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and Madison Ground Water District*

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF 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

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

DC-2010-001

Docket No. CM-MP-2016-001

**UPPER VALLEY GROUND WATER
DISTRICTS' RESPONSE IN
OPPOSITION TO AMERICAN-FALLS
ABERDEEN GROUND WATER
DISTRICT'S MOTION FOR
RECONSIDERATION**

COME NOW, Henry's Fork Ground Water District, Jefferson Clark Ground Water District and Madison Ground Water District (hereafter collectively referred to as "Upper Valley Ground Water Districts" or "UVGWD"), by and through the above counsel, and hereby submit this Response in Opposition to the Motion for Reconsideration of Order Determining Deficiency in Notices of Secured Water ("AFA Motion") filed by the American Falls-Aberdeen Ground Water District on May 17, 2024.

UVGWD's are members of the Idaho Ground Water appropriators, Inc. ("IGWA"). American Falls-Aberdeen Ground Water District ("AFA") is also a member of IGWA. The purpose of this Response is not to substitute counsel or positions taken by IGWA through its counsel of record on behalf of IGWA members as a whole. However, due to the AFA Motion which is made on its own behalf and not on behalf of IGWA's other ground water district members, and because it has caused IGWA's law firm to have a conflict of interest amongst its members as to the issue's raised by AFA, UVGWDs are required to have their independent counsel file the above entitled Response on behalf of the firm's said three ground water districts (hereinafter "Response").

Because IGWA has taken various legal positions in all of the pending SWC/IGWA matters, not only before the Director of the Idaho Department of Water Resources ("Director") but also before the District Court, this Response is intended to only address the so called "proportionate share" each Ground Water District ("GWDs") is required to provide mitigation whether it be under the 2009 Mitigation Plan, the 2016 Plan or any other mitigation requirement. Furthermore, because IGWA and its member GWDs are presently involved in negotiations and discussions regarding a Ground Water Management Plan for the Eastern Snake Plain Aquifer ("GWMP"), the proportionate share argued by UVGWDs in this Response is intended to be for the present time period or until such time as the GWMP is in place and adopted by the Director.

**ARGUMENT AS TO UVGWDs OBJECTON TO AFA's PROPOSED APPORTIONMENT
OF IT'S OBLIGATION TO MITIGATE SWC's IMPACTS**

I. Neither the 2009 Mitigation Plan nor the 2016 Plan has any binding agreement as to future GWD's individual proportionate obligation to mitigate.

Although there is currently an issue as to whether the GWDs are allowed to mitigate their impacts through the 2009 Mitigation Plan or if the 2016 Plan controls and has replaced the 2009 Mitigation Plan, there has never been an agreement (written or otherwise) that the proportionate share of any shortfall or mitigation requirements among the GWDs be set in stone for all future years. The original allocation among the GWDs, including the past allocations used in the 2016 Plan to date, was based upon a formula involving diversions as opposed to impacts. AFA's motion is based upon a presumption that the past allocation among GWDs is permanent when there is absolutely no agreement to support that position. Because the underlying issues involved in the SWC calls and the stability of the aquifer would dictate that impacts and NOT diversions make the most sense when determining where and who should be mitigating for their pumping, a determination of those impacts is paramount for current and future years mitigation purposes.

Although SWC filed a supporting Response to American Falls-Aberdeen Ground Water District's Motion for Reconsideration on May 17, 2024, it acknowledges that the "signatory districts are responsible for determining the apportionment of the 50,000 acre-feet" in the past (2016-2023) and that "the Coalition takes no position on how that number should be divided".

II. Modelling of Impacts should form the basis for proportionate GWDs mitigation allocations.

Since 2016, significant modeling has been done by not only IDWR but also IGWA's experts. This modeling has clearly shown that the allocation originally used does not create

sufficient mitigation to occur in the regions that cause the most impact to the SWC's members. Furthermore, significant changes have been made since 2016, including the Director's removal of A&B Irrigation District and Southwest Irrigation District from any allocation of the 240,000 acre-feet of reductions pursuant to the 2016 Plan or the scaled-up requirement on top of the 240,000 acre-feet most recently made by the Director. Added to this is the change to the Director's modelling of impacts to a transient-state modelling.

To show the stark difference between the allocation methodology used to date in the 2016 Plan as opposed to using ESPAM 2.2 modeling (in either Steady-State or in Transient-State), IGWA's experts have prepared the attached tables which clearly evidence the substantial difference in allocation depending upon which methodology was used when modelling the April 2024 As-Applied Order. What this clearly evidences is that for all years to date, most of the impacts caused by AFA have been mitigated by other IGWA GWDs, especially Jefferson Clark Ground Water District.

It should be noted that the attached tables do not show the contribution of Madison Ground Water District ("MGWD") and Henry's Fork Ground Water District ("HFGWD") which combined have annually contributed fifteen hundred (1,500) acre feet of storage water and recharged three thousand (3,000) acre feet all to the benefit of IGWA GWDs obligations. Nevertheless, as per the letter from the above counsel to the Director dated May 2, 2024, MGWD and HFGWD fully intend to continue said mitigation for this year regardless of the final determination of allocation.

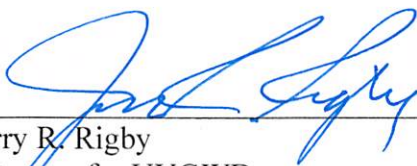
It should be further noted that pursuant to a similar letter from counsel to the Director dated May 2, 2024, although JCGWD offered to accept the allocation of mitigation based upon the Steady-State Allocation, it fully intended such compromise, if approved by all of the

GWDs, would be sufficient to cover any demand shortfall. Nevertheless, because it is apparent that AFA is unwilling to accept the compromise of the Steady-State Allocation, JCGWD, advocates that the Director should use the Transient-State modelling in order to allocate demand shortfall as among the GWDs.

CONCLUSION

Therefore, UVGWDs oppose AFA's motion and it should not be accepted or approved by the Director. It is clear as to why AFA desires to maintain the past allocated/proportionate share among the GWDs as that obligation is only a fraction of the impacts caused by AFA when modeled under ESPAM 2.2 and especially when using the current Director's use of Transient-State Allocations (which approaches almost 2/3rds deficiency of the shortfall caused by AFA). Unless the Director accepts Transient-State Allocation of any mitigation requirement among the GWDs, including mitigation of the 2009 Plan of Mitigation or the 50,000 acre-feet of storage if finally determined to be enforceable, then AFA has NOT fulfilled its compliance with either mitigation plan and should not be able to seek "safe harbor" under either.

DATED this 24th of May, 2024



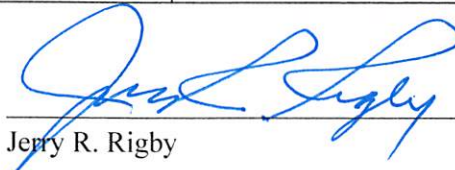
Jerry R. Rigby
Attorney for UVGWDs

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2024, I served a true and correct copy of the foregoing *Henry's Fork Ground Water District, Jefferson Clark Ground Water District and Madison Ground Water District's Response to American Falls-Aberdeen Ground Water District's Motion for Reconsideration* on the following by the method indicated:

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 Jerry R. Rigby

OPTIONS FOR ALLOCATING DEMAND SHORTFALL

April 2024 As-Applied Order

GWD	2015 Agreement Allocation			ESPAM 2.2 Steady-State Allocation			ESPAM 2.2 Transient-State Allocation		
	50,000 Allocation	Proportionate Share	Share of Demand Shortfall	Steady State Impact	Proportionate Share	Share of Demand Shortfall	Transient May - Sept 2024 Impact	Proportionate Share	Share of Demand Shortfall
	AF	%	AF	AF	%	AF	AF	%	AF
American Falls Aberdeen	8,705	17.4%	11,508	240,665	31.0%	22,998	38,019	51.9%	38,472
Bingham	8,593	17.2%	11,360	135,887	17.5%	12,986	27,278	37.3%	27,603
Bonneville Jefferson	4,745	9.5%	6,273	93,430	12.0%	8,928	1,085	1.5%	1,098
Carey Valley	173	0.3%	229	3,422	0.4%	327	0	0.0%	0
Henry's Fork	-	0.0%	-	1,024	0.1%	98	0	0.0%	0
Jefferson Clark	13,375	26.7%	17,682	71,765	9.3%	6,858	70	0.1%	71
Madison	-	0.0%	-	w/HF	w/HF	w/HF	w/HF	w/HF	w/HF
Magic Valley	8,000	16.0%	10,576	111,320	14.4%	10,638	23	0.0%	-
North Snake	6,410	12.8%	8,474	34,211	4.4%	3,269	0	0.0%	0
TOTAL	50,000	100%	66,102	691,723	89.2%	66,102	66,475	90.8%	67,266