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*Attorneys for Magic Valley Ground Water District and
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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

Docket Nos. CM-DC-2010-001
CM-MP-2016-001
CM-MP-2009-007

**JOINT NOTICE OF COMPLIANCE—MAGIC
VALLEY GROUND WATER DISTRICT &
NORTH SNAKE GROUND WATER
DISTRICT'S 2024 IRRIGATION SEASON
MITIGATION COMMITMENTS**

Magic Valley Ground Water District (“MV”) and North Snake Ground Water District (“NS”), through undersigned counsel, submit this *Joint Notice of Compliance* (“Joint Notice”) in response to the Director’s: (a) *Final Order Regarding April 2024 Forecast Supply* (Apr. 18, 2024) (“April 2024 As-Applied Order”); and (b) combined *Order Shortening Notice Period; Notice of Status Conference* (Apr. 30, 2024) (“Notice”).

**I.
BACKGROUND**

The April 2024 As-Applied Order requires groundwater users (including members of MV and NS) “establish, to the satisfaction of the Director, that they can mitigate for their proportionate

share of the predicted April IDS of 74,100 acre-feet in accordance with an approved mitigation plan.” April 2024 As-Applied Order, p. 6. Similarly, the Notice requires that the parties “come prepared to discuss the status of IGWA’s mitigation plans and IGWA’s mitigation efforts for this [2024] irrigation season.” Notice, p. 1.

This Joint Notice is submitted by MV and NS through undersigned counsel because of a current lack of consensus within IGWA’s membership frustrating IGWA’s ability to submit an entity-wide responsive notice. This Joint Notice is also submitted by MV and NS in recognition that some substantive response to the April 2024 As-Applied Order and the Notice—albeit on an individual district level—is better than no response at all.

In that vein (i.e., that some substantive response is better than no response), and acknowledging as the Director has that “uncertainty exists regarding the status of [IGWA’s approved mitigation] plans” (*see* April 2024 As-Applied Order at p.5, note 8), MV and NS submit the following 2024 irrigation season mitigation commitments in this matter recognizing that their own mitigation plans (Docket Nos. CM-MP-2023-005 and CM-MP-2023-004, respectively) are currently on-hold by Hearing Officer Schroeder pending the outcome of Hearing Officer Burdick’s proceedings in Docket No. CM-MP-2016-001.

II. 2024 IRRIGATION SEASON MITIGATION

Under the 2009 Storage Water Plan (CM-MP-2009-007), MV and NS agree to collectively provide up to 15,590 acre-feet of storage water to the Surface Water Coalition (“SWC”) based on the 74,100 acre-feet of 2024 IDS predicted in the April 2024 As-Applied Order. By district, the 15,590 acre-feet of storage water breaks down as:

MV: 11,925 acre-feet (representing a 16.1% proportionate share of the steady state allocation predicted under ESPAM 2.2 for the 74,100 acre-foot IDS); and

NS: 3,665 acre-feet (representing a 4.9% proportionate share of the steady state allocation predicted under ESPAM 2.2 for the 74,100 acre-foot IDS).¹

The districts' steady state-based commitments above shall not be construed as an admission or concession that steady state application of ESPAM 2.2 is the appropriate application of the model. Clearly, the Director has determined that transient model simulation/application is the appropriate method of ESPAM 2.2 deployment. *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover ("Methodology Order")* (Jul. 19, 2023) ("Sixth Methodology Order"), pp. 38 (Conclusion of Law No. 24) and 42 (Order re "Step 2"). Under transient application of the model, MV's proportionate share of the April-predicted IDS would be 25 acre-feet, and NS's proportionate share would be negligible (0.1 acre-feet). Be that as it may, MV and NS are willing to collectively provide 15,590 acre-feet (as opposed to merely 25 acre-feet under transient modelling) for the 2024 irrigation season in a good faith effort to do what they can, the fairest they can in recognition of the lingering effects of legacy pumping.

In addition to mitigating their proportionate share of the SWC April 2024-predicted IDS through the provision of storage water outlined above, MV and NS further agree/commit to ongoing pumping reductions and conservation efforts of at least 32,462 acre-feet (MV) and 25,474 acre-feet (NS), respectively, during the 2024 irrigation season as has historically been the case

¹ These proportionate shares of the 74,100 acre-foot IDS are based largely upon the analysis, modeling, and extrapolation of IGWA consultant Sophia Sigstedt as explained in her Declaration filed by IGWA (filed May 2, 2024). The shares differ, however, because MV and NS commit to contribute up to their proportionate share of the 74,100 IDS based on an assumption of IGWA bearing 100% of the total IDS, rather than 89.2% (or 66,102 acre-feet) of the IDS unless and until the Director approves of the 89.2%-based shares. It is MV and NS's understanding that this IGWA member "share" issue is the subject of a pending motion for reconsideration (i.e., the issue of whether IGWA member districts bear 100% of the IDS, or only 89.2% of the IDS).

under the IGWA 2016 Mitigation Plan (Docket No. CM-MP-2016-001). The districts acknowledge that this collective quantity of water (57,936 acre-feet) is based on the former IGWA-wide conservation target of 205,937 acre-feet, and not the full 240,000 acre-foot target affirmed by the Director in his *Amended Final Order Regarding Compliance With Approved Mitigation Plan* (Apr. 24, 2023) (Docket No. CM-MP-2016-001) (compare Table Nos. 1 and 2). However, the districts submit that their commitment to supply the SWC with upwards of 15,590 acre-feet of storage water alone mitigates their proportionate share of the April 2024-predicted IDS. This reaffirmed commitment to ongoing pumping reductions/conservation efforts (collectively 57,936 acre-feet) is an additional effort beyond addressing the 2024 IDS—an additional effort to further attempt to proportionately share in the longer term stabilization of the aquifer.

The districts' collective access to the 2024 storage water quantity of 15,590 acre-feet is secured by existing contract (*Multi-Year Tribal Lease Agreement*) executed between the Shoshone-Bannock Tribes of the Fort Hall Reservation and IGWA, effective October 27, 2020. The contract provides annual access to no less than 25,000 acre-feet of tribal storage water for the benefit of IGWA members MV, NS, Southwest Irrigation District, American Falls-Aberdeen Ground Water District, and Carey Valley Ground Water District between April 1, 2021 and October 31, 2025. The contract then automatically renews annually thereafter unless terminated by the parties with requisite advance notice. While MV and NS have yet to make a 2024 payment under the contract, that is because the contract provides a payment schedule that has yet to come due this year (first half payment is due July 1, and second half payment is due November 1).

III. PRIOR PRECEDENTIAL SUPPORT FOR MV AND NS'S 2024- MITIGATION EFFORTS

As a threshold matter, and as asserted in Section 2.1 of IGWA's *Memorandum in Support of Summary Judgment* (Feb. 12, 2024) (Docket No. CM-MP-2016-001) ("Memo"), the Conjunctive Management Rules authorize junior priority water users to submit and mitigate under multiple, approved mitigation plans. *See* Memo, pp. 9-11 (incorporated by reference herein). For his part, Hearing Officer Burdick agreed as a general matter, though he concluded that the multiple mitigation plan legal principle did not squarely address the issues pending before him in Docket No. CM-MP-2016-001. *Order on Motions for Partial Summary Judgment* (Mar. 12, 2024) (Docket No. CM-MP-2016-001), p. 9, Note 12. To this point, the Director has yet to address the question and, in the meantime, has acknowledged the ongoing validity of the 2009 storage water-based mitigation plan in the interim. *See, e.g.*, April 2024 As-Applied Order, pp. 5-6, Note 8.

Given the ongoing validity of the 2009 storage water-based mitigation plan, at least in the interim, there is no question that the Director has historically held that the provision of storage water supplies sourced from the Basin 01 rental pool or otherwise constitutes a valid method of mitigation. For example, in his *Order Approving Mitigation Plan* (Jun. 3, 2010) (Docket No. CM-MP-2009-007) ("2009 Plan Order"), the Director plainly held—after hearing and over the protest and objection of the SWC—that:

- “Rental or acquisition of an option to rent storage water prior to or at the beginning of the irrigation season will assure the SWC of an adequate quantity of water for the upcoming irrigation season”;
- the “rental of storage water by IGWA will not diminish the supply of water available to the SWC”;
- the “rental of storage water and delivery of the storage water [to the SWC] . . . is in compliance with Idaho law”;

- the “[storage water-based] mitigation plan will provide replacement water at the time and place required by the senior-priority water right. During many years, there will be sufficient storage water to offset the depletive effect of ground water withdrawal on the water available in the Snake River at such time and place as necessary to satisfy the rights of diversion from the Snake River”;
- “Storage water in the Snake River reservoirs is a reliable source of replacement water”;
- the “[storage water-based] mitigation plan will maximize the beneficial use of water in the State of Idaho and promote the conservation of water resources”; and
- “Use of storage water for mitigation is in the public interest and will not injure other water rights.”

2009 Plan Order, pp. 9-10. The Director subsequently, and consistently, upheld the same storage water-based mitigation method in the context of A&B Irrigation District’s approved 2015 mitigation plan. *See Final Order Approving Mitigation Plan* (Dec. 16, 2015) (Docket No. CM-MP-2015-003), pp. 2-3 (wherein the Director noted A&B’s proposed mitigation use of its “storage water in American Falls Reservoir and Palisades Reservoir, or to rent storage water through Water District 01’s Rental Pool,” and ultimately held that that mitigation method, among others contained in the plan, comprise “the type of activities that can provide replacement water at the time and place required by the senior-priority water rights.”).

MV and NS acknowledge and understand that this submission (*i.e.*, their 2024 irrigation season mitigation proposal) is, arguably, a form of mitigation plan hybridization that the Director has rejected in the past. However, it is equally true that the Director has moved more and more to recognizing and affirming the concept of ground water district “proportionate shares” of the total obligations owed under any particular mitigation plan. The Director’s move to transient modeling further underscores the notion that “one-size-does-not-fit-all”—that pumping location and effect

correlate such that compliance obligations, evaluation, and determination should likely track accordingly.

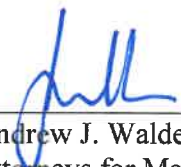
By this submission, MV and NS seek to be part of a more global solution—to do their fair share, and then some, in 2024. Hopefully, the Director agrees with this approach.

**IV.
PROCEDURAL POST-SCRIPT**

Undersigned counsel is aware of the status conference noticed in this matter. However, given the shortened notice of the conference, counsel is not able to avoid previously-scheduled travel putting him in areas of likely spotty-to-no cell phone service along the Highway 20 corridor in eastern Oregon at the time of the conference. While counsel will attempt to call in with the number and code provided in the Notice, whether successful connection can be made is currently unknown. Consequently, the districts will continue to rely on Mr. Budge to appear and speak on their behalf at least for purposes of the status conference should undersigned counsel be unable to successfully connect by phone.

DATED this 2nd day of May, 2024.

SAWTOOTH LAW OFFICES, PLLC

By  _____
Andrew J. Waldera
Attorneys for Magic Valley Ground
Water District and North Snake Ground
Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2024, I caused a true and correct copy of the foregoing **JOINT NOTICE OF COMPLIANCE—MAGIC VALLEY GROUND WATER DISTRICT & NORTH SNAKE GROUND WATER DISTRICT'S 2024 IRRIGATION SEASON MITIGATION COMMITMENTS** to be served by the method indicated below, and addressed to the following:

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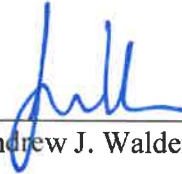
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