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*Attorneys for IGWA and Ground Water Districts*

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

IN THE MATTER OF THE DISTRIBUTION OF	)	<b>CM-DC-2014-001</b>
WATER TO WATER RIGHT HELD BY	)	
AQUARIUS AQUACULTURE, INC., WATER	)	<b>STIPULATED MITIGATION PLAN</b>
RIGHT NO. 36-07092B, 36-07159 and 36-07160	)	<b>AND REQUEST FOR ORDER</b>
	)	
	)	

COME NOW Aquarius Aquaculture, Inc. ("Aquarius"), and North Snake Ground Water District, Magic Valley Ground Water District and Southwest Irrigation District (herein "Ground Water Districts") and the Idaho Ground Water Appropriators, Inc. ("IGWA"), pursuant to IDAPA 37.01.11.043.03(o), by and through their respective attorneys of record and do hereby stipulate and agree as follows:

1. Aquarius, the Ground Water Districts and IGWA have entered into a Settlement Agreement dated November 4<sup>th</sup>, 2014 ("Settlement Agreement"), a copy of which is attached hereto as Exhibit A.

2. Pursuant to the Settlement Agreement the Ground Water Districts have agreed to provide compensation as mitigation to Aquarius.

3. Pursuant to Settlement Agreement and in consideration of the compensation, Aquarius has agreed to dismiss its pending delivery call in the above-referenced matters and to limit future calls or requests for administration of certain water rights pursuant to the Settlement Agreement, to-wit:

3. Limitations on Future Delivery Calls/Participation in Aquifer Management.

3.1 Water Rights. For the duration of this Agreement, the hydraulic impact from the use of Water Rights of District Members shall be deemed fully and completely mitigated as to Aquarius's Call and Aquarius shall have no right to and agrees not to make any calls or request administration against the Water Rights of District Members under the Conjunctive Management Rules or otherwise based upon Water Right Nos. 36-7092B, 36-7159 and 36-7160, or any other water right now or hereafter

owned or controlled by Aquarius or any of its subsidiaries or affiliates for fish production within Water District 36 or 36A.


4. The parties agree that the Settlement Agreement together is intended to be a mitigation plan as defined in the Conjunctive Management Rules and request the Director of IDWR issue an Order confirming the Settlement Agreement as a Final Mitigation Plan for the duration of the Settlement Agreement and dismissing the underlying proceedings pursuant to paragraph 3.5 of the Settlement Agreement, to-wit:

3.5 Memorialization of Settlement and Mitigation Plan. The Parties do hereby acknowledge that this Agreement is intended to be a "Mitigation Plan" as such term is defined by the Conjunctive Management Rules. A copy of this Agreement shall be filed with IDWR in conjunction with the dismissal of the underlying proceeding. The Parties will request the Director of IDWR issue a final order in conjunction with the dismissal of the underlying proceeding confirming this Agreement as a final Mitigation Plan pursuant to the provisions of the Conjunctive Management Rules.

Wherefore, the parties request that the Director enter an order without further notice or hearing accepting the Agreement as a complete and final Stipulated Mitigation Plan and dismissing the above-referenced delivery calls matters of Aquarius with prejudice in accordance with the parties' provisions as contained in the Agreement.


DATED this 4<sup>th</sup> day of November, 2014.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By:   
RANDALL C. BUDGE  
THOMAS J. BUDGE  
*Attorneys for IGWA and  
Ground Water Districts*

**AQUARIUS AQUACULTURE, INC.**


Date: 10-20-2014

  
Name: Wayne Huff  
Title: President

Date: 10-24-2014

  
Name: David Huff  
Title: Vice-President

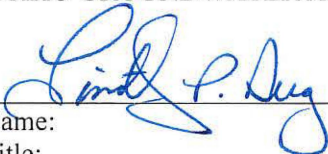
Date: 10-20-2014

  
Name: Ron Huff  
Title: Secretary

**IGWA**

IDAHO GROUNDWATER APPROPRIATORS, INC.

Date: 11/4/14

  
Name: Linda P. Day  
Title:

**SIGNATORY DISTRICTS**

NORTH SNAKE GROUND WATER DISTRICT

Date: 11/4/14

  
Name:   
Title: Chairman



MAGIC VALLEY GROUND WATER DISTRICT

Date: 11/4/14

  
Name:   
Title: Chairman

SOUTHEAST IRRIGATION DISTRICT

Date: 11/4/14

  
Name:   
Title: chairman

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of November, 2014, the above and foregoing document was served in the following manner:

Director Gary Spackman  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, Idaho 83720-0098

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Sarah Klahn  
Mitra Pemberton  
White & Jankowski  
511 16<sup>th</sup> St., Ste 500  
Denver, CO 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)  
[mitrap@white-jankowski.com](mailto:mitrap@white-jankowski.com)

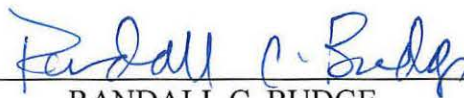
- ☐ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☒ E-mail

A. Dean Tranmer  
City of Pocatello  
P.O. Box 4169  
Pocatello, Idaho 83205  
[dtranmer@pocatello.us](mailto:dtranmer@pocatello.us)

- ☐ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☒ E-mail

Aquarius Aquaculture, Inc.  
c/o David Huff, Vice President  
2674 Norwood Road  
Hagerman, Idaho 83332

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail



RANDALL C. BUDGE  
THOMAS J. BUDGE  
Attorneys for IGWA and Ground  
Water Districts

**Exhibit A**

**Settlement Agreement**



## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("**Agreement**") is made and entered into effective November 4, 2014, by and between Aquarius Aquaculture, Inc. ("**Aquarius**"), the North Snake Ground Water District, Magic Valley Ground Water District, Southwest Irrigation District (collectively the "**Signatory Districts**"). Idaho Ground Water Appropriators, Inc. ("**IGWA**") is a party to this Agreement in its capacity as intervener on behalf of the District Members, as is defined below, in the underlying proceeding that is resolved hereby (Aquarius, the Signatory Districts and IGWA are referred to as "**Parties**" and each a "**Party**").

### **RECITALS:**

WHEREAS, on February 12, 2014, Aquarius delivered a letter to the Idaho Department of Water Resources ("**IDWR**") demanding that IDWR administer water rights as required by Idaho Code and IDWR's Conjunctive Management Rules, as defined below, to supply Aquarius with water under its Water Right Nos. 36-7092B, 36-7159 and 36-7160 ("**Aquarius's Call**"), which call was assigned Docket No. CM-DC-2014-001.

WHEREAS, IGWA petitioned to intervene as a respondent in Aquarius's Call on July 17, 2014, and on July 23, 2014 IDWR granted IGWA's petition to intervene in Aquarius's Call;

WHEREAS, Aquarius, the Signatory Districts and IGWA now desire to resolve, compromise and settle the issues related to and to avoid further litigation and dispute as to Aquarius's Call to enter into settlement as provided herein.

WHEREAS, the Signatory Districts have agreed to pay monetary compensation to Aquarius for the subordination of Aquarius water rights.

WHEREAS, in consideration for the compensation paid and this Agreement, Aquarius has agreed to dismiss Aquarius's Call and to limit future calls or requests for administration of Aquarius water rights as set forth herein in more detail.

### **AGREEMENT**

NOW, THEREFORE, in consideration of this Agreement and the terms and conditions contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

### **DEFINED TERMS**

In addition to those terms defined herein, the following definitions shall apply to this Agreement:

"Conjunctive Management Rules" means the Rules for Conjunctive Management of Surface and Ground Water Resources IDAPA 37.03.11, adopted pursuant to the Idaho Administrative Procedures Act and Section 42-603, Idaho Code, as they now exist or may hereafter be amended.

"District Member" means any present or future member of a ground water district as defined in Title 42, Chapter 52 of Idaho Code, or any present or future qualified voter of an irrigation district as defined by Title 43, Chapter 1 of Idaho Code, that is a member of IGWA, including the Signatory Districts, together with any member who has joined a district for mitigation purposes.

“Water Rights” means certain water rights pertaining to the operation of the hatchery that is owned by Aquarius as more fully described as follows:

Water Right No.	Authorized Diversion Rate (cfs)	Priority Date	Beneficial Use	Diversion Name/Number
36-7092B	10	11/6/1969	Fish Propagation	Hidden Springs Hatchery/410087
36-7159	10	02/18/1971	Fish Propagation	Hidden Springs Hatchery/410087
36-7160	2.64	02/18/1971	Fish Propagation	Hidden Springs Hatchery/410087

“Water Rights of District Members” means any decreed, licensed or permitted groundwater right and pending groundwater applications of a District Member with a priority date prior to the date of this Agreement.

1. Purpose and Objectives. The purpose and objectives of the Parties are as follows:

1.1 To fully compromise and settle all present and future delivery calls and any and all claims of Aquarius as against the Water Rights of District Members for the term of this Agreement;

1.2 To pay monetary compensation as mitigation to Aquarius in return for Aquarius’s agreement to dismiss Aquarius’s Call and to forever limit Aquarius’s future calls against the Water Rights of District Members;

1.3 To mutually release each other from any and all claims arising directly or indirectly out of the foregoing; and

1.4 To provide for cooperation, encouragement and participation in efforts made by the State of Idaho and other users of the waters of the State of Idaho to promote the recharging, stabilization and sustaining of the aquifer.

2. Compensation. The Signatory Districts agree to pay monetary compensation of [REDACTED] to Aquarius as mitigation for depletions caused to Aquarius’s water right by junior ground water pumpers.

2.1 This payment will be made within thirty (30) days after the IDWR Director has entered a final order accepting this Settlement Agreement as a complete Stipulated Mitigation Plan and dismissing the delivery call of Aquarius with prejudice in accordance with the provisions of this Agreement.

2.2 The compensation amount is deemed confidential information that is proprietary to the Parties and shall not be disclosed to anyone other than the parties’ professional consultants who agree to hold the confidential information in strict confidence. Accordingly, for purpose of any public filings or dissemination of this Settlement Agreement, the compensation amount shall be redacted.

3. Limitations on Future Delivery Calls/Participation in Aquifer Management.

3.1 Water Rights. For the duration of this Agreement, the hydraulic impact from the use of Water Rights of District Members shall be deemed fully and completely mitigated as to Aquarius’s Call and Aquarius shall have no right to and agrees not to make any calls or request administration against the Water Rights of District Members under the Conjunctive Management Rules or otherwise based upon Water Right Nos. 36-7092B, 36-7159 and 36-7160, or any other water right now or hereafter owned or



controlled by Aquarius or any of its subsidiaries or affiliates for fish production within Water District 36 or 36A. The limitation described in this paragraph and this Agreement shall be noted by IDWR as a condition upon the described water rights and incorporated by reference.

3.2 No Third Party Rights. The rights established in this Settlement Agreement are not intended and do not create any right in any person or entity other than IGWA, the Signatory Districts, the District Members, and Aquarius . These rights shall not be assigned to except as set forth in Section 9.3 below.

3.3 No Prohibition on Enforcement of Rights. Notwithstanding any contained herein, this Agreement shall not be interpreted or applied to preclude either party from pursuing remedies against: (a) an unauthorized diversion of water; (b) water rights or water diversions not covered by this Agreement; (c) water right transfers which do not comply with Idaho law; or (d) water right transfers which will reduce water supplies available to fulfill the water rights identified in this Agreement.

3.4 Aquifer Management Participation. The Parties will cooperate, encourage and participate in efforts made by the State of Idaho and other uses of the waters of the State of Idaho to promote the recharging, stabilization and sustaining of the aquifer.

3.5 Memorialization of Settlement and Mitigation Plan. The Parties do hereby acknowledge that this Agreement is intended to be a "Mitigation Plan" as such term is defined by the Conjunctive Management Rules. A copy of this Agreement shall be filed with IDWR in conjunction with the dismissal of the underlying proceeding. The Parties will request the Director of IDWR issue a final order in conjunction with the dismissal of the underlying proceeding confirming this Agreement as a final Mitigation Plan pursuant to the provisions of the Conjunctive Management Rules.

4. Contingencies. The conditions precedent to settlement must each be fully satisfied or waived in writing before they are obligated to perform under the terms of this Agreement. The Signatory Districts' conditions precedent to settlement are as follows:

4.1 The Parties all have executed the Stipulated Mitigation Plan and Request for Order regarding the dismissal of Aquarius's Call in the form attached hereto as Exhibit "A".

4.2 The IDWR Director entering a final order accepting this Settlement Agreement as a complete and final Stipulated Mitigation Plan and dismissing the delivery call of Aquarius with prejudice in accordance with the provisions of this Agreement.

If any of the conditions are not satisfied, then this Agreement may be terminated at the option of the Signatory Districts.

5. Limited Beneficiaries to Settlement. The sole parties to and beneficiaries of this Agreement are Aquarius, IGWA, the Signatory Districts, and the Water Rights of District Members. Only the parties to and beneficiaries specified in this section shall (i) have any right or interest under this Agreement; (ii) be a beneficiary of the duties, rights and obligations created hereby; or (iii) have the right to enforce this Agreement. Aquarius shall have the right to pursue legal and administrative remedies against any person or entity that is not a specified beneficiary hereunder and their water rights. No other person or individual shall have any rights hereunder.

6. Release. Aquarius, the Signatory Districts, and IGWA mutually release each other from any and all claims, losses, or damages arising directly or indirectly out of the use and operation of their respective water rights as decreed or permitted, together with any and all past, present or pending



respective water rights as decreed or permitted, together with any and all past, present or pending administrative or legal proceedings pertaining thereto. All parties shall bear their own attorney's fees, costs and expenses incurred in connection with the preparation and finalization of this Agreement.

7. Default. In the event any Party fails to perform any of the terms, conditions or provisions of this Agreement and such default is not cured within thirty (30) days of receipt of written notice thereof to cure or correct the noticed default, the non-defaulting Party may elect any or all of the following cumulative remedies, to-wit:

7.1 To require specific performance of this Agreement.

7.2 To pursue any and all other remedies allowed by Idaho law.

8. Notice. Any notices and communications between the parties for the purpose of complying with or enforcing the terms of this Agreement shall be in writing and delivered to the other party either personally or by certified mail, return receipt requested at the addresses provided below:

**SIGNATORY DISTRICTS:** North Snake Ground Water District  
152 E. Main St.  
Jerome, Idaho 83338

Magic Valley Ground Water District  
P.O. Box 430  
Paul, Idaho 83347

Southwest Irrigation District  
P.O. Box 910  
Burley, Idaho 83318

Idaho Ground Water Appropriators, Inc.  
c/o Randall C. Budge  
Racine, Olson, Nye, Budge & Bailey, Chartered  
P.O. Box 1391; 201 E. Center Street  
Pocatello, Idaho 83204-1391

**AQUARIUS:** Aquarius Aquaculture, Inc.  
c/o David Huff, Vice President  
2674 Norwood Rd.  
Hagerman, Idaho 83332

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed upon attempted delivery by the post office. Either party hereto shall give notice of a change of its address to the other party.

9. General Provisions.

9.1 Binding Effect. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto.

9.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same Agreement.

9.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. The Parties' duties, rights and obligations may only be assigned to a person or entity succeeding to and acquiring all of the interests of one of the Parties upon the written assumption by such person or entity acquiring the same evidencing its acceptance of all of the duties, rights, and obligations hereunder. Such shall include a successor entity acquiring and assuming all of the rights and obligations of the Signatory Districts as well as a person or entity acquiring the Water Rights as part of a sale or other conveyance of Aquarius's operations or Water Rights as part of a sale.

9.4 Survival/Merger. Except as expressly provided herein, the covenants, terms, conditions, representations, indemnity agreements, and warranties contained in this Agreement shall survive any termination of this Agreement and commencement of the Lease as contemplated hereunder.

9.5 Entire Agreement. This Agreement, together with all exhibits hereto, shall constitute the entire Agreement between the parties and supersedes any and all previous oral or written agreements, understandings, representations, and warranties, if any, between the parties concerning the subject matters of this Agreement.

9.6 Attorney Fees. In the event either party is required to retain the services of an attorney in order to enforce the terms or provisions of this Agreement, the prevailing party in any litigation arising therefrom shall be entitled to recover from the other party reasonable attorney fees and costs incurred.

9.7 Time of the Essence. Time is expressly made of the essence of all the provisions of this Agreement.

9.8 Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9.9 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

9.10 Waiver. The failure of a party hereto to insist upon strict performance of any of the terms set forth herein shall not be deemed a waiver of any rights or remedies that the party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms contained herein by the same or any other party.

9.11 Further Assurances. Each party hereto shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement.

9.12 Governing Law. This Agreement is made in the State of Idaho and the validity, meaning, effect, construction, and all rights under this Agreement shall be governed by the laws of the State of Idaho.

9.13 Representation of Authority. The Parties, and each of them, do hereby represent and warrant to each other Party that (a) they are in all respects competent to enter into this Agreement and, in addition, have no reason to believe that any other signatory hereof is not competent to enter into this Agreement, (b) they have relied upon the legal advice of their respective attorneys in entering into this Agreement, (c) the terms hereof are fully understood and voluntarily accepted; and (d) the signatories hereto have full legal right, power and authority to execute and fully perform each Parties' respective obligations under this Agreement. IGWA's participation herein is, as set forth above, for purposes of facilitating dismissal of Aquarius's Call, in which proceeding IGWA has intervened on behalf of the Water Rights of District Members. IGWA represents and warrants that it has the authority to execute this Agreement and to stipulate to the dismissal of Aquarius's Call on behalf of the District Members. Provided, however, the Signatory Districts shall be solely responsible for the performance of the terms of the Lease as the owner of the Property and IGWA does not hereby assume any of the obligations under the Lease.

9.14 Confidentiality. The compensation amount as specified in paragraph 2 is deemed confidential information that is proprietary to the Parties and shall not be disclosed to anyone other than the parties' professional consultants who agree to hold the confidential information in strict confidence. Accordingly, for purpose of any public filings or dissemination of this Settlement Agreement, the compensation amount shall be redacted.

(Signatures on following page)

IN WITNESS WHEREOF, the parties have executed this agreement on the dates recited below:

**AQUARIUS**

**AQUARIUS AQUACULTURE, INC.**

10-26-2014  
Date

Wayne Huff  
Name: Wayne Huff  
Title: President

10-24-2014  
Date

David Huff  
Name: David Huff  
Title: Vice-President

10.20.2014  
Date

Ron Huff  
Name: Ron Huff  
Title: Secretary

**IGWA**

**IDAHO GROUNDWATER APPROPRIATORS, INC.**

11-04-14  
Date

Scott P. Aug  
Name: Scott P. Aug  
Title: President IGWA

**SIGNATORY DISTRICTS**

**NORTH SNAKE GROUND WATER DISTRICT**

11/4/14  
Date

Mark Lynn Carlquist  
Name: Mark Lynn Carlquist  
Title: Chairman

**MAGIC VALLEY GROUND WATER DISTRICT**

11/4/14  
Date

Dean Stearn  
Name: Dean Stearn  
Title: Chairman

**SOUTHEAST IRRIGATION DISTRICT**

11/4/14  
Date

Randy Brown  
Name: Randy Brown  
Title: Chairman