

**INTERIM STIPULATED AGREEMENT
FOR PROCESSORS AND MUNICIPALITIES WITHIN AND NEAR IDWR
ADMINISTRATIVE BASINS 35 AND 36**

This Interim Stipulated Agreement (Agreement) is entered into between the undersigned ground water users and surface water users, or their representatives, in consideration of the promises stated in this Agreement. The term of the Agreement shall extend to December 31, 2003.

1. This Agreement is made in reference to the following facts:
 - 1.1 The Director of the Idaho Department of Water Resources (Director) stated his intent to entirely curtail diversions under certain water rights for ground water beneath portions of administrative surface water sub-basins consisting of Basins 27, 29, 35, 36, 41, 43, and 45 (the Basins). The Director's intent was based upon his findings, set forth in his administrative orders designating the American Falls and Thousand Springs Ground Water Management Areas dated August 3, 2001, that diversions of ground water under such rights cause significant reductions in the gains to the American Falls and Thousand Springs reaches of the Snake River, and that those reductions will further reduce the diminished water supply available to satisfy senior priority surface water rights should current drought conditions continue into the 2002 water year;
 - 1.2 The parties are unable to agree to the extent of interconnection of ground water and surface water sources in the Snake River Basin and any alleged injury to surface water rights as a result of the diversion of water from the Eastern Snake Plain Aquifer (ESPA);
 - 1.3 The Idaho Department of Water Resources (IDWR) has committed to complete reformulating and recalibrating the ESPA Ground Water Model by December 31, 2003, contingent on continued funding from the Idaho Legislature and other entities;
 - 1.4 The new ESPA Ground Water Model is expected to provide the parties with additional information regarding the alleged impacts of ground water diversions from the ESPA on spring discharges and flows in defined reaches of the Snake River; and
 - 1.5 The parties desire to avoid the need for litigation at this time on the nature and extent of the alleged injury to senior priority surface water rights caused by diversions of ground water under junior priority water rights within the Basins pending the completion of the new ESPA Ground Water Model. The parties understand that this agreement and IDWR administrative actions described in this agreement may include water rights in areas immediately adjacent to the Basins as necessary to respect geohydrologic characteristics and water user organization boundaries. All subsequent references to the Basins in the agreement include this qualification.

2. Interim Stipulated Agreement:

- 2.1 The undersigned holders of ground water rights in the Basins or their representatives agree that in exchange for the safe harbor provided in paragraph 2.3, they will use their best efforts to:
- 2.1.1 provide annually 3,000 acre-feet of replacement water from rental pools above Milner Dam for use by senior surface water users in Water District 01 during the 2002 and 2003 irrigation seasons. 1,500 acre-feet shall be credited to the American Falls Reservoir storage proportionately and 1,500 acre-feet credited to downstream natural flow users proportionately as soon as Water District No. 01 goes on regulation. If American Falls reservoir fills and spills, all 3,000 acre-feet shall be used to mitigate natural flow impacts after Water District No. 01 is on regulation. The replacement water will be provided to holders of senior priority surface water rights in a manner determined by the Director, after consultation with the holders of senior priority surface water rights, to provide the maximum benefit to the holders of senior priority surface water rights; and
- 2.1.2 provide 500 acre-feet of replacement water from rental pools above Milner Dam for use pursuant to the terms of the INTERIM STIPULATED AGREEMENT FOR AREAS WITHIN AND NEAR IDWR ADMINISTRATIVE BASIN 36.
- 2.2 In the event the undersigned holders of junior priority ground water rights or their representatives provide none of the 3,500 acre-feet in paragraph 2.1 in any year, the undersigned holders of junior priority ground water rights agree to pay \$20,000 into an escrow account at IDWR for IDWR to acquire water when available or use to mitigate the impacts of ground water pumping in the Basins as determined by IDWR. If some but not all of the 3,500 acre-feet is provided, an adjustment to the \$20,000 may be made in proportion to the percentage of the 3,500 acre-feet provided.
- 2.3 Safe Harbor: In exchange for the commitments by the holders of junior priority ground water rights enumerated in paragraphs 2.1 and 2.2, the undersigned holders of senior priority surface water rights and their representatives agree not to seek either judicially or administratively the curtailment or reduction of the ground water rights held or represented by the undersigned within the Basins for the term of this Agreement.
- 2.4 By providing replacement water or in the alternative agreeing to pay money into an escrow account at IDWR, the undersigned holders of junior priority ground water rights and their representatives do not concede that diversions of ground water are causing injury to senior priority surface water rights, nor do the undersigned holders of senior priority surface water rights and their representatives concede that the amount of replacement water accepted under this stipulated Agreement fully compensates for the extent of the injury they allege.

- 2.5 The parties agree not to oppose the State of Idaho's motion to the District Court for the Snake River Basin Adjudication requesting authority for the Director to implement interim administration of water rights in the Basins and other related administrative areas outside of the Basins. The parties understand that interim administration will include: (1) enforcement of the provisions of the stipulated agreement; (2) curtailment of illegal diversions (i.e. any diversion without a water right or in excess of the elements of a water right); (3) measurement and reporting of diversions of water rights; and (4) curtailment of out-of-priority diversions found by the Director to be causing injury to senior water rights that are not covered by a stipulated agreement or a mitigation plan approved by the Director. The parties reserve the right to file motions to participate or submit other pleadings to participate in proceedings on the motion as they deem appropriate.
- 2.6 The parties agree to work collaboratively with the Director to expeditiously create a water district or water districts and to formulate initial instructions to the associated watermaster(s) to administer water rights of the water district or water districts. Such instructions shall include the elements of administration identified in paragraph 2.5. The parties agree not to oppose the Director's initial instructions to these watermasters that are jointly developed through this collaborative process.
- 2.7 The parties understand that the Director will issue an administrative order approving this Agreement, which will include the elements of interim administration identified in paragraph 2.5. Holders of junior priority ground water rights within the area subject to interim administration under this agreement who are not now or do not become a party to this or another stipulated agreement, either directly or as a member of a participating ground water district, shall not be entitled to the benefits of the safe harbor provided by paragraph 2.3. The parties agree to request that the Director notify holders of ground water rights in the Basins who are not party to this or another stipulated agreement that they may be subject to curtailment under the prior appropriation doctrine as established by Idaho law.

3. Process for Future Conflicts:

- 3.1. The undersigned parties agree to develop a process for ascertaining the extent of any injury caused by ground water diversions in the Basins under junior priority water rights to senior priority surface water rights and for the development of any mitigation plans subsequently required. The parties agree to meet with IDWR on at least a quarterly basis during the term of this Agreement to discuss and attempt to negotiate settlements of issues regarding the administration of water rights from connected surface and ground water sources in the Snake River Basin between Shelley, Idaho and Milner Dam and in the Thousand Springs reach of the Snake River. These discussions and negotiations will include, among other things:

- 3.1.1 The ESPA Model capabilities.
 - 3.1.2 Adoption of statewide water management rules to govern IDWR's overall administration of water rights from surface and ground water sources.
 - 3.1.3 Adoption of conjunctive administration rules based on the results from the new ESPA ground water model and other necessary information to more specifically govern IDWR's administration of water rights from connected sources of surface and ground water within the ESPA.
 - 3.1.4 Formalization of an administrative structure for and administration of connected ground water and surface water uses in accordance with the prior appropriation doctrine; and
 - 3.1.5 Consideration of a mechanism to account for changes in the use of water rights since the commencement of the SRBA and development of a means to administer water rights in the context of such changes.
4. Enforcement:
 - 4.1 The parties understand the Director intends to approve this stipulated Agreement in lieu of issuing curtailment orders under Idaho Code § 42-233b, and that in the event this Agreement is breached, any party may petition the Director, or the Director on his own initiative, may seek an appropriate remedy.
 - 4.2 Upon the SRBA District Court's issuing an order for interim administration of water rights within the Basins and related areas, this Agreement will be enforced through such administration.
5. Disclaimers:
 - 5.1 This Agreement represents a settlement of disputed issues regarding the administration of water rights from interconnected ground water sources and surface water sources within portions of the Snake River Basin. The undersigned are unable to agree on the extent and locations of interconnections of ground water and surface water sources in the Snake River Basin along the reach of the Snake River between Shelley, Idaho and Milner Dam or in the Thousand Springs reach of the Snake River and the extent of injury, if any, to senior priority surface water rights as a result of ground water diversions from the ESPA under junior priority water rights. In order to avoid litigation of these issues at this time, the undersigned have entered into this Agreement. Because this Agreement does not fully resolve the issues, the parties agree that this Agreement shall not be construed or interpreted so as to waive or prejudice any contention by any party regarding the legal or factual relationship between water rights from surface and ground water sources in the Snake River Basin along the reach of the Snake River between Shelley, Idaho and Milner Dam or in the Thousands Springs reach of the Snake River.

5.2 This Agreement has been reached as the result of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceedings.

6. Dismissal or Stay of Pending Actions:

Based upon the foregoing and the parties' understanding that the Director will stay further administrative proceedings regarding his Order In The Matter of Designating the American Falls Ground Water Management Area and his Order In The Matter of Designating the Thousand Springs Ground Water Management Area, and unless this Agreement is breached, the parties agree as follows:

6.1 The Idaho Ground Water Appropriators, Inc. and other plaintiffs agree to secure voluntary dismissal, without prejudice, of their Petition for Judicial Review and Complaint for Preliminary Injunction, Writ of Mandate, and for Declaratory Relief that they previously filed in the Sixth Judicial District Court.

6.2 Representatives of the holders of surface water rights agree to withdraw their July 2001 petitions seeking the establishment of ground water management areas, and the holders of ground water rights agree to withdraw their pleadings filed in response to the same.

7. General Provisions:

7.1 The provisions of this Agreement are not severable.

7.2 This Agreement shall bind and inure to the benefit of the respective successors of the parties.

7.3 This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

7.4 Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

7.5 This Agreement is executed in triplicate. Each of the three (3) Agreements with an original signature of each party shall be an original.

7.6 This Agreement shall be effective from October 11, 2001

7.7 The parties to this Agreement may extend the term of this Agreement beyond 2003 by mutual consent on an annual basis.

The parties have executed this Agreement the date following their respective signatures.