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Oct 21, 2025

DEPARTMENT OF
WATER RESOURCES

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Attorneys 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

**FALLS IRRIGATION DISTRICT'S
RESPONSE TO PETITION TO
INTERVENE**

COMES NOW, FALLS IRRIGATION DISTRICT (“Falls” or “District”), by and through its counsel of record, IdaH20, PLLC, and submits this response to the *Petition to Intervene* filed on October 7, 2025, by Coalition of Cities (“Petitioner”) in the above captioned matter.

I. STANDARD OF REVIEW

A person who is not already a party to a contested case may petition for an order granting intervention as a party. IDAPA 37.01.01.350. A timely filed petition to intervene must make two showings. *First*, the proposed intervenor must show a “direct and substantial interest in any part of the subject matter of a contested case.” IDAPA 37.01.01.353.01. *Second*, the proposed intervenor must show that its intervention will “not unduly broaden the issues.” *Id.* Only if the proposed intervenor can make both showings can the Department grant a motion to intervene, which may be subject to reasonable conditions. *Id.* Further, if an intervenor applicant’s interests are adequately represented by existing parties, intervention should not be granted. *Id.*

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II. BACKGROUND

Falls filed a mitigation plan (“Plan”) on May 7, 2024. On August 28th, 2025, Falls and the Surface Water Coalition (“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. These conditions did not modify Falls’ proposed actions in the Plan but simply identify when certain additional actions would be taken. Specifically, III.E of the Plan, identifies the use of storage deliveries “to mitigate any shortfalls caused by the District’s junior priority ground water deliveries.” *See* Plan pg. 6. The Stipulated Agreement (“SWC Stipulation”) describes when storage delivery is required to satisfy the injured party, SWC.

The Petitioner now seeks to intervene in this case nearly sixteen (16) months after the mitigation plan was filed, and nearly two (2) months after the SWC Stipulation was filed and after numerous status conferences have been held. Those status conferences addressed the fact that Falls was in discussion with SWC, the senior water right holder and injured party regarding mitigation.

III. ARGUMENT

The Department should deny the Petitioner’s Motion to Intervene because: (1) it has not shown a direct and substantial interest in this proceeding, and (2) the Petitioner’s intervention will unduly broaden the issues covered in this proceeding.

A. The Petitioner has no direct or substantial interest in this proceeding.

The Petitioner fails to assert and show direct interest in the proceedings which will be impacted should the SWC Stipulation be implemented and the administrative methodology order reflect the adjustments as contemplated. The Petitioner has an individual mitigation plan which

provides storage water, and in some years, direct delivery depending upon the circumstances. The Petitioner's mitigation plan has no direct or substantial relationship or interface with the Plan. That is, should Falls' mitigation plan be approved consistent with the SWC Stipulation, it would have no impact on the Petitioner's continued compliance under the methodology order.

Evaluation of a Mitigation Plan is limited to the criteria identified in Rule 43 and in this particular situation, Rule 43(o). "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(o). Falls and SWC recognize that the Director may reduce the Methodology injury determination that is attributable to Falls' junior groundwater diversions. Under the methodology then how can another water right holder be impacted or show a direct interest in opposing approval of the SWC Stipulation and the mitigation plan, or at a minimum the basis for intervention.

Petitioner's allegations of a "direct and substantial interest" are vague and speculative. Speculation about future "interest" does not satisfy the rule's criteria to intervene in the present contested case. Petitioner fails to connect the idea that it has water right holders as members to the matters in this contested case. Further, the fact that its members have or may have return flows in the future does not create a direct and substantial interest. Finally, one could argue that recovery of the aquifer is in the best interests of every citizen of the State, therefore, the Petitioner has no particularized interest in this case any different than the general public. That generalized assertion doesn't meet the standards articulated in IDAPA 37.01.01.353.01. *See* Petition at 4.

Moreover, the Petition is not timely. This Petition was filed well after a motion for approval of a stipulation between the senior water right holder, SWC and a junior ground water

user, Falls setting forth Falls' obligation, was reached and filed with the hearing officer. If approved, the plan would set forth Falls' on-going obligation, recognizing that no other junior water rights would be impacted through the incorporation of plan into the methodology determinations. It is that methodology which defines junior water right holders' injury to the senior. Absent separate mitigation plans approved by the Director, that methodology injury determination sets the bar for administration.

The conjunctive management rules allow for the filing of individual/separate mitigation plans for approval. *See CMR 42.02*. ("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). Each plan may or may not fully address the impact caused by the out-of-priority diversion of a junior. "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(o). Such determination is part of the negotiations between the senior and junior. However, if the parties agree to terms, those terms should be honored. Here, SWC stipulates that the mitigation offered is sufficient to mitigate for any material injury caused by Falls' consumptive use so long as the provisions of the stipulated plan are being implemented.

Falls' mitigation plan solely addresses Falls' actions and obligations. That is, pursuant to the stipulation, if Falls fails to continue to return flows in excess of its groundwater consumptive use, it will deliver storage water to SWC. This further delineation of when storage delivery is required, is consistent with Falls' Rule 43 plan that was filed on May 7, 2024.

What the Petitioner is requesting is that this hearing officer determine how each and every individual mitigation plan operates in relationship with other plans that have been approved. IDWR has adopted no such standard to date. Moreover, such determinations have been rejected as the basis for intervention in a contested case. Petitioner's generalized allegation that its interests in a separate mitigation plan may be impacted is not enough to establish a direct and substantial interest to intervene in this specific matter. *In the Matter of IGWA's Settlement Agreement Mitigation Plan*, Order Denying Cities' Petition to Intervene, Dkt. No. CM-MP-2016-001 (Jan. 4, 2024), the hearing officer concluded that a coalition of cities and the City of Pocatello failed to demonstrate a direct and substantial interest. The order stated:

This contested case proceeding addresses issues regarding IGWA's 2022 noncompliance with the IGWA 2016 Mitigation Plan. It has no direct link to the Cities' separate mitigation plan with the SWC. While the Cities may be required to increase their obligation under the mitigation plan, they have failed to show that such a result is a direct outcome of this proceeding.

Order at 3.

B. The Petitioner's intervention unduly broadens the issues.

Petitioner's intervention will unduly broaden the issues. The joint motion for approval of the SWC Stipulation is presently in front of the hearing officer for consideration and approval. This joint motion should be addressed prior to consideration of any subsequently filed motions. Further, the Petitioner's motion raises issue not presented under the Falls mitigation plan or the SWC Stipulation. Petitioner proposes to bring in other water rights, municipal return flows and recovery of the aquifer issues into this contested case. Clearly, those issues are not part of Falls' mitigation plan.

C. Petitioner's Motion for Re-publication Lacks Merit.

The Petitioner finally requests that if the Petition to Intervene is denied, then the Department should republish the mitigation plan. Such request is without merit as a review of

the plan reveals that Falls originally proposed as one action, the delivery of storage water directly to SWC if required under the Plan or IDWR order, i.e. the methodology order. The stipulation entered into between Falls and SWC simply identifies when storage water delivery would be required. That is when ground water consumptive use exceeds irrigation return flows.

IV. CONCLUSION

For the reasons identified herein, the Petitioner's motions should be denied.

DATED this 21st day of October, 2025.

IdaH20, PLLC

/s/ John K. Simpson

John K. Simpson

Attorney for Falls Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2025, the above and foregoing **FALLS IRRIGATION DISTRICT’S RESPONSE TO PETITION TO INTERVENE** was sent to the following by the method indicated:

Gerald F. Schroeder Garrick Baxter IDAHO DEPARTMENT OF WATER RESOURCES	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: gerald_23107@msn.com garrick.baxter@idwr.idaho.gov file@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov
Candice McHugh Chris Bromely MCHUGH BROMLEY, PLLC	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: cmchugh@mchughbromley.com cbromley@mchughbromley.com
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/s/ John K. Simpson

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