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DEPARTMENT OF
WATER RESOURCES

August 31, 2016

VIA EMAIL & U.S. MAIL

Director Gary Spackman
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83702-7374

Re: Comments on Proposed ESPA Ground Water Management Area

Dear Director Spackman:

We are writing on behalf of our clients A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company. We are joined in this letter by Kent Fletcher on behalf of his clients American Fall Reservoir District #2 and Minidoka Irrigation District. Together, these entities are informally known as the "Surface Water Coalition" or "Coalition."

The Coalition supports the designation of the Eastern Snake Plain Aquifer (ESPA) (as defined by ESPAM 2.1) as a groundwater management area pursuant to Idaho Code § 42-233b. Such a designation should include the entire ESPA and should avoid the "double-designation" of areas that are already identified as "critical" or "approaching critical." *See e.g. American Falls, Artesian City, Big Wood, Cottonwood, Oakley-Kenyon, West Oakley Fan.*

The Coalition has been concerned about the state of the aquifer for decades. Coalition members have filed petitions and participated in actions resulting in the moratorium[1], the conjunctive management rules[2], ground water measurement districts[3], the American Falls GWMA[4], water districts[5], the ESPAM, CAMP[6], and the State Water Plan[7].

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[1] *See Amended Moratorium Order* (In the Matter of Applications for Permit et al.) (April 30, 1993).
[2] *See* IDAPA 37.03.11 et seq. (adopted
[3] *See Pre-Hearing Conference Order* (In the Matter of Petition for Delivery Call of A&B et al.) (May 1, 1995).
[4] *See Order Designating the American Falls Ground Water Management Area* (August 3, 2001).
[5] *See generally, Orders Creating Water District Nos. 100, 110, 120, 130, 140.*
[6] *See Eastern Snake Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan* (January 2009).
[7] *See Idaho State Water Plan* (November 2012)

The Coalition has initiated water right administration proceedings through delivery calls under the Department's CM Rules.[8] In 2015, after years of litigation before IDWR and Idaho's courts, the Coalition and several ground water districts entered into a historic *Settlement Agreement*. *See* Ex. B to *Stipulated Mitigation Plan and Request for Order* (CM-MP-2016-001) (March 9, 2016). The Agreement's overarching goal is described as follows:

> Stabilize and ultimately reverse the trend of declining ground water levels and return ground water levels to a level equal to the average of the aquifer levels from 1991-2001.

Agreement, at 3, ¶ 3.e.

The Agreement has been approved as a Mitigation Plan under the CM Rules and the Coalition and Ground Water Districts are participating in the first year of the Agreement's implementation. It is expected the Steering Committee will meet this fall to review the actions taken and the state of the aquifer levels. However, the Director has noted that the Agreement is "a private agreement between the SWC and the Ground Water Districts" – it does not bind the Department or address its independent statutory obligations. *See Final Order on Reconsideration* at 3 (In the Matter of Requiring Measuring Devices et al.) (July 22, 2016).

The Department formally recognized the need to protect the aquifer as early as 1992 when former Director Higginson issued the first moratorium orders. In the April 30, 1993 *Amended Order* he found:

> 3. Ground water aquifers have become stressed by the reduction in natural recharge due to changes in diversion and use of surface waters throughout the basin and by the increased volume of pumping occurring to augment scarce surface water supplies during the drought period. The lowered water levels in the aquifers across much of the Snake River Basin in southern Idaho have resulted in numerous wells, often those used for domestic and municipal water supply purposes becoming unusable. Lowered ground water levels also reduce spring and base flow discharge needed to maintain stream and river flows.

Amended Moratorium Order at 1-2.

The conditions resulting in the 1993 moratorium worsened in the early 2000s. Former Director Dreher acknowledged these worsening conditions and, for certain areas of the ESPA, determined that they "may be approaching the conditions of a critical ground water area." *See Order Designating the American Falls Ground Water Management Area* at 3; *Order Designating the Thousand Springs Ground Water Management Area* at 3.[9] Yet, despite the

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[8] *See generally*, SWC Call (Docket No. CM-DC-2010-001); A&B Call (Docket No. 37-03-11-1).

[9] The Director later dissolved the Thousand Springs GWMA and modified the boundaries of the American Falls GWMA. Petitions requesting hearing on those actions were filed with IDWR.

designations, "ground water management plans" were never developed for these areas and the water supplies became increasingly stressed. In light of the continuing downward trend in spring flows and reach gains, senior water right holders that rely upon these water supplies were forced to seek administrative remedies through delivery calls. Several of those cases eventually reached the Idaho Supreme Court. *See Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790 (2011); *A&B Irr. Dist. v. IDWR*, 153 Idaho 500 (2012); *A&B Irr. Dist. et al. v. Spackman*, 155 Idaho 640 (2013); *Rangen, Inc. v. IDWR*, 367 P.3d 193 (Idaho 2016).

Notwithstanding the Department's limited GWMA designations and its responses to the various delivery calls, aquifer levels continue their decline. The Department's mass measurement reports document extensive declines in certain areas between 1980 and 2013 – with some areas declining over 40 feet. *See* **Ex. A**. These declines have resulted in lost aquifer storage, to levels not experienced since the early 1900s. *See* **Ex. B**. A&B Irrigation District's average July well level data confirms what is happening across the aquifer. *See* **Ex. C**. Declining ground water levels correspond with the declines in springs and reach gains throughout the ESPA, resulting in decreased supplies for senior surface water rights. *See* **Ex. D.**

In addition, irrigation, municipal, and domestic wells have lost water, forcing deepening and re-drilling throughout the aquifer. The lack of available ground water has forced several area groundwater users to seek alternative water supplies through river pump and pipeline projects exceeding several million dollars (i.e. Southwest Irr. Dist. West Cassia Pipeline, A&B Pumping Plant #2 and Pipeline).

The Idaho Water Resource Board adopted a Comprehensive Aquifer Management Plan (CAMP) and has recently pursued an aggressive recharge campaign. It is now time for the Department to exercise its statutory authorities and protect the ground water resource in a unified and directed manner through the designation of a ground water management area (GWMA). *See* I.C. § 42-233b.

The ESPA, <u>as defined by ESPAM 2.1</u>, the best available and court approved science, should be designated as a GWMA. Further, the Director should not "double-designate" areas that are already GWMAs or critical ground water areas (i.e. *American Falls*, *Artesian*, etc.). Rather, the Director should evaluate those existing designations individually and determine how individual management plans within those areas could complement or support the designation and management goals of the ESPA GWMA.

Further, it is the Coalition's position that the existing Settlement Agreement should be approved as a "ground water management plan" for those signatory parties. The Agreement is being implemented and should serve as the template for managing ground water withdrawals to stop continued declines and ultimately prevent a critical ground water area designation. A GWMA designation will ensure withdrawals are properly managed in a comprehensive manner and that management actions are taken to stop the continued declines. Further, the designation may assist in obtaining federal funds or actions for programs to protect and enhance the resource.

The Coalition is committed to protecting southern Idaho's most valuable asset, its water supply. The Ground Water Districts and the Idaho Water Resource Board have demonstrated their respective commitments as well. To that end, the time is right for IDWR to commit and assume its proper role to protect the aquifer through the designation of a GWMA on the ESPA.

Protecting and enhancing the aquifer through approved ground water management plans will ensure withdrawals are properly managed and that water supplies are sustained for continued use.

We appreciate consideration of these comments on behalf of the Surface Water Coalition.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP

Travis L. Thompson

Enc.

cc: Dan Temple, A&B
Lynn Harmon, AFRD #2
John Lind, BID
Walt Mullins, Milner
Dan Davidson, MID
Alan Hansten, NSCC
Brian Olmstead, TFCC
Kent Fletcher
Randy Budge, T.J. Budge c/o Ground Water Districts

Exhibit
A

Water Level Change - Spring 1980 To Spring 2013 with Well Locations

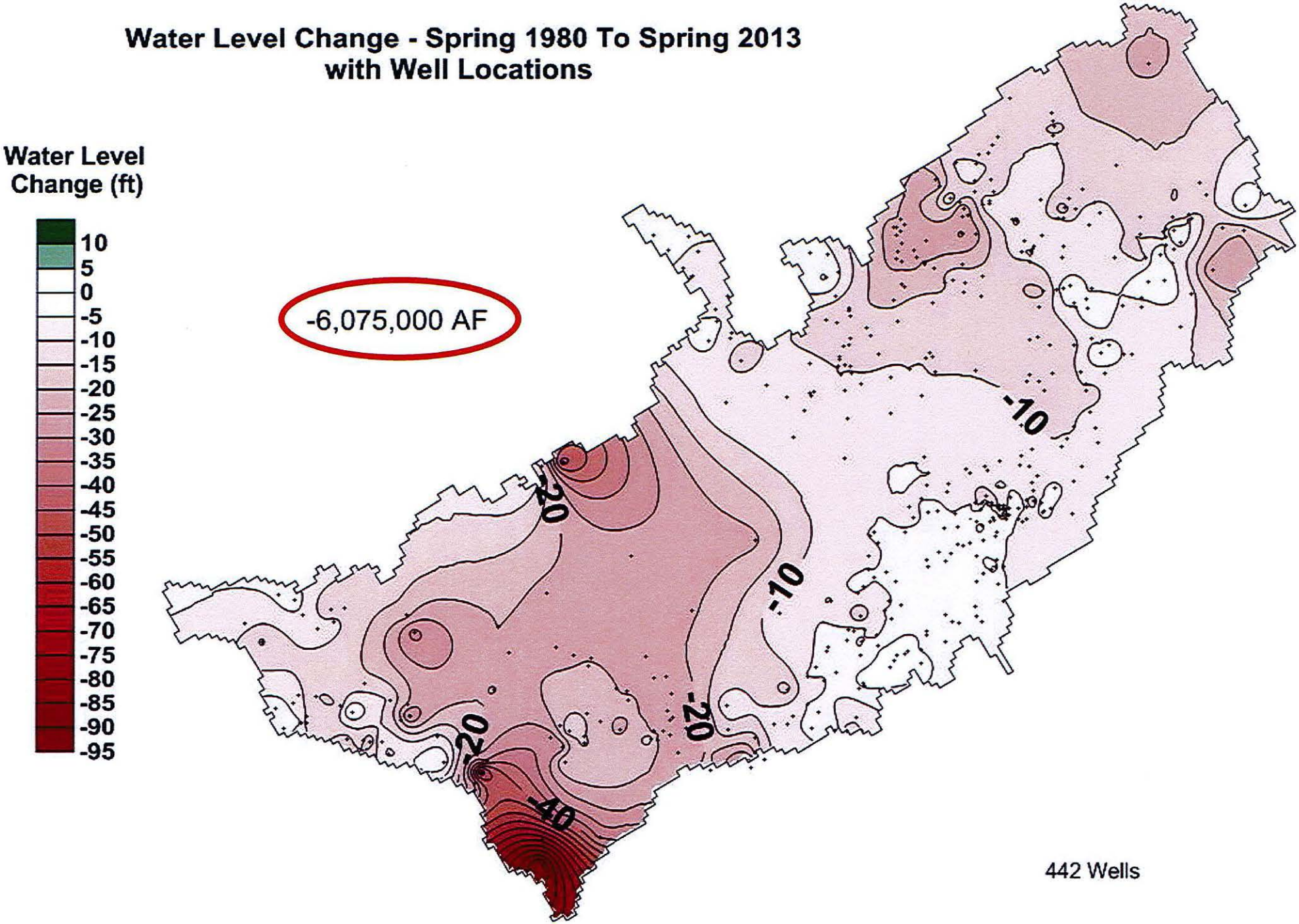


Exhibit
B

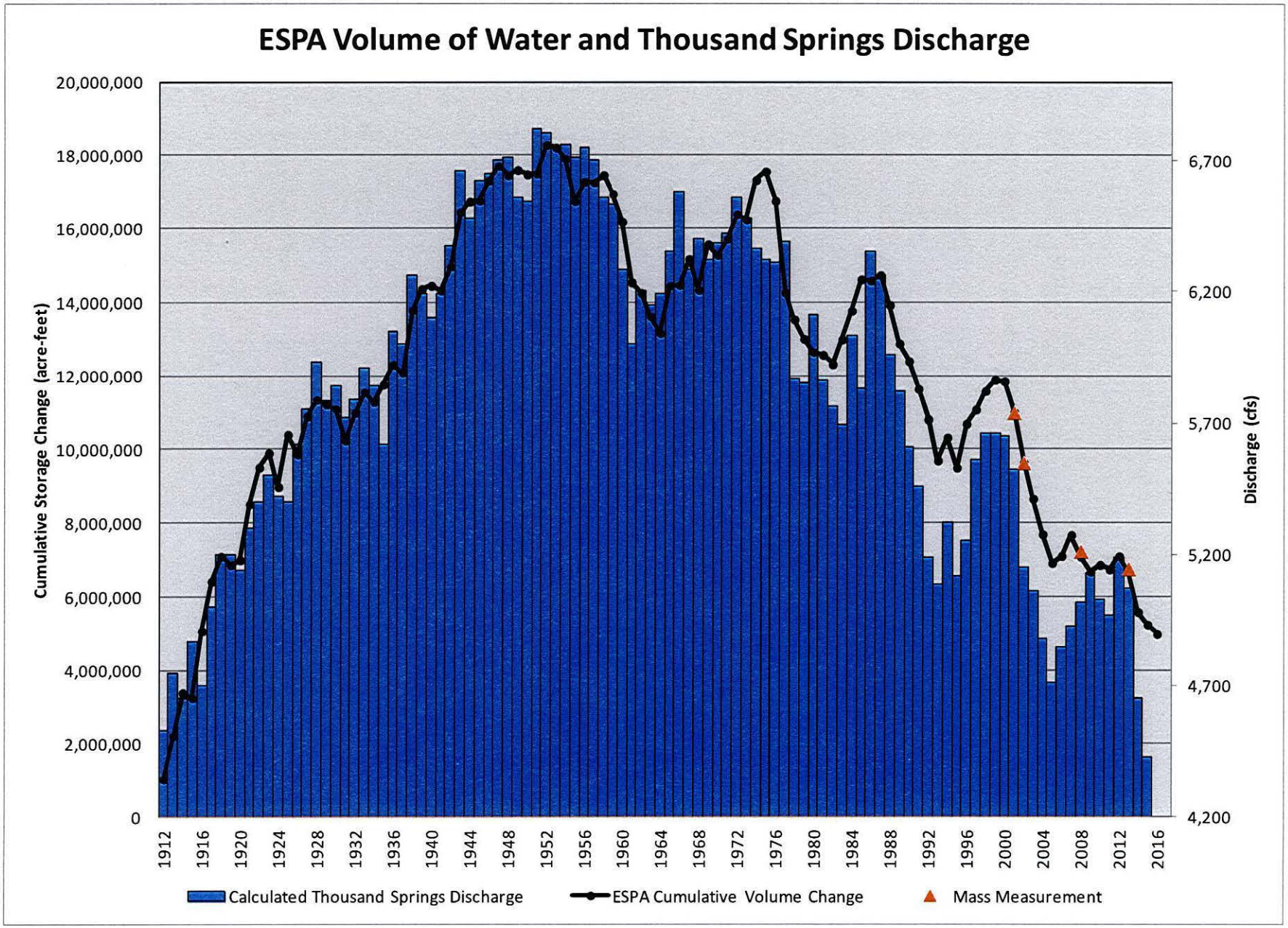

ESPA Volume of Water and Thousand Springs Discharge
Cumulative Storage Change (acre-feet)
20,000,000
18,000,000
16,000,000
14,000,000
12,000,000
10,000,000
8,000,000
6,000,000
4,000,000
2,000,000
0
Discharge (cfs)
6,700
6,200
5,700
5,200
4,700
4,200
1912
1916
1920
1924
1928
1932
1936
1940
1944
1948
1952
1956
1960
1964
1968
1972
1976
1980
1984
1988
1992
1996
2000
2004
2008
2012
2016
Calculated Thousand Springs Discharge
ESPA Cumulative Volume Change
Mass Measurement

Exhibit
C

A&B IRRIGATION DISTRICT
Average Low July Pumping Depth
1959-2016

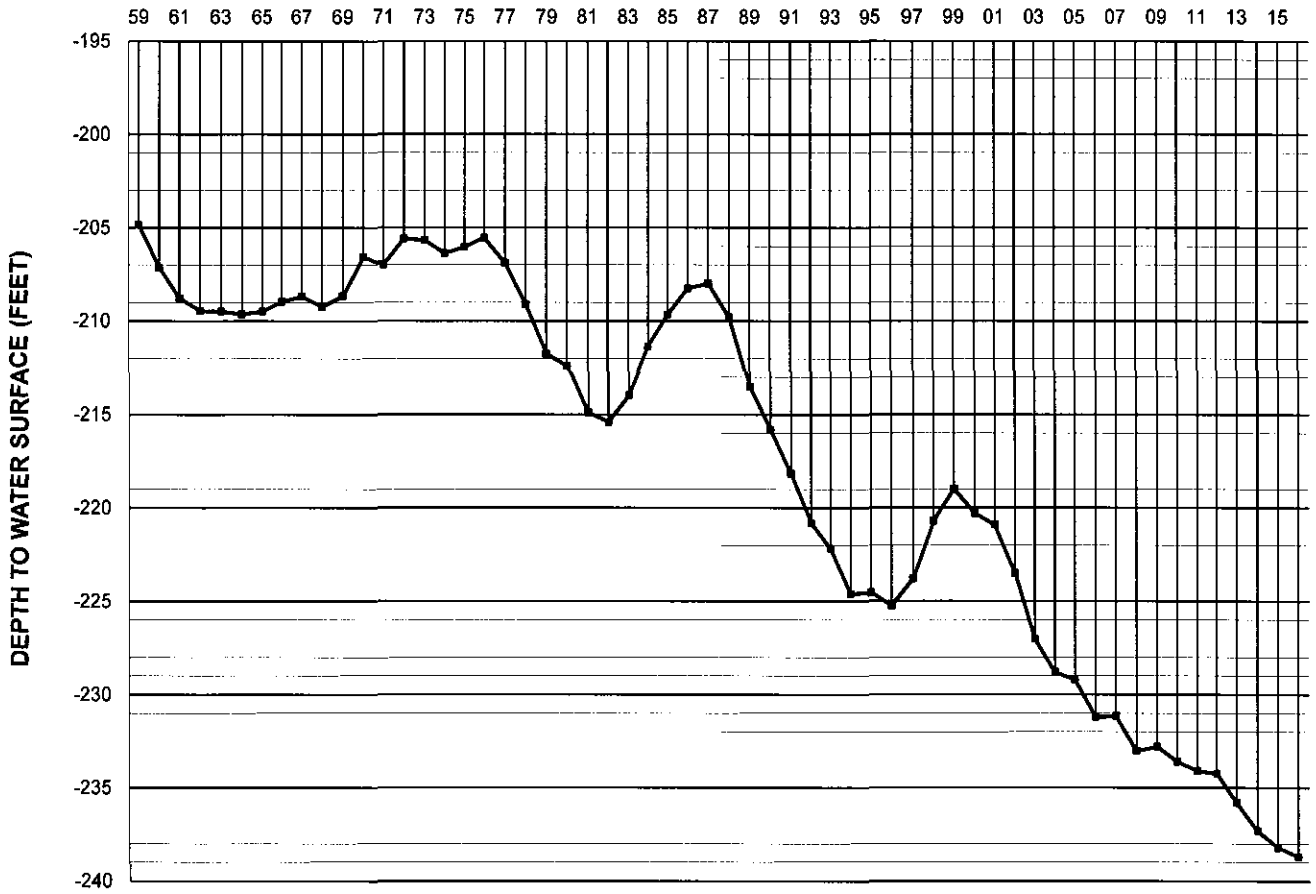
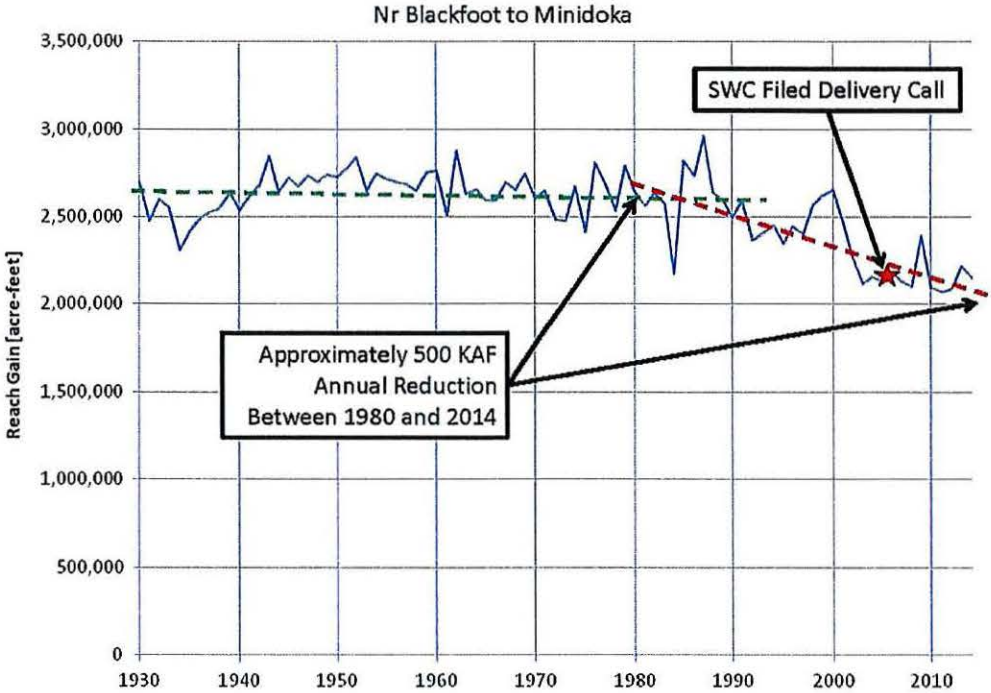


Exhibit
D



Note: *2013 and 2014 data values are preliminary.*