

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into effective September 7, 2022, between participating members of Idaho Ground Water Appropriators, Inc.<sup>1</sup> (“IGWA”) and participating members of the Surface Water Coalition<sup>2</sup> (“SWC”). Such participating members may be referred to herein individually as a “party” and collectively as the “parties.”

### Recitals

A. On June 30, 2015, IGWA and the SWC entered into 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.* (“Settlement Agreement”) to resolve the SWC delivery call, IDWR Docket No. CM-DC-2010-001, with respect to certain signatory IGWA members. On October 19, 2015, IGWA and the SWC entered into an *Addendum to Settlement Agreement* (“First Addendum”) to clarify certain terms of the Agreement. On October 7, 2015, IGWA and A&B Irrigation District entered into an *Agreement* relating to A&B Irrigation District’s participation in the Settlement Agreement.

B. On March 9, 2016, IGWA and the SWC filed with the Idaho Department of Water Resources (“IDWR” or “Department”) the *Surface Water Coalition’s and IGWA’s Stipulated Mitigation Plan and Request for Order* asking the Department to approve the Agreement, as amended by the First Addendum, as a mitigation plan under rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”), IDAPA 37.03.11. On May 2, 2016, the Department issued the *Final Order Approving Stipulated Mitigation Plan* approving the Agreement as a mitigation plan under CM Rule 43, IDWR Docket No. CM-MP-2016-001.

C. On December 14, 2016, IGWA and the SWC entered into a *Second Addendum to Settlement Agreement* (“Second Addendum”) amending the Agreement. On February 7, 2017, IGWA and SWC amended filed an *Amended Mitigation Plan and Request for Order* asking the Department to approve the Second Addendum as an amendment to the approved mitigation plan, and on May 9, 2017, the Department issued a *Final Order Approving Amendment to Stipulated Mitigation Plan*.

D. The Settlement Agreement requires IGWA to conserve a certain amount of groundwater through reduced diversions and/or managed aquifer recharge, among other things. IGWA submitted its 2021 performance report on April 1, 2022. On April 27, 2022, the SWC filed *SWC’s Request for Status Conference* (“SWC Notice”) with the Department identifying a shortfall in certain IGWA districts’ 2021 performance as referenced in the performance report. IGWA disputes the SWC’s allegation. The parties’ disagreement hinges on (a) the amount of

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<sup>1</sup> The participating members of IGWA are North Snake Ground Water District, Carey Valley Ground Water District, Magic Valley Ground Water District, American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Henry’s Fork Ground Water District, and Madison Ground Water District.

<sup>2</sup> The participating members of the SWC are 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.

groundwater conservation for which IGWA is responsible under the Agreement, and (b) whether averaging may be used to measure compliance with IGWA's conservation obligation.

E. The parties have been advised that the Director of IDWR has prepared an order that interprets the Settlement Agreement and the approved mitigation plan and orders curtailment of certain IGWA members in 2022. The parties desire to reach a settlement such that the Director does not curtail certain IGWA members during the 2022 irrigation season.

### **Agreement**

Therefore, with the above definitions incorporated herein by reference, and in consideration of the mutual agreements set forth below, the parties agree as follows:

**1. 2021 Remedy.** As a compromise to resolve the parties' dispute over IGWA's compliance with the Settlement Agreement and Mitigation Plan in 2021, and not as an admission of liability, IGWA will collectively provide to the SWC an additional 30,000 acre-feet of storage water in 2023 and an additional 15,000 acre-feet of storage water in 2024 within 10 days after the Date of Allocation of such year. Such amounts will be in addition to the long-term obligations set forth in section 3 of the Settlement Agreement and approved Mitigation Plan. IGWA agrees to take all reasonable steps to lease the quantities of storage water set forth above from non-SWC spaceholders. If IGWA is unable to secure the quantities set forth above from non-SWC spaceholders by April 1 of such year, IGWA will make up the difference by either (a) leasing storage water from the SWC as described in section 2, or (b) undertaking diversion reductions in Power, Bingham, and/or Bonneville Counties at locations that have the most direct benefit to the Blackfoot to Minidoka reach of the Snake River. For example, if by April 1, 2023, IGWA has secured contracts for only 25,000 acre-feet of storage water, IGWA will either (a) lease 5,000 acre-feet of storage from the SWC, or (b) undertake 5,000 acre-feet of diversion reductions. The remedy described in this section shall satisfy IGWA's obligation under the Settlement Agreement for 2021 only.

**2. Lease of SWC Water.** To the extent IGWA is unable to secure the quantities set forth above from non-SWC spaceholders as required by section 1 of this Agreement, the SWC will lease storage water to IGWA as needed to fulfill its obligations under this Agreement, to the extent the SWC has storage available. While final details of such lease have not been reduced to writing, time is of the essence and the parties agree to continue to work in good faith toward finalizing an agreement for IGWA to lease storage water from the SWC as a contingency in case the full balance in 2023 and 2024 is not available from other sources. Nothing in this section shall obligate any SWC spaceholder to contract with IGWA for the lease of storage water and nothing in this section shall be deemed to alter or amend the requirements of section 1.

**3. Agreement to be filed with the Director.** The parties agree to jointly submit this Agreement to the Director as a stipulated plan to remedy the alleged shortfall regarding IGWA's 2021 groundwater conservation obligation as set forth in the SWC Notice. The Director shall incorporate the terms of section 1 above as the remedy selected for the alleged shortfall in lieu of curtailment, and shall issue a final order regarding the interpretive issues raised by the SWC Notice. The parties reserve the right to seek judicial review of the decision by the Director

relating to such interpretive issues but shall not seek review of the remedy agreed to herein and incorporated into the Director's Order.

**4. Amendment of Settlement Agreement.** The parties will continue to negotiate in good faith to resolve the issues concerning interpretation of the Settlement Agreement and present any agreed upon amendments to the Settlement Agreement to the Director at the earliest date possible but no later than March 1, 2023. If the parties fail to amend the Settlement Agreement, the obligations set forth in section 1 shall continue and shall be in addition to any volume of mitigation water or curtailment ordered by the Department in the absence of this Agreement for subsequent years in accordance with the Settlement Agreement and Mitigation Plan.

**5. Reservation of Rights.** This Agreement shall not be construed as an admission or waiver of any party's rights or arguments with respect to the Settlement Agreement and Mitigation Plan, except with respect to IGWA's compliance with its 2021 groundwater conservation obligation. The parties reserve the right to pursue administrative and/or judicial action to enforce the terms of the Settlement Agreement, the Mitigation Plan, and/or this Agreement and to seek judicial review of any order issued by the Director as specified in section 3.

**6. Entire Agreement; Binding Effect; Assignment.** This Agreement sets forth all understandings between the parties concerning the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of parties and their respective successors and assigns; provided, that no party shall assign its interest in this Agreement to another party without the prior written consent of the other parties, which shall not be unreasonably withheld.

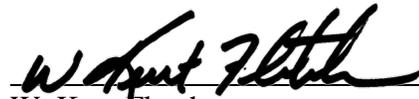
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**FLETCHER LAW OFFICE**

September 7, 2022

/s/ John Simpson 9/7/22

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