

STIPULATION REGARDING MITIGATION AND MOTION FOR APPROVAL

The Water Mitigation Coalition (the "WMC") and the Senior Water Users' Coalition ("Senior Coalition") hereby stipulate and agree as follows:

I.

PARTIES

1. The WMC is a group of ground water right holders comprised of J. R. Simplot Company, Basic American Foods, a division of Basic American, Inc., and ConAgra Foods Packaged Foods Company, Inc., d/b/a Lamb-Weston, who all have operations in eastern Idaho and have organized to promote their common interests.

2. The members of the WMC, who divert ground water from the Eastern Snake Plain Aquifer ("ESPA") within or near Water Districts 100, 110, 120, 130 and 140, represent that they are authorized to enter into this Stipulation Regarding Mitigation and Motion for Approval ("Mitigation Agreement"). The members of the WMC further represent that they have full authority and resources to perform or ensure performance of the mitigation and related obligations described in this Mitigation Agreement.

3. The Senior Coalition is comprised 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 and Clear Springs Foods, Inc. The members of the Senior Coalition represent that they have full authority and resources to perform or ensure performance of the Senior Coalition obligations described in this Mitigation Agreement.

4. The parties have agreed to this Mitigation Agreement by negotiation and compromise, and hereby assent to its terms.

II.

DEPLETIONS

5. The WMC Members are authorized to divert ground water under valid existing water rights. The source of water for those ground water rights is the Eastern Snake Plain Aquifer ("ESPA"). The Idaho Department of Water Resources ("IDWR") and the Snake River Basin Adjudication Court have determined that the ESPA and these ground water rights are hydraulically connected to the spring and surface water sources and water rights of members of the Senior Coalition.

6. For purposes of this Mitigation Agreement, the Senior Coalition accepts the following representations of WMC and WMC accepts the following representations of the Senior Coalition:

a. WMC represents that Exhibit A is a complete list of all WMC members and their addresses who divert ground water from the Eastern Snake Plain Aquifer ("ESPA") within or near Water Districts 100, 110, 120, 130 and 140 and their corresponding ground water rights that are not included within an existing Groundwater District;

b. Senior Coalition represents that Exhibit B is a complete list of all Senior Coalition members, their addresses and their surface water rights which are senior to the WMC water rights in Exhibit A, and that these surface water rights shall be mitigated in accordance with the terms of this Mitigation Agreement. The Senior Coalition also agrees as a result of such mitigation that in any administrative, judicial or other proceeding which would otherwise result in the partial or complete curtailment of the WMC water rights (i) in connection with a surface water Delivery Call by all or any of the Senior Coalition Members or (ii) in connection with any

other administrative, judicial or other proceeding which would otherwise result in the partial or complete curtailment of the WMC water rights ("Delivery Call"), it is the intention of the Senior Coalition that all impacts of the Exhibit A water rights on the Exhibit B water rights shall be fully mitigated in accordance with the terms and conditions of this Mitigation Agreement.

c. The parties agree that these representations are essential terms of this Mitigation Agreement. The parties further agree that if the relationship between the water rights of WMC listed on Exhibit A and the water rights of the Senior Coalition listed on Exhibit B is determined by the IDWR to materially change in the future, the parties will in good faith negotiate proportional changes to the level of mitigation and Delivery Call subordination provided in this Mitigation Agreement.

7. For purposes of this Mitigation Agreement only, the parties have reviewed the recorded water rights of the WMC listed in Exhibit A and have analyzed said water right records using the IDWR's ground water model and other analytical methods to determine a negotiated average annual net depletion to the surface water sources of the Senior Coalition water rights listed in Exhibit B, resulting from the WMC members' ground water pumping. Without intending to be bound outside of the scope, subject matter, terms and conditions of this Mitigation Agreement and without intending to set a precedent for other such mitigation arrangements of like factual circumstances, the parties stipulate that the average annual net depletion resulting from ground water usage by the WMC members as of the date of this Mitigation Agreement is 10,000 acre-feet per annum ("AFA") [See Exhibit C (Brockway Calculations)].

III.

MITIGATION AND SUBORDINATION

8. In consideration of the acceptance of mitigation and Delivery Call subordination by the Senior Coalition provided herein, the WMC agrees that for a minimum period of twenty years, it will acquire and annually deliver 10,000 acre feet of Minidoka Irrigation District stored water to the Senior Coalition for purposes of mitigating the agreed upon average annual net depletion set forth in Paragraph 7, above. The annual delivery of 10,000 acre feet shall mitigate, for all purposes of the Senior Coalition, the depletions caused by the water rights listed on Exhibit A within Water Districts 100, 110, 120, 130 and 140 and shall also mitigate those depletions caused by the water rights listed on Exhibit A which affect the surface water rights held by and on behalf of the members of the Senior Coalition in all other Water Districts. The Senior Coalition hereby represents and warrants to the WMC that the Senior Coalition will be responsible for compliance with any provision of the Reclamation Reform Act of 1982 in the diversion and use of the 10,000 acre feet supplied by the WMC hereunder. Furthermore, the Delivery Call subordination set forth below shall remain in effect indefinitely with no additional obligations by WMC provided (1) the provisions of paragraphs 8 and 11 are satisfied and (2) there are no additional parties or water rights included in the Delivery Call subordination that exceed the scope of the assignment provisions as set forth in Paragraph 17, below. Notwithstanding any other provision herein to the contrary, in the event that in any year or years during WMC's obligation to deliver storage water pursuant to this Mitigation Agreement, WMC is unable to deliver 10,000 acre feet of storage water from Minidoka Irrigation District because Minidoka Irrigation District cannot provide 10,000 acre feet of mitigation water in accordance with its Water Rental Agreement with the WMC, the parties agree that WMC's mitigation

obligation hereunder for any such year or years shall be satisfied simply by the payment to the Senior Coalition of the yearly water rental fees for said 10,000 acre feet of mitigation storage water.

9. The parties agree that, as long as WMC provides to the Senior Coalition 10,000 acre feet of stored water per annum for mitigation (or in such years when stored water is not available, makes the full water rental payment to the Senior Coalition for such mitigation water), the Senior Coalition will fully subordinate any surface water Delivery Call to WMC's water rights listed on Exhibit A. This subordination shall also include any injury calculated by the Director for the WMC water rights listed in Exhibit A in response to a surface water Delivery Call that may exceed the stipulated average annual net depletion set forth in paragraph 7 above and the accounting identified in paragraph 11 below. Furthermore, any surface water Delivery Call shall be diminished to reflect such additional calculated injury, as that additional calculated injury might otherwise increase the mitigation required by other water rights in response to the surface water Delivery Call. The parties mutually recognize that the actual injury calculated by the Director in any particular surface water Delivery Call may be less than or exceed the stipulated average annual net depletion set forth in Paragraph 7 above and the accounting identified in Paragraph 11 below. Variations in injury calculated by the Director above or below the stipulated average annual net depletion shall not be considered material changes requiring good faith negotiations set forth in Paragraph 6c, above. Notwithstanding the foregoing, if the Director does not administer the WMC water rights as provided in this Mitigation Agreement, the parties shall jointly seek relief from the Director or a District Court of competent jurisdiction to ensure compliance with this Mitigation Agreement. Ultimately, if a District Court determines that the Director is not required to enforce this Mitigation Agreement, this Mitigation Agreement

may be terminated by either party upon written notice. Such termination shall not in itself prejudice the rights of the parties to enter into or perform other agreements regarding the subject water rights. Finally, nothing in this Agreement shall preclude the Senior Coalition from protesting or participating in any future I.C. 42-222 transfer proceedings that concern the WMC water rights listed on Exhibit A.

IV.

ADDITIONAL PROVISIONS

10. The parties mutually agree and intend that this Mitigation Agreement shall be submitted to and approved by the Director of the Idaho Department of Water Resources ("IDWR") as a mitigation or replacement water plan. The parties also agree to seek approval by the Committee of Nine of the long term mitigation water storage lease with Minidoka Irrigation District described above in Paragraph 8. The parties agree to exercise good faith efforts to obtain timely approval by the Director of this Mitigation Agreement. On an interim basis, in the event that the Director does not timely approve the Mitigation Agreement, the parties agree that the mitigation provided herein shall nevertheless take effect and shall effectively subordinate any call by the Senior Coalition or its members as set forth in Paragraph 9, above.

11. The parties hereby agree that in addition to the mutual obligations set forth herein, that certain spaceholder contracts with the Bureau of Reclamation require that storage be debited against said spaceholder accounts and delivered to downstream irrigation water users as a result of spaceholder groundwater use and depletions to the Snake River. Therefore, the parties will also request that the Watermaster and the IDWR make or cause to be made an accounting of the pertinent spaceholder contracts in accordance with the terms of those spaceholder contracts to

ensure the proper accounting and debiting/crediting of groundwater water use as against storage, though agreement by the Watermaster and the IDWR to make or cause to be made such an accounting shall not be a condition of the other obligations and rights of the parties set forth in this Mitigation Agreement.

12. **Additional Acts And Documents.** Each party hereto agrees to do all such things and take all such action, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purposes of this Mitigation Agreement.

13. **Authority.** Each of the parties hereto represents and warrants to the other that this Mitigation Agreement has been duly authorized by all necessary action and that this Mitigation Agreement constitutes and will constitute a binding obligation of each such party.

14. **Attorneys' Fees.** In the event suit is brought or an attorney is retained by any party to this Mitigation Agreement to enforce the terms of this Mitigation Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith in addition to any other available remedies.

15. **Assignability of Mitigation Agreement.** Subject to applicable rules, laws and regulations, this Mitigation Agreement and all rights hereunder may be assigned by the members of WMC and the Senior Coalition to their respective successors in interest of the water rights listed in Exhibits A and B. Furthermore, after written notice to the Senior Coalition and consent of the IDWR, any member of the WMC may delegate its duties and assign its rights, including the right to receive subordination, under this Agreement to another member of the WMC. Upon such an assignment and delegation, the assigning member's water rights shall no longer be

covered by the the provisions of this Mitigation Agreement. The WMC shall then have the right to apply the storage water relating to the departing member's water rights toward mitigating (i) additional WMC member water rights or (ii) new WMC member water rights. The WMC may also substitute additional WMC members into this Mitigation Agreement that are reasonably acceptable to the Senior Coalition and its consultants and approved by the IDWR. Otherwise this Mitigation Agreement may not be assigned by any party without the express written consent of the members of the other party, which consent shall not be unreasonably withheld. Subject to the foregoing, this Mitigation Agreement shall bind the successors and assigns of all parties hereto.

16. **Complete Agreement.** No verbal statements or conversations between the parties hereto or their representatives, whether the same shall have been implied or direct, occurring either before or after the execution of this Mitigation Agreement, shall be construed as having any bearing or effect upon this Mitigation Agreement or any portion thereof, it being understood that this written Mitigation Agreement evidences the complete agreement between the parties hereto regarding their mitigation and replacement water plan to resolve the impact of the WMC water rights on the Senior Coalition's water rights described in this Mitigation Agreement. Specifically, the parties agree that this Mitigation Agreement shall supersede all prior contracts, agreements and arrangements between the parties concerning the mitigation and replacement water plan to be submitted to the IDWR for approval. This Mitigation Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and having been approved by the IDWR. Any attempt at oral modification of this Mitigation Agreement shall be void and of no effect. Notwithstanding the foregoing, the parties agree that they shall be free to enter into and to perform such other agreements regarding their water rights as they may mutually determine to be appropriate.

17. **Captions.** Captions and paragraph headings used herein are for convenience only and are not a part of this Mitigation Agreement and shall not be deemed to limit or alter any provision hereof, and shall not be deemed relevant in construing this Mitigation Agreement.

18. **Amendment and Waiver.** The parties may, by mutual agreement in writing, signed by each party and approved by the IDWR, amend this Mitigation Agreement in any respect. Each party hereto may, insofar as it is entitled to the rights and benefits of this Mitigation Agreement:

- a. Extend the time for the performance of any of the obligations of the other.
- b. Waive any representations by the other contained in this Mitigation Agreement and performance of any obligations by the other.
- c. Waive compliance by the other with any of the covenants contained in this Mitigation Agreement.
- d. Waive the fulfillment of any condition that is precedent to the performance, by the party so waiving, of any of its obligations under this Mitigation Agreement.

Such extension or waiver shall in no way otherwise affect either party's right to enforcement of the provisions contained in this Mitigation Agreement nor shall any extension or waiver be held to be an extension of time or a waiver of any prior or subsequent breach of any obligation under this Mitigation Agreement.

19. **Exhibits.** All exhibits referred to herein are incorporated in this Mitigation Agreement as if set forth at length herein.

20. **Specific Performance, Injunctive Relief.** The parties agree that the obligations and performances hereunder involve unique circumstances and that a breach in performance hereunder could leave a non-breaching party without an adequate remedy at law. To the fullest

extent permitted by applicable law, the parties therefore agree that in addition to any other remedies available at law or in equity, a non-breaching party shall be entitled to seek specific performance and injunctive relief to enforce its rights hereunder.

21. **Governing Law.** This Mitigation Agreement shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of Idaho, and suit to enforce any provision of this Mitigation Agreement or to obtain any remedy with respect hereto may be brought in any court or administrative forum with proper jurisdiction in the State of Idaho.

22. **Interpretations.** To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; and (b) references to "persons" or "parties" in this Mitigation Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and all other entities.

23. **Counterparts.** This Mitigation Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be transmitted by telefacsimile, and shall be effective upon receipt. The parties also agree to execute as many "hard copy" originals of this Mitigation Agreement as they mutually determine to be appropriate, which shall be distributed among the parties for their permanent files.

V.

MOTION

In consideration of the foregoing, the parties to this Mitigation Agreement move the Director for Orders accomplishing the following:

1. The approval of this Mitigation Agreement.
2. The exclusion of the WMC water rights identified on Exhibit A from any curtailment order or other water use restriction that the Director may determine to be applicable to said water rights which may occur as a result of any surface water Delivery Call in the ESPA currently pending before the Director or in any subsequent surface water Delivery Call which could result in curtailment of those WMC water rights.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the 6th day of February 2007.

WATER MITIGATION COALITION

J. R. Simplot Company
by: Terry P. Uhling

ConAgra/Lamb-Weston

By: [Signature]
Its: Senior Vice President, Secretary and General Counsel

By: _____
Its: _____

Basic American Foods, a division of Basic American, Inc.

By: _____
Its: _____

SENIOR WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: _____
Its: _____

By: _____
Its: _____

Burley Irrigation District

Milner Irrigation District

By: _____
Its: _____

By: _____
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: _____
Its: _____

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the _____ day of February 2007.

WATER MITIGATION COALITION

J. R. Simplot Company

ConAgra/Lamb-Weston

By: _____
Its: _____

By: _____
Its: _____

Basic American Foods, a division of Basic American, Inc.

By: D. Hatch
Its: PRESIDENT & CEO

SENIOR WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: _____
Its: _____

By: _____
Its: _____

Burley Irrigation District

Milner Irrigation District

By: _____
Its: _____

By: _____
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: _____
Its: _____

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

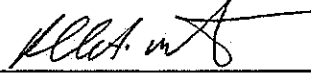
DATED as of the _____ day of February 2007.

WATER MITIGATION COALITION

J. R. Simplot Company

ConAgra Foods Packaged Foods Company, Inc., d/b/a Lamb-Weston

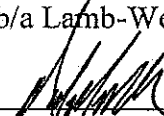
By: _____
Its: _____

By:  _____
Its: Vice President Manufacturing

Basic American Foods, a division of Basic American, Inc.

ConAgra Foods Packaged Foods Company, Inc., d/b/a Lamb-Weston

By: _____
Its: _____

By:  _____
Its: Vice President Finance

SENIOR WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: _____
Its: _____

By: _____
Its: _____

Burley Irrigation District

Milner Irrigation District

By: _____
Its: _____

By: _____
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: _____
Its: _____

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the ___ day of August, 2006.

WATER MITIGATION COALITION

J. R. Simplot Company

Basic American Foods

By: _____
Its: _____

By: _____
Its: _____

ConAgra/Lamb-Weston

By: _____
Its: _____

SENIOR WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: *Harold McPherson*
Its: *Board Chairman*

By: _____
Its: _____

Burley Irrigation District

Milner Irrigation District

By: _____
Its: _____

By: _____
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: _____
Its: _____

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the ____ day of August, 2006.

WATER MITIGATION COALITION

J. R. Simplot Company

Basic American Foods

By: _____
Its: _____

By: _____
Its: _____

ConAgra/Lamb-Weston

By: _____
Its: _____

SENIOR WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: _____
Its: _____

By: Bob Databook
Its: President

Burley Irrigation District

Milner Irrigation District

By: _____
Its: _____

By: _____
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: _____
Its: _____

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the _____ day of August, 2006.

WATER MITIGATION COALITION

J. R. Simplot Company

Basic American Foods

By: _____
Its: _____

By: _____
Its: _____

ConAgra/Lamb-Weston

By: _____
Its: _____

SENDER WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: _____
Its: _____

By: _____
Its: _____

Burley Irrigation District

Milner Irrigation District

By: Dean Edgan
Its: President of Board

By: _____
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: _____
Its: _____

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the _____ day of August, 2006.

WATER MITIGATION COALITION

J. R. Simplot Company

By: _____
Its: _____

Basic American Foods

By: _____
Its: _____

ConAgra/Lamb-Weston

By: _____
Its: _____

SENIOR WATER USERS COALITION

A&B Irrigation District

By: _____
Its: _____

American Falls Reservoir District #2

By: _____
Its: _____

Burley Irrigation District

By: _____
Its: _____

Milner Irrigation District

By: Scott Bredberg
Its: CHAIRMAN

Minidoka Irrigation District

By: _____
Its: _____

North Side Canal Company

By: _____
Its: _____

Twin Falls Canal Company

By: _____
Its: _____

Clear Springs Foods, Inc

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the ____ day of August, 2006.

WATER MITIGATION COALITION

J. R. Simplot Company

Basic American Foods

By: _____
Its: _____

By: _____
Its: _____

ConAgra/Lamb-Weston

By: _____
Its: _____

SENIOR WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: _____
Its: _____

By: _____
Its: _____

Burley Irrigation District

Milner Irrigation District

By: _____
Its: _____

By: _____
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: *Mike Callahan*
Its: *Chairman*

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the _____ day of August, 2006.

WATER MITIGATION COALITION

J. R. Simplot Company

Basic American Foods

By: _____
Its: _____

By: _____
Its: _____

ConAgra/Lamb-Weston

By: _____
Its: _____

SENIOR WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: _____
Its: _____

By: _____
Its: _____

Burley Irrigation District

Milner Irrigation District

By: _____
Its: _____

By: John Marshall, Pres
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: _____
Its: _____

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the ____ day of August, 2006.

WATER MITIGATION COALITION

J. R. Simplot Company

Basic American Foods

By: _____
Its: _____

By: _____
Its: _____

ConAgra/Lamb-Weston

By: _____
Its: _____

SENIOR WATER USERS COALITION

A&B Irrigation District

American Falls Reservoir District #2

By: _____
Its: _____

By: _____
Its: _____

Burley Irrigation District

Milner Irrigation District

By: _____
Its: _____

By: _____
Its: _____

Minidoka Irrigation District

North Side Canal Company

By: _____
Its: _____

By: _____
Its: _____

Twin Falls Canal Company

Clear Springs Foods, Inc

By: *Jan A. Munch*
Its: *Pres.*

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Mitigation Agreement to be executed as of the day and year indicated immediately below.

DATED as of the _____ day of August, 2006.

WATER MITIGATION COALITION

J. R. Simplot Company

By: _____
Its: _____

Basic American Foods

By: _____
Its: _____

ConAgra/Lamb-Weston

By: _____
Its: _____

SENIOR WATER USERS COALITION

A&B Irrigation District

By: _____
Its: _____

American Falls Reservoir District #2

By: _____
Its: _____

Burley Irrigation District

By: _____
Its: _____

Milner Irrigation District

By: _____
Its: _____

Minidoka Irrigation District

By: _____
Its: _____

North Side Canal Company

By: _____
Its: _____

Twin Falls Canal Company

By: _____
Its: _____

Clear Springs Foods, Inc

By: John R. MacMillan
Its: VICE PRESIDENT