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DEPARTMENT OF  
WATER RESOURCES

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ATTORNEYS FOR THE IDAHO GROUND WATER APPROPRIATORS

**BEFORE DEPARTMENT OF WATER RESOURCES**

**STATE OF IDAHO**

**IDAHO GROUND WATER  
APPROPRIATORS, INC.,**  
  
**Petitioners**

Docket No.: CM-MP-2009-06

**IGWA'S REQUEST FOR  
MITIGATION CREDIT**

COME NOW THE IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), through counsel and on behalf of its Ground Water District Members and other water user members for and on behalf of their respective members and those ground water users who are non-member participants in their mitigation activities and hereby submit this *Request for Mitigation Credit* under the *Mitigation Plan for Conversions, Dry-Ups and Recharge* ("Mitigation Plan") for use in the Surface Water Coalition Delivery Call.

On July 24, 2009 the Court issued an *Order on Petition for Judicial Review* in the Fifth Jud. Dist. Ct., Gooding County, Case No. CV-2008-551. The Court found that the Director of the Idaho Department of Water Resources ("Director" or "IDWR") abused his discretion when

he issued two Final Orders in response to Justice Schroeder's Recommended Order of April 29, 2008 ("Recommendations"). In March 2010, the Court issued his *Order Staying Decision on Petition for Rehearing Pending Issuance of Revised Final Order*, March 4, 2010, at 2. On April 7, 2010, the Director issued *Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carry-Over* ("Methodology Order"). On April 29, 2010, the Director applied the methods in the Methodology Order in his *Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4)* ("As-Applied Order") despite the fact that all parties sought reconsideration of the Methodology Order.

The As-Applied Order is based upon certain delivery calls (the "Delivery Calls") filed by the Surface Water Coalition demanding that additional water be supplied to their water rights. The As-Applied Order finds material injury to Twin Falls Canal Company ("TFCC") and American Falls Reservoir District No. 2 ("AFRD No. 2") and requires the Ground Water Users to provide 84,300 acre-feet of water or face a curtailment order. As-Applied Order at 4. The As-Applied Order does not take into consideration other mitigation efforts or activities that enhance the water supply to TFCC and AFRD No. 2; the benefits of these actions by IGWA on the ESPA should be considered and mitigation credit granted to the Ground Water Users. The other activities that enhance the water supply in the ESPA and to the Snake River should be considered in the calculation of the total water supply available to TFCC and AFRD No. 2 and other SWC entities as needed.

Below is a table that summarizes, to the best of our knowledge, the reach gain benefit to the Surface Water Coalition from ongoing mitigation activities of the Ground Water Users and other parties.

**Estimated\* Gains to the Near-Blackfoot to Minidoka Reach**

**From Existing Mitigation Plans**

Mitigation Plan/Component	Reach (af/yr)	Gain
IGWA Water District 130**		
Conversions		2,074
CREP		580
Recharge***		<u>2,714</u>
		5,368
SWID/Goose Cr. Blue Lakes Plan		
J Canal conversions		6,266
Cassia Pipeline		<u>9,040</u>
		15,306
Idaho Dairymen	Not known	
Processors	Not known	

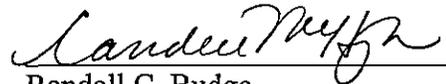
- \* From existing Department model runs  
(some may need adjustment for trim line differences)
- \*\* Includes conversions for Clear Springs OTR plan
- \*\*\* Based on 2009 recharge of 13,687 acre-feet

The Ground Water Users request that the Director consider the above benefits to the Surface Water Coalition and consider the entire water supply that is provided through these activities. The information contained in the above table comes from Department modeling of mitigation plans for North Snake Ground Water, Magic Valley Ground Water District and South West Irrigation District and recharge information presented to the Eastern Snake Hydrologic Modeling Committee. See accompanying Affidavit of Charles M. Brendecke.

Specifically, the Ground Water Users request credit for their actions that have resulted in an estimated 5,368 acre-feet of reach gain for the Near-Blackfoot to Minidoka Reach, the reach that the Director has determined supplies water to TFCC and AFRD No. 2. Because this Mitigation Plan has not been protested and the activities set forth in the table above clearly fall within approvable mitigation activities and positively affect the supply of water to the Surface

Water Coalition, and specifically TFCC and, according to the Director AFRD No. 2, the Director should approve mitigation credit for IGWA's activities and use it to offset the mitigation obligations of the Ground Water Users in the ongoing Surface Water Coalition Delivery Call, As Applied Order, IDWR Docket No. CM-DC-2010-001.

Submitted this 11th day of May, 2010.



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Randall C. Budge  
Candice M. McHugh



professional experience are set forth in greater detail in the *Affidavit of Charles M. Brendecke* filed with the Department in the Matter of the Surface Water Coalition Delivery Call and is included in my prefiled direct testimony filed both in the Surface Water Coalition and the Blue Lakes and Clear Springs delivery call matters. I have been for the past several years and continue to be the lead engineer and technical consultant to IGWA and its Ground Water District Members.

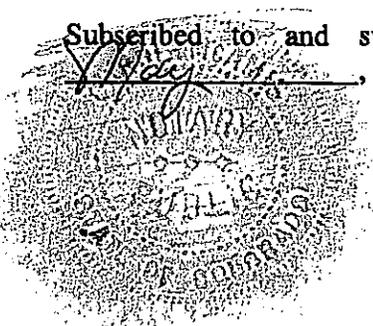
2. The information contained in the table was prepared by me using modeling results from Department groundwater modeling of IGWA and SWID mitigation plans, post-audits of previous mitigation activities and recharge information for 2009 presented to the ESHMC. These are estimated gains from activities that are planned or have been undertaken. The reach gains created by these activities will contribute to the water supply of TFCC and while we dispute that it will benefit AFRD No. 2, the Director has identified in this recent orders that AFRD No. 2 will benefit from an increase in reach gain from the Near-Blackfoot to Minidoka reach. As such, these gains should be considered as delivering water to off-set the calculated shortage. Further, your Affiant saith not.

Dated: May 11, 2010.



CHARLES M. BRENDECKE

Subscribed to and sworn to before me, a Notary Public, this 11<sup>th</sup> day of May, 2010.



Notary Public for State of Colorado  
Residing at 7988 Marshall, Arvada  
My commission expires 12/2/2012