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DEPARTMENT OF
WATER RESOURCES

John K. Simpson, ISB #4242
 Travis L. Thompson, ISB #6168
 Paul L. Arrington, ISB #7198
 BARKER ROSHOLT & SIMPSON LLP
 163 Second Ave. West
 P.O. Box 63
 Twin Falls, Idaho 83303-0063
 Telephone: (208) 733-0700
 Facsimile: (208) 735-2444

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

Randall C. Budge, ISB #1949
 Thomas J. Budge, ISB #7465
 RACINE OLSON NYE BUDGE & BAILEY, CHTD.
 201 E. Center St. / P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208) 232-6101
 Facsimile: (208) 232-6109

Attorneys for Idaho Ground Water Appropriators, Inc.

W. Kent Fletcher, ISB #2248
 FLETCHER LAW OFFICE
 P.O. Box 248
 Burley, Idaho 83318
 Telephone: (208) 678-3250
 Facsimile: (208) 878-2548

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

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

**Surface Water Coalition's and IGWA's
 Stipulated Amended Mitigation Plan and
 Request for Order**

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 (collectively the "Surface Water Coalition" or "SWC"), and Idaho Ground Water Appropriators, Inc. ("IGWA") hereby stipulate and move the Director to enter an order approving the parties' *Second Addendum to Settlement Agreement* attached hereto as **Exhibit A** under Rule 43 of the Department's Rules for Conjunctive Management of Surface and Ground Water Resources ("CMR").

STIPULATION

1. In 2015, historic settlement agreements, identified herein, were entered into between the following surface water right holders: 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, collectively known as the Surface Water Coalition (SWC); and the following ground water right holders: Aberdeen American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Groundwater District, Fremont-Madison Irrigation District, Anheuser-Busch, United Water, Glanbia Foods, City of Blackfoot, City of American Falls, City of Jerome, City of Rupert, City of Heyburn, City of Paul, City of Chubbuck and City of Hazelton, collectively known as the Idaho Ground Water Appropriators, Inc.; (IGWA) for the purpose of resolving pending water delivery calls and provide for on-going management of the ESPA.

2. Following execution of the agreement the parties filed the *Stipulated Mitigation Plan and Request for Order* with the Director on March 9, 2016. The parties adopt and incorporate that stipulation.

3. The Director approved the stipulated mitigation plan. *See Final Order Approving Stipulated Mitigation Plan* (May 2, 2016).

4. The parties recently executed the *Second Addendum to Settlement Agreement* (Ex. A) which provides further details concerning implementation of the agreement addressing Sections 3.a (Consumptive Use Volume Reduction); 3.e (Ground Water Level Goal and Benchmarks), 3.m (Steering Committee), and 4.a (Adaptive Water Management).

5. The parties hereby incorporate and submit the *Second Addendum to Settlement Agreement* as a proposed amendment to the stipulated mitigation plan filed and approved by the Director last year.


6. The parties stipulate and request that the Director issue an Order approving the *Second Addendum to Settlement Agreement* as an amendment to the previously approved mitigation plan under CMR 43.

Therefore, the parties request that the Director:

- (a) Publish notice of the amendment in accordance with CMR 43.02; and
- (b) Approve the amendment as part of the previously approved mitigation plan together as a complete mitigation plan under CMR 43.
- (c) Take the necessary management actions to address declining ESPA groundwater levels, water supply and sustainability issues in order that the benefits contemplated in the SWC-IGWA Settlement Agreement are realized.

DATED this 7th day of February, 2017.

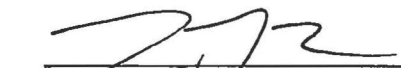
BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson
Paul L. Arrington

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

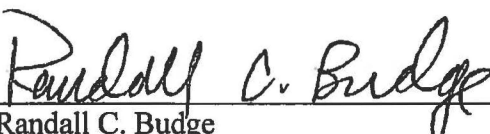
FLETCHER LAW OFFICE



W. Kent Fletcher

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

RACINE OLSON NYE BUDGE & BAILEY, CHTD.



Randall C. Budge

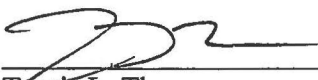
Attorneys for Idaho Ground Water Appropriators, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2017, I served a true and correct copy of the foregoing *Surface Water Coalition's and IGWA's Stipulated Amended Mitigation Plan and Request for Order* on the following by the method indicated:

<p>Director Gary Spackman c/o Deborah Gibson State of Idaho Dept of Water Resources 322 E Front St Boise, ID 83720-0098 *** service by electronic mail</p> <p>facsimile – 208-287-6700 gary.spackman@idwr.idaho.gov deborah.gibson@idwr.idaho.gov</p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234</p> <p>*** service by electronic mail only</p> <p>mhoward@pn.usbr.gov emcgarry@pn.usbr.gov</p>	<p>IDWR – Eastern Region 900 N. Skyline Dr., Suite A Idaho Falls, ID 83402-1718</p> <p>*** service by electronic mail only lyle.swank@idwr.idaho.gov</p>
<p>Randy Budge T.J. Budge Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only</p> <p>rcb@racinelaw.net tjb@racinelaw.net</p>	<p>Sarah A. Klahn Mitra Pemberton White & Jankowski, LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 *** service by electronic mail only facsimile – 303-825-5632 sarahk@white-jankowski.com mitrap@white-jankowski.com</p>	<p>David Gehlert ENRD – DOJ 999 18th St. South Terrace, Suite 370 Denver, CO 80202 *** service by electronic mail only</p> <p>david.gehlert@usdoj.gov</p>
<p>A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 *** service by electronic mail only</p> <p>facsimile – 208-234-6297 dtranmer@pocatello.us</p>	<p>William A. Parsons Parsons, Smith & Stone LLP P.O. Box 910 Burley, ID 83318 *** service by electronic mail only</p> <p>wparsons@pmt.org</p>	<p>IDWR – Southern Region 1341 Fillmore St., Suite 200 Twin Falls, ID 83301-3380</p> <p>*** service by electronic mail only allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>

Michael C Creamer Jeffrey C. Fereday Givens Pursley 601 W Bannock St Ste 200 P.O. Box 2720 Boise, ID 83701-2720 *** service by electronic mail only mcc@givenspursley.com jcf@givenspursley.com	Kathleen Carr US Dept Interior, Office of Solicitor Pacific Northwest Region, Boise 960 Broadway, Ste 400 Boise, ID 83706 *** service by electronic mail only facsimile – 208-334-1918 kathleenmarion.carr@sol.doi.gov	
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Travis L. Thompson

Exhibit A

SECOND ADDENDUM TO SETTLEMENT AGREEMENT

This Second Addendum dated December 14th, 2016 ("Second Addendum") augments the *Settlement Agreement Entered Into June 30, 2015, Between Participating Members of the Surface Water Coalition and Participating Members of Idaho Ground Water Appropriators, Inc. ("IGWA")*, the *Addendum Agreement* between the same entered into October 19, 2015 ("First Addendum"), and the *Agreement* between A&B Irrigation District and participating members of IGWA dated October 7, 2016. The foregoing agreements are referred to collectively herein as the "Settlement Agreement," and the parties thereto are referred to collectively herein as the "Parties."

RECITALS

- A. WHEREAS, on March 9, 2016 the Surface Water Coalition and IGWA submitted to the Idaho Department of Water Resources ("Department") the *Surface Water Coalition and IGWA's Stipulated Mitigation Plan and Request for Order* ("Request for Order"); and
- B. WHEREAS, the parties included as an attachment to the Request for Order a proposed "Final Order" for the purpose of Department approval of the Settlement Agreement as a mitigation plan under rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Resources ("CMR"); and
- C. WHEREAS, the proposed Final Order contained provisions to address, clarify and resolve certain issues relating to the Settlement Agreement; and
- D. WHEREAS, on May 2, 2016 the Director entered a *Final Order Approving Stipulated Mitigation Plan* ("Director's Final Order") approving the Settlement Agreement as a CMR 43 mitigation plan; and
- E. WHEREAS, the Director's Final Order did not include certain provisions set forth in the Parties' proposed Final Order; and
- F. WHEREAS, the Parties now set forth and incorporate into the Settlement Agreement to the provisions set forth in this Second Addendum.

COVENANTS

NOW THEREFORE, in consideration of the above recitals and the mutual agreements contained herein, the parties to the Settlement Agreement agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are an integral part of this Second Addendum and are fully incorporated herein by this reference.

2. **Implementation of Settlement Agreement.** The Parties will work cooperatively in implementing the terms of the Settlement Agreement, to wit: Sections 3.a (Consumptive Use Volume Reduction), 3.e (Ground Water Level Goal and Benchmarks), 3.m (Steering Committee), and 4.a (Adaptive Water Management) as follows:

a. Section 3.a (Consumptive Use Volume Reduction):

- i. Prior to April 1 annually the Districts will submit to the Steering Committee their groundwater diversion and recharge data for the prior irrigation season and their proposed actions to be taken for the upcoming irrigation season, together with supporting information compiled by the Districts' consultants.

b. Section 3.e (Ground Water Level Goal and Benchmarks):

- i. The Parties and their consultants will work with the Department to collect, process, archive and submit sentinel well data to the Steering Committee within 30 days of collection.
- ii. The Parties and their consultants will use the *Technique For Calculating Groundwater Level Index and Determining Compliance with Settlement* ("Calculation Technique") to determine if the groundwater level benchmarks and goal are met by June 1 of the year identified. This information shall be provided for use by the Steering Committee. Following experience with the Calculation Technique the technical working group may recommend amendments for approval by the Steering Committee.
- iii. The Parties will request the Department to verify each District's annual diversion volume, and other diversion reduction data (recharge, CREP, conversions, end-gun removals, etc.) to confirm the accuracy of the data. The Department's analysis shall be provided to the Steering Committee no later than July 1 for the previous irrigation season.
- iv. Any District may elect to report to the Department and request enforcement against any individual member of that District that is not in compliance with any mitigation plan or activity implemented by the District. Such members will not be protected under the Settlement Agreement. It is the Parties' intent that 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 Parties will request the Director to issue an order

against the breaching member requiring action to cure the breach or be subject to immediate curtailment as provided under CMR 40.05.

c. Section 3.m (Steering Committee):

- i. The Steering Committee will review the technical information supplied by the Department together with technical reports compiled by the Parties' consultants.
- ii. If, based on the information reported and available, the Surface Water Coalition and IGWA find that the Long Term Practices as set forth in paragraph 3 of the Agreement have been performed but the groundwater 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 Surface Water Coalition and IGWA do not agree upon additional actions prior to March 1 of the following year, the Steering Committee will request that the Director issue an order requiring additional actions to be undertaken by the Districts to achieve the benchmarks or goal not met.
- iii. 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 Steering Committee will request that the Director issue an order specifying actions that must be taken by the breaching party to cure the breach or be subject to immediate curtailment pursuant to CM Rule 40.05.
- iv. If the Surface Water Coalition and IGWA do not agree that a breach has occurred or cannot agree upon actions that must be taken by the breaching party to cure the breach, the Steering Committee will report the same to the Director and request that the Director evaluate all available information, determine if a breach has occurred, and issue an order specifying actions that must be taken by the breaching party to cure the breach or be subject to curtailment.
- v. The Steering Committee will submit a report to the Parties and the Department prior to May 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.

d. Section 4 (Adaptive Water Management Measures):


- i. 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 the Department or a district court. The terms of the Settlement Agreement and the Director's Final Order approving the same as a mitigation plan control and satisfy any mitigation obligations imposed by the Methodology Order on the Parties to the Settlement Agreement.

3. **Binding Effect.** This Second Addendum shall bind and inure to the benefit of the respective successors of the Parties.
4. **Entire Agreement.** This Second Addendum and the Settlement Agreement set forth all understandings between the Parties. There are no other understandings, covenants, promises, agreements, conditions, either oral or written between the Parties other than those contained herein and in the Agreement between A&B and IGWA dated October 7, 2015. The Parties expressly reserve all rights not settled by this Agreement. The parties further reserve all remedies, including the right to judicial action, to enforce the terms of the Settlement Agreement and this Second Addendum.
5. **Effect of Headings.** Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

The Parties have executed this Agreement on the date following their respective signatures.

SURFACE WATER COALITION:


BARKER RSHOLT & SIMPSON LLP



John K. Simpson Date 1-5-17

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

FLETCHER LAW OFFICE



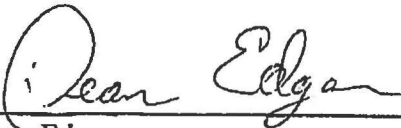
W. Kent Fletcher Date 1-3-17

Attorney for American Falls Reservoir District #2 and
Minidoka Irrigation District

AMERICAN FALLS RESERVOIR DISTRICT NO. 2

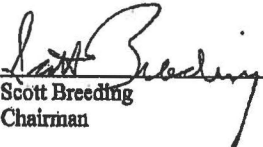
Ellis Gooch 1-3-17
Ellis Gooch Date
President

BURLEY IRRIGATION DISTRICT

 12/13/2014

Dean Edgar Date
Chairman

MILNER IRRIGATION DISTRICT

 12/14/16

Scott Breeding Date
Chairman


MINIDOKA IRRIGATION DISTRICT

Frank Hunt 12-20-16
Frank Hunt Date
Chairman

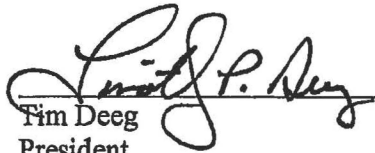
NORTH SIDE CANAL COMPANY

John Beukers 12-16-16
John Beukers Date
Chairman

TWIN FALLS CANAL COMPANY

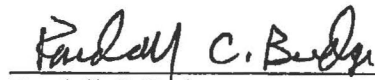
 12-13-16
Dan Shewmaker Date
Chairman

IDAHO GROUND WATER APPROPRIATORS, INC.:


Tim Deeg
President

12/14/16
Date


RACINE OLSEN NYE BUDGE & BAILEY, CHTD.


Randall C. Budge

12/14/16
Date

Attorneys for Idaho Ground Water Appropriators, Inc. et al.


ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT


Nick Behrend
Chairman

12-14-16

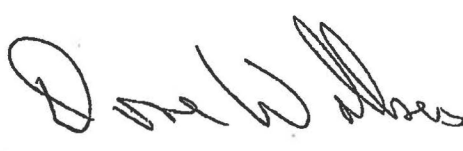
Date

BINGHAM GROUND WATER DISTRICT

 12-14-19

Craig Evans Date
Chairman

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

 12/14/16

Dane Watkins
Chairman

Date

CAREY VALLEY GROUND WATER DISTRICT

Leta Hansen
Leta Hansen
Chairman

12/26/16
Date

JEFFERSON CLARK GROUND WATER DISTRICT

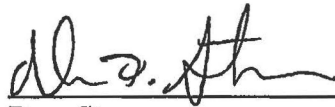

Kirk Jacobs
Chairman


Date

MADISON GROUND WATER DISTRICT

Jason Webster 1-9-17
Jason Webster Date
Chairman

MAGIC VALLEY GROUND WATER DISTRICT



Dean Stevenson
Chairman

12/14/16

Date

NORTH SNAKE GROUND WATER DISTRICT

 _____
Lynn Carlquist
Chairman

12/14/16
Date

FREEMONT MADISON IRRIGATION DISTRICT

Dale L. Swenson, 12-14-16
Dale L. Swenson Date
Manager