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Irrigation District*

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

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

CM-MP-2016-001

Docket No. ~~CM-DC-2010-001~~

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

**NOTICE OF FILING OF AGREEMENT-  
SATISFACTION OF AF-A-2022  
MITIGATION DEFICIT**

COME NOW, 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 collectively referred to as the “Coalition” or “SWC”) and  
notifies the Director of the Idaho Department of Water Resources that the SWC and the  
American Falls-Aberdeen Ground Water District have executed the attached *Agreement -  
Satisfaction of AF-A 2022 Mitigation Deficit* (Ex. A) for consideration by the Director.

DATED this 3<sup>rd</sup> day of November, 2023.

**MARTEN LAW LLP**



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Travis L. Thompson

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

**FLETCHER LAW OFFICE**



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W. Kent Fletcher


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

## CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of November, 2023, I served a true and correct copy of the foregoing on the following by the method indicated:

<p>Director Mat Weaver Garrick Baxter Sarah Tschohl State of Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail</p> <p><a href="mailto:mat.weaver@idwr.idaho.gov">mat.weaver@idwr.idaho.gov</a> <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a> <a href="mailto:sarah.tschohl@idwr.idaho.gov">sarah.tschohl@idwr.idaho.gov</a> <a href="mailto:file@idwr.idaho.gov">file@idwr.idaho.gov</a></p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234 *** service by electronic mail only</p> <p><a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<p>Tony Olenichak IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only</p> <p><a href="mailto:tony.olenichak@idwr.idaho.gov">tony.olenichak@idwr.idaho.gov</a></p>
<p>T.J. Budge Elisheva Patterson Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only</p> <p><a href="mailto:tj@racineolson.com">tj@racineolson.com</a> <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a></p>	<p>Sarah A. Klahn Max C. Bricker Diane Thompson Somach Simmons &amp; Dunn 2033 11<sup>th</sup> St., Ste. 5 Boulder, CO 80302 *** service by electronic mail only</p> <p><a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:mbricker@somachlaw.com">mbricker@somachlaw.com</a> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p>	<p>David Gehlert ENRD – DOJ 999 18<sup>th</sup> St. South Terrace, Ste. 370 Denver, CO 80202 *** service by electronic mail only</p> <p><a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>
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 Jessica Nielsen  
 Assistant for Travis L. Thompson

**AGREEMENT -**  
**SATISFACTION OF AF-A 2022 MITIGATION DEFICIT -**

This Agreement is entered into on October 27, 2023, between A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, Twin Falls Canal Company (collectively “Surface Water Coalition” or “SWC”), and American Falls-Aberdeen Ground Water District (“AF-A”).

WHEREAS AF-A is subject to certain annual mitigation obligations pursuant to the *Final Order Approving Stipulated Mitigation Plan* dated May 2, 2016, as amended, (“Mitigation Order”); and

WHEREAS the Director (“Director”) of the Idaho Department of Water Resources (“IDWR”) determined that certain ground water districts breached the Mitigation Order in that *Final Order Regarding IGWA’s 2022 Mitigation Plan Compliance* dated August 2, 2023 (“2022 Breach Order”); and

WHEREAS the Director determined that AF-A was in breach of the Mitigation Order and failed to reduce or offset diversions during 2022 in the amount of one thousand three hundred fifty two (1,352) acre-feet (“AF”) (“2022 deficit”) as required by the Mitigation Order; and

WHEREAS the SWC asked for a hearing on the 2022 Breach Order and the Director granted the request. A scheduling conference on the request for hearing is scheduled for November 7 at 9:30 A.M.; and

WHEREAS AF-A has secured 1,352 AF of water for purposes of satisfying its 2022 deficit. Although it is the position of the SWC that failure to reduce or offset diversions annually as required by the Mitigation Order has long term impacts on the ESPA Aquifer that can exceed the amount of a one year failure to reduce or offset diversions, for 2022 only the SWC is willing to report to the Director that AF-A has resolved it’s 2022 breach of the Mitigation Order if AF-A can recharge the 2022 deficit before December 1, 2023 in an area that is beneficial to the natural flow water rights of the SWC as determined by the SWC; and

WHEREAS AF-A has secured space in the Aberdeen-Springfield Canal for recharge of the 1,352 AF and that location is acceptable to the SWC.

NOW, THEREFORE, and in consideration of the mutual agreements herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

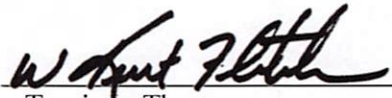
1. AF-A shall deliver 1,352 AF of storage water to the Aberdeen-Springfield Canal, or such other location agreed upon in writing by the SWC, for recharge no later than November 30, 2023.

2. AF-A shall notify SWC, in writing, of the dates recharge occurred, the location of recharge and the amounts recharged not later than five (5) days following completion of recharge.
3. The amounts recharged pursuant to this Agreement shall be used only for the purpose of resolving AF-A's 2022 deficit as described in this Agreement and shall not be used as mitigation or credit for any other purpose.
4. The parties agree to file this Agreement with IDWR and advise the Director that SWC has accepted the recharge described herein as a cure of AF-A's 2022 deficit.
5. The Agreement only settles AF-A's 2022 deficit of the Mitigation Order and does not settle any other claimed breaches of the Mitigation Order. This Agreement does not create precedent for resolution of any other breach of the Mitigation Order or for the settlement of any other breach of the Mitigation Order. The parties reserve all rights not settled by this Agreement.

AMERICAN FALLS – ABERDEEN  
GROUND WATER DISTRICT

By   
Sarah Klahn  
SOMACH SIMMONS & DUNN

A&B IRRIGATION DISTRICT,  
BURLEY IRRIGATION DISTRICT,  
MILNER IRRIGATION  
DISTRICT, NORTH SIDE CANAL  
COMPANY, AND  
TWIN FALLS CANAL COMPANY

By  for  
Travis L. Thompson  
MARTEN LAW

AMERICAN FALLS RESERVOIR  
DISTRICT #2 AND MINIDOKA  
IRRIGATION DISTRICT

By   
W. Kent Fletcher  
FLETCHER LAW OFFICE