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DEPARTMENT OF
WATER RESOURCES

Robert L. Harris, Esq. (ISB #7018)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
rharris@holdenlegal.com

Attorneys for Falls Water Co., Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE MITIGATION
PLAN OF FALLS WATER CO., INC.

Docket No. CM-MP-2024-004

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF
A&B IRRIGATION DISTRICT,
AMERICAN FALLS RESERVOIR
DISTRICT #2, BURLEY IRRIGATION
DISTRICT, MILNER IRRIGATION
DISTRICT, MINIDOKA IRRIGATION
DISTRICT, NORTH SIDE CANAL
COMPANY, AND TWIN FALLS CANAL
COMPANY

**FIRST AMENDED
FALLS WATER CO., INC.'S
CM RULE 43 MITIGATION PLAN**

Falls Water Co., Inc. ("Falls Water"), an Idaho corporation and municipal provider of water, by and through its above-identified counsel, hereby submits this *First Amended Falls Water Co. Inc.'s CM Rule 43 Mitigation Plan* (the "Plan"). The Plan is intended to completely supersede and replace Falls Water's first mitigation plan dated November 22, 2024. While components of the Plan may be included as the result of informal settlement conversations between the parties to the current contested case, none of the existing protestants shall be deemed to stipulate to the Plan

unless memorialized in a separate submitted and signed stipulation.

The Plan is submitted in response to the Surface Water Coalition’s (the “SWC”)¹ delivery call (hereinafter, the “SWC Call”). The SWC Call was initially filed in January of 2005 and is ongoing. The SWC Call has resulted in certain administrative orders from the Director of the Idaho Department of Water Resources (“IDWR” or “Department”) which quantifies material injury to the SWC’s senior surface water rights resulting from junior ground water diversions from the Eastern Snake Plain Aquifer (“ESPA”). The methodology to determine and quantify material injury to each individual member of the SWC is now described in the Director’s July 19, 2023 *Sixth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (the “Methodology Order”).

The Plan is submitted pursuant to Rule 43 of the Idaho Department of Water Resources’ *Rules for Conjunctive Management of Surface and Ground Water Resources* found at IDAPA² 37.03.11 (hereinafter, the “CM Rules”). Rule 43 of the CM Rules is hereafter referred to as “CM Rule 43.”

Falls Water is a municipal provider of water supplied primarily to residential properties, but also to several commercial and industrial businesses within its three separate service areas located east and south of Idaho Falls in Bonneville County, and south of Rigby in Jefferson County. As set forth below, diversion of ground water under Falls Water’s water rights, subject to any future curtailment orders under the *Methodology Order*, can be fully mitigated with various actions undertaken by Falls Water. This Plan is being submitted to mitigate for Falls Water’s impacts to

1 The SWC consists of the A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

2 “IDAPA” is an acronym for rules promulgated pursuant to the Idaho Administrative Procedure Act (Chapter 52 of Title 67 of the Idaho Code). The IDAPA administrative rules can be accessed at <http://adminrules.idaho.gov/rules/current/index.html>

the SWC’s senior water rights and to avoid any disruption in Falls Water’s operations and the secondary disruption to the homes and businesses who rely upon Falls Water’s water supply.

I. MITIGATION PLAN

CM Rule 43 describes the information that must be contained in a mitigation plan. In accordance with CM Rule 43, Falls Water submits the following information.

A. Name and Mailing Address the Person or Persons Submitting the Plan.

The names and mailing address of those individuals who are submitting the Plan, and who are to receive correspondence in regards to this Plan, are as follows:

<p>Scott Bruce Falls Water Co., Inc. 2180 N Deborah Dr. Idaho Falls, ID 83401 scott1@fallswater.com</p>	<p>Robert L. Harris Holden, Kidwell, Hahn & Crapo, PLLC 1000 Riverwalk Dr. Suite 200 P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com</p>
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B. Identification of the Water Rights for Which Benefit the Mitigation Plan is Proposed.

Through submission of this plan, it is Fall Water’s intent to mitigate all of its water rights set forth on **Exhibit 1** and any other junior priority ground water rights obtained by Falls Water in the future.

C. Description of the Plan.

1. Plan Structure.

Falls Water’s initial proposed mitigation plan was based upon a mitigation plan submitted by the Coalition of Cities, the City of Idaho Falls, and the City of Pocatello in response to the SWC

Delivery Call approved on April 9, 2019, by IDWR³ (the “Cities’ Mitigation Plan”).

The Plan is for a term of two years (2026 and 2027). The mitigation occurring in a year under the Plan will be based on pumping numbers from the prior year. This new Plan is now based upon certain percentages and associated calculations related to with the stipulated mitigation plan between the Surface Water Coalition and Idaho Ground Water Appropriators, Inc. (the “SWC-IGWA Plan”). The calculation of Falls Water’s yearly mitigation under the Plan requires two separate calculations akin to the *SWC-IGWA Plan*’s pumping reductions and lease of storage water, with the sum of the results of both arriving at the total mitigation amount. All volumes described below will be represented in units of acre-feet.

The first mitigation component is calculated as follows:

1. Total annual pumping from Falls Water is obtained from measuring devices located on Falls Water’s wells (all of which are metered);
2. Non-consumptive pumping (in-house culinary use) is deducted from the total pumping amount. Annual total non-consumptive pumping is determined by summing the monthly diversions from November through March⁴, divided by 5, and then multiplying by 12 to calculate a yearly⁵ total non-consumptive pumping amount.
3. The total non-consumptive pumping amount is deducted from the total pumping amount described in step 1 above to arrive at Falls Water’s total annual consumptive pumping.
4. Total consumptive pumping is multiplied by 11.4%⁶ to calculate the first mitigation component amount.

³ See <https://idwr.idaho.gov/legal-actions/mitigation-plan-actions/SWC/Cities/>

⁴ No irrigation is occurring during these months. Accordingly, it is reasonable to assume that pumping during these months is solely for in-house, non-consumptive uses.

⁵ It is reasonable to assume that the diversion of in-house, non-consumptive use will remain constant throughout the year

⁶ This is the average percentage of pumping reductions imposed by IGWA on its patrons under the SWC-IGWA mitigation plan.

The second mitigation component is calculated as follows:

1. Dividing the same total annual consumptive pumping amount calculated in step 3 by 1,795,034⁷ acre-feet, which will calculate a percentage.
2. The percentage is multiplied by the storage water lease component IGWA is obligated to provide to the SWC under the *SWC-IGWA Plan*, which as of today's date is 75,000 acre-feet. The result of this calculation is the second mitigation amount.

The total Falls Water mitigation amount is the sum of the first mitigation amount and the second mitigation amount. Based on actual 2025 Falls Water pumping numbers, a summary of the above calculations in spreadsheet form is depicted here:

Mitigation Calculation: 2025 Falls Water Co. Pumping Numbers								
				= Hard Inputs				
IGWA EQUIVALENT PUMPING REDUCTION PERCENTAGE COMPONENT OF IGWA MITIGATION PLAN								
Total Pumping (AF)	In-house Pumping (AF) (Nov. thru March Pumping)		In-house Pumping Months	Average In-house Pumping (AF) Per Month (In-house Pumping / Months)	Total Non-Consumptive Pumping (Average In-house Pumping (AF) Per Month X 12)	Total Consumptive Pumping (Total Pumping - Total Non-Consumptive Pumping)	IGWA'S Pumping Reduction Mitigation Percentage	Falls Water Mitigation Amount (Total Consumptive Pumping X IGWA's %)
6025	Jan. 2025	156.06	5	151.95	1823	4201.6	11.4%	478.99
	Feb. 2025	143.52						
	Mar. 2025	153.32						
	Nov. 2025	150.81						
	Dec. 2025	156.03						
TOTAL		759.74						
IGWA EQUIVALENT STORAGE WATER LEASE COMPONENT OF IGWA MITIGATION PLAN								
				Falls Water Consumptive Pumping (AF)	IGWA Base Line Pumping Amount (AF)	Percentage (Falls Water Consumptive Pumping/IGWA Pumping)	IGWA Storage Lease Amount (75,000 AF)	Percentage X 75,000 AF
				4201.6	1,795,034	0.23407%	75,000.00	175.55
TOTAL MITIGATION OBLIGATION								
						TOTAL FALLS WATER MITIGATION OBLIGATION	654.54	

As shown, the total calculated mitigation for 2026 is 654.54 acre-feet. The result is a larger mitigation amount that calculated under the formula contained in Falls Water's original plan submission.

Falls Water's performance under the Plan will be measured on a two-year average and all

7 This number was obtained from IGWA and represents is the total baseline pumping of IGWA patrons.

mitigation activities for each calendar year will be reported to IDWR by April 1st of the year following such calendar year.

2. Sources of Mitigation Water

Falls Water has entered into the *Storage Water Lease Agreement* (the “Lease”) with Progressive Irrigation District (“Progressive”), which holds various contracts which entitle it to receive storage water that yields to storage space in the upper Snake River basin storage system of reservoirs operated by the United States Bureau of Reclamation. The *Lease* for Progressive storage water is for a term of two (2) years. A revised lease is forthcoming and will be submitted separately.

Falls Water will recharge Progressive storage water to mitigate for Falls Water’s ground water pumping. The recharge will either be accomplished by Progressive (which has the first option to recharge under the Lease) in Progressive recharge facilities or, after assignment for delivery to the Idaho Water Resource Board (the “Board”) will be recharged in Board recharge sites. Progressive has received necessary approvals for several recharge sites.⁸ Recharge within Progressive’s recharge sites is ideal. The largest of Falls Water’s service areas is within the service area of Progressive where recharge will occur in relative close proximity to the location of Falls Water’s municipal wells.

As for limitations on the use of Progressive storage water, the use of Progressive storage water for recharge will be transacted through Water District 1 and will be subject to the most recent iteration of the *Water District 1 Rental Pool Procedures*.⁹

8 For example, See https://www.postregister.com/news/local/stakeholders-host-ribbon-cutting-for-southfork-aquifer-recharge-basin/article_fb621076-753c-11ef-9d52-ab4cdebb2bcc.html.

9 See <https://www.waterdistrict1.com/media/qwjbw5e/2024-rental-pool-procedures.pdf>.

II. REQUEST FOR RELIEF

Falls Water hereby requests that the hearing officer:

1. Substitute this Plan in lieu of Falls Water's initial plan, with no need to readvertise the Plan given its increase in mitigation volume and shortened term.
2. If necessary, hold a hearing regarding this Plan pursuant to CM Rule 43.02; and
3. Enter an order approving the Plan upon such terms and conditions as may be reasonable and necessary to comply with CMR 43.

DATED this 4th day of February, 2026.



Robert L. Harris,
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Exhibit 1
Falls Water Co., Inc.'s Water Rights

25-7148
25-7191
25-7418
25-7509
25-14035
25-14055
25-14114
25-14326
25-14327
25-14482
25-14483
25-14516
25-14517
25-7090
25-14440
25-14287
25-14301
25-14304
25-14313
25-14383
25-14385
25-14442
25-7593
25-14199
25-14236
25-7086

CERTIFICATE OF SERVICE

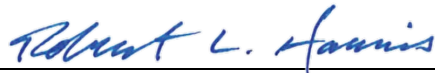
I HEREBY CERTIFY that on this 4th day of February, 2026, the above and foregoing, was served by the method indicated below, and addressed to the following:

ORIGINAL TO: Idaho Department of Water Resources
file@idwr.idaho.gov

Hearing Officer Schroeder
gerald_23107@msn.com

COPIES TO:

Skyler C. Johns OLSEN TAGGART PLLC PO Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Travis L. Thompson Abby R. Bitzenburg PARSONS BEHLE & LATIMER PO Box 63 Twin Falls, Idaho 83303-0063 tthompson@parsonsbehle.com abitzenburg@parsonsbehle.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Norman M. Semanko Garrett M. Kitamura PARSONS BEHLE & LATIMER 800 W. Main St. Suite 1300 Boise, Idaho 83702 nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Thomas J. Budge Elisheva M. Patterson RACINE OLSON, PLLP PO Box 1391 Pocatello, Idaho 83204 tj@racineolson.com elisheva@racineolson.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email



Robert L. Harris,
 Holden, Kidwell, Hahn & Crapo, P.L.L.C.