AFA.
4. FID also petitioned to join AFA to protect a portion of its ground water rights in 2025.
5. Thus, several of the water rights FID seeks to protect with its mitigation plan are currently subject to protection from curtailment under the 2024 Plan by virtue of FID’s petition for membership in AFA.
6. The *2024 Plan* terminates at the end of 2027 and may not automatically renew. *See Joint Motion for Order Approving 2024 Stipulated Mitigation Plan*, Appendix A at ¶ 3.
7. Due to AFA’s (and FID’s) proximity to the Near Blackfoot-Minidoka Reach of the Snake River, AFA currently bears the largest burden of all the parties to the *2024 Plan* with

respect to providing storage water to the SWC. *See Joint Motion for Order Approving 2024 Stipulated Mitigation Plan, Appendix B.*

8. If FID is not required to provide storage water to the SWC, take other actions to physically offset the impacts to the Near Blackfoot-Minidoka Reach from its groundwater pumping, or participate in the *2024 Plan* as a patron of AFA, then the remainder of AFA's patrons will shoulder an even larger mitigation burden.

PETITION TO INTERVENTION

9. Regarding petitions to intervene, the Department's Rules of Procedure provide: "A person who is not already a party to a contested case and who has a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case." IDAPA 37.01.01.350 (Rule 350).
10. Petitions to intervene filed after the date of the initial prehearing conference are considered late and must state a good cause for delay. *See Rule 352.*
11. The Hearing Officer shall grant intervention if a timely-filed petition shows a direct and substantial interest in the proceeding, does not unduly broaden the issues, and the petitioner is not adequately represented by existing parties. *See Rule 353.01.*
12. The Hearing Officer may grant or conditionally grant late petitions to intervene for good cause shown and if intervention will not disrupt the proceeding or prejudice the existing parties. *See Rule 353.02.*
13. AFA has good cause for the delay in filing this petition.
 - a. AFA did not protest FID's original *Mitigation Plan* filed on May 7, 2024, at least in part, because that plan proposed several actions that FID would affirmatively take to physically offset the impacts of its groundwater pumping. *See Amended*

Notice of Mitigation Plan Submitted by Falls Irrigation District in Response to the Surface Water Coalition Water Delivery Call (Jun. 7, 2024) (“FID proposes five ways to mitigate injury to the SWC members.”).

- b. AFA was not aware of the August 28, 2025 *Joint Motion* until September 9, 2025, when counsel for IGWA informed its members (including AFA) that IGWA would be filing a response brief in opposition to the *Joint Motion*.
 - c. The *Stipulated Mitigation Plan* does not require any affirmative action on the part of FID to obtain protection from curtailment, a material change from the original *Mitigation Plan*.
 - d. Granting AFA’s intervention will not materially disrupt the proceedings or prejudice the existing parties, as the Hearing Officer has yet to act on the *Joint Motion*. If the *Joint Motion* is not granted, then a significant portion of the hearing process (including discovery) remains to occur. Moreover, AFA will be significantly prejudiced if it does not have an opportunity to protest or otherwise challenge the merits of the *Stipulated Mitigation Plan*.
14. AFA has a direct and substantial interest in the subject matter in this proceeding.
- a. The remainder of AFA’s patrons stand to bear an even larger burden if FID (a fellow AFA patron) can obtain protection from curtailment without participating in the *2024 Plan* as a patron of AFA or taking any affirmative action to physically offset its impacts to the Near Blackfoot-Minidoka Reach.
15. AFA’s participation in this proceeding will not unduly broaden the issues.
- a. AFA does not seek to introduce new issues in this proceeding. AFA only seeks to challenge the merits of the *Stipulated Mitigation Plan* as presented.

16. Finally, AFA is not adequately represented by existing parties.
- a. IGWA does not adequately represent AFA’s interest because its interests may conflict with AFA’s interests. While there is not a live controversy between AFA and IGWA or the other member Ground Water Districts (“GWDs”), a controversy regarding AFA’s obligations under the *2024 Plan*, or future iterations thereof, could arise. Thus, it is important for AFA to appear in these proceedings individually and protect its own interests.
 - b. FID is exclusively within AFA’s boundaries. FID is not a patron of any other GWD. Thus, AFA is uniquely situated and is likely to present arguments that neither IGWA nor any other GWD would raise.
 - c. AFA is aware that, in recent briefs filed by the parties, IGWA alleged that the *Stipulated Mitigation Plan* fails to mitigate for all the impacts that may occur from FID’s historical pumping, to which FID/SWC asserted:

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.

Joint Reply Brief in Support of Motion to Approve Mitigation Plan at 3 (Sep. 23, 2025). AFA does not fully understand the meaning of these statements or their implications, and given AFA’s unique relationship with FID, the statements underscore the importance of AFA’s individual participation in this proceeding.
 - d. IGWA represents the collective interests of North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District,

Southwest Irrigation District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Henry's Fork Ground Water District, and AFA. In some cases, individual districts may have interests that diverge from IGWA's membership generally. In such cases, individual districts may participate separately from IGWA, as AFA seeks to do here. IGWA's participation in this contested case is on an associational basis for its member districts who do not intervene separately in this case.

17. Accordingly, because AFA has a direct and substantial interest in the subject matter in this proceeding, it will not unduly broaden the issues, is not adequately represented by existing parties, and has provided good cause for the delay in filing this *Petition to Intervene*, the Hearing Officer should grant AFA's intervention. See Rule 353.02.

ALTERNATIVE REQUEST FOR REPUBLICATION

18. If AFA is unable to intervene in this proceeding, AFA alternatively requests that the Department republish notice of the *Stipulated Mitigation Plan* and *Joint Motion* so that AFA has an opportunity to file a notice of protest.
 - a. The Department is required to publish notice of a proposed mitigation plan and "consider the plan under the procedural provisions of Section 42-222, Idaho Code, in the same manner as applications to transfer water rights." IDAPA 37.03.11.043.02.
 - b. If a water rights transfer application is amended after it is filed, then generally the Department must republish notice of the application. *Processing Applications for Transfer of Water Rights*, IDWR Transfer Processing Memo No. 24, at 9 (Oct 1,

2024) (“Generally, the Department must publish notice of an amended transfer application.”); *see also* Idaho Code § 42-211 (regarding applications for permits: “If amendment is made after publication of notice of the original application, said notice shall be republished following amendment . . .”); IDAPA 37.03.08.040.01.e. (regarding applications for permits: “An application amended under Paragraph 035.04.a. after publication requires republication.”).

19. The *Stipulated Mitigation Plan* is materially different from the original *Mitigation Plan* that FID filed on May 7, 2024, which triggers a republication requirement.
 - a. AFA did not protest the original *Mitigation Plan* because FID proposed affirmatively taking several actions to physically offset the impacts of its groundwater pumping, including by providing storage water to the SWC. *See Amended Notice of Mitigation Plan Submitted by Falls Irrigation District in Response to the Surface Water Coalition Water Delivery Call* (Jun. 7, 2024) (“Finally, FID states that FID ‘holds rights to storage water in American Falls Reservoir’ and proposes that ‘[a]vailable 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.’”).
 - b. AFA wishes to protest the *Stipulated Mitigation Plan* because now FID proposes to take zero affirmative action to physically offset the impacts of its groundwater pumping, to which the SWC consents.
 - c. If the *Stipulated Mitigation Plan* is approved as presented, the remainder of AFA’s patrons stand to bear an even larger burden than they already bear, since FID will presumably cease to be a patron of AFA and FID will not take any affirmative

action to physically offset its impacts to the Near Blackfoot-Minidoka reach, which are significant (roughly 5,500 acre-feet under steady-state simulations).

See generally Declaration of Jaxon Higgs (Sep. 11, 2025).

20. If AFA is not permitted to intervene, and is not provided an opportunity to protest the new, unique *Stipulated Mitigation Plan*, then the remainder of its patrons will be significantly prejudiced and its rights of due process will be violated.

CONCLUSION

Based on the foregoing, AFA satisfies the requirements for intervention and respectfully requests that the Hearing Officer grant its petition to intervene. Alternatively, AFA requests that the Department republish the *Stipulated Mitigation Plan* and *Joint Motion* so that AFA will have an opportunity to protest.

DATED this 25th day of September 2025.

SOMACH SIMMONS & DUNN, P.C.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September 2025, 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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