BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001
RESPONSE TO SVGWD AND GGWD’S PROPOSED MITIGATION PLAN

COMES NOW, the BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION, as the representative of its individual parties to the above-entitled matter, and the BIG WOOD CANAL COMPANY (“BWLWWU” and “BWCC”), collectively, by and through its attorneys of record, RIGBY, ANDRUS & RIGBY LAW, PLLC, JAMES LAW OFFICE, PLLC, and FLETCHER LAW OFFICE, hereby respond to the Proposed Mitigation Plan filed by South
Valley Ground Water District and Galena Ground Water District (collectively “Ground Water Districts”):

Unlike the detailed methodology of mitigation allowed in the conjunctive management rules, I.C. Sec. 42-237a.g. does not specifically provide for mitigation and therefore, it is questionable that a mitigation plan as proposed by the Ground Water Districts is allowable in the first place.

Notwithstanding the above, Ground Water Districts’ attempt to mitigate to a specific subset of priority dates fails to fully mitigate the impacts that will be realized by the BWLWWU & BWCC’s rights should full curtailment of the ground water rights within the Bellevue Triangle be ordered for the following reasons:

1. According to Jennifer Sukow’s 2021 Staff Memo and her testimony, the values for Silver Creek responses under a July 1 curtailment scenario would equal a total benefit to Silver Creek in the amount of 4,695 ac-ft. Assuming a twenty five percent (25%) loss, it would still leave approximately 3,521 ac-ft left in the Little Wood River system for the benefit of senior water rights. It is estimated that the Mitigation Plan proposal would only furnish 500 AF (375 AF assuming 25% seepage loss) of additional storage water from Henry’s Lake, a reimbursement of 500 AF (375 AF assuming 25% seepage loss) to the senior surface water users through Mitigation, Inc and 15 cfs of water pumped from the aquifer and put back in the stream. The net benefit to senior water right users from such a proposal however would only be 254 AF, assuming it is delivered to their headgates. See attached table.

2. At this date (June 25th), the April 1883 water rights are still in priority and are being diverted from the Little Wood River. Assuming this were to continue to July 1, any
additional water generated from curtailment of groundwater pumping would be delivered in priority. This would support continued fulfillment of not only the April 1883 rights but also benefit water rights with later priorities, including large surface water rights in the Picabo and Hwy 93 wetland area, and possibly some of the 1884 surface decrees throughout the system.

3. Pumping ground water into Silver Creek does not ensure that the impacted senior surface water users will be mitigated as there is no method set forth in the Mitigation Plan of shepherding the pumped water to those intended to be mitigated. The Mitigation Plan does not state that the Ground Water Districts’ members surface water rights will cease diversion of surface water rights that could impact the amount of water received by the mitigated parties.

4. The Mitigation Plan proposes to divert ground water rights that are not being diverted this year, resulting in a greater depletion to the aquifer and water supplies than is already occurring. Continued extraction of ground water in order to provide surface water deliveries to senior surface water users only exacerbates the depletion of the aquifer and reduces the flows to the Little Wood River in the long term.

Based upon the above, BWCC & BWLWWU oppose the Ground Water Districts’ proposed Mitigation Plan.

Dated this 25th day of June, 2021.
JERRY R. RIGBY

/S/
JOSEPH F. JAMES

Attorneys for Big Wood & Little Wood Water Users Association

/S/
W. KENT FLETCHER

Attorney for Big Wood Canal Company
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 2021, the above and foregoing was served on the following by the method(s) indicated below:

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Jerry R. Rigby

RESPONSE TO SVGWD AND GGWD’S PROPOSED MITIGATION PLAN - 10
### Volumetric Evaluation of SV GW District’s & Galena GW District’s Proposed Mitigation Plan

<table>
<thead>
<tr>
<th>Proposed Mitigation</th>
<th>Senior Benefit (ac-ft)</th>
<th>Junior Benefit (ac-ft)</th>
<th>Net Senior Benefit (ac-ft)</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 ac-ft rental through Henry’s Fork Reservoir District for Barbara Farms</td>
<td>375</td>
<td>0</td>
<td>375</td>
<td>Seepage losses on 500 ac-ft of water through AFRD2 would result in approximately 75% of the water being delivered to the Barbara Farms headgate.</td>
</tr>
<tr>
<td>Reimbursement of 500 ac-ft rented from Mitigation Inc.</td>
<td>375</td>
<td>0</td>
<td>375</td>
<td>Seepage losses on 500 ac-ft of water through AFRD2 would result in approximately 75% of the water being delivered to the Barbara Farms headgate.</td>
</tr>
<tr>
<td>Transfer of three (3) water rights to nine different wells pumps to be used to increase Silver Creek Flows to mitigate Don Taber’s water rights.</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>As clearly stated in the proposed Mitigation Plan, all three transfers are from lands already “not being irrigated in the Bellevue Triangle during the 2021 irrigation season”. As such, the presumed consumptive use for these lands for 2021 is zero. Consequently, any benefit gained by senior users from pumping, will essentially be offset by increases in consumptive use for the 2021 irrigation season.</td>
</tr>
<tr>
<td>August 15, 2021 curtailment in the Bellevue Triangle</td>
<td>1,082</td>
<td>0</td>
<td>1,082</td>
<td>Extrapolation of Sukow’s (2021) Silver Creek Responses to August 15 indicates that a September 1 curtailment would result in approximately 300 ac-ft being returned to Silver Creek. The average between predicted responses from an August 1 curtailment (i.e., 1,864 ac-ft) and the estimated September 1 curtailment (i.e., 300 ac-ft) is approximately 1,082 ac-ft which is a reasonable approximation for Silver Creek responses for an August 15 curtailment.</td>
</tr>
<tr>
<td>Description</td>
<td>Water Needed</td>
<td>Water Used</td>
<td>Water Saved</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>--------------</td>
<td>------------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>Irrigation of 3,500 acres of pastureland beyond August 15, 2021</td>
<td>0</td>
<td>1,540</td>
<td>-1,540</td>
<td></td>
</tr>
<tr>
<td>This estimate was made assuming irrigation of pastureland from August 15 – September 15 and using PICI Agrimet data for precipitation deficit (Pdef) for “Grass Pasture – High Management” over 3,500 acres of pastureland. Based on discussions with long-time farmers in the area, the elimination of this allowance would not result in crop failure but rather a reduction in crop-yield proportional to the reduction in yearly irrigation water (i.e., approximately 18%).</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Irrigation of 450 acres of seed potatoes beyond August 15, 2021</td>
<td>0</td>
<td>38</td>
<td>-38</td>
<td></td>
</tr>
<tr>
<td>This estimate is based on assuming 1”/acre of water needed to prepare for harvesting after August 15 for seed potatoes. The estimate of 1”/acre is from an expert in seed potato production in Ashton, ID.</td>
<td></td>
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</tr>
<tr>
<td>Total Net Senior Benefit (ac-ft)</td>
<td></td>
<td></td>
<td>254</td>
<td></td>
</tr>
<tr>
<td>As such, the proposed Mitigation Plan essentially benefits the senior surface water users in the amount of approximately 254 ac-ft.</td>
<td></td>
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</tr>
</tbody>
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