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DEPARTMENT OF
WATER RESOURCES

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE DISTRIBUTION
OF WATER TO VARIOUS WATER
RIGHTS HELD BY AND 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

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

Docket No. CM-MP-2016-001

FINAL ORDER

Based upon and consistent with the Surface Water Coalition's and IGWA's Stipulated Mitigation Plan and Request for Order filed herein, and good cause appearing therefore,

IT IS HEREBY ORDERED as follows:

The IGWA Settlement Agreement Mitigation Plan is APPROVED upon the following conditions:

1. The parties will work cooperatively in implementing the terms of the Agreement, to wit: Sections 3 (Long Term Practices, Commencing 2016), 3.m ("Steering Committee"), and 4.a ("Adaptive Water Management"). The parties will undertake the following actions to begin implementation:
 - a. Section 3. Long Term Practices, Commencing 2016:
 - Pursuant to 3.a of the Settlement Agreement, prior to April 1, 2016, the participating Districts will submit to the Steering Committee their proposed actions to be taken for the upcoming irrigation season, together with supporting information compiled by the Districts' consultants.
 - Pursuant to 3.e.i of the Agreement, IDWR will collect, process, archive and submit sentinel well data to the Steering Committee within 30 days of collection.

- Pursuant to 3.e. of the Agreement, the parties and their consultants will use a groundwater level index at the sentinel wells and mutually agreed upon calculation techniques (“3e Calculation Technique”) to determine if the ground water level benchmarks and goal are met by June 1. This information shall be provided for use by the Steering Committee.
- IDWR will verify each District’s well measurement and other diversion reduction data (recharge, CREP, conversions, end-gun removals, etc.) to confirm the accuracy of the data. This IDWR analysis shall be provided to the Steering Committee by _____ annually. IDWR will not take additional action following the analysis for non-conformance unless requested by the obligated District.
- Any District may elect to report to the Department and request enforcement against a member that is not in compliance with any mitigation plan or activity implemented by the District to comply with the Settlement Agreement. Such members will not be protected under the Settlement Agreement. The Director will evaluate the breach and if a breach is found to exist provide notice of violation and opportunity to cure to the breaching member. If the member fails to cure the breach the Director will issue an order against the breaching member requiring action to cure the breach or be subject to curtailment. .

b. Section 3.m. Steering Committee:

- The Steering Committee will review the technical information supplied by IDWR together with technical reports compiled by the parties’ consultants. This information will be reviewed at least bi-annually.
- If, based on the information reported and available, the Steering Committee finds that the Long Term Practices as set forth in paragraph 3 of the Agreement have been performed but the ground water level benchmarks or goal set forth in 3.e.ii have not been met, the Steering Committee shall recommend additional actions to be undertaken by the Districts pursuant to 3.m.iii of the Settlement Agreement. If the Steering Committee does not agree upon additional actions prior to March 1 of the following year, the Director shall issue an order requiring additional actions to be undertaken by the Districts to achieve the benchmarks or goal not met.
- If, based on the information reported and available, the Steering Committee finds any breach of the Long Term Practices as set forth in paragraph 3 of the Agreement, the Steering Committee shall give ninety (90) days written notice of

the breach to the breaching party specifying the actions that must be taken to cure such breach. If the breaching party refuses or fails to take such actions to cure the breach, the Steering Committee shall report the breach to the Director with all supporting information, with a copy provided to the breaching party. If the Director determines based on all available information that a breach exists which has not been cured, the Director shall issue an order specifying actions that must be taken by the breaching party to cure the breach or be subject to curtailment.

If the Steering Committee does not agree that a breach has occurred or upon actions that must be taken by the breaching party to cure the breach, the same will be reported to the Director who will evaluate all available information and issue an order specifying actions that must be taken by the breaching party to cure the breach or be subject to curtailment.

- The Steering Committee will submit a report to the parties and the Department prior to April 1 annually reporting on: (a) progress on implementation and achieving the benchmarks and goals of the Settlement Agreement, (b) performance of the Long Term Practices set forth in paragraph 3 of the Settlement Agreement, (c) the status and resolution of any breaches, and (d) adaptive water management measures recommended and implemented pursuant to paragraph 4 of the Settlement Agreement.

c. Section 4. Adaptive Water Management Measures:

- The intent of the Adaptive Management Provision is to provide a forum for the parties to resolve implementation issues without a party seeking an enforcement order from IDWR or a district court. The terms of the Settlement Agreement and this order approving the same as mitigation plan control and satisfy any mitigation obligations imposed by the Methodology Order on the parties to the Settlement Agreement. IDWR involvement in the described annual actions and enforcement will be limited to those actions described herein. If the Agency is required by law to conduct additional oversight, the parties would engage the IDWR in the necessary actions.

2. On-going measures:

- a. Total groundwater diversions from the ESPA shall be reduced by 240,000 acre-feet annually starting in 2016 and based on a 3-year rolling average going forward. This diversion reduction has been allocated pro-rata by agreement between the Districts.
- b. IGWA shall provide 50,000 acre-feet of storage through private leases from the Upper Snake Reservoir system to the SWC twenty-one (21) days after the date of

allocation (as set by the Water District 01 Watermaster). Following the SWC's determination of its irrigation needs, it will notify IGWA by September 15 each year of the balance of 50,000 acre-feet, if any, remaining for potential recharge or conversions. The assignment of the balance of the remaining storage water shall only occur upon consensus of the parties to the Agreement. Absent consensus, the storage balance shall remain available for SWC use. Such assignments do not replace or count towards the obligations of the parties otherwise identified in the Agreement.

- c. IGWA shall use its best efforts to continue existing conversions in Water Districts 130 and 140.
 - d. IGWA's participating members shall not irrigate sooner than April 1 or later than October 31 in any year.
 - e. IGWA's participating members shall install approved closed conduit flow meters on all remaining unmeasured and power consumptive coefficient measured ground water diversions by the beginning of the 2018 irrigation season. The parties will determine the sequence to phase in this condition by ground water district each year. If an adequate measurement device is not installed by the beginning of the 2018 irrigation season, a power consumption coefficient methodology will be utilized to evaluate and verify the individual consumptive groundwater use reduction condition.
 - f. The parties intend based on modeling results that the foregoing actions, coupled with the State's commitment to 250,000 AF of annual recharge, will return the groundwater level to the average aquifer level of 1991-2001 in mutually agreed upon wells using mutually agreed upon calculation techniques. A preliminary list of 19 wells has been agreed upon and will be used (Exhibit A), recognizing that the list may be modified based on additional technical information. The groundwater level benchmarks and goal are as follows:
 - i. Benchmark 1: The ground water levels at the identified wells must be stabilized by April 2020 to 2015 ground water levels.
 - ii. Benchmark 2: The ground water levels at the identified wells must increase by April 2023 to a point halfway between 2015 ground water levels and the 1991-2001 average. (Benchmark 2)
3. Recovery Goal: The ground water levels at the identified wells must increase by April 2026 to the 1991-2001 average. No groundwater user who belongs to and is in good standing with an IGWA member who is participating in the SWC-IGWA Settlement Agreement will be subject to curtailment so long as the obligations under the SWC-IGWA Settlement Agreement identified herein are being performed. Junior ground water right holders who are not protected from curtailment under the SWC-IGWA Settlement Agreement and who do not otherwise have an approved Rule 43 mitigation plan which complies with CMR will be subject to conjunctive administration pursuant to the

Director's orders under IDWR Docket No. CM-DC-2010-001, consistent with Conjunctive Management Rules, including, but not limited to 40.05.

4. This is a FINAL ORDER of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.
5. Unless the right to a hearing before the Director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Director to contest the action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. See Idaho Code § 42-1701A(3).
6. Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order or orders previously issued by the Director in this matter may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which a hearing was held, the final agency action was taken, the party seeking review of the order resides, or the real property or personal property that was the subject of the agency action is located. The appeal must be filed within twenty-eight (28) days: (a) of the service date of the final order; (b) of an order denying a petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.
7. Nothing in this Order shall modify or change the rights of the parties to the settlement agreement between the Surface Water Coalition and the participating groundwater districts, dated June 30, 2015. This Order and mitigation plan deal with the rights and obligations of the parties to the Agreement only.

Dated this _____ day of March, 2016.

GARY SPACKMAN
Director