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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF FALLS WATER CO.,)
INC.'S APPLICATION FOR DEFERRAL OF) CASE NO. FLS-W-22-01
CERTAIN COSTS)
)
)
) COMMENTS OF THE
) COMMISSION STAFF
)
_____)

STAFF OF the Idaho Public Utilities Commission, by and through its Attorney of record, Chris Burdin, Deputy Attorney General, submits the following comments.

BACKGROUND

On October 31, 2022, Falls Water Co., Inc. ("Falls Water" or "Company") filed an application ("Application") with the Idaho Public Utilities Commission ("Commission") requesting authorization to defer costs associated with groundwater mitigation so that Falls Water may advocate for the recovery of those costs in a future rate case.

Falls Water is a regulated water company that serves approximately 6,400 customers within its service territory near Idaho Falls, Idaho, pursuant to Certificate of Public Convenience and Necessity No. 236, and owns certain water rights, under which Falls Water is allowed to pump groundwater from its wells to serve its customers. Falls Water is located within the Bonneville-

Jefferson Ground Water District (“District”), which is a member of an entity known as the Idaho Ground Water Appropriators, Inc. (“IGWA”).

In 2016, IGWA entered into a Stipulated Mitigation Plan (“Mitigation Plan”) with an entity known as the Surface Water Coalition (“SWC”). The Mitigation Plan provided a framework for administrating groundwater rights, including Falls Water’s groundwater rights, in a manner designed to decrease conflict between water users. As a result of the Mitigation Plan, groundwater users within the District were required to decrease groundwater production by approximately 18,000 acre-feet. The Company states that in 2022, the cumulative growth on the system, drought conditions, and the actions of other members of the District were such that incurring mitigation fees was necessary for Falls Water to pump sufficient water to meet customer demand. The precise amount of mitigation fees is not known at this time, but the Company expects the fees to be material considering Falls Water’s overall operations.

STAFF ANALYSIS

Commission Staff (“Staff”) reviewed the Company’s Application, supporting documents, responses to Production Requests, and the proposed accounting treatment. Staff believes the Company’s request is reasonable based on the extraordinary circumstances of the special assessment fees. Staff recommends the Commission approve the Company’s Application to defer costs associated with mitigation and fees assessed by the District into a regulatory asset account until its next general rate case. At that time, the prudence of the expenses incurred, and the recovery method will be determined.

Customer Growth

As part of the District, the Company is required to adhere to its 2010-2014 average baseline water production level of 3,732.2 acre-feet for the Mitigation Plan. The Company’s baseline includes the Company’s recent acquisitions of Taylor Mountain and Morning View, and it anticipates Honey Bee Acres baseline of 19.44-acre feet will be added to the baseline. Response to Production Request No. 9. The Company claims its customer base has “grown by 40%” since 2014; therefore, the customer demand for water has increased. Application at 3. The Company estimates that 2022 total production will be approximately 5,257 acre-feet. Response to Production Request, Attachment 1.

Staff reviewed the Company’s water production and customer usage data since 2016 and notes the Company has experienced significant growth to its system since baselines were

established for the Mitigation Plan. The Company averaged an additional 230 new connections each year since 2016, with the biggest increase in Residential customers on 1-inch meters. Staff is concerned that as the Company continues to grow, the Company's baseline will not adequately reflect additional customer growth based on the current Mitigation Plan. Staff encourages the Company to explore updates to the Mitigation Plan that will accurately reflect a reasonable baseline water production level based on the Company's current system production and will allow for customer growth on the system.

Mitigation Efforts

The Company stated that in 2020 and 2021 it failed to meet the water reduction requirements described in the Mitigation Plan. In May of 2022, the District initiated a special assessment¹ that provides for a fee of \$100 per acre-feet used over the Company's 2010-2014 baseline. In response to the District's special assessment, the Company stated it has "pursued the purchase of additional water rights; it has urged its customers to conserve water; it has explored the possibility of leasing water rights from the water bank; and it has explored changing its rate structure to encourage conservation." Application at 4. Additionally, the Company used its communications system, RAVE, to alert customers by text message, voice message, and email to conserve water on June 27, 2022. The Company also sent out bill stuffers and put a message on the Company website notifying customers of the drought conditions and recommendations on how to conserve water. As a result, the Company saw a 3.1% decrease in water production from 2021 to 2022.

Staff believes the Company adequately alerted customers of the need to conserve water due to drought conditions, but notes that the Company did not mention special assessment fees due to increased water production over its allotted baseline. Staff encourages more transparency between the Company and its customers about the special assessment fee and believes it would be beneficial for customers to know how customer bills could be impacted by increased water usage. Additionally, Staff is concerned that the Company will continue to face assessment fees due to the Company's baseline not adequately reflecting customer growth in the Mitigation Plan. Staff

¹ *Idaho Code* §42-5232 gives the District authority to levy a special assessment against a District member due to excess water use based on an agreed mitigation plan.

encourages the Company to explore all mitigation efforts including rate design, purchasing water leasing rights, and continuing to encourage its customers to conserve water.

Breach of the Mitigation Plan

Due to multiple members of IGWA failing to meet ground water production requirements established in the Mitigation Plan, on July 21, 2022, the SWC filed the *Surface Water Coalition's Notice of Steering Committee Impasse/Request for Status Conference* with the Idaho Department of Water Resources ("IDWR"). The IDWR's Director granted the request for a status conference to be held on August 5, 2022. On September 8, 2022, IDWR issued the final order, Docket No. CM-MP-2016-001, finding IGWA was in breach of the Mitigation Plan and ordering IGWA to supply SWC with an additional 30,000 acre-feet storage water in 2023, and an additional 15,000 acre-feet storage water in 2024; this is in addition to the existing production requirements in the Mitigation Plan. It has not yet been determined how IGWA will allocate those requirements among all participating ground water districts. Staff is concerned that the Company may be affected by the Director's judgement regarding the issue of IGWA's breach of the Mitigation Plan. Staff recommends the Company update the Commission when the District has agreed upon specific requirements from the Company due to the breach.

Mitigation Costs

The Company requests a deferral of costs arising from groundwater mitigation in 2022 and "possibly other costs." Application at 4. The Company expects to receive an invoice in the first quarter of 2023 for the special assessment fees. The Company estimates the special assessment will be approximately \$152,000 due to the Company pumping approximately 1,525 acre-feet over the required baseline level. The Company also expects to include potential leased or purchased water costs, legal fees, and costs of third-party assistance in search of water rights as "other costs" in the deferral. The Company estimates costs associated with conservation communication will be \$977 for 2022; however, it is unclear if the Company plans to include these as "other costs."

Estimated Cost to Customers

The expected 2022 special assessment of \$152,472 would be a yearly cost of \$24.10 per customer, based on the current number of customers, without consideration of customer class. The

actual amount would differ based on the total amount deferred and how the deferral balance would be recovered from customer classes in the next rate proceeding.

Deferral Request

On a case-by-case basis, the Commission has generally allowed deferred accounting treatment for extraordinary and unusual expenses mandated by a regulatory or similar authority that have a significant financial impact on the Company. Staff believes the groundwater mitigation expenses fall into this category. The District has mandated these costs through the Mitigation Plan implementation. The Company has yet to encounter these types of expenses before the current circumstance. The Company does not know if these expenses will continue to occur or the timing and amount of additional groundwater mitigation costs. Thus, these costs are extraordinary and unusual in nature. If groundwater mitigation costs become a routine annual expense, prudent mitigation costs should be included in customer rates in the Company's next general rate case.

A deferred accounting order does not constitute Commission approval to recover these costs from the Company's customers. In this case, the granting of a deferral order does not limit Staff's right to audit, question, or challenge the appropriateness, reasonableness, and prudence of any cost to be deferred, as this sort of review is necessary to protect ratepayers. Staff expects the Company to provide sufficiently detailed supporting documentation when it seeks recovery of these costs in a subsequent filing. Therefore, Staff recommends the Company defer groundwater mitigation costs into a regulatory asset account, with recovery of prudently incurred costs determined in the Company's subsequent rate proceeding.

Absent an accounting order from the Commission, the Company would not be able to recover these costs unless they were incurred during the Company's test year in a general rate case. Staff believes that allowing the Company to defer otherwise unrecoverable costs provides a sufficient benefit to the Company and, therefore, the Company should not be granted a carrying charge on the regulatory asset account.

CUSTOMER COMMENTS

Rule 125 of the Commission's Rules and Procedure does not require customer notification unless the Company requests a rate change. IDAPA 31.01.01.125. Because the Company is not currently requesting a change in rates, no customer notification is required. As of February 1, 2023, no customer comments have been filed.

Additionally, Staff recommends that the Company keep its customers apprised of the potential change in rates resulting from future groundwater mitigation efforts and the part that customers with over-zealous watering habits play in the delicate balance between water usage and overall customer rates.

STAFF RECOMMENDATIONS

Staff recommends the Commission issue an Order authorizing the Company to defer, without interest, the special assessment fees and other costs associated with groundwater mitigation into a regulatory asset account, with recovery subject to a prudence review in its next general rate case. Additionally, Staff recommends the Commission order the Company to:

1. Provide more transparency between the Company and its customers over the special assessment and the potential impact it may have on rates.
2. Update the Commission when the District has determined how the breach of Mitigation Plan will impact the Company.
3. Continue and expand its mitigation efforts to explore all options.

Respectfully submitted this 2nd day of February 2023.



Chris Burdin
Deputy Attorney General

Technical Staff: Kathy Stockton
Kimberly Loskot
Laura Conilogue
Rick Keller

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 2ND DAY OF FEBRUARY 2023, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. FLS-W-22-01, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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