

JAN 04 2018

DEPARTMENT OF  
WATER RESOURCES

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District and Goose Creek Irrigation  
District*

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

IN THE MATTER OF SOUTHWEST AND	)	
GOOSE CREEK IRRIGATION DISTRICTS	)	Docket No.: CM-MP-2010-01
MITIGATION PLAN FOR THE SURFACE	)	
WATER COALITION DELIVERY CALL	)	<b>JOINT MOTION FOR APPROVAL</b>
	)	<b>OF MITIGATION AGREEMENT</b>
	)	
	)	

COME NOW, the Applicants SOUTHWEST IRRIGATION DISTRICT and GOOSE  
CREEK IRRIGATION DISTRICT (hereinafter collectively referred to as "Applicants") by  
through their attorneys of record Parsons, Smith, Stone, Loveland and Shirley LLP, and the

<sup>1</sup> Mr. Reagan is currently practicing under a legal intern limited license (I.B.C.R. 226). Mr. Reagan also recently passed the bar exam and is the process of being admitted to the Idaho State Bar.

Protestants, 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, (hereinafter "Surface Water Coalition," "Coalition," or "SWC"), by and through their attorneys of record, Barker Rosholt & Simpson, LLP and Fletcher Law Office, and hereby file this *Joint Motion for Approval of Mitigation Agreement* pursuant to the provisions of Conjunctive Management Rule 43 and other applicable law.

### **BACKGROUND**

The Surface Water Coalition has an outstanding water delivery call to protect senior surface water rights to the Snake River. The Applicants' members hold various ground water rights junior in priority to the Coalition's water rights. On June 15, 2010 the Applicants filed an *Amended Mitigation Plan* regarding the Coalition's delivery call. IDWR published notice of the plan and the Coalition protested the plan on July 9, 2010. Since that time the Coalition and the Applicants have been working in good faith to resolve the protests and reach an acceptable mitigation agreement. The parties initially executed an *Interim Mitigation Agreement* for the years 2013-2015. The Director approved that agreement by final order. *See Final Order Approving Interim Mitigation Plan* (Nov. 25, 2013). The interim agreement was then extended for the years 2016 and 2017. The Director approved both extensions. *See Final Order Approving Mitigation Plan for 2016* (March 29, 2016); *Final Order Approving SWID's Mitigation Plan for 2017* (Feb. 8, 2017).

Since approval of the 2017 extension the Parties have negotiated and ultimately agreed upon terms for a permanent mitigation plan. *See Ex. A*. The agreement provides safe harbor for the Applicants' members' junior priority ground water rights that may otherwise cause material

injury to the Coalition's senior priority surface water rights. The agreement further identifies specific mitigation actions to be undertaken by the Applicants. Finally, the agreement establishes a groundwater level index and goals through a list of wells for continued measurement and monitoring within Water District 45.

### **JOINT MOTION FOR APPROVAL**

The Coalition and the Applicants jointly move the Director to finally approve the *Mitigation Agreement*. The agreement provides for certain aquifer mitigation actions to be undertaken by the Applicants on an annual basis, including groundwater recharge, conversions, and voluntary curtailment. In exchange, the Coalition agrees that the Applicants' members' junior priority ground water rights shall not be subject to curtailment in response to the SWC's water delivery call or any order issued by IDWR during the term of the agreement.

No hearing is requested on this motion, however, the Parties will appear and provide any further information to the Director if needed. The Parties respectfully request the Director to expedite consideration and approval of this motion.


### **REQUESTS FOR RELIEF**

1. The Parties request the Director to approve the *Mitigation Agreement*.
2. The Parties request the Director to lift the stay of the contested case on the Applicants' amended mitigation plan and enter a final order concluding the contested case.
3. The Parties request the Director recognize that the Applicants' members' junior priority ground water rights are not subject to curtailment or any further mitigation requirements in response to the SWC delivery call during the term of the *Mitigation Agreement*.

4. The Parties request the Director to expedite approval of this joint motion.


DATED this 4<sup>th</sup> day of January, 2018.

**BARKER RSHOLT & SIMPSON LLP**

  
Travis L. Thompson

*Attorneys for A&B Irrigation District, .  
Burley Irrigation District, Twin Falls Canal Company,  
North Side Canal Company, and Milner  
Irrigation District*

**FLETCHER LAW OFFICE**

  
W. Kent Fletcher

*Attorneys for American Falls  
Reservoir District #2 and  
Minidoka Irrigation District*

**PARSONS, SMITH, STONE LOVELAND & SHIRLEY LLP**

  
William A. Parsons


*Attorneys for Southwest Irrigation District and  
Goose Creek Irrigation District*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of January, 2018, I served a true and correct copy of the foregoing **JOINT MOTION FOR APPROVAL OF MITIGATION AGREEMENT** by email and by depositing same in the United States mail, postage prepaid, addressed to the following:

Director Gary Spackman  
Idaho Department of Water Resources  
322 E. Front St.  
P.O. Box 83720-0098  
[gary.spackman@idwr.idaho.gov](mailto:gary.spackman@idwr.idaho.gov)  
[deborah.gibson@idwr.idaho.gov](mailto:deborah.gibson@idwr.idaho.gov)

William Parsons  
Parsons Smith Stone Loveland & Shirley LLP  
P.O. Box 910  
137 W. 13<sup>th</sup> St.  
Burley, Idaho 83318  
[wparsons@pmt.org](mailto:wparsons@pmt.org)

  
Travis L. Thompson

# Exhibit A

## MITIGATION AGREEMENT

THIS AGREEMENT is entered into by and between SOUTHWEST IRRIGATION DISTRICT and GOOSE CREEK IRRIGATION DISTRICT (hereinafter collectively referred to as "SWID"), Idaho irrigation districts, and A&B IRRIGATION DISTRICT ("A&B"), an Idaho irrigation district, AMERICAN FALLS RESERVOIR DISTRICT #2 ("AFRD #2"), an Idaho reservoir district, BURLEY IRRIGATION DISTRICT ("BID"), an Idaho irrigation district, MILNER IRRIGATION DISTRICT ("Milner"), an Idaho irrigation district, MINIDOKA IRRIGATION DISTRICT ("MID"), an Idaho irrigation district, NORTH SIDE CANAL COMPANY ("NSCC"), an Idaho non-profit corporation, and TWIN FALLS CANAL COMPANY ("TFCC"), an Idaho non-profit corporation (hereinafter collectively referred to as "Surface Water Coalition", "Coalition", or "SWC") (together both sets of parties hereinafter referred to as "Parties").

### RECITALS

WHEREAS, the Surface Water Coalition has an outstanding delivery call against hydraulically connected junior ground water rights on the Eastern Snake Plain Aquifer ("ESPA") (IDWR Docket No. CM-DC-2010-001); and

WHEREAS, SWID filed a mitigation plan with the Idaho Department of Water Resources ("IDWR") on May 28, 2010 in reference to the Surface Water Coalition's water delivery call; and

WHEREAS, IDWR published notice of the plan and processed it under Rule 43 of the *Rules for Conjunctive Management of Surface and Ground Water Resources* (IDAPA 37.03.11 *et seq.*) and the SWC filed a protest to SWID's plan on July 9, 2010; and

WHEREAS, the Parties negotiated and eventually entered into an *Interim Mitigation Agreement* for the years 2013-2015; and

WHEREAS, the Director approved the agreement by final order on November 25, 2013; and

WHEREAS, the Parties subsequently extended the agreement for the years 2016 and 2017, which extensions were also approved by the Director; and

~~WHEREAS, since that time the Parties have been gathering additional groundwater data within SWID's boundary in Twin Falls and Cassia Counties; and~~

WHEREAS, the Parties seek to enter into a perpetual term agreement and wish to delineate their agreement in writing as follows.

## COVENANTS

NOW THEREFORE, in consideration of the recitals, the mutual covenants, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **SWID Aquifer Mitigation Actions.** SWID agrees to undertake the following aquifer mitigation actions during the years 2018-2026 to meet the groundwater level benchmarks and the groundwater level goal set forth in Paragraph 6:

a. **Recharge:**

i.	Cottonwood	=	800 acre-feet
ii.	Dry Creek	=	800 acre-feet
iii.	Murtaugh	=	450 acre-feet
iv.	West Cassia Pipeline	=	2,500 acre-feet
v.	New Pipeline	=	<u>2,000 acre-feet</u>
Total			6,550 acre-feet

b. **Conversions:** SWID will provide surface water to convert, in total or in part, approximately 30,000 groundwater irrigated acres within SWID's boundary. The approximate volume delivered for the conversions is identified as follows:

i.	Burley Irrigation District	=	23,100 acre-feet
ii.	Milner Irrigation District	=	12,630 acre-feet
iii.	Twin Falls Canal Company	=	6,500 acre-feet
iv.	West Cassia Pipeline	=	12,120 acre-feet
v.	New Pipeline	=	<u>10,000 acre-feet</u>
Total			64,350 acre-feet

c. **Voluntary Curtailment:** In addition to the foregoing, SWID will voluntarily curtail all groundwater use on an additional 2,378 acres within SWID's boundary (to be identified and reported by SWID on an annual basis by May 1<sup>st</sup>).

3. **Irrigation Season.** Landowners within SWID further agree to not turn on and irrigate with any groundwater prior to April 1<sup>st</sup> or after October 31<sup>st</sup> within a given irrigation season.

4. **Alternative Mitigation.** As an alternative to providing mitigation water directly to SWC, SWID shall annually pay, on or before May 1<sup>st</sup>, Sixty-Five Thousand and No/Dollars (\$65,000.00) to be deposited into a trust account held for the benefit of SWC to be used for projects or actions to stabilize and/or enhance groundwater levels in the ESPA and benefit reach gains to the Snake River.



5. **Safe Harbor.** In exchange for the mitigation identified in Paragraphs 1-3 above, and provided SWID implements the Agreement as stated, SWC agrees that junior priority ground water rights held by SWID members (located within the project boundaries of the Southwest Irrigation District and Goose Creek Irrigation District and in good standing with each irrigation district) shall not be subject to curtailment in response to SWC's delivery call or any curtailment order issued by IDWR or any district court for the SWC delivery call during the term of this Agreement.

6. **Mitigation Plan Agreement.** To the extent deemed necessary by IDWR or any district court, this Agreement shall constitute an agreement on an acceptable mitigation plan identified in Rule 43.03.o of the *Rules for Conjunctive Management of Surface and Ground Water Resources* (IDAPA 37.03.11 *et seq.*).

7. **Groundwater Level Goals.** The Coalition seeks to sustain ground water levels, reach gains, and spring flows in the American Falls reach for purposes of maintaining a sufficient water supply for the irrigation of its members' projects. The Parties seek to stabilize and ultimately reverse the trend of declining groundwater levels in the SWID boundary and return ground water levels in that area to a level equal to the average of the groundwater levels from 1991-2001. A preliminary list of eighteen (18) wells has been agreed to by the Parties, recognizing that the list may be modified based on additional technical information. The list and groundwater level index for measuring the benchmarks and goal is attached hereto as Ex. A. The following benchmarks shall be established:

- a. Stabilization of groundwater levels at the identified wells by April 2020, to the 2015 groundwater levels (spring groundwater level readings);
- b. Increase groundwater levels by April 2023 to a point halfway to the groundwater level goal;
- c. Increase groundwater levels at the identified wells by April 2026 to the groundwater level goal (average of 1991-2001) and sustained thereafter.

When the groundwater level goal is achieved for a five-year rolling average, the actions identified in Paragraph 1 above may be reduced or removed, so long as the ground water level goal is sustained. If any of the benchmarks, or the groundwater level goal, is not achieved, adaptive measures will be identified and implemented pursuant to Paragraph 8 below.

8. **Adaptive Water Management Measures.** If any of the benchmarks or the groundwater level goal is not met, additional recharge, conversions, consumptive use reductions, or other measures as recommended by the Parties shall be implemented by SWID to meet the benchmarks or the groundwater level goal.

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9. **Implementation of Agreement.** The Parties agree to take any and all actions necessary to ensure this Agreement is implemented to the satisfaction of the Parties, including filing necessary documents with the Director for approval for the initial review term (years 2018-2026), and compliance with any requirements of the Water District 01 and 140 Watermasters. The Parties further agree to jointly support and defend the implementation of the Agreement

including ensuring that IDWR does not improperly credit other junior ground water users, not covered by this Agreement, for any mitigation obligations that they incur pursuant to the SWC Delivery Call.

10. **Term.** This is a perpetual agreement.

11. **Steering Committee.** The Parties will establish a steering committee to meet at least once annually. The committee will review progress on the actions taken by SWID (set forth in Paragraph 1), the annual groundwater level measurements, and the progress in meeting the benchmarks and goal. The committee will develop an adaptive management plan for responding to changes in groundwater levels in the SWID boundary and reach gain trends in the American Falls reach (Near Blackfoot to Milner) of the Snake River.

12. **Representations.** The Parties have the full legal right, power and authority to enter into and perform this Agreement.

13. **Attorneys' Fees.** In any suit, action or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing Party shall be entitled to recover all its costs reasonably incurred therein (and on appeal), including reasonable attorneys' fees.

14. **Duty of Good Faith.** Each of the Parties to this Agreement agrees to perform and execute this Agreement in accordance with the highest standards of good faith, honesty in fact, and fair dealing. Accordingly, the Parties agree to cooperate fully and execute any and all supplemental documents and take any and all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

15. **Entire Agreement.** This is the entire agreement of the Parties with respect to matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by the Parties.

16. **Counterparts.** This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

17. **Idaho Law.** This agreement shall be governed by the laws of the State of Idaho.

18. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

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19. **Captions to Paragraphs.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

20. **Binding Contract.** This Agreement shall be binding upon and inure to the benefit of the heirs, personal representative, administrators, successors, and assigns of the Parties

hereto.

21. **Effective Date.** The Effective Date of this Agreement shall be the date when both Parties have approved and executed the Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

DATED this 28 day of November, 2017.

SOUTHWEST IRRIGATION DISTRICT

Randy Brown  
Randy Brown, Chairman

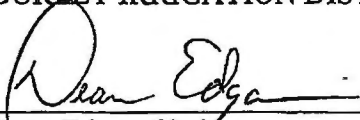
DATED this 28 day of November 2017.

GOOSE CREEK IRRIGATION DISTRICT


  
Noland Critchfield, Chairman

DATED this 12<sup>th</sup> day of December, 2017.

BURLEY IRRIGATION DISTRICT

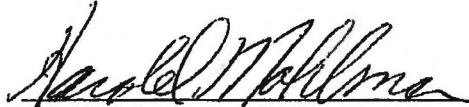
  
\_\_\_\_\_  
Dean Edgar, Chairman

ATTEST:

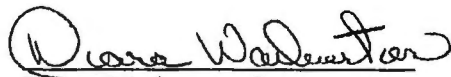
  
\_\_\_\_\_  
Lana Hanks, Secretary  
Pincock

DATED this 11 day of December, 2017.

A&B IRRIGATION DISTRICT

  
Harold Mohlman, Chairman

ATTEST:

  
Diana Warburton, Secretary

DATED this 1st day of 12, 2017.

AMERICAN FALLS RESEVOIR DISTRICT #2

Ellis Gooch  
Ellis Gooch, Chairman

ATTEST:

Mark Sabala  
~~John Arkoosh~~, Secretary

MARK SABALA

DATED this 13<sup>th</sup> day of DECEMBER 2017.

MILNER IRRIGATION DISTRICT

  
Scott Breeding, Chairman

ATTEST:

  
Walt Mullins, Secretary

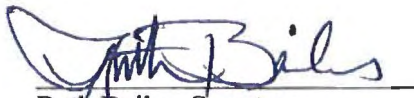


DATED this 12<sup>th</sup> day of December, 2017.

MINIDOKA IRRIGATION DISTRICT

  
Ron Kowitz, Chairman

ATTEST:

  
Ruth Bailes, Secretary

DATED this 15 day of December, 2017.

NORTH SIDE CANAL COMPANY

John Beukers  
John Beukers, Chairman

ATTEST:

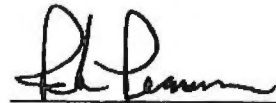
Alan W. Hansten  
Alan Hansten, Secretary

DATED this 12<sup>th</sup> day of December 2017.

TWIN FALLS CANAL COMPANY

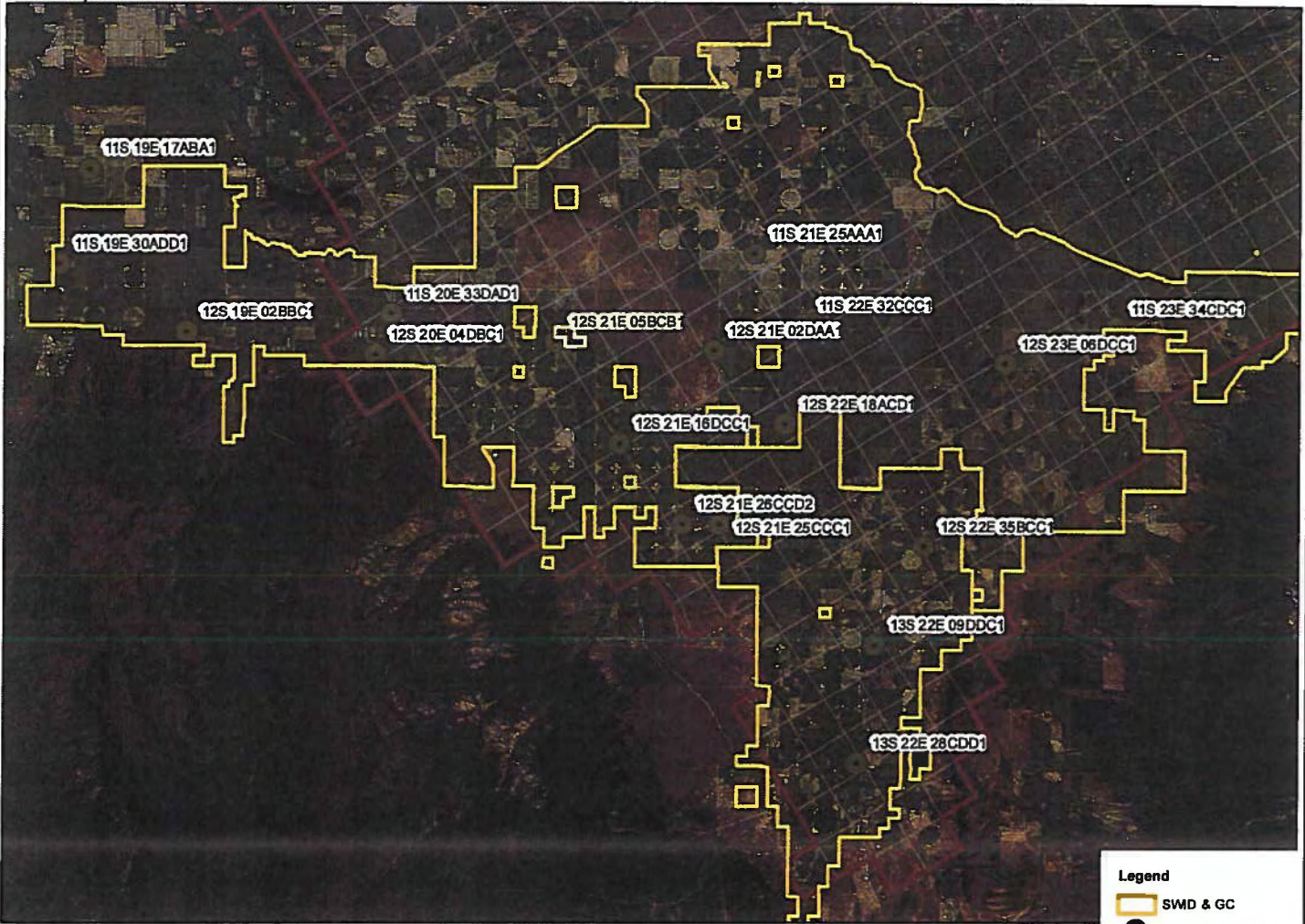
  
Dan Shewmaker, Chairman

ATTEST:

  
Rick Pearson, Secretary

# Exhibit A

Path: F:\Projects\Surface Water Coalition\Arcview 9 SWD\observation wells swd.mxd



N  
1 inch = 17,000 feet  
BROCKWAY ENGINEERING, PLLC  
GEP - JAN. 12, 2017

SWD & GC GROUNDWATER LEVELS  
SURFACE WATER COALITION  
2015 NAIP AERIAL PHOTOGRAPH

Legend  
SWD & GC  
Observation Wells  
ESPA BOUNDARY  
ESPA GRID

**Possible SWID & GC Targets Compared with IGWA Targets**

