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Dec 02, 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

CM-MP-2024-002

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

COMES NOW, Falls Irrigation District (“Falls” or “District”), by and through its counsel of record, and hereby submits this Amended Mitigation Plan (“Plan”) pursuant to Rule 43 of the Department’s Conjunctive Management Rules (37.03.11.43) and hearing officer order 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, 29-13427 and 29-2380.

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 are fully mitigated or 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

FALLS IRRIGATION DISTRICT’S AMENDED RULE 43 MITIGATION PLAN

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:

- 8,371 acres gravity irrigated with surface water.
- Approximately 3,800 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 12,171 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 have led to reduced District water use. 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 Amended 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	IdaH20, PLLC
310 Valdez St.	P.O. Box 152
American Falls, Idaho 83211	Boise, Idaho 83702
(208) 226-5227	(208) 724-2580

II. WATER RIGHTS TO BE MITIGATED BY PLAN

Through this Amended Mitigation Plan, it is Falls’ intent to mitigate all of its junior-priority ground water rights (as listed below), 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
29-2380

III. DESCRIPTION OF PLAN

A. Project Development Safe Harbor

Following construction of the Michaud Flats Project (Falls Irrigation District), the District has abided by the commitments made at the time the Project was authorized in 1954. To the extent that the Project failed to cover ground water consumptive use with return flows, the District owed storage water as detailed in the Water District 1 accounting. Following discussions with the Surface Water Coalition (SWC), the senior water right holder, SWC recognized the historical safe harbor provided the District at the time of the congressional authorization. Discussions led to the Stipulated Agreement attached as Exhibit A.

The key elements of the Stipulation are: 1) so long as Falls' net impact on the Snake River flows is positive, that is return flows exceed ground water consumptive use, SWC stipulates and consents to the modeled impacts that Falls' water rights are allocated by the Idaho Department of Water Resources' (IDWR) methodology; 2) if going forward, Falls' return flows fail to exceed Falls' ground water consumptive use, Falls agrees to make up the deficit with direct delivery of storage water to injured SWC members; and 3) SWC recognizes that IDWR may reduce methodology order material injury determinations by the amount of injury allocated to Falls' exercise of its ground water rights. Hence, no other water right holder is assigned Falls'

modeled impact and is only responsible for their own impacts. While not directly referenced in the Stipulation, Falls has historically measured return flows and consumptive use over the life of the Project. These measurements provided the foundation for SWC's continued acceptance of this water budget approach. The Stipulation provides for the continued measuring of diversions and return flows.

B. 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 ground water rights as a reduction in water use and 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.

C. 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.

D. 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. Further, given the seniority of Falls' ground water rights, these rights should not be subject to further administration until and if, junior rights have fully mitigated for their individual depletions to reaches of the Snake River.

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. Additionally, any discharge of water into American Falls reservoir can and is recaptured by pumping at the dam. Such recapture should be credited against any obligation owed if consistent with an approved Stipulation.

E. 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.

F. Storage Delivery

Falls holds rights to storage water in American Falls Reservoir and Palisades Reservoir and has the ability to participate in Water District 01's Rental Pool. Available storage, if necessary, can be delivered to injured SWC members to mitigate any shortfalls caused by the District's junior priority ground water deliveries that are subject to curtailment and are not in compliance with the Stipulated Agreement identified above and submitted for approval pursuant to Rule 43.03.o of the Department's Conjunctive Management Rules (37.03.11.43).

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 amended plan as soon as possible. The District further requests the Director to approve this amended plan and previously submitted Stipulated Agreement in conformance with the procedures and criteria set forth in rule 220 of the Rules of Procedure of the Idaho Department of Water Resources and rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Resources. Further, if necessary, the Applicant requests that any mitigation obligations not satisfied by the Stipulated Agreement be analyzed in accordance with Rule 43.

DATED this 2nd day of December, 2025.

MARTEN LAW LLP

/s/ John K. Simpson

John K. Simpson

Attorney for Falls Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2025, the above and foregoing **FALLS IRRIGATION DISTRICT’S AMENDED RULE 43 MITIGATION PLAN** 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 Bromley 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
Travis Thompson Norm Semanko Abby Bitzenburg PARSONS BEHLE & LATIMER	<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: tthompson@parsonsbehle.com nsemanko@parsonsbehle.com abitzenburg@parsonsbehle.com jnielsen@parsonsbehle.com
Thomas J. Budge Elisheva M. Patterson RACINE OLSON, PLLP	<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: tj@racineolson.com elisheva@racineolson.com
Sarah A. Klahn Maximilian C. Bricker SOMACH SIMMONS & DUNN	<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: sklahn@somachlaw.com mbricker@somachlaw.com

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/s/ John K. Simpson

John K. Simpson

EXHIBIT A

STIPULATION

The Stipulation dated June 10, 2025 (“Stipulation”) is entered into between Falls Irrigation District (“Falls”) and the Surface Water Coalition (“SWC”)¹ for the purpose of addressing Falls’ initial irrigation project development, ground water pumping within the project, and impacts from said pumping on Snake River flows for purposes of the pending SWC water right delivery call (Idaho Dept. of Water Resources Docket No. CM-2010-001).

RECITALS

WHEREAS, in the early 1950s, federal agencies were studying the feasibility of the Michaud Flats Project (“MF Project”) and Michaud Fort Hall Project (“FH Project”) adjacent to American Falls Reservoir in southeastern Idaho; and

WHEREAS, as a part of the funding of the MF Project, the United States Bureau of Reclamation (“BoR”) analyzed the potential ground water pumping impacts from the development of the MF Project on surface water irrigation supplies for existing water rights located downstream on the Snake River; and

WHEREAS, the federal agencies were concerned that new development of water-related projects not impact water supplies to existing downstream irrigation project development and water rights; and

WHEREAS, federal agencies, in assessing the potential impacts, did engage the downstream water users and solicited feedback and comment during approval and authorization of the MF Project and FH Project; and

¹ SWC members are Twin Falls Canal Company, North Side Canal Company, Minidoka Irrigation District, Burley Irrigation District, A&B Irrigation District, American Fall Reservoir District No. 2 & Milner Irrigation District.

WHEREAS, BoR recognized the potential impact that upstream development of water sources above American Falls for the FH Project and MF Project might have on downstream water supplies; and

WHEREAS, the federal agencies were able to provide an alternative water supply for the FH Project to avoid impacting downstream water supplies to the benefit of downstream water users; and

WHEREAS, Congress held hearings in 1954 and invited agencies and water users to testify on the proposed MF Project; and

WHEREAS, this testimony answered questions about whether the MF Project development would impair water supplies to existing downstream surface water users and justify continued funding of the MF Project and FH Project; and

WHEREAS, based upon the proposed development of the FH Project and MF Project, including delivery of surface storage water to the MF Project, the decision to forego development of tributary springs upstream of American Falls reservoir for the FH Project and MF Project, the alternative water supply provided to the FH Project, and the water budget analysis provided in the agency's analysis for each Project, representatives for the downstream Surface Water Coalition surface water users through their testimony before Congress agreed that any potential impacts of the MF Project groundwater pumping would be offset by return flows; and

WHEREAS, the hydrologic conditions resulting from Falls' new irrigation activities, including return flows from surface water irrigation and impacts from groundwater pumping that existed at the time of development generally exist today.

AGREEMENT

NOW THEREFORE, in consideration of representations and actions previously recognized and agreed to, as well as the terms and conditions of this Stipulation, the Parties agree as follows:

1. The SWC stipulates to any resulting impact or injury that may be caused by the limited groundwater pumping of Falls, provided the return flows and losses from the entire MF Project, including from surface and groundwater, exceed the actual consumptive use of groundwater by Falls. The annual calculation for determining this condition shall be as follows:

	Total Booster Waste Return Flow	(Acre Feet)
+	Total Supplemental Well Delivery	(Acre Feet)
+	Total Canal Waste Return Flow	(Acre Feet)
+	Total Canal Loss	(Acre Feet)
+	Groundwater Loss (85% estimated irrigation efficiency)	(Acre Feet)
-	Total Groundwater Diversion	(Acre Feet) ²

2. The Parties recognize that implementing this Stipulation would reduce any injury determination made by the IDWR consistent with the Methodology affirmed by the Idaho Supreme Court (*In Matter of Distribution of Water to Various Water Rts. Held By or For Ben. of A&B Irrigation Dist.*, 155 Idaho 640, 645, 315) by the amount of Falls' proportionate share of any calculated demand shortfall.

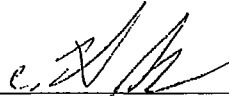
3. In the event Falls changes irrigation and/or water delivery operation practices that would result in the consumptive use of groundwater pumping to exceed the annual return flows and losses from the MF Project (as depicted in the calculation set forth in paragraph 1 above),

² Example calculations for 2018-2024 are attached hereto as Exhibit A.

Falls agrees to assign storage in the amount of such shortfall to the injured SWC member in that particular year. Such assignment shall be coordinated and implemented through IDWR, Water District 01, and its Rental Pool Procedures no later than October 31st.

SWC MEMBERS:

A&B Irrigation District



Vice-Chairman

8-11-2023

Date

SWC MEMBERS:

Burley Irrigation District

Clifford Z. Paul 6/10/20
Chairman Date

STIPULATION

SWC MEMBERS:

Minidoka Irrigation District

Ronald Kowit June 10 2025
Chairman Date

STIPULATION

SWC MEMBERS:


North Side Canal Company

Mich Elliott 6-19-25
Chairman Date

STIPULATION

SWC MEMBERS:

Twin Falls Canal Company


Chairman _____ Date

STIPULATION

FALLS IRRIGATION DISTRICT:

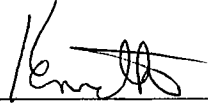
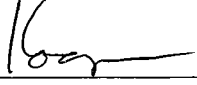
  6-24-25
Chairman Date

Exhibit A

	Total Booster Waste (AF) (+)	Total Supple- mental Well Delivery (AF) (+)	Total Canal Waste (AF) (+)	Total Canal Loss (AF) (+)	Total Well Delivery (AF) (-)	Hypothetical Groundwater Loss (85% efficiency; 15% loss)	Net Gains or Subtractions (AF) 1. 35% loss 2. 15% loss 3. 10% loss
2018	186.481	363.400	2,479.284	4,921.829	6,426.100	963.915	1. (+) 3,774.029 2. (+) 2,488.809 3. (+) 1,749.807
2019	166.101	562.600	2,007.036	2,959.291	6,219.800	932.97	1. (+) 1,652.158 2. (+) 408.198 3. (-) 307.079
2020	215.220	745.500	2,574.266	3,990.207	6,346.300	951.945	1. (+) 3,400.098 2. (+) 2,130.838 3. (+) 1,401.013
2021	142.388	678.900	2,397.532	4,465.497	7,694.500	1,154.175	1. (+) 2,682.892 2. (+) 1,143.992 3. (+) 259.1245
2022	4.270	584.300	2,447.302	2,780.427	6,377.760	956.664	1. (+) 2,020.755 2. (+) 395.203 3. (-) 303.2394
2023	116.581	338.500	2,143.013	2,697.768	5,636.400	932.400	1. (+) 1,632.202 2. (+) 591.862 3. (+) 223.102
2024	312.679	549.900	2,218.666	3,334.658	5,632.000	844.8	1. (+) 2,755.103 2. (+) 1,628.703 3. (+) 1,347.103