

FEB 09 2016
DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF SOUTHWEST AND)
GOOSE CREEK IRRIGATION DISTRICTS) Docket No.: CM-MP-2010-01
MITIGATION PLAN FOR THE SURFACE)
WATER COALITION DELIVERY CALL) **JOINT MOTION FOR APPROVAL**
) **OF INTERIM MITIGATION**
) **AGREEMENT FOR 2016**
)
_____)

COME NOW, the Applicants SOUTHWEST IRRIGATION DISTRICT and GOOSE
CREEK IRRIGATION DISTRICT (hereinafter collectively referred to as "Applicants") by
through their attorneys of record Parsons, Smith, Stone, Loveland and Shirley LLP, and the
Protestants, A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT

#2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, and TWIN FALLS CANAL COMPANY, (hereinafter “Surface Water Coalition,” “Coalition,” or “SWC”), by and through their attorneys of record, Barker Rosholt & Simpson, LLP and Fletcher Law Office, and hereby file this *Joint Motion for Approval of Interim Mitigation Agreement for 2016* pursuant to the provisions of Conjunctive Management Rule 43 and other applicable law.

BACKGROUND

The Surface Water Coalition has an outstanding water delivery call to protect senior surface water rights to the Snake River. The Applicants’ members hold various ground water rights junior in priority to the Coalition’s water rights. On June 15, 2010 the Applicants filed an *Amended Mitigation Plan* regarding the SWC’s delivery call. IDWR published notice of the plan and the Coalition protested the plan on July 9, 2010. Since that time the Coalition and the Applicants have been working in good faith to resolve the protests and an acceptable interim mitigation agreement. The parties executed an *Interim Mitigation Agreement* for purposes of the SWC delivery call for the years 2013-2015. *See* Ex. A. The parties recently executed a first amendment to the agreement extending the term for one year. *See* Ex. B. The parties continue to work on a long term agreement and seek to extend approval of the *Interim Mitigation Agreement* for 2016.

JOINT MOTION FOR APPROVAL / STAY OF CONTESTED CASE

The Coalition and the Applicants jointly move the Director to approve the *Interim Mitigation Agreement* for a term of one year (2016) as set forth in the first amendment to the agreement. The agreement provides for certain aquifer mitigation actions to be undertaken by the Applicants on an annual basis, including groundwater recharge, conversions, and voluntary

curtailment. In exchange, the Coalition agrees that the Applicants' members' junior priority ground water rights shall not be subject to curtailment in response to the SWC's water delivery call or any order issued by IDWR during the term of the agreement. The Parties have also agreed to stay the pending contested case on the Applicants' mitigation plan and work toward a long-term permanent mitigation plan.

In the event no permanent mitigation plan or agreement is reached between the Parties, both the Applicants and SWC reserve all rights and retain their respective positions with respect to the protested mitigation plan. The Parties will keep IDWR informed as to future progress and whether a permanent plan or agreement has been reached prior to the expiration of the interim agreement's term (end December 31, 2016). No hearing is requested on this motion, however, the Parties will appear and provide any further information to the Director if needed. The Parties respectfully request the Director to expedite consideration and approval of this motion.

REQUESTS FOR RELIEF

1. The Parties request the Director to approve the *Interim Mitigation Agreement* as the Applicants' mitigation for 2016.
2. The Parties request the Director to stay the contested case on the Applicants' amended mitigation plan until December 31, 2016, or until otherwise notified in writing by the Parties.
3. The Parties request the Director recognize that members' junior priority ground water rights within the Applicants' boundaries are not subject to curtailment or any further mitigation requirements in response to the SWC delivery call during the term of the *Interim Mitigation Agreement*.
4. The Parties request the Director to expedite approval of this joint motion.

DATED this 9th day of February, 2016.

BARKER ROSHOLT & SIMPSON LLP

FLETCHER LAW OFFICE



Travis L. Thompson
Paul L. Arrington

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Twin Falls Canal Company,
North Side Canal Company, and Milner
Irrigation District*



W. Kent Fletcher

*Attorneys for American Falls
Reservoir District #2 and
Minidoka Irrigation District*

PARSONS, SMITH, STONE LOVELAND & SHIRLEY LLP

William A. Parsons

*Attorneys for Southwest Irrigation District and
Goose Creek Irrigation District*

DATED this _____ day of _____, 2016.

BARKER ROSHOLT & SIMPSON LLP

FLETCHER LAW OFFICE

Travis L. Thompson
Paul L. Arrington

W. Kent Fletcher

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Twin Falls Canal Company,
North Side Canal Company, and Milner
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*Attorneys for American Falls
Reservoir District #2 and
Minidoka Irrigation District*

PARSONS, SMITH, STONE LOVELAND & SHIRLEY LLP



William A. Parsons

*Attorneys for Southwest Irrigation District and
Goose Creek Irrigation District*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2016, I served a true and correct copy of the foregoing **JOINT MOTION FOR APPROVAL OF INTERIM MITIGATION AGREEMENT FOR 2016** by email and by depositing same in the United States mail, postage prepaid, addressed to the following:

Director Gary Spackman
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720-0098
gary.spackman@idwr.idaho.gov
deborah.gibson@idwr.idaho.gov

William Parsons
Parsons Smith Stone Loveland & Shirley LLP
P.O. Box 910
137 W. 13th St.
Burley, Idaho 83318
wparsons@pmt.org


Travis L. Thompson

Exhibit

A

INTERIM MITIGATION AGREEMENT

THIS AGREEMENT is entered into by and between SOUTHWEST IRRIGATION DISTRICT and GOOSE CREEK IRRIGATION DISTRICT (hereinafter collectively referred to as "SWID"), Idaho irrigation districts, and A&B IRRIGATION DISTRICT ("A&B"), an Idaho irrigation district, AMERICAN FALLS RESERVOIR DISTRICT #2 ("AFRD #2"), an Idaho reservoir district, BURLEY IRRIGATION DISTRICT ("BID"), an Idaho irrigation district, MILNER IRRIGATION DISTRICT ("Milner"), an Idaho irrigation district, MINIDOKA IRRIGATION DISTRICT ("MID"), an Idaho irrigation district, NORTH SIDE CANAL COMPANY ("NSCC"), an Idaho non-profit corporation, and TWIN FALLS CANAL COMPANY ("TFCC"), an Idaho non-profit corporation (hereinafter collectively referred to as "Surface Water Coalition", "Coalition", or "SWC") (together both sets of parties hereinafter referred to as "Parties").

RECITALS

WHEREAS, the Surface Water Coalition has an outstanding delivery call against hydraulically connected junior ground water rights on the Eastern Snake Plain Aquifer ("ESPA"); and

WHEREAS, the Coalition's delivery call remains subject to pending administrative and judicial cases; and

WHEREAS, SWID filed a mitigation plan with the Idaho Department of Water Resources ("IDWR") on May 28, 2010 in reference to the Surface Water Coalition's water delivery call; and

WHEREAS, IDWR published notice of the plan and processed it under Rule 43 of the *Rules for Conjunctive Management of Surface and Ground Water Resources* (IDAPA 37.03.11 *et seq.*) and the SWC filed a protest to SWID's plan on July 9, 2010; and

WHEREAS, the Parties have held several meetings and have exchanged information in an effort to resolve SWC's protest to SWID's mitigation plan without a formal hearing; and

WHEREAS, SWC acknowledges SWID's past mitigation actions and history of taking a pro-active approach to reducing groundwater demand in Basin 45, including through local recharge projects, voluntary curtailment, and conversions of lands irrigated with groundwater to a surface water supply; and

WHEREAS, SWC is supportive of SWID's primary "aquifer" based mitigation actions that seek to reduce consumptive groundwater use from the ESPA and enhance groundwater recharge to the ESPA; and

WHEREAS, the Parties seek to implement a three-year pilot project through this interim agreement as a first step toward a long-term permanent mitigation agreement and to finally resolve SWC's protest and obtain IDWR's approval of SWID's mitigation plan for the SWC water delivery call; and

WHEREAS, the Parties wish to delineate their agreement in writing as follows.

COVENANTS

NOW THEREFORE, in consideration of the recitals, the mutual covenants, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **SWID Aquifer Mitigation Actions.** SWID agrees to undertake the following aquifer mitigation actions during the years 2013-2015. The Parties acknowledge that actual water recharged or delivered for conversions may vary based upon water availability, delivery constraints, and climatic conditions. Assuming: 1) similar water conditions to an average of 2008-2012; 2) SWID acquires similar surface water supplies to an average of 2008-2012; and 3) SWID does not experience any unforeseen circumstances or delivery constraints; SWID agrees to undertake all necessary steps to accomplish the mitigation actions in the following amounts:

a. **Recharge:** Subject to water availability, SWID will attempt to accomplish not less than the following amounts of recharge through its various projects:

i.	Cottonwood	=	800 acre-feet
ii.	Dry Creek	=	800 acre-feet
iii.	Murtaugh	=	450 acre-feet
iv.	West Cassia Pipeline	=	<u>2,500 acre-feet</u>
	Total		4,550 acre-feet

b. **Conversions:** SWID will provide surface water to convert, in total or in part, approximately 30,000 ground water irrigated acres within SWID's boundary. Subject to water availability and delivery capability, SWID will attempt to accomplish not less than the following amounts of surface water conversion (identified by delivery system):

i.	Burley Irrigation District	=	23,100 acre-feet
ii.	Milner Irrigation District	=	12,630 acre-feet
iii.	Twin Falls Canal Company	=	6,500 acre-feet
iv.	West Cassia Pipeline	=	<u>12,120 acre-feet</u>
	Total		54,350 acre-feet

c. **Voluntary Curtailment:** In addition to the foregoing, SWID will voluntarily curtail all groundwater use on an additional 2,378 acres within SWID's boundary (to be identified and reported by SWID on an annual basis by May 1st).

2. **Storage Water Mitigation.** SWID further agrees to provide, on an annual basis, Five Thousand (5,000) acre-feet to the SWC as direct water mitigation to mitigate for junior ground water rights held by SWID members within its project boundaries. SWID agrees to acquire and provide the water to SWC by July 1st, or within ten (10) days after Water District 01's "date of allocation" for purposes of storage fill in the Upper Snake River reservoir system above Milner Dam, whichever date is later. SWC shall advise SWID and the Water District 01 Watermaster as to how the storage water will be assigned. The Parties agree to cooperate and coordinate with the Water District 01 Watermaster in order to satisfy this term.

3. **Alternative Mitigation.** The Parties may agree to accept alternative mitigation in any year as a substitute for the mitigation prescribed in Paragraph 2 above (i.e. contributions of water, funds, or services to a designated recharge project, conversion, etc.). If acceptable, the Parties shall confirm any alternative mitigation in writing by June 1st. In the event the Parties agree to alternative mitigation in the form of funds toward an aquifer project, SWID shall pay Sixty-Five Thousand and No/Dollars (\$65,000) to be deposited into a trust account held for the benefit of SWC to be used for a designated aquifer project.

4. **No Curtailment.** In exchange for the mitigation identified in Paragraphs 1-3 above, SWC agrees that junior priority ground water rights held by SWID members (located within the project boundaries of the Southwest Irrigation District and Goose Creek Irrigation District) shall not be subject to curtailment in response to SWC's delivery call or any curtailment order issued by IDWR or any district court for the SWC delivery call during the term of this Agreement.

5. **Mitigation Plan Agreement.** To the extent deemed necessary by IDWR or any district court, this Agreement shall constitute an agreement on an acceptable mitigation plan identified in Rule 43.03.o of the *Rules for Conjunctive Management of Surface and Ground Water Resources* (IDAPA 37.03.11 *et seq.*).

6. **Water Measurement Devices.** By August 1, 2013, SWID agrees to install, or cause to be installed, water measurement devices (flow meters, data loggers, etc.) on all groundwater wells within the Southwest and Goose Creek Irrigation District boundaries in order to accurately measure and record all ground water diversions. SWID shall report its annual water use to the Water District 140 Watermaster and will make any data, including total volume pumped and instantaneous diversion records, available to SWC. The Parties agree this obligation under this provision will survive the term of this Agreement.

7. **Reach Gains / Spring Flow / American Falls Groundwater Level Goals.** The Coalition agrees to monitor and evaluate reach gains, certain spring flows, and certain ground water levels in the Snake River in the Near Blackfoot - Milner Reach. The Coalition seeks to sustain ground water levels, reach gains, and spring flows in the American Falls reach for purposes of maintain a sufficient water supply for the irrigation of its members' projects. The Parties seek to achieve and maintain the following hydrologic goals in each category over the course of this Interim Agreement and into the future:

a. American Falls Reach Gains

<u>Month</u>	<u>Short-Term Goal (Average 1980-2000)</u>
May	176,073 af
June	171,550 af
July	161,219 af
August	178,274 af
September	192,570 af

b. Spring Flow

	<u>Short-Term Goal (Average 1980-2000)</u>
Spring Creek	359 cfs

c. Ground Water Levels

<u>Well ID</u>	<u>Short-Term Goal (Average 1980-2000)</u>
08S27E-B1DDA1	4,173 ft (elevation)
08S26E-33BCB1	4,213
05S31E-19DDC1	4,381
05S33E-35CDC1	4,399

Following each irrigation season and no later than February 1st of the following year, the Parties agree to meet and review the past season's data in the above categories. As part of a long-term mitigation agreement, the Parties will seek to identify an acceptable level of reach gains, spring flows, and groundwater levels to maintain the water supplies of SWC.

8. SWID Groundwater Level Goals. SWID agrees to monitor and evaluate certain ground water levels in the SWID project areas (including the boundaries of the Southwest and Goose Creek Irrigation Districts). The Parties seek to achieve and maintain the following static groundwater levels over the course of this Interim Agreement and into the future:

<u>Well ID (POD)</u>	<u>Name</u>	<u>Short-Term Goal (Target Depth)</u>
11S24E28 SWSWSW	Searle Abandoned	400 ft
12S23E6 SWSE	Chris Drakos	490 ft
11S22E4 NWSW	Mike Beck	485 ft
11S21E33 NWNWNW	Pickett Desert	430 ft
11S20E21 NWNWNE	Darrell Funk	100 ft
11S19E18 NENW	Skunk Well	265 ft

Following each irrigation season and no later than February 1st of the following year, the Parties agree to meet and review the past year's data. As part of a long-term mitigation agreement, the Parties will seek to identify acceptable groundwater levels throughout Water District No. 140 to maintain the water supplies of SWID.

9. Term / Stay of Contested Case. The term of this agreement is from January 1, 2013 to December 31, 2015. The Parties further agree to seek interim approval of SWID's mitigation plan as modified by this Agreement and stipulate to entry of an order staying the contested case on SWID's mitigation plan during the term of this Agreement.

10. **Long-Term Mitigation Agreement.** The Parties agree to continue to meet and attempt to reach a long-term permanent mitigation agreement regarding SWID's mitigation plan for the SWC water delivery call.

11. **Implementation of Agreement.** The Parties agree to take any and all actions necessary to ensure this Agreement is implemented to the satisfaction of the Parties, including filing necessary documents with the Director for approval for the term (years 2013-2015), and compliance with any requirements of the Water District 01 and 140 Watermasters. The Parties further agree to jointly support or defend the implementation of the Agreement including ensuring that IDWR does not improperly credit other junior ground water users, not covered by this agreement, for any mitigation obligations that they incur pursuant to the SWC Delivery Call.

12. **Representations.** The Parties have the full legal right, power and authority to enter into and perform this Agreement.

13. **Attorneys' Fees.** In any suit, action or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing Party shall be entitled to recover all its costs reasonably incurred therein (and on appeal), including reasonable attorneys' fees.

14. **Duty of Good Faith.** Each of the Parties to this Agreement agrees to perform and execute this Agreement in accordance with the highest standards of good faith, honesty in fact, and fair dealing. Accordingly, the Parties agree to cooperate fully and execute any and all supplemental documents and take any and all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

15. **Entire Agreement.** This is the entire agreement of the Parties with respect to matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by the Parties.

16. **Counterparts.** This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

17. **Idaho Law.** This agreement shall be governed by the laws of the State of Idaho.

18. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

19. **Captions to Paragraphs.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

20. **Binding Contract.** This Agreement shall be binding upon and inure to the benefit of the heirs, personal representative, administrators, successors, and assigns of the Parties

hereto.

21. **Effective Date.** The Effective Date of this Agreement shall be January 1, 2013.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

DATED this 24 day of Sept. 13.

SOUTHWEST IRRIGATION DISTRICT


Grant Wyatt, Chairman

ATTEST:

_____, Secretary

DATED this 27th day of Sept, 2013.

GOOSE CREEK IRRIGATION DISTRICT

Noland Critchfield
Noland Critchfield, Chairman

ATTEST:

_____, Secretary

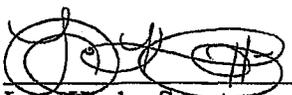
DATED this 10th day of September, 2013.

BURLEY IRRIGATION DISTRICT



Dean Edgar, Chairman

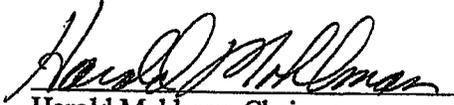
ATTEST:



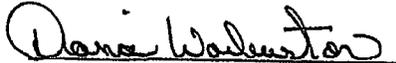
Lana Hanks, Secretary

DATED this 10 day of Sept, 2013.

A&B IRRIGATION DISTRICT


Harold Mohlman, Chairman

ATTEST:


Diana Warburton, Secretary

DATED this 15th day of October, 2013.

AMERICAN FALLS RESEVOIR DISTRICT #2

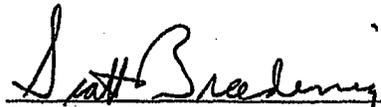
Ellis Gooch
Ellis Gooch, Chairman

ATTEST:

John Arkoosh
John Arkoosh, Secretary
acting for

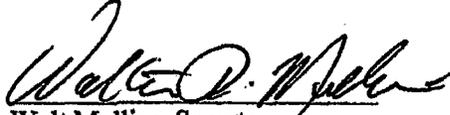
DATED this 11 day of September, 2013.

MILNER IRRIGATION DISTRICT



Scott Breeding, Chairman

ATTEST:



Walt Mullins, Secretary

DATED this 10th day of September, 2013.

MINIDOKA IRRIGATION DISTRICT

Mike Wilkins
Mike Wilkins, Chairman

ATTEST:

Ruth Bales
Ruth Bales, Secretary

DATED this 20th day of September, 2013.

NORTH SIDE CANAL COMPANY

Albert Lockwood
Albert Lockwood, Chairman

ATTEST:

Alan Hansten
Alan Hansten, Secretary

DATED this 10 day of Sept, 13.

TWIN FALLS CANAL COMPANY



Roger Blass, Chairman

ATTEST:



Rick Pearson, Secretary

Exhibit B

FIRST AMENDMENT TO INTERIM MITIGATION AGREEMENT

THIS FIRST AMENDMENT is entered into by and between SOUTHWEST IRRIGATION DISTRICT and GOOSE CREEK IRRIGATION DISTRICT (hereinafter collectively referred to as "SWID"), Idaho irrigation districts, and A&B IRRIGATION DISTRICT ("A&B"), an Idaho irrigation district, AMERICAN FALLS RESERVOIR DISTRICT #2 ("AFRD #2"), an Idaho reservoir district, BURLEY IRRIGATION DISTRICT ("BID"), an Idaho irrigation district, MILNER IRRIGATION DISTRICT ("Milner"), an Idaho irrigation district, MINIDOKA IRRIGATION DISTRICT ("MID"), an Idaho irrigation district, NORTH SIDE CANAL COMPANY ("NSCC"), an Idaho non-profit corporation, and TWIN FALLS CANAL COMPANY ("TFCC"), an Idaho non-profit corporation (hereinafter collectively referred to as "Surface Water Coalition", "Coalition", or "SWC") (together both sets of parties hereinafter referred to as "Parties").

RECITALS

WHEREAS, on June 20, 2013 the Surface Water Coalition and SWID entered into the *Interim Mitigation Agreement*; and

WHEREAS, the term of the Agreement was from January 1, 2013 to December 31, 2015; and

WHEREAS, the Parties wish to amend the term and extend the Agreement for one (1) year from January 1, 2016 to December 31, 2016; and

WHEREAS, the Parties desire to amend the Agreement accordingly.

COVENANTS

NOW THEREFORE, in consideration of the recitals, the mutual covenants, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties mutually agree that the Agreement remain in full force and effect except as modified by this First Amendment. In the event of any conflict the terms and conditions of this First Amendment shall control over those in the Agreement.

2. Paragraph 9 of the Agreement shall be amended to read as follows:

9. **Term / Stay of Contested Case.** The term of this agreement is from January 1, 2016 to December 31, 2016. The Parties further agree to seek interim approval of SWID's mitigation plan as modified by this Agreement and stipulate to entry of an order staying the contested case on SWID's mitigation plan during the term of this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

DATED this 2nd day of February, 2016.

SOUTHWEST IRRIGATION DISTRICT

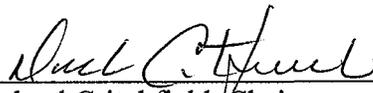
Randy Brown
Randy Brown, Chairman

ATTEST:

Craig E. Seab
Secretary

DATED this 2ND day of FEBRUARY, 2016.

GOOSE CREEK IRRIGATION DISTRICT



Noland Critchfield, Chairman

ATTEST:

_____, Secretary

DATED this _____ day of _____, _____.

BURLEY IRRIGATION DISTRICT

Dean Edgar, Chairman

ATTEST:

Lana Hanks, Secretary

DATED this _____ day of _____, _____.

A&B IRRIGATION DISTRICT

Harold Mohlman, Chairman

ATTEST:

Diana Warburton, Secretary

DATED this _____ day of _____, _____.

AMERICAN FALLS RESEVOIR DISTRICT #2

Ellis Gooch, Chairman

ATTEST:

John Arkoosh, Secretary

DATED this _____ day of _____, _____.

MILNER IRRIGATION DISTRICT

Scott Breeding, Chairman

ATTEST:

Walt Mullins, Secretary

DATED this _____ day of _____, _____.

MINIDOKA IRRIGATION DISTRICT

Frank Hunt, Chairman

ATTEST:

Ruth Bailes, Secretary

DATED this _____ day of _____, _____.

NORTH SIDE CANAL COMPANY

John Buekers, Chairman

ATTEST:

Alan Hansten, Secretary

DATED this 9th day of February, 2016.

TWIN FALLS CANAL COMPANY



Dan Shewmaker, Chairman

ATTEST:



Rick Pearson, Secretary