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**BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO**

)	CM-MP-2009-02
)	
IN THE MATTER OF DISTRIBUTION OF)	STIPULATION AND JOINT
WATER TO WATER RIGHT NOS. 36-)	MOTION FOR APPROVAL OF
02356A, 36-07210, AND 36-07247)	A&B IRRIGATION DISTRICT'S
)	RULE 43 MITIGATION PLAN
(Blue Lakes Delivery Call))	
)	
_____)	

COMES NOW, A&B IRRIGATION DISTRICT (“A&B”), by and through its counsel of record, BARKER ROSHOLT & SIMPSON LLP, and BLUE LAKES TROUT FARM, INC. (“Blue Lakes”), by and through its counsel of record, RINGERT LAW, CHTD., and hereby submit this *Stipulation and Joint Motion for Approval of A&B Irrigation District’s Rule 43 Mitigation Plan* pursuant to Rule 43 of the Department’s Conjunctive Management Rules (37.03.11.43) and the Department’s Rules of Procedure (IDAPA 37.01.01).

A&B and Blue Lakes request the Director to grant this motion and approve the mitigation plan in the above-captioned matter as conditioned below. This *Stipulation and Joint Motion*, along with the analysis and conditions set forth below, supersedes the mitigation plan filed by A&B on August 18, 2009.

BACKGROUND

A&B filed a mitigation plan in the above-captioned matter on August 18, 2009 for A&B's water rights 36-15127B, 36-15193B, 36-15194B, 36-15195B, and 36-15196B ("Enlargement Rights"). Notice of the plan was published and the plan was protested by Blue Lakes, IGWA, the Unit A Association, and the City of Pocatello.

Through this *Stipulation and Joint Motion*, A&B and Blue Lakes have reached an agreement as to the mitigation plan, and as detailed below, diversion of ground water under A&B's Enlargement Rights (with a 1994 subordination condition) is fully mitigated by the substitute curtailment actions performed within the A&B project and therefore the water rights should not be curtailed in response to Blue Lakes' water delivery call.

A&B and Blue Lakes hereby stipulate to the mitigation plan and analysis presented below. A&B and Blue Lakes further stipulate that the Director should approve the plan pursuant to the conditions identified below.

Blue Lakes' stipulation to the A&B mitigation plan does not constitute a waiver of any position Blue Lakes has taken or may take in the future that the Director has failed and is failing to acknowledge the full extent of injury to Blue Lakes' water rights, and that the Director has failed and is failing to administer junior ground water diversions that cause injury to Blue Lakes' water rights as required by Idaho law.

MITIGATION PLAN

I. Name and Address:

A&B Irrigation District
P.O. Box 675
Rupert, Idaho 83350-0675
(208) 436-3152

II. Water Rights to be Mitigated By Plan:

36-15127B
36-15193B
36-15194B
36-15195B
36-15196B

III. Description of Plan:

A&B has curtailed the diversion of groundwater under its senior priority water rights (1,322.7 acres under water right 36-2080 and 55.1 acres under water right 36-15127A) for the irrigation of 1,377.8 acres within the Unit B portion of the irrigation district. Although A&B is seeking to continue to serve these acres with groundwater through its senior priority rights (36-2080, September 9, 1948 priority; 36-15127A, April 1, 1962 priority), diversion and use of water by other junior priority ground water rights within the Eastern Snake Plain Aquifer (“ESPA”) has injured A&B’s water right and prevented the continued use of groundwater on those acres.¹

A&B has converted the 1,378 acres from groundwater to a surface water supply of A&B Irrigation District, consisting of stored water in American Falls and Palisades Reservoirs (water rights as recommended in the SRBA Court, 1-2064, 1-2068), along with collected drain water off of various lands within the District. Pursuant to analysis performed by IDWR using the Eastern

¹ A&B’s water right delivery call for water right 36-2080 is subject to a separate administrative proceeding before IDWR entitled *In the Matter of the Petition for Delivery Call of A&B Irrigation District for the Delivery of Ground Water and for the Creation of Groundwater Management Area* and is presently on appeal to the Minidoka County District Court (Case No. 09-647).

Snake Plain Aquifer Model (ESPAM) and the output for the Blue Lakes Spring node, diversion of groundwater for the acres served by A&B's Enlargement Rights (2,063 acres), would result in depletion to the Blue Lakes Spring of 0.51 cfs and 369 acre-feet per year. *See Direct Testimony of Charles E. Brockway; Attachment B.*²

Using the same analysis, A&B's conversion of the 1,378 acres from groundwater to a surface water supply would result in an increase of 0.60 cfs and 434 acre-feet per year to the Blue Lakes Spring. *See id.* In addition, A&B's use of surface water on the acres previously irrigated with groundwater provides additional incidental recharge to the ESPA in the amount of 0.15 cfs and 106 acre-feet per year to the Blue Lakes Spring. *See id.* Finally, A&B has enrolled 121 acres in the federal CREP program, which results in 0.02 cfs and 16.6 acre-feet per year to the Blue Lakes Spring. Therefore, ground water will be voluntarily curtailed under water rights 36-2080 and 36-15127A and will no longer be used on those acres for the duration of the program. Consequently, A&B's depletion and benefits from its mitigation actions, as calculated by using the ESPAM directly to the Blue Lakes Spring node are detailed as follows:

Depletions:

<u>Action</u>	<u>Impact to Blue Lakes Spring</u>
GW Irrigation – 2,063 acres	0.51 cfs / 369 af
Total Mitigation Obligation	0.51 cfs / 369 af

² The analysis was completed prior to the approval of Transfer No. 75339 which added points of diversion to A&B's water right 36-2080. Presently there are 195, not 188 points of diversion.

Mitigation Benefits:

<u>Action</u>	<u>Benefit to Blue Lakes Spring</u>
Conversions – 1,378 acres	0.60 cfs / 434 af
Incidental Recharge	0.15 cfs / 106 af
CREP	0.02 cfs / 16.6 af
Total Mitigation Performed	0.77 cfs / 556.6af

As calculated above, A&B’s actions completely mitigate for the depletions resulting from the use of the Enlargement Rights.

The Plan is based upon appropriate simulations and calculations using the ESPAM directly to the Blue Lakes Spring node, and such simulations and calculations were performed by Dr. Allan Wylie (IDWR) and further reviewed by Dr. Charles E. Brockway (Brockway Engineering PLLC). *See* CMR 43.03.e; *Direct Testimony of Charles E. Brockway* and Attachment B.

CONDITIONS OF APPROVAL

A&B and Blue Lakes agree with the above-listed mitigation obligation and benefits for the purposes of this proceeding. A&B and Blue Lakes further agree to the following conditions for approval of the mitigation plan:

1. The issuance of a final order approving this mitigation plan does not constitute res judicata or otherwise prevent or estop Blue Lakes or A&B from presenting additional data and analysis to modify the Director’s determination of injury to Blue Lakes’ water rights and/or A&B’s mitigation obligation. Consistent with the Director’s *Final Order*

Regarding Blue Lakes and Clear Springs Delivery Calls, the best available information will be used in the ongoing administration of Blue Lakes' water delivery call.

REQUEST FOR RELIEF

The *Stipulation* resolves Blue Lakes' protest to A&B's mitigation plan. A&B and Blue Lakes request expedited review and approval of the *Stipulation and Joint Motion*.

DATED this 1st day of February, 2010.

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

Attorneys for A & B Irrigation District

RINGERT LAW, CHTD.


Daniel V. Steenson

Attorneys for Blue Lakes Trout Farm Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2010, the above and foregoing **STIPULATION AND JOINT MOTION** was sent to the following by e-mail at the listed e-mail addresses:

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