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WILLIAM D. OLSON, OF COUNSEL

November 9, 2009

Idaho Department of Water Resources
Attn: Victoria Wigle, Assistant to Interim Director
P.O. Box 83720
Boise, ID 83720-0098

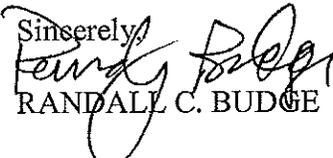
Re: Docket No. CM-MP-2009-07

Dear Victoria:

Enclosed please find for filing, publication, and processing, *IGWA's Mitigation Plan for the Surface Water Coalition Plan Delivery Call* which should be substituted for the mitigation plan titled *IGWA's Mitigation Plan for the Surface Water Coalition Delivery Call, Water District 120* which was filed on November 5, 2009. By this letter, IGWA withdraws the mitigation plan filed on November 5, 2009 and would like you to substitute the enclosed plan and file it and conform, stamp and return the extra copy enclosed herewith.

Please bring this matter to the attention of Director Spackman and proceed with advertisements. We have also provided courtesy copies to the Surface Water Coalition attorneys as indicated on the Certificate of Mailing.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,

RANDALL C. BUDGE

Randall C. Budge, ISB #1949
Candice M. McHugh, ISB #5908
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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-2009-007

**IGWA'S MITIGATION PLAN FOR THE
SURFACE WATER COALITION
DELIVERY CALL**

COME NOW THE IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), through counsel and on behalf of its Ground Water District Members and its other water user members, which are set forth on Exhibit A attached hereto, for and on behalf of their respective members and those groundwater users who are non-member participants in their mitigation activities (collectively the "Ground Water Users") and hereby submit this *Mitigation Plan for the Surface Water Coalition Delivery Call* ("Mitigation Plan") pursuant to the Rules for the *Conjunctive Management of Surface and Ground Water Resources*, ("CM Rules") Rule 43, IDAPA 37.03.11.043.

I. PRELIMINARY DETAILS

In support of this Mitigation Plan the following information is provided:

The name and mailing address of the parties filing the Mitigation Plan are:

Idaho Ground Water Appropriators, Inc.
P.O. Box 2624
Boise, ID 83701

Counsel of record:
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
Randall C. Budge
Candice M. McHugh
PO Box 1391
Pocatello, ID 83204-1391

The water rights that will benefit from the mitigation activities under this proposed Mitigation Plan are any senior surface water rights diverting from the Snake River or its tributaries and administered by the Watermaster of Water District 01 that the Director has previously found or may in the future find to have been materially injured by the use of groundwater under junior groundwater rights. The water rights that may benefit from this Mitigation Plan include the surface water rights held by or on behalf of Twin Falls Canal Company, North Side Canal Company A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, and Minidoka Irrigation District. These irrigation entities are commonly known and hereafter referred to collectively as the Surface Water Coalition ("SWC"). Because future obligations for mitigation cannot be determined in advance, this Mitigation Plan is intended to secure advance approval of the mitigation methods and practices that junior groundwater users can rely upon and implement in order to avoid curtailment. It is the desire and intent of the Ground Water Users by this mitigation plan to have a permanent and ongoing mitigation plan in place that can be

implemented on a year-to-year basis as necessary to avoid or reduce curtailment.

This Mitigation Plan will allow the Director and the effected parties to timely comply with hearing and procedural requirements under the CM Rules as established by the Gooding County District Court in *Clear Springs Foods, Inc. v. Tuthill, Case No. 2008-444* (Fifth Jud. Dist., Gooding Co.). The storage water supply for use under this Mitigation Plan is secured by agreements entered into between IGWA and storage space holders in the Upper Snake Reservoir System. Through these existing agreements, IGWA has a reliable supply of up to 68,000 acre-feet of storage water that will be available on an annual basis for delivery to SWC entities as may be required by the Director's orders. The exact amount of water required to be delivered to SWC entities under this Mitigation Plan cannot be known in advance but can be expected to vary annually based upon the forecasted water supply and reasonable irrigation requirements which are used to determine the amount of water needed for the irrigation season and reasonable carryover storage.

II. MITIGATION ACTIVITIES

This Mitigation Plan will mitigate any and all material injury by guaranteeing and underwriting the senior water user's water supply. If the Director projects material injury for a senior water user, then the Ground Water Users will provide water for mitigation in accordance with this Mitigation Plan for that mitigation year. The mitigation year is that part of any irrigation season and/or Water District 1 accounting year for which the Director has projected there will be material injury to a senior user caused by junior groundwater pumping. This Mitigation Plan will fully mitigate and compensate the senior water user for material injury by making water available for direct delivery of replacement water by the Water District 1 Watermaster when necessary during the irrigation season.

a. Mitigation Plan Methodology and Details -- Twin Falls Canal Company

Because the water supply of the Twin Falls Canal Company is most clearly established it is used as the example below. Yet, the same process described for Twin Falls Canal Company will be used to mitigate any material injury to other SWC entities.

The Director has determined that a full water supply for the Twin Falls Canal Company is 1,009,100 acre-feet based upon 5/8 inch per acre headgate delivery¹. Accordingly, the Ground Water Users will underwrite Twin Falls Canal Company's supply to guarantee up to 1,009,000 acre-feet of water. Should the combined sum of the storage allocated to Twin Falls Canal Company and the natural flow delivered to Twin Falls Canal Company during the irrigation season be less than 1,009,100 acre-feet as calculated by the Water District 1 Watermaster in the manner described below, the Ground Water Users will supply sufficient water to eliminate the resulting water debt ("excess use") of Twin Falls Canal Company on the books of Water District 1. Twin Falls Canal Company's water supply shall be measured at the broad crested weir at the main canal headgate. In determining the water supply available to Twin Falls Canal Company and any actual shortfall to be made up by the Ground Water Users, the Watermaster shall apply established year-end accounting procedures used since 1978.

If Twin Falls Canal Company diverts its allocated natural flow and storage of 1,009,100 acre-feet or more, then there is no in-season injury and no mitigation is required. The Ground Water Users' commitment to underwrite Twin Falls Canal Company's water supply is subject to the following conditions:

- (1) If Twin Falls Canal Company does not divert 1,009,100 acre-feet no mitigation requirement shall exist if Twin Falls Canal Company has

¹ If in the future the Court determines that 3/4 inch per acre is the correct head gate delivery, then the amount of water guaranteed by this Mitigation Plan is 1,075,900 acre-feet and that amount should be substituted accordingly.

carryover storage remaining when the final Water District 01 Water Right Accounting is complete for the mitigation year.

- (2) All water spilled at the end of the Twin Falls Canal Company canal system shall be measured and accounted for by the Watermaster. Unreasonable waste shall be accounted for and deducted from any obligation of the Ground Water Districts.
- (3) Any water leased to others by Twin Falls Canal Company shall be considered a delivery to Twin Falls Canal Company for the purpose of calculating any obligation of the ground water users.
- (4) Only water diverted and used by Twin Falls Canal Company for beneficial purposes of providing irrigation water to its shareholders for irrigation of lands within the service area during the mitigation year shall be included in calculating the obligation of the Ground Water Districts.
- (5) Existing accounting procedures employed by Water District 01 should not be modified and the accounting will be the final year-end accounting by the Water District 01 Watermaster.
- (6) Any water released past Milner Dam during the mitigation year for hydropower generation or related to Endangered Species Act requirements shall be accounted for by the Water District 01 Watermaster and shall not increase the mitigation obligation of the Ground Water Users.
- (7) The Department of Water Resources shall examine the diversion and climate-based water requirements of the mitigation year and adjust mitigation obligations downward if sufficient precipitation or other circumstances indicate that a full water supply was available to Twin Falls with a diversion less than 1,009,100 acre-feet.
- (8) If on any day the Twin Falls Canal Company diverts less than the natural flow that is available to its water rights in priority, such foregone amount of natural flow diversion will be deducted from any obligation of the Ground Water Users.
- (9) In no event will any actual shortfall be made up by the Ground Water Users as determined by the Watermaster, which exceeds the actual current shortfall to Twin Falls Canal Company as determined by the Director of the Department.
- (10) The calculated amount of the Minidoka Dam Return Flow Credit shall

be deducted from any obligation of the Ground Water Users.

The mitigation obligation resulting from Twin Falls Canal Company's irrigation season diversions will be replaced by the Ground Water Districts by the delivery of storage water credited to the storage water account of Twin Falls Canal Company as determined by order of the Director. The mitigation water will be delivered to Twin Falls Canal Company as it is needed during the irrigation season.

In the event that direct replacement water from storage is not available, the Ground Water Users will reimburse Twin Falls Canal Company (or the senior water user who has been determined to be materially injured) for any actual seasonal water supply shortfall at the Water District 1 Rental Pool rate for the short-fall alleged by the Director to have occurred during the current season.

b. Other SWC Entities

The water supply of each member of the SWC is different. In the event there is a determination of material injury to other entities caused by groundwater pumping, the process for determining the amount of mitigation in all cases will be determined by the Watermaster in completing his annual final water distribution and accounting. Other material injury to other SWC Entities will be mitigated by underwriting and guaranteeing their supply in the same manner as described above for Twin Falls Canal Company.

The Ground Water Districts reserve the right to modify this Mitigation Plan as needed to secure approval and to comply with other requirements that may be imposed by the Director

III. ADDITIONAL INFORMATION

This Mitigation Plan is based upon the following facts:

- (1) By their delivery call, the Surface Water Coalition seeks to establish water

rights that are greater in quantity and reliability than what was originally appropriated. Their rights have yet to be adjudicated in the Snake River Basin Adjudication and remain pending subject to objections of record.

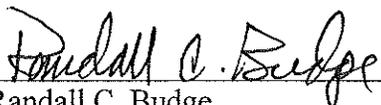
- (2) Ground Water Users are not responsible for reductions in water supply due to drought conditions or changed irrigation practices.
- (3) The Twin Falls Canal Company natural flow water rights are supplied primarily from the reach gains that accrue to the river in the Blackfoot to Neeley reach. These river gains have experienced substantial annual and seasonal variation in their natural flow supplies well before the beginning of groundwater development and Twin Falls Canal Company could never have expected their natural flow rights to be fully satisfied from reach gains arising below Blackfoot.
- (4) All other Surface Water Coalition members including American Falls Reservoir District No. 2 are totally dependent upon storage water that is supplied primarily from snow-melt and late spring runoff, and they have no entitlement to groundwater.

IV. RELIEF REQUESTED

The Ground Water Users requests that:

1. IDWR advertise this Mitigation Plan as required under the CM Rules;
2. IDWR hold any hearing as may be required;
3. The Director enter an order approving this Mitigation Plan upon such terms and conditions as may be reasonable and necessary to comply with CM Rule 43.
4. For such other and further relief as the Director may determine is reasonable and necessary to enable the Ground Water Users to mitigate for any material injury to senior surface water rights in Water District 120 to avoid or reduce curtailment.

Submitted this 9th day of November, 2009.



Randall C. Budge
Candice M. McHugh

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2009, I served a true and correct copy of the foregoing IGWA'S MITIGATION PLAN FOR THE SURFACE WATER COALITION DELIVERY CALL by delivering it to the following individuals by the method indicated below, addressed as stated:

<p>Gary Spackman, Interim Director Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 Fax: 208-287-6700</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email</p>
<p>C. Tom Arkoosh Arkoosh Law Offices, Chtd. 301 Main Street; P.O. Box 32 Gooding, ID 83330</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318-0248</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email</p>
<p>Roger D. Ling Ling, Robinson & Walker 615 H Street; P.O. Box 396 Rupert, Idaho 83350-0396</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email</p>
<p>John A. Rosholt John K. Simpson Travis L. Thompson Barker, Rosholt & Simpson 113 Main Avenue W., Ste 303 Twin Falls, ID 83301-6167</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email</p>
<p>Kathleen Marion Carr U.S. Department of the Interior 960 Broadway, Ste 400 Boise, Idaho 83706</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email</p>
<p>Matt J. Howard U.S. Bureau of Reclamation Pacific Northwest Region 1150 N. Curtis Road Boise, ID 83706-1234</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email</p>

Michael S. Gilmore Deputy Attorney General Civil Litigation Division P.O. Box 83720 Boise, ID 83720-0010	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Josephine P. Beeman Beeman & Associates 409 W. Jefferson Boise, Idaho 83702-6049	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Sarah H. Klahn White & Jankowski 511 16 th Street, Ste 500 Denver, CO 80202	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Terry T. Uhling J.R. Simplot Company P.O. Box 27 Boise, ID 83707	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Michael C. Creamer Jeffrey C. Fereday Givens Pursley P.O. Box 2720 Boise, Idaho 83701-2720	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
James C. Tucker Idaho Power Company P.O. Box 70 Boise, Idaho 83707	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, Idaho 83205	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email

Randall C. Budge

Exhibit A

IGWA MEMBERS

November, 2009

- Aberdeen American Falls Ground Water District
- Bingham Ground Water District
- Bonneville-Jefferson Ground Water District
- Clark Jefferson Ground Water District
- Madison Ground Water District
- Magic Valley Ground Water District
- North Snake Ground Water District
- Fremont Madison Irrigation District
- Goose Creek Irrigation District
- South West Irrigation District
- City of American Falls
- City of Blackfoot
- City of Chubbuck
- City of Heyburn
- City of Jerome
- City of Paul
- City of Rupert
- Busch Agricultural
- Jerome Cheese
- United Water of Idaho