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Thomas J. Budge, ISB No. 7465
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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) WATER TO WATER RIGHT HELD BY) ARK FISHERIES, INC., WATER RIGHT) NO. 36-07278) _____))	CM-DC-2014-002 STIPULATED MITIGATION PLAN AND REQUEST FOR ORDER
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COME NOW Lynn J. Babington and Kathy L. Babington, husband and wife, d/b/a ARK Fisheries, Inc. (collectively "ARK"), 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. ARK, the Ground Water Districts and IGWA have entered into a Settlement Agreement dated January 6, 2015 ("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 ARK.

3. Pursuant to Settlement Agreement and in consideration of the compensation, ARK 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 ARK's Call and ARK 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 No. 36-7278. The limitations described in this paragraph and the Agreement shall be noted by IDWR as a condition upon the described water right and incorporated by reference.

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:

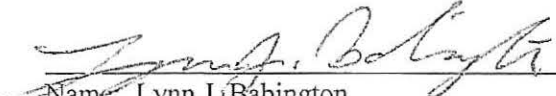
3.5 Memorialization of Settlement and Mitigation Plan. The Parties do hereby acknowledge that this Agreement is intended to be a "Mitigation Plan" as such term is defined by the Conjunctive Management Rules. A copy of this Agreement shall be filed with IDWR in conjunction with the dismissal of the underlying 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 for the duration of the Lease.

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 ARK with prejudice in accordance with the parties' provisions as contained in the Agreement.

DATED this 25th day of February, 2019.

**LYNN J. BABINGTON and KATHY L.
BABINGTON, Husband and Wife**

2-22-15
Date



Name: Lynn J. Babington

2-22-15
Date

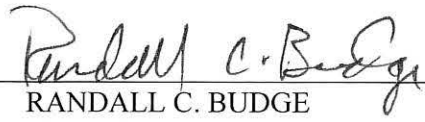

Name: Kathy L. Babington

ARK FISHERIES, INC.

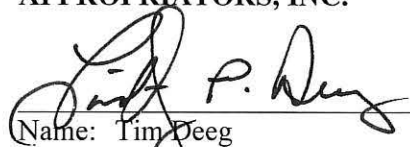
2-22-15
Date


Name: Lynn Babington
Title: President


RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

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

**IDAHO GROUNDWATER
APPROPRIATORS, INC.**

Date: 1/7/15 Name:  Tim Deeg
Title: President

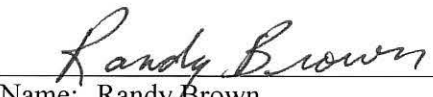
NORTH SNAKE GROUND WATER DISTRICT

Date: 1/7/15 Name:  Lynn Carlquist
Title: Chairman

MAGIC VALLEY GROUND WATER DISTRICT

Date: 1/7/15 Name:  Dean Stevenson
Title: Chairman

SOUTHWEST IRRIGATION DISTRICT

Date: 1/7/15 Name:  Randy Brown
Title: Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the th ~~25~~ ^{February} day of ~~January~~, 2015, 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 16th St., Ste 500
Denver, CO 80202
sarahk@white-jankowski.com
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

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

Lynn J. and Kathy L. Babington
ARK Fisheries, Inc.
1107 E. 2900 S.
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 January 6, 2015, by and between Lynn J. Babington and Kathy L. Babington, husband and wife, d/b/a ARK Fisheries, Inc. (collectively “**ARK**”), 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 (ARK, the Signatory Districts and IGWA are referred to as “**Parties**” and each a “**Party**”).

RECITALS:

WHEREAS, on May 20, 2014, ARK 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 ARK with water under its Water Right No. 36-7278 (“**ARK’s Call**”), which call was assigned Docket No. CM-DC-2014-002.

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

WHEREAS, ARK, 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 ARK’s Call to enter into settlement as provided herein.

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

WHEREAS, in consideration for the compensation paid and this Agreement, ARK has agreed to dismiss ARK’s Call and to limit future calls or requests for administration of ARK 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 Right” means that certain water right pertaining to the operation of the hatchery that is owned by ARK as more fully described as follows:

Water Right No.	Authorized Diversion Rate (cfs)	Priority Date	Beneficial Use	Diversion Name/Number
36-7278	4.69	02/14/1973	Fish Propagation	Johnson Hatchery/410073

“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 ARK as against the Water Rights of District Members for the term of this Agreement;

1.2 To pay monetary compensation as mitigation to ARK in return for ARK’s agreement to dismiss ARK’s Call and to forever limit ARK’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 ARK as mitigation for depletions caused to ARK’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 ARK with prejudice in accordance with the provisions of this Agreement.

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

3.1 Water Rights. The hydraulic impact from the use of water rights of District Members shall be deemed permanently, fully and completely mitigated as to ARK’s Call and ARK 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 No. 36-7278. The limitations described in this paragraph and the Agreement shall be noted by IDWR as a condition upon the described water right 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 ARK . 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.

3.6 Right to Beneficial Use. ARK retains the sole and exclusive right to beneficially use any and all water available under the Water Right.

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 ARK'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 ARK 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 ARK, 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. ARK 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. ARK, 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 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

ARK: Lynn J. and Kathy L. Babington
ARK Fisheries, Inc.
1107 E. 2900 S.
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 ARK'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.

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 ARK'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

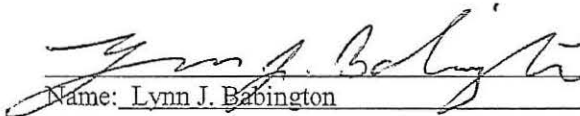
this Agreement and to stipulate to the dismissal of ARK's Call on behalf of the District Members. Provided, however, the Signatory Districts shall be solely responsible for the performance of the terms of the Agreement as the owner of the Property and IGWA does not hereby assume any of the obligations under the Agreement.

(Signatures on following page)

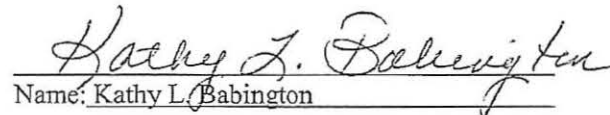
IN WITNESS WHEREOF, the parties have executed this agreement on the dates recited below:

**LYNN J. BABINGTON and KATHY L.
BABINGTON, Husband and Wife**

2-22-15
Date

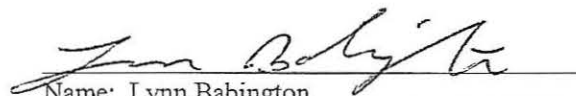

Name: Lynn J. Babington

2-22-15
Date


Name: Kathy L. Babington

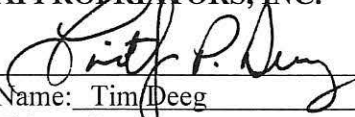
ARK FISHERIES, INC.

2-22-15
Date


Name: Lynn Babington
Title: President


**IDAHO GROUNDWATER
APPROPRIATORS, INC.**

1-7-15
Date


Name: Tim Deeg
Title: President

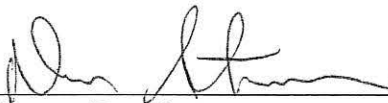
NORTH SNAKE GROUND WATER DISTRICT

1-7-15
Date


Name: Lynn Carlquist
Title: Chairman

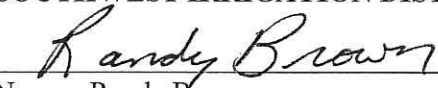
MAGIC VALLEY GROUND WATER DISTRICT

1-7-15
Date


Name: Dean Stevenson
Title: Chairman

SOUTHWEST IRRIGATION DISTRICT

1-7-15
Date


Name: Randy Brown
Title: Chairman