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Sep 30, 2025

DEPARTMENT OF
WATER RESOURCES

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Attorney for Jerry D. Bingham and Valerie H. Bingham

STATE OF IDAHO
IDAHO DEPARTMENT OF RESOURCES

Water Rights of Jerry D. Bingham and)
Valerie H. Bingham,)
1675 W 400 N)
Blackfoot, ID 83221-5051)
)
Water Rights No: 35-12226, 35-2202B,)
35-2205E, 35-2266, 35-2269G, and)
35-2186D,)
)
)
)
_____)

Docket No. CM-MP-2025-003

**BINGHAMS' OPPOSITION TO
IGWA'S PETITION TO INTERVENE**

Jerry D. Bingham and Valerie H. Bingham ("Binghams"), by and through the undersigned counsel, hereby file Binghams' Opposition to IGWA's Petition to Intervene, which is submitted in response to IGWA's Petition to Intervene ("Petition") filed in the above-entitled matter. This opposition is filed pursuant to IDAPA 37.01.01.354 and other applicable law.

I. ARGUMENT

The above-entitled matter is a contested case before the Idaho Department of Water Resources ("IDWR") because it was protested by the American Falls-Aberdeen Ground Water District, Surface Water Coalition, Coalition of Cities, and Carey Valley Ground Water District, each of whom timely filed their notices of protest. A party may intervene in an IDWR contested case proceeding under certain circumstances. IDAPA 37.01.01.353.01 provides:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties.

Based on this rule, the analysis of a petition to intervene requires consideration of: (a) whether the Petition is timely, (b) whether the potential intervenor shows a "direct and substantial interest in any part of the subject matter of a proceeding," (c) a showing that the intervention would "not unduly broaden the issues," and (d) whether the potential intervenor's "interest is adequately represented by existing parties." *Id.*

1. IGWA's Petition is not timely.

IGWA's Petition is not timely under Rule 352, which states:

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions filed after this deadline are considered late and must state a good cause for delay. [Emphasis added].

IGWA's Petition argues that because a formal hearing or prehearing conference has not been scheduled, its petition is timely. However IDWR published its notice of Bingham's Proposed Mitigation Plan with the Idaho State Journal on September 3, 2025, and stated as follows: "Protests against approval of the Bingham Plan must be filed with the Department, together with a protest fee of \$25, on or before September 22, 2025." *See Exhibit A, Notice of Mitigation Plan.*

2. IGWA does not have a direct and substantial interest in subject matter of this proceeding.

In addition to the fact that IGWA's intervention was not timely, it should also be denied because IGWA does not have a direct and substantial interest in the issues that are the subject of Bingham's Mitigation Plan. IGWA argues that Bingham's proposed Mitigation Plan does not offset

the impact of their ground water use and would cause an unmitigated decline in Snake River reach gains and have a depletive effect that would ultimately be borne by IGWA's members. First, Bingham's proposition to voluntarily reducing their water usage by 14.2% is sufficient to offset any 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 the rights of diversion from the surface or ground water source as required by CM Rule 43.03.b. Further, hydrologist expert, Eric Miller, is expected to testify at the hearing in this matter that Bingham's use of their ground water, located 11 miles from the Snake River, will have no impact whatsoever on the senior water rights of those around them including any IGWA members. For this reason, Bingham's proposed Mitigation Plan does not implicate or involve IGWA's mitigation plan in any way. IGWA negotiated its own mitigation plan and other parties should also be able to negotiate or seek approval of their own mitigation plans. There is nothing in IGWA's approved plan that would be impacted by what Bingham's are proposing, and there is nothing in Bingham's proposed Mitigation Plan that references or implicates IGWA's approved plan.

3. IGWA's intervention would unduly broaden the issues.

In its Petition, IGWA asserts that it "presently seeks intervention in these matters to enable IGWA to effectively represent the interests of its member ground water districts who do not separately participate in this matter. IGWA's participation will not assert new issues into these matters, nor broadening the issues that exist by rule under CM Rule 43." Petition, at 4. However, this argument is without merit, as IGWA's Petition sets forth additional interests and issues. *Id.*, at 2-4. Further, IGWA members do not have a direct and substantial interest in this matter, and Bingham's cannot fully determine the extent that IGWA's intervention will unduly broaden the issues. Consequently, IGWA's Petition should be denied.

C. IGWA's interests are adequately represented by the Carey Valley Ground Water District, American Falls-Aberdeen Water District and the SWC.

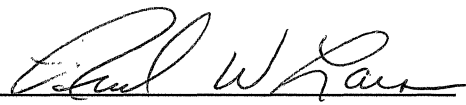
Two of IGWA's member ground water districts, the Carey Valley Ground Water District and the American Falls-Aberdeen Water District, are already parties to this action, as is the Surface Water Coalition. IGWA asserts that these parties do not represent the interests of all of IGWA's member districts. *Id.*, at 4. However, at the same time, IGWA asserts that IGWA's participation will not unduly broaden the issues. Nevertheless, because two of IGWA's member ground water districts are already intervenors, IGWA's interests are adequately represented. Additionally, the Surface Water Coalition is already a party and can also protect whatever interest IGWA may have in this proceeding. Because IGWA's interests are adequately represented by existing parties to the contested case, IGWA's Petition must be denied.

II. CONCLUSION

For the foregoing reasons, Bingham request an order from the Hearing Officer denying IGWA's Petition.

DATED this 30th day of September, 2025.

COOPER & LARSEN, CHARTERED

By 
REED W. LARSEN
*Attorney for Jerry D. Bingham and
Valerie H. Bingham*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 2025, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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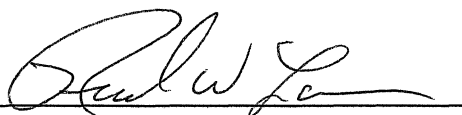
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NOTICE OF MITIGATION PLAN SUBMITTED BY JERRY D. BINGHAM AND VALERIE H. BINGHAM IN RESPONSE TO THE SURFACE WATER COALITION WATER DELIVERY CALL

Notice is hereby given that on August 19, 2025, Jerry D. Bingham and Valerie H. Bingham (the “Binghams”), through their counsel, Reed W. Larsen, of Cooper & Larsen, Chartered, PO Box 4229, Pocatello, ID 83205-4229, submitted a Mitigation and Curtailment Plan (“Bingham Plan”) to the Idaho Department of Water Resources (“Department”).

The Bingham Plan is intended to satisfy the Binghams’ mitigation obligation for the Surface Water Coalition (“SWC”) Water Delivery Call “as long as the Director’s [Curtailment] Order of July 25, 2025 is in place.” The SWC delivery call is administered by the Department and the watermasters of state water districts who administer ground water rights within the Eastern Snake Plain Aquifer (“ESPA”). The SWC consists of irrigation entities with senior surface water rights diverted from the Snake River above Milner Dam. The SWC members include 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.

The Binghams hold ground water rights within the ESPA that are used for agricultural irrigation. The Binghams’ water rights are junior to the SWC’s water rights. The Bingham Plan proposes to mitigate the effects of ground water pumping by fully curtailing their 1987 priority date water right – No. 35-12226 – and voluntarily reducing their water usage under Water Right Nos. 35-2202B, 35-2205E, 35-2266, 35-2269G, and 35-2183D by 14.2%, through a weekly Sunday shutdown of all irrigation pumping throughout the irrigation season. The Binghams assert that their mitigation plan is appropriate given the priority dates of their water rights. The Binghams assert that the plan is consistent with Idaho law and prior appropriation doctrine, and that it provides benefits to the aquifer by leaving water in place that could otherwise be legally diverted.

The Department will process the Bingham Plan under the Department’s Conjunctive Management Rules (IDAPA 37.03.11). A complete copy of the Bingham Plan is available for review at the following website: <https://idwr.idaho.gov/legal-actions/mitigation-plan-actions/SWC/bingham/>.

This notice does not represent analysis or approval of the proposed plan by the Department. Protests against approval of the Bingham Plan must be filed with the Department, together with a protest fee of \$25, on or before **September 22, 2025**. Rule 53 of the Department’s Rules of Procedure (IDAPA 37.01.01.053) outlines how documents may be filed with the Department and when they are considered filed. A copy of the Rules of Procedure may be obtained at the following link: <https://adminrules.idaho.gov/rules/current/37/370101.pdf>.

The protest must include a certificate of service showing that a copy of the protest has been mailed or delivered personally to counsel for the Binghams.

Mathew Weaver
Director

Published: September 3, 10, 2025 (PR12622-669252)

Exhibit A