

RECEIVED

Feb 12, 2024

DEPARTMENT OF  
WATER RESOURCES

Sarah A. Klahn, ISB #7928  
Maximilian C. Bricker, ISB #12283  
**SOMACH SIMMONS & DUNN**  
1155 Canyon Blvd., Suite 110  
Boulder, CO 80302  
Telephone: (303) 449-2834  
[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)  
[mbricker@somachlaw.com](mailto:mbricker@somachlaw.com)

*Attorneys for American Falls-Aberdeen Ground Water District*

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

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

Docket No. CM-MP-2016-001

**AFFIDAVIT OF  
MAXIMILIAN C. BRICKER  
IN SUPPORT OF AFAGWD'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

IN THE MATTER OF IGWA'S SETTLEMENT  
AGREEMENT MITIGATION PLAN

I, MAXIMILIAN C. BRICKER, being first duly sworn upon oath, depose and say the following:

1. I am over the age of 18. I am admitted to the bar of Idaho and an attorney at Somach Simmons & Dunn, P.C.
2. The following statements are based on my personal knowledge.

3. Attached hereto as Exhibit 1 is a true and correct copy of the *Surface Water Coalition's and IGWA's Stipulated Mitigation Plan and Request for Order*, filed in this matter on March 9, 2016.
4. Attached hereto as Exhibit 2 is a true and correct copy of the Surface Water Coalition's and IGWA's Stipulation Amended Mitigation Plan and Request for Order, filed in this matter on February 7, 2017.
5. Attached hereto as Exhibit 3 is a true and correct copy of the *Order Approving Mitigation Plan*, filed in CM-MP-2009-007 on June 10, 2010.
6. Attached hereto as Exhibit 4 is a true and correct copy of the *IGWA's Mitigation Plan for the Surface Water Coalition Delivery Call*, filed in IDWR Docket No. CM-MP-2009-007 on November 9, 2009.
7. Attached hereto as Exhibit 5 is a true and correct copy of the *Final Order Approving Stipulated Mitigation Plan*, filed in this matter on May 2, 2016.
8. Attached hereto as Exhibit 6 are true and correct copies of pages 840 through 844 in the Settled Agency Record on Appeal in *IGWA v. IDWR*, Case No. CV01-23-07893 (4th Dist. Ct., Ada County).<sup>1</sup>

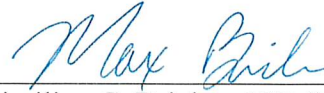
I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

---

<sup>1</sup> These pages (IGWA's annual performance reports from 2016-2020) appear in the record as excel documents. See <https://idwr.idaho.gov/legal-actions/district-court-actions/igwa-v-idwr-cv01-23-07893/> (last visited Jan. 31, 2024). For purposes of this *Affidavit*, the first tab in each excel document, entitled "20xx Summary Table," has been converted to a .pdf and the page number in the record has been added in the margins.

DATED this 12th day of February 2024.

**SOMACH SIMMONS & DUNN, P.C.**



---

Maximilian C. Bricker, ISB #12283

ACKNOWLEDGEMENT

STATE OF COLORADO   )  
  )  
COUNTY OF BOULDER   )

The foregoing Affidavit was sworn to before me by Maximilian C. Bricker who executed the above on February 12, 2024.

Witness my hand and official seal.

My commission expires: 5/6/26



Veva Francisco  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of February 2024, a true and correct copy of the foregoing document was served by email and addressed to the following:

Hearing Officer Roger S. Burdick Director Mat Weaver Garrick Baxter Idaho Department of Water Resources 322 E Front St. Boise, ID 83720-0098	<a href="mailto:Mathew.Weaver@Idwr.Idaho.Gov">Mathew.Weaver@Idwr.Idaho.Gov</a> <a href="mailto:Garrick.Baxter@Idwr.Idaho.Gov">Garrick.Baxter@Idwr.Idaho.Gov</a> <a href="mailto:File@Idwr.Idaho.Gov">File@Idwr.Idaho.Gov</a> <a href="mailto:roburd47@gmail.com">roburd47@gmail.com</a>
John K. Simpson Marten Law LLP P.O. Box 2139 Boise, ID 83701-2139	<a href="mailto:Jsimpson@Martenlaw.Com">Jsimpson@Martenlaw.Com</a>
Travis L. Thompson Marten Law LLP P. O. Box 63 Twin Falls, ID 83303-0063	<a href="mailto:Tthompson@Martenlaw.Com">Tthompson@Martenlaw.Com</a>
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318	<a href="mailto:Wkf@Pmt.Org">Wkf@Pmt.Org</a>
Thomas J. Budge Elisheva M. Patterson Racine Olson, PLLP P.O. Box 1391 Pocatello, ID 83204-1391	<a href="mailto:Tj@Racineolson.Com">Tj@Racineolson.Com</a> <a href="mailto:Elisheva@Racineolson.Com">Elisheva@Racineolson.Com</a>
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202	<a href="mailto:David.Gehlert@Usdoj.Gov">David.Gehlert@Usdoj.Gov</a>
Matt Howard U.S. Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234	<a href="mailto:Mhoward@Usbr.Gov">Mhoward@Usbr.Gov</a>

<p>Rich Diehl  City Of Pocatello  P.O. Box 4169  Pocatello, ID 83205</p>	<p><a href="mailto:Rdiehl@Pocatello.Us">Rdiehl@Pocatello.Us</a></p>
<p>Candice McHugh  Chris Bromley  Mchugh Bromley, PLLC  380 South 4<sup>th</sup> Street, Suite 103  Boise, ID 838702</p>	<p><a href="mailto:Cmchugh@Mchughbromley.Com">Cmchugh@Mchughbromley.Com</a>  <a href="mailto:Cbromley@Mchughbromley.Com">Cbromley@Mchughbromley.Com</a></p>
<p>Robert E. Williams  Williams, Meservy &amp; Lothspeich, LLP  P.O. Box 168  Jerome, ID 83338</p>	<p><a href="mailto:Rewilliams@Wmlattys.Com">Rewilliams@Wmlattys.Com</a></p>
<p>Robert L. Harris  Holden, Kidwell, Hahn &amp; Crapo, PLLC  P. O. Box 50130  Idaho Falls, ID 83405</p>	<p><a href="mailto:Rharris@Holdenlegal.Com">Rharris@Holdenlegal.Com</a></p>
<p>Michael A. Kirkham  City Attorney  City of Idaho Falls  P.O. Box 50220  Idaho Falls, ID 83405</p>	<p><a href="mailto:mkirkham@idahofallsidaho.gov">mkirkham@idahofallsidaho.gov</a></p>
<p>Corey Skinner  IDWR-Southern Region  1341 Fillmore St., Ste. 200  Twin Falls, ID 83301-3033</p>	<p><a href="mailto:Corey.Skinner@Idwr.Idaho.Gov">Corey.Skinner@Idwr.Idaho.Gov</a></p>
<p>Tony Olenichak  IDWR-Eastern Region  900 N. Skyline Drive, Ste. A  Idaho Falls, ID 83402</p>	<p><a href="mailto:Tony.Olenichak@Idwr.Idaho.Gov">Tony.Olenichak@Idwr.Idaho.Gov</a></p>
<p>Skyler C. Johns  Nathan M. Olsen  Steven L. Taggart  Olsen Taggart PLLC  P.O. Box 3005  Idaho Falls, ID 83403</p>	<p><a href="mailto:Sjohns@Olsentaggart.Com">Sjohns@Olsentaggart.Com</a>  <a href="mailto:Nolsen@Olsentaggart.Com">Nolsen@Olsentaggart.Com</a>  <a href="mailto:Staggart@Olsentaggart.Com">Staggart@Olsentaggart.Com</a></p>
<p>Dylan Anderson  Dylan Anderson Law</p>	<p><a href="mailto:Dylan@Dylanandersonlaw.Com">Dylan@Dylanandersonlaw.Com</a></p>

P. O. Box 35 Rexburg, ID 83440	
<i>COURTESY COPY TO:</i> William A. Parsons Parsons Smith & Stone P.O. Box 910 Burley, ID 83318	<a href="mailto:Wparsons@Pmt.Org">Wparsons@Pmt.Org</a>



---

Maximilian C. Bricker, ISB #12283

# **EXHIBIT 1**

**Surface Water Coalition's and IGWA's Stipulated Mitigation  
Plan and Request for Order (Mar. 9, 2016)**



RECEIVED

MAR 09 2016

DEPARTMENT OF  
WATER RESOURCES

John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
Paul L. Arrington, ISB #7198  
BARKER ROSHOLT & SIMPSON LLP  
195 River Vista Place, Suite 204  
Twin Falls, Idaho 83301-3029  
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 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 the proposed *Order Approving IGWA's Mitigation Plan* 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. The Eastern Snake Plain Aquifer (ESPA) supplies groundwater to approximately one million irrigated acres and to numerous cities, businesses, dairies, factories and homes; and

2. The ESPA is hydraulically connected to the Snake River and discharges to the Snake River via tributary springs, which supply surface water for multiple beneficial uses, including aquaculture, hydropower, and the irrigation of approximately one million acres; and

3. Since 1952 the total volume of water stored in the ESPA has decreased due to increasing direct diversions of ground water, increasingly efficient surface water irrigation practices, and other factors; and

4. Current ESPA water levels and total storage content, after more than six decades of decline, are inadequate to provide a reasonably safe supply of water for sustainable surface and groundwater irrigation, hydropower, aquaculture, municipal and industrial uses, the curtailment of which would cause severe economic harm to the State of Idaho

5. 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 to address the current hydrologic conditions identified in paragraphs nos. 3 and 4;

6. Attached hereto as **Exhibits B and C** respectively are true and correct copies of the *Settlement Agreement entered into June 30, 2015, between participating members of the Surface Water Coalition and participating members of the Idaho Ground Water Appropriators, Inc. and Addendum to Settlement Agreement* (collectively the "SWC-IGWA Settlement Agreement").

7. Attached hereto as *Exhibit D* is a true and correct copy of the *Agreement* dated October 7, 2015 between A&B Irrigation District and the IGWA members who entered into the SWC-IGWA Settlement Agreement (the "A&B-IGWA Agreement").

8. The parties hereby incorporate and submit the SWC-IGWA Settlement Agreement and the A&B-IGWA Agreement (collectively, the "Agreements") as a stipulated mitigation plan in reference to the Surface Water Coalition delivery call (IDWR Docket No. CM-DC-2010-001). The Coalition stipulates that the mitigation provided by participating IGWA members under the Agreements is, provided the Agreements are implemented, sufficient to mitigate for any material injury caused by the groundwater users who belong to, and are in good standing with, a participating IGWA member.

9. With respect to the 2015 obligation identified in the SWC-IGWA Agreement (Paragraph 2.a), on May 8, 2015, the SWC and IGWA filed the *Surface Water Coalition and IGWA Stipulation and Joint Motion Regarding April as Applied Order and Third Methodology Order* in IDWR Docket No. CM-DC-2010-0001, pursuant to which the Director entered an *Order Approving Stipulation and Granting Joint Motion* dated May 8, 2015 ("May 8, 2015 Order").

10. IGWA fully satisfied its 2015 obligation(SWC-IGWA Settlement Agreement, Paragraph 2.a) and the May 8, 2015 Order by leasing and assigning 110,000 acre feet of storage water to the SWC through the Water District 01 Rental Pool procedures.

11. With respect to the long term obligations identified in the SWC-IGWA Agreement (Paragraph 3), IGWA is proceeding to implement those actions commencing in 2016. Participating IGWA members providing the stipulated mitigation to the SWC are not subject to curtailment under the SWC delivery call, IDWR Docket No. CM-DC-2010-001, provided actions are implemented and performed as set forth in the SWC-IGWA Settlement Agreement. Junior ground water right holders who are not protected from curtailment under the Agreements and who do not otherwise have an approved Rule 43 mitigation plan will be subject to conjunctive administration pursuant to the Director's orders under IDWR Docket No. CM-DC-2010-001.

12. IGWA, on behalf of its participating members identified in the Agreements, stipulates and acknowledges the obligations, benchmarks and goal identified in Paragraphs 1 and 4 of the SWC-IGWA Settlement Agreement. Provided the obligations identified in the SWC-IGWA Settlement Agreement are performed, the parties stipulate this mitigation plan is effectively operating pursuant to CM Rules 40.01.b, 40.05 and 43.

13. The parties stipulate and request that the Director issue the attached Order approving the SWC-IGWA Settlement Agreement and the A&B-IGWA Agreement together as a mitigation plan under CMR 43 ("IGWA's Settlement Agreement Mitigation Plan").

14. Groundwater users who are not presently protected under IGWA's Mitigation Plan may participate on an equitable basis by joining an IGWA Ground Water District or Irrigation District that entered into the SWC-IGWA Settlement Agreement and the A&B-IGWA Agreement and by complying with such District's obligations under IGWA's Settlement

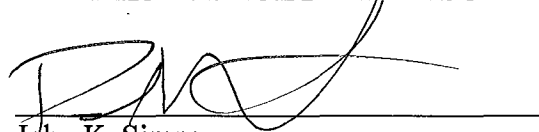
Agreement Mitigation Plan; or, secure Director approval of an individual mitigation plan which complies with CMR 43 and provides adequate mitigation to help achieve the groundwater level goal and benchmarks set forth in the SWC-IGWA Settlement Agreement.

Therefore, the parties request that the Director:

- (a) Publish notice of IGWA's 2015 Mitigation Plan in accordance with CMR 43.02; and
- (b) Approve the SWC-IGWA Settlement Agreement and the A&B-IGWA Agreement 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 \_\_\_\_ day of March, 2016.

**BARKER ROSHOLT & SIMPSON LLP**



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

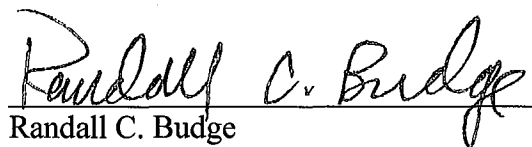
*Attorneys for A&B Irrigation District,  
Burley Irrigation District, Milner Irrigation  
District, North Side Canal Company, and  
Twin Falls Canal Company*

**FLETCHER LAW OFFICE**



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

**RACINE OLSON NYE BUDGE & BAILEY, CHTD.**



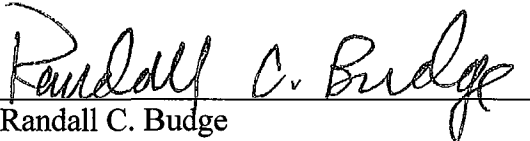
*Attorneys for Idaho Ground Water Appropriators, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of March, 2016, I served a true and correct copy of the foregoing *Surface Water Coalition's and IGWA's Stipulated 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 <a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@idwr.idaho.gov</a> v <a href="mailto:deborah.gibson@idwr.idaho.gov">deborah.gibson@idwr.idaho.gov</a> v</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><a href="mailto:mhoward@pn.usbr.gov">mhoward@pn.usbr.gov</a> <a href="mailto:emcgarry@pn.usbr.gov">emcgarry@pn.usbr.gov</a></p>	<p>IDWR – Eastern Region 900 N. Skyline Dr., Suite A Idaho Falls, ID 83402-1718</p> <p>*** service by electronic mail only <a href="mailto:lyle.swank@idwr.idaho.gov">lyle.swank@idwr.idaho.gov</a></p>
<p>Randy Budge T.J. Budge Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only</p> <p><a href="mailto:rbc@racinelaw.net">rbc@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a></p>	<p>Sarah A. Klahn Mitra Pemberton White &amp; Jankowski, LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 *** service by electronic mail only facsimile – 303-825-5632 <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a> <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</a></p>	<p>David Gehlert ENRD – DOJ 999 18<sup>th</sup> St. South Terrace, Suite 370 Denver, CO 80202 *** service by electronic mail only</p> <p><a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></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 <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a></p>	<p>William A. Parsons Parsons, Smith &amp; Stone LLP P.O. Box 910 Burley, ID 83318</p> <p>*** service by electronic mail only</p> <p><a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>	<p>IDWR – Southern Region 1341 Fillmore St., Suite 200 Twin Falls, ID 83301-3380</p> <p>*** service by electronic mail only <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a> v <a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a> v</p>

<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  <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a>  <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a></p>	<p>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   <a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a>  v</p>	
---	--	--

  
Randall C. Budge

**EXHIBIT A**

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

**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

Docket No. CM-MP-2016-\_\_\_\_\_

**FINAL ORDER**

IN THE MATTER OF IGWA'S  
SETTLEMENT AGREEMENT  
MITIGATION PLAN

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 a 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).
  - 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

**EXHIBIT B**

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

**SETTLEMENT AGREEMENT ENTERED INTO JUNE 30, 2015 BETWEEN PARTICIPATING MEMBERS OF THE SURFACE WATER COALITION<sup>1</sup> AND PARTICIPATING MEMBERS OF THE IDAHO GROUND WATER APPROPRIATORS, INC.<sup>2</sup>**

IN SETTLEMENT OF LITIGATION INVOLVING THE DISTRIBUTION OF WATER TO THE MEMBERS OF THE SURFACE WATER COALITION, THE PARTIES AGREE AS FOLLOWS:

**1. Objectives.**

- a. Mitigate for material injury to senior surface water rights that rely upon natural flow in the Near Blackfoot to Milner reaches to provide part of the water supply for the senior surface water rights.
- b. Provide “safe harbor” from curtailment to members of ground water districts and irrigation districts that divert ground water from the Eastern Snake Plain Aquifer (ESPA) for the term of the Settlement Agreement and other ground water users that agree to the terms of this Settlement Agreement.
- c. Minimize economic impact on individual water users and the state economy arising from water supply shortages.
- d. Increase reliability and enforcement of water use, measurement, and reporting across the Eastern Snake Plain.
- e. Increase compliance with all elements and conditions of all water rights and increase enforcement when there is not compliance.
- f. Develop an adaptive groundwater management plan to stabilize and enhance ESPA levels to meet existing water right needs.

---

<sup>1</sup> The Surface Water Coalition members (“SWC”) are A&B Irrigation District (A&B), American Falls Reservoir District No. 2 (AFRD2), Burley Irrigation District (BID), Milner Irrigation District (Milner), Minidoka Irrigation District (MID), North Side Canal Company (NSCC), and Twin Falls Canal Company (TFCC). The acronym “SWC” in the Settlement Agreement is used for convenience to refer to all members of the Surface Water Coalition who are the actual parties to this Settlement Agreement.

<sup>2</sup> The Idaho Ground Water Appropriators, Inc. (“IGWA”) are 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 Ground Water District, Southwest Irrigation District, and Fremont-Madison Irrigation District, Anheuser-Busch, United Water, Glambia Cheese, 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. The acronym “IGWA” in the Settlement Agreement is used for convenience to refer to all members of the Idaho Ground Water Appropriators, Inc. who are the actual parties to this Settlement Agreement.

## **2. Near Term Practices.**

- a. For 2015 IGWA on behalf of its member districts will acquire a minimum of 110,000 ac-ft for assignment as described below:
  - i. 75,000 ac-ft of private leased storage water shall be delivered to SWC;
  - ii. 15,000 ac-ft of additional private leased storage water shall be delivered to SWC within 21 days following the date of allocation;
  - iii. 20,000 ac-ft of common pool water shall be obtained by IGWA through a TFCC application to the common pool and delivered to SWC within 21 days following the date of allocation; and
  - iv. Secure as much additional water as possible to be dedicated to on-going conversion projects at a cost not to exceed \$1.1 million, the cost of which will be paid for by IGWA and/or the converting members.
- b. The parties stipulate the director rescind the April 16 As-Applied Order and stay the April 16 3<sup>rd</sup> Amended Methodology Order, and preserve all pending rights and proceedings.
- c. "Part a" above shall satisfy all 2015 "in-season" mitigation obligations to the SWC.
- d. This Settlement Agreement is conditional upon approval and submission by the respective boards of the Idaho Ground Water Appropriators, Inc. ("IGWA") and the Surface Water Coalition ("SWC") to the Director by August 1.
- e. If the Settlement Agreement is not approved and submitted by August 1 the methodology order shall be reinstated and implemented for the remainder of the irrigation season.
- f. Parties will work to identify and pass legislative changes needed to support the objectives of this Settlement Agreement, including, development of legislation memorializing conditions of the ESPA, obligations of the parties, and ground water level goal and benchmarks identified herein.

## **3. Long Term Practices, Commencing 2016.**

- a. *Consumptive Use Volume Reduction.*
  - i. Total ground water diversion shall be reduced by 240,000 ac-ft annually.
  - ii. Each Ground Water and Irrigation District with members pumping from the ESPA shall be responsible for reducing their proportionate share of the total annual ground water reduction or in conducting an equivalent private recharge activity. Private recharge activities cannot rely on the Water District 01 common Rental Pool or credits acquired from third parties, unless otherwise agreed to by the parties.
- b. *Annual storage water delivery.*
  - i. IGWA will provide 50,000 ac-ft of storage water through private lease(s) of water from the Upper Snake Reservoir system, delivered to SWC 21 days after the date of allocation, for use to the extent needed to meet irrigation

requirements. Any excess storage water will be used for targeted conversions and recharge as determined by SWC and IGWA.

- ii. IGWA shall use its best efforts to continue existing conversions in Water Districts 130 and 140.

c. *Irrigation season reduction.*

Ground water users will not irrigate sooner than April 1 or later than October 31.

d. *Mandatory Measurement Requirement.*

Installation of approved closed conduit flow meter on all remaining unmeasured and power consumption coefficient (PCC) measured ground water diversions will be completed by the beginning of the 2018 irrigation season. Measurement device installation will be phased in over three years, by ground water district, in a sequence determined by the parties. If an adequate measurement device is not installed by the beginning of the 2016 irrigation season, a cropping pattern methodology will be utilized until such measuring device is installed.

e. *Ground Water Level Goal and Benchmarks.*

- i. Stabilize and ultimately reverse the trend of declining ground water levels and return ground water levels to a level equal to the average of the aquifer levels from 1991-2001. Utilize groundwater levels in mutually agreed upon wells with mutually agreed to calculation techniques to measure ground water levels. A preliminary list of 19 wells has been agreed to by the parties, recognizing that the list may be modified based on additional technical information.
- ii. The following benchmarks shall be established:
  - o Stabilization of ground water levels at identified wells by April 2020, to 2015 ground water levels;
  - o Increase in ground water levels by April 2023 to a point half way between 2015 ground water levels and the ground water level goal; and
  - o Increase of ground water levels at identified wells by April 2026 to the ground water level goal.
- iii. Develop a reliable method to measure reach gain trends in the Blackfoot to Milner reach within 10 years.
- iv. When the ground water level goal is achieved for a five year rolling average, ground water diversion reductions may be reduced or removed, so long as the ground water level goal is sustained.
- v. If any of the benchmarks, or the ground water level goal, is not achieved, adaptive measures will be identified and implemented per section 4 below.

f. *Recharge.*

Parties will support State sponsored managed recharge program of 250 KAF annual-average across the ESPA, consistent with the ESPA CAMP and the direction in HB



547. IGWA's contributions to the State sponsored recharge program will be targeted for infrastructure and operations above American Falls.

g. *NRCS Programs.*

Parties will support NRCS funded permanent water conservation programs.

h. *Conversions.*

IGWA will undertake additional targeted ground water to surface water conversions and/or fallow land projects above American Falls (target near Blackfoot area as preferred sites).

i. *Trust Water Rights.*

The parties will participate and support the State in initiating and conducting discussions regarding long-term disposition of trust water rights and whether trust water rights should be renewed or cancelled, or if certain uses of trust water rights should be renewed or cancelled.

j. *Transfer Processes.*

Parties agree to meet with the State and water users to discuss changes in transfer processes within or into the ESPA.

k. *Moratorium Designations.*

State will review and continue the present moratoriums on new applications within the ESPA, including the non-trust water area.

l. *IDWR Processes.*

Develop guidelines for water right applications, transfers and water supply bank transactions for consideration by the IDWR.

m. *Steering Committee.*

- i. The parties will establish a steering committee comprised of a representative of each signatory party and the State.
- ii. Steering committee will be formed on or before September 10, 2015 and will meet at least once annually.
- iii. The Steering Committee will develop an adaptive management plan for responding to changes in aquifer levels and reach gain trends, review progress on implementation and achieving benchmarks and the ground water goal.
- iv. A technical work group ("TWG") will be created to support the Steering Committee. The TWG will provide technical analysis to the Steering Committee, such as developing a better way to predict and measure reach gains and ground water levels, to assist with the on-going implementation and adaptive management of the Settlement Agreement.

**4. Adaptive Water Management Measures.**

- a. If any of the benchmarks or the ground water level goal is not met, additional recharge, consumptive use reductions, or other measures as recommended by the

Steering Committee shall be implemented by the participating ground water parties to meet the benchmarks or ground water level goal.

- b. The SWC, IGWA and State recognize that even with full storage supplies, present (2015) reach gain levels in the Near Blackfoot to Milner reach (natural flows) are not sufficient to provide adequate and sustainable water supplies to the SWC.

**5. Safe Harbor.**

No ground water user participating in this Settlement Agreement will be subject to a delivery call by the SWC members as long as the provisions of the Settlement Agreement are being implemented.

**6. Non-participants.**

Any ground water user not participating in this Settlement Agreement or otherwise have another approved mitigation plan will be subject to administration.

**7. Term.**

This is a perpetual agreement.

**8. Binding Effect.**

This Agreement shall bind and inure to the benefit of the respective successors of the parties.

**9. Entire Agreement.**

This Agreement sets forth all understandings between the parties with respect to SWC delivery call. There are no other understandings, covenants, promises, agreements, conditions, either oral or written between the parties other than those contained herein. The parties expressly reserve all rights not settled by this Agreement.

**10. Effect of Headings.**

Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

**11. Effective Date.**

This Agreement shall be binding and effective when the following events have occurred:

- a. This Agreement is approved and executed by the participating parties consistent with paragraph 2.e. above; and
- b. IGWA has assigned all of the storage water required by paragraph 2.a.i. , ii., and iii. to the SWC by July 8, 2015.

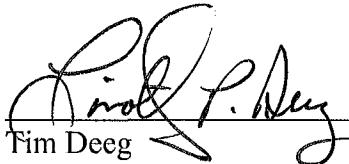
The parties have executed this Agreement on the date following their respective signatures.

RACINE OLSON NYE BUDGE AND BAILEY, CHARTERED

Randall C Budge 7/1/15  
Randall C. Budge Date


Attorney for Idaho Ground Water Appropriators, Inc.

IDAHO GROUND WATER APPROPRIATORS, INC.

 7/1/2015  
Tim Deeg / Date

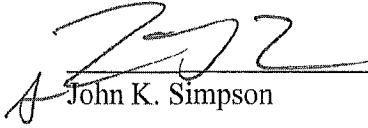
President

FLETCHER LAW OFFICE

 7-2-15  
W. Kent Fletcher Date

On Behalf of the Surface Water Coalition

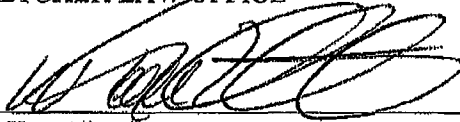
BARKER ROSHOLT AND SIMPSON LLP

 7/7/15  
John K. Simpson Date


On Behalf of the Surface Water Coalition

**The following signature pages are  
for the August 1 Deadline**

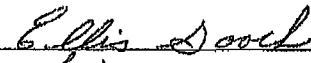
FLETCHER LAW OFFICE

  
W. Kent Fletcher Date 7-7-15

MINIDOKA IRRIGATION DISTRICT

BY:   
Title: Chairman Date 7-7-15

AMERICAN FALLS RESERVOIR DISTRICT NO. 2

BY:   
Title: Chairman Date 7-1-15



BURLEY IRRIGATION DISTRICT

BY: Dean Edgan  
Title: President Date: July 14, 2015

Attested by:  
Lana K. Pincock  
Lana K. Pincock  
Secretary / Treasurer

MILNER IRRIGATION DISTRICT

BY: Scott Breeding  
Title: Board Chairman Date: 7/23/2015


NORTH SIDE CANAL COMPANY

BY: John Beubers  
Title: Chairman Date: 7/20/15

TWIN FALLS CANAL COMPANY

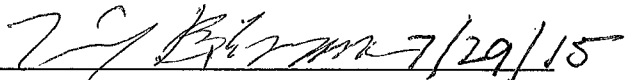
BY: *Jan A. Kurnaker*  
Title: *Chair. BOB* Date: *July 22, 2015*

ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT

 7-16-15  
\_\_\_\_\_  
Nick Behrend Date

Chairman

BINGHAM GROUND WATER DISTRICT

  
\_\_\_\_\_  
Craig Evans Date

Chairman

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT


 7/29/15

\_\_\_\_\_  
Dane Watkins

\_\_\_\_\_  
Date

Chairman

CAREY VALLEY GROUND WATER DISTRICT

  
Leta Hansen \_\_\_\_\_ 7/27/15  
Date

Chairman



JEFFERSON CLARK GROUND WATER DISTRICT


---

Kirk Jacobs

Date

Chairman

MADISON GROUND WATER DISTRICT


 7-23-15

Jason Webster

Date

Chairman

MAGIC VALLEY GROUND WATER DISTRICT

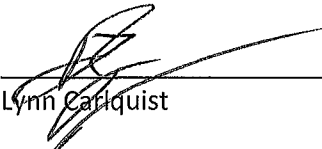
 7/14/2015

Dean Stevenson


Date

Chairman

NORTH SNAKE GROUND WATER DISTRICT

  
\_\_\_\_\_  
Lynn Carlquist                      7/22/2015  
Chairman    Date

FREMONT MADISON IRRIGATION DISTRICT

  
\_\_\_\_\_  
Dale L. Swenson Date  
Jeff Raybould  
Manager Chairman

SOUTHWEST IRRIGATION DISTRICT

---

RANDY BROWN

Date

Chairman

**EXHIBIT C**

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

## ADDENDUM TO SETTLEMENT AGREEMENT

This Addendum To Settlement Agreement (“*Addendum Agreement*”) is entered into between the parties to 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*”).

### RECITALS

WHEREAS, all members of the Surface Water Coalition, excepting A&B Irrigation District, and all eight Ground Water Districts and Fremont-Irrigation District, executed the *Settlement Agreement* (Ex. A) by August 1, 2015; and

WHEREAS, all parties wish to clarify certain issues related to the settlement discussions;

WHEREAS, the parties wish to address and resolve this issue in this *Addendum Agreement*.

### COVENANTS

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

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

**2. Area of Common Groundwater Supply.** All parties in the *Settlement Agreement* reserve the right to participate in any administrative or other proceeding to establish a new area of common groundwater supply if the existing Conjunctive Management Rule 50 boundary is rescinded.

**3. Legislation.** As contemplated in the *Settlement Agreement*, all parties have a right to fully participate in the drafting and passage of any legislation proposed to implement the *Settlement Agreement*.

**4. Binding Effect.** This Agreement shall bind and inure to the benefit of the respective successors of the parties.

**5. Entire Agreement.** This Agreement 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 \_\_\_\_\_. The parties expressly reserve all rights not settled by this Agreement.



convenience and reference and shall not be construed as interpretations of the text.

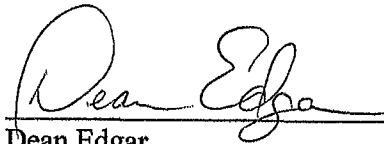
The parties have executed this Agreement on the date following their respective signatures.

**SURFACE WATER COALITION:**

American Falls Reservoir District No. 2

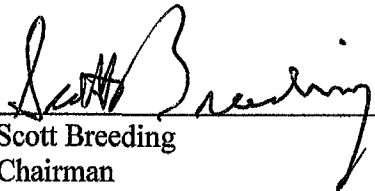
Ellis Gooch      10-1-15  
Ellis Gooch      Date  
President

Burley Irrigation District

  
Dean Edgar  
Chairman

10/13/2015  
Date

Milner Irrigation District

 10/14/15  
\_\_\_\_\_  
Scott Breeding                      Date  
Chairman

Minidoka Irrigation District

Frank Hunt      Oct 13-2015  
Frank Hunt      Date  
Chairman

North Side Canal Company

A handwritten signature in cursive script that reads "John Beukers". The signature is written over a horizontal line.

John Beukers  
Chairman

Date

Twin Falls Canal Company


 10-13-15

Dan Shewmaker  
Chairman

Date

**IDAHO GROUNDWATER APPROPRIATOR'S, INC.:**


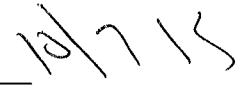
ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT

 10-7-15  
Nick Behrend Date  
Chairman





BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

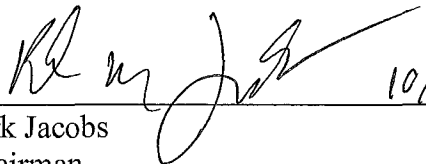
Dane Watkins  
Chairman

Date

CAREY VALLEY GROUND WATER DISTRICT

   
\_\_\_\_\_  
Leta Hansen Date  
Chairman

JEFFERSON CLARK GROUND WATER DISTRICT

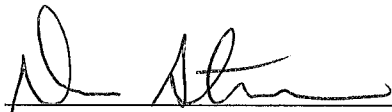
  
Kirk Jacobs  
Chairman

10/13/15  
Date

MADISON GROUND WATER DISTRICT

Jason Webster      10-19-15  
Jason Webster      Date  
Chairman

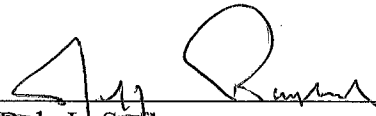
MAGIC VALLEY GROUND WATER DISTRICT

 10/7/2015  
Dean Stevenson Date  
Chairman

NORTH SNAKE GROUND WATER DISTRICT

 \_\_\_\_\_ 10/7/2015  
Lynn Carlquist Date  
Chairman

FREMONT MADISON IRRIGATION DISTRICT

  
\_\_\_\_\_  
Date ~~Er Swenson~~ Date  
Manager Jeff Raybould  
Chairman

**EXHIBIT D**

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



## AGREEMENT

This Agreement is made this 7<sup>th</sup> day of October, 2015, by and between A&B Irrigation District (“A&B”) and the Idaho Ground Water Appropriators, Inc., 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 Ground Water District, and Fremont-Madison Irrigation District (referred to collectively herein as the “Ground Water Districts”).

## RECITALS

WHEREAS, all members of the Surface Water Coalition, except A&B Irrigation District, and all eight Ground Water Districts and Fremont-Irrigation District, executed the *Settlement Agreement* (Ex. A) by August 1, 2015; and

WHEREAS, disputes have arisen concerning the scope of A&B’s participation in the *Settlement Agreement*; and

WHEREAS, the parties wish to address and resolve these issues in this Agreement.

## COVENANTS

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

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

**2. A&B Irrigation District Surface Water Delivery Call.** A&B agrees to participate in the *Settlement Agreement* as a surface water right holder only. The obligations of the Ground Water Districts set forth in Paragraphs 2 – 4 of the *Settlement Agreement* do not apply to A&B and its ground water rights. A&B agrees to not make a surface water delivery call against junior-priority ground water rights held by participating members of the Ground Water Districts as set forth in Paragraph 6 of the *Settlement Agreement*.

**3. A&B Irrigation District Ground Water Delivery Call.** A&B further agrees to not make a ground water delivery call against junior-priority ground water rights held by participating members of the Ground Water Districts.

**4. A&B Irrigation District “Soft Conversions.”** A&B agrees to implement approximately 3,000 acres of “soft conversions” within its project. A&B has already developed approximately 1,500 acres and is currently in the process of developing an additional 1,500 acres to receive water through a new pumping plant and pipeline project to be completed in the future.

5. **Ground Water Districts' Implementation of Settlement Agreement.** The safe harbor identified above is conditioned upon the Ground Water Districts implementing the *Settlement Agreement* in accordance with its terms.

6. **Ground Water Districts' Delivery Calls.** The safe harbor provided by A&B above shall be null and void against any Ground Water District and/or against any participating member of a Ground Water District that files a surface or ground water delivery call against A&B's ground water rights.

7. **Ground Water Recharge Projects.** A&B and the Ground Water Districts agree to cooperate and work together to identify and implement recharge projects within or near A&B's irrigation project that benefit aquifer levels, and the sentinel wells identified in the *Settlement Agreement*.

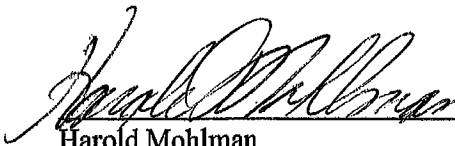
8. **Binding Effect.** This Agreement shall bind and inure to the benefit of the respective successors of the parties.

9. **Entire Agreement.** This Agreement sets 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. The parties expressly reserve all rights not settled by this Agreement.

10. **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.

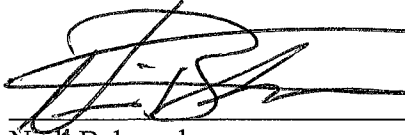
A&B IRRIGATION DISTRICT

  
Harold Mohlman  
Chairman

10-12-15  
Date

**IDAHO GROUNDWATER APPROPRIATOR'S, INC.:**

ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT



10-7-15

Nick Behrend  
Chairman

Date

BINGHAM GROUND WATER DISTRICT

  
\_\_\_\_\_ Date Oct 8, 2015  
Craig Evans  
Chairman

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

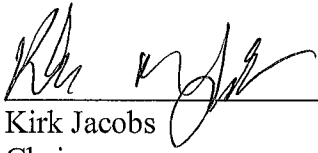
Dane Watkins  
Chairman

Date

CAREY VALLEY GROUND WATER DISTRICT

Leta Hansen      10/7/15  
Leta Hansen      Date  
Chairman

JEFFERSON CLARK GROUND WATER DISTRICT


 10/13/15  
Kirk Jacobs Date  
Chairman

MADISON GROUND WATER DISTRICT

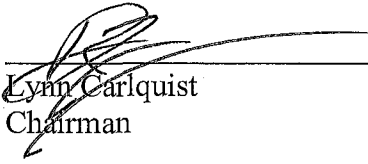
Jason Webster      10-19-15  
Jason Webster      Date  
Chairman



MAGIC VALLEY GROUND WATER DISTRICT

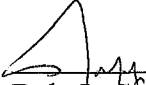

 10/7/2015  
\_\_\_\_\_  
Dean Stevenson Date  
Chairman

NORTH SNAKE GROUND WATER DISTRICT

  
\_\_\_\_\_  
Lynn Carlquist  
Chairman

10/7/2015  
Date

FREEMONT MADISON IRRIGATION DISTRICT

   
\_\_\_\_\_  
Dale L. Swenson      Jeff Raybould      Date  
Manager              Chairman

## **EXHIBIT 2**

**Surface Water Coalition's and IGWA's Stipulation Amended  
Mitigation Plan and Request for Order (Feb. 7, 2017)**

RECEIVED

FEB 07 2017

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 7<sup>th</sup> day of February, 2017.

**BARKER ROSHOLT & SIMPSON LLP**

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

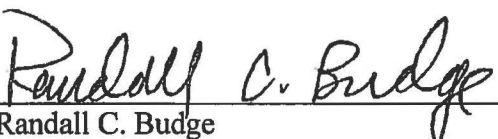
*Attorneys for A&B Irrigation District,  
Burley Irrigation District, Milner Irrigation  
District, North Side Canal Company, and  
Twin Falls Canal Company*

**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 7<sup>th</sup> 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 <a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@idwr.idaho.gov</a> <a href="mailto:deborah.gibson@idwr.idaho.gov">deborah.gibson@idwr.idaho.gov</a></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><a href="mailto:mhoward@pn.usbr.gov">mhoward@pn.usbr.gov</a> <a href="mailto:emcgarry@pn.usbr.gov">emcgarry@pn.usbr.gov</a></p>	<p>IDWR – Eastern Region 900 N. Skyline Dr., Suite A Idaho Falls, ID 83402-1718</p> <p>*** service by electronic mail only <a href="mailto:lyle.swank@idwr.idaho.gov">lyle.swank@idwr.idaho.gov</a></p>
<p>Randy Budge T.J. Budge Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only</p> <p><a href="mailto:rbc@racinelaw.net">rbc@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a></p>	<p>Sarah A. Klahn Mitra Pemberton White &amp; Jankowski, LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 *** service by electronic mail only facsimile – 303-825-5632 <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a> <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</a></p>	<p>David Gehlert ENRD – DOJ 999 18<sup>th</sup> St. South Terrace, Suite 370 Denver, CO 80202 *** service by electronic mail only</p> <p><a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></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 <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a></p>	<p>William A. Parsons Parsons, Smith &amp; Stone LLP P.O. Box 910 Burley, ID 83318 *** service by electronic mail only</p> <p><a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>	<p>IDWR – Southern Region 1341 Fillmore St., Suite 200 Twin Falls, ID 83301-3380</p> <p>*** service by electronic mail only <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a> <a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a></p>



<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  <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a>  <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a></p>	<p>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  <a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>	
--	--	--

  
 \_\_\_\_\_  
 Travis L. Thompson

# Exhibit A

## SECOND ADDENDUM TO SETTLEMENT AGREEMENT

This Second Addendum dated December 14<sup>th</sup>, 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                      1/5/17  
Date

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                      1-3-17  
Date

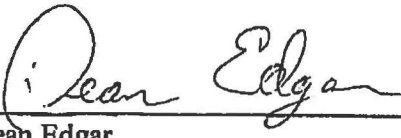
Attorney for American Falls Reservoir District #2 and  
Minidoka Irrigation District

AMERICAN FALLS RESERVOIR DISTRICT NO. 2

Ellis Gooch      1-3-17  
Ellis Gooch      Date  
President

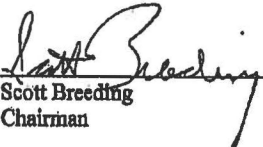


BURLEY IRRIGATION DISTRICT

 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  
Chairman


Date

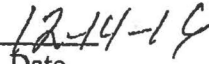


ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT

  
\_\_\_\_\_  
Nick Behrend Date 12-14-16  
Chairman


BINGHAM GROUND WATER DISTRICT

  
Craig Evans  
Chairman

  
Date



BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

 12/14/16

\_\_\_\_\_  
Dane Watkins  
Chairman

\_\_\_\_\_  
Date

CAREY VALLEY GROUND WATER DISTRICT

Leta Hansen 12/26/16  
Leta Hansen Chairman Date

JEFFERSON CLARK GROUND WATER DISTRICT

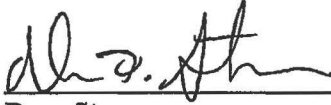
  
Kirk Jacobs  
Chairman

12/14/14  
Date

MADISON GROUND WATER DISTRICT

Jason Webster      1-9-17  
Jason Webster      Date  
Chairman

MAGIC VALLEY GROUND WATER DISTRICT



12/14/16

Dean Stevenson  
Chairman

Date

NORTH SNAKE GROUND WATER DISTRICT

  
Lynn Carlquist  
Chairman

12/14/16  
Date

FREMONT MADISON IRRIGATION DISTRICT

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

# **EXHIBIT 3**

**Order Approving Mitigation Plan (June 3, 2010)**



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

IN THE MATTER OF THE IDAHO GROUND )	CM-MP-2009-007
WATER APPROPRIATORS, INC.'S )	
MITIGATION PLAN IN RESPONSE TO THE )	<b>ORDER APPROVING</b>
SURFACE WATER COALITION'S WATER )	<b>MITIGATION PLAN</b>
DELIVERY CALL )	
_____ )	

**PROCEDURAL HISTORY**

This matter came before the Director of the Department of Water Resources (“Director” or “Department”) on January 14, 2005 with the filing of a letter (“Letter”) and petition (“Petition”) by members of the Surface Water Coalition (“SWC”).<sup>1</sup> The Letter and Petition sought administration and curtailment of junior ground water rights. The Director of the Department considered the Letter and Petition as a delivery call under the Department’s Conjunctive Management Rules (“CM Rules”), IDAPA 37.03.11 *et seq.*

On February 14, 2005, the former Director entered the first of a series of orders (“February 2005 Order”) in this matter, which provided an initial response to the Letter and Petition. The February 2005 Order was followed by an order issued on May 2, 2005 (“May 2005 Order”), which superseded an order issued on April 19, 2005. Based on forecasting from the United States Bureau of Reclamation (“USBR”) and the United States Army Corp of Engineers for the unregulated inflow into the Upper Snake River Basin at the Heise Gage, the May 2005 Order predicted that some members of the SWC would be materially injured by junior ground water pumping and ordered curtailment of junior users in lieu of acceptable replacement water being provided to mitigate for the depletions causing the injury. During the 2005, 2006, and 2007 irrigation seasons, the Director issued seven supplemental orders regarding material injury predictions to the SWC. Under these orders, the Idaho Ground Water Appropriators, Inc.

---

<sup>1</sup> The Surface Water Coalition is made up of the 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.

(“IGWA”)<sup>2</sup> was authorized by the Director to mitigate for material injury to the SWC with replacement water plans.

On September 5, 2008, following a recommended order (“Recommended Order”) from hearing officer Gerald F. Schroeder, the Director issued a final order in this matter (“2008 Final Order”), in which he ruled on all issues raised at hearing, with the exception of stating his methodology for determining material injury to the SWC’s reasonable in-season demand and reasonable carryover

On July 24, 2009, the Honorable John M. Melanson issued his *Order on Judicial Review*, which found that the Director’s decision to bifurcate his orders was unlawful under the IDAPA. Judge Melanson also determined that the replacement water plans previously approved by the Director did not satisfy the requirements of Rule 43 of the Conjunctive Management Rules, and that, in order for a junior ground water user to derive the benefits of providing replacement or mitigation for depletions causing injury to senior water right users, the junior water right holder must propose a mitigation plan, and the Department must approve the plan under CM Rule 43.

On November 9, 2010, IGWA filed its *Mitigation Plan for the Surface Water Coalition Delivery Call* (“the mitigation plan”). The Department published notice of the mitigation plan. The mitigation plan was protested by the SWC and by the USBR.

On April 7, 2010, upon an order of remand from Judge Melanson, the Director issued his *Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”). The Methodology Order sets out the process by which the Director will determine material injury, if any, to members of the SWC.

On May 25-26, 2010, the interim director of the Department conducted a hearing for protests against the mitigation plan. At the hearing, the USBR withdrew its protest on the record.

## DESCRIPTION OF THE MITIGATION PLAN

The mitigation plan generally proposes supplying water stored in Snake River reservoirs to the SWC “that will be available on an annual basis for delivery to SWC entities as may be required by the Director’s orders.” The storage water supply for use under the mitigation plan will be “secured by agreements entered into between IGWA and storage space holders in the Upper Snake Reservoir System.” IGWA represented it controls 68,000 acre-feet of storage water. The mitigation plan recognizes that the “exact amount of water required to be delivered to SWC entities under this Mitigation Plan cannot be known in advance but can be expected to vary annually based upon the forecasted water supply and reasonable irrigation requirements which are used to determine the amount of water needed for the irrigation season and reasonable carryover storage.” Finally the mitigation plan seeks express limitations or prohibitions on

---

<sup>2</sup> IGWA is comprised of ground water districts, irrigation districts, municipal providers, and commercial and industrial water users. A list of members is attached as the last page of IGWA’s Mitigation Plan.

requiring mitigation if the SWC fails to comply with very strict conditions that will be discussed later in this order.

### **REQUIREMENTS OF A MITIGATION PLAN**

CM Rule 43.a requires the following components be included in a plan:

#### 043. MITIGATION PLANS (RULE 43).

01. Submission of Mitigation Plans A proposed mitigation plan shall be submitted to the Director in writing and shall contain the following information:

- a. The name and mailing address of the person or persons submitting the plan.
- b. Identification of the water rights for which benefit the mitigation plan is proposed.
- c. A description of the plan setting forth the water supplies proposed to be used for mitigation and any circumstances or limitations on the availability of such supplies.
- d. Such information as shall allow the Director to evaluate the factors set forth in Rule Subsection 043.03.

The mitigation plan contained IGWA's name and mailing address.

The mitigation plan did not specifically identify "the water rights for which benefit the mitigation is proposed." Nonetheless, the mitigation plan is filed to address a specific petition for delivery call that identifies the senior water rights (natural flow and storage) that may be injured by depletions to Snake River flows caused by ground water pumping. The rights have been expressly identified in the previous litigation in the larger contested case and need not be expressly repeated in the mitigation plan. *See May 2005 Order* at 11-16.

Finally, information about the Snake River reservoirs was also presented in the larger contested case. The volume capacity of the reservoirs and the frequency of fill need not be repeated in the mitigation plan. *See Recommended Order* at 13-17; 34-36.

The Director has sufficient information to evaluate the factors set form in CM Rule 43.03.

### **FACTORS CONSIDERED**

CM Rule 43 states as follows:

03. Factors to Be Considered. Factors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights include, but are not limited to, the following: (10-7-94)

a. Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law. (10-7-94)

b. Whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods. (10-7-94)

c. Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable. (10-7-94)

d. Whether the mitigation plan proposes artificial recharge of an area of common ground water supply as a means of protecting ground water pumping levels, compensating senior-priority water rights, or providing aquifer storage for exchange or other purposes related to the mitigation plan. (10-7-94)

e. Where a mitigation plan is based upon computer simulations and calculations, whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal. (10-7-94)

f. Whether the mitigation plan uses generally accepted and appropriate values for aquifer characteristics such as transmissivity, specific yield, and other relevant factors. (10-7-94)

g. Whether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use. (10-7-94)

- h. The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan. (10-7-94)
- i. Whether the mitigation plan proposes enlargement of the rate of diversion, seasonal quantity or time of diversion under any water right being proposed for use in the mitigation plan. (10-7-94)
- j. Whether the mitigation plan is consistent with the conservation of water resources, the public interest or injures other water rights, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge. (10-7-94)
- k. Whether the mitigation plan provides for monitoring and adjustment as necessary to protect senior-priority water rights from material injury. (10-7-94)
- l. Whether the plan provides for mitigation of the effects of pumping of existing wells and the effects of pumping of any new wells which may be proposed to take water from the areas of common ground water supply. (10-7-94)
- m. Whether the mitigation plan provides for future participation on an equitable basis by ground water pumpers who divert water under junior-priority rights but who do not initially participate in such mitigation plan. (10-7-94)
- n. A mitigation plan may propose division of the area of common ground water supply into zones or segments for the purpose of consideration of local impacts, timing of depletions, and replacement supplies. (10-7-94)
- o. Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions. (10-7-94)

Rule 43 does not require the Director to apply each of the factors to the mitigation plan. Nonetheless, the rule requires that the Director review the mitigation plan against a sufficient number of factors to assure adequate breadth of review.

### **ANALYSIS OF THE MITIGATION PLAN**

The closing arguments of parties define their respective and mutually extreme positions.

IGWA stated that the mitigation plan proposes providing storage water at the times and quantities required by the Director. In the details of its presented testimony, however, IGWA suggested that the mitigation water should be supplied after the irrigation season is over through an adjustment of the Water District 01 accounting of deliveries of storage water and natural flow. At a minimum, IGWA argued it should not be required to show it has contractually secured its obligation for delivery of storage water until the day when the storage in the Snake River

reservoirs is allocated to the various space holders. This “day of allocation” often falls in late June or early July, well into the irrigation season.

IGWA’s argument adopts the theory that if water is diverted, a supply will be provided. Underlying the argument is a presumption that there is always sufficient storage to make the SWC users whole. Yet, IGWA argues that these always available supplies of water cannot be acquired prior to the irrigation season.

IGWA’s position places an unreasonable burden upon the SWC senior water right holders that the water supply will be available at the time of need. The SWC must have an assurance at the beginning of the irrigation season that water can be provided when the water is needed. The proposals by IGWA do not provide these assurances.

In contrast, the SWC argued that storage water rented from willing lessors through the Idaho Water Resources Board’s Upper Snake River Rental Pool should not be a source of mitigation water for IGWA because IGWA is proposing to use the same source of water for mitigation that ground water pumping is depleting, causing a double negative impact to surface water supplies.

The SWC argument fails because the Snake River reservoirs fill in many years despite ground water pumping. When there is sufficient water in the reservoirs to provide the demand shortfall to SWC members caused by ground water pumping, the ground water users should not be prohibited from supplying the mitigation water to the SWC from rented storage water.

IGWA can rent storage water or acquire options to rent water prior to the irrigation season. These contracts may be more expensive prior to the lessor or potential lessor knowing the water supply that will be available. Nonetheless, as junior water users, IGWA cannot shift this risk of uncertainty upon the SWC.

IGWA should provide sufficient evidence of preseason commitment of water rights to provide any demand shortfalls projected by the Director in steps three and four of the Methodology Order.

### **IGWA’S PROPOSED CONDITIONS**

IGWA proposed ten limitations on its obligation to mitigate for material injury to the SWC. Some of these limitations would apply only to the Twin Falls Canal Company water obligation, used by IGWA as an example for application of the mitigation plan. Each of these proposed limitations will be addressed immediately following quotation of the proposed limitation.

- (1) If Twin Falls Canal Company does not divert 1,009,100 acre-feet no mitigation requirement shall exist if Twin Falls Canal Company has carry-over storage remaining when the final Water District 01 Water Right Accounting is complete for the mitigation year.

This proposed limitation ignores the requirement that the Director consider reasonable storage water carryover in determining the obligation of IGWA. The proposed limitation assumes an after season accounting before mitigation is required. Finally the condition attempts to establish demand water volume not consistent with the Methodology Order. The entire proposed limitation should be rejected.

(2) All water spilled at the end of the Twin Falls Canal Company canal system shall be measured and accounted for by the Watermaster. Unreasonable waste shall be accounted for and deducted from any obligation of the Ground Water Districts.

Measurement of spill at the end of the SWC delivery systems is not the job of the Water District 01 watermaster. Furthermore, the interim director recognizes that water deliveries through long and complex conveyance systems cannot always immediately respond to changes in weather and water user behaviors. The interim director rejects this limitation, but agrees that IGWA should not be responsible for waste by the SWC. In the future, it may be possible to measure spill at the end of the SWC's conveyance systems. The Director reserves the right to re-examine measurement of spill.

(3) Any water leased to others by Twin Falls Canal Company shall be considered a delivery to Twin Falls Canal Company for the purpose of calculating any obligation of the ground water users.

This proposed method of calculating obligation at the time of need is appropriate.

(4) Only water diverted and used by Twin Falls Canal Company for beneficial purposes of providing irrigation water to its shareholders for irrigation of lands within the service area during the mitigation year shall be included in calculating the obligation of the Ground Water Districts.

This proposed method of calculating obligation at the time of need is appropriate.

(5) Existing accounting procedures employed by Water District 01 should not be modified and the accounting will be the final year-end accounting by the Water District 01 Watermaster.

Accounting procedures may change as to employ better methods of accounting or interpretations of the law. This proposed limitation also requests year-end determination of mitigation obligation. The interim director entirely rejects the proposed limitation.

(6) Any water released past Milner Dam during the mitigation year for hydropower generation or related to Endangered Species Act requirements shall be accounted for by the Water District 01 Watermaster and shall not increase the mitigation obligation of the Ground Water Users.

This proposed limitation too broadly proposes that **any** “water released past Milner Dam during the mitigation year for hydropower generation or related to Endangered Species Act requirements . . . shall not increase the mitigation obligation . . .” If a specific SWC entity leases water for hydropower or flow augmentation, either through a direct lease or as a participant in the rental pool, the water provided for this purpose by the SWC entity must be added into the total supply available to the SWC member to determine the adequacy of supply to the SWC member. Leases of water by other water right holders for hydropower or flow augmentation should not reduce the quantity of water needed for reasonable in season demand for the SWC members not participating in the specific lease.

(7) The Department of Water Resources shall examine the diversion and climate-based water requirements of the mitigation year and adjust mitigation obligations downward if sufficient precipitation or other circumstances indicate that a full water supply was available to Twin Falls with a diversion less than 1,009,100 acre-feet.

This proposed limitation again implies an end-of-year determination of obligation. The interim director rejects the proposed limitation except as it is inconsistent with the mid-irrigation season adjustments set forth in the Methodology Order.

(8) If on any day the Twin Falls Canal Company diverts less than the natural flow that is available to its water rights in priority, such foregone amount of natural flow diversion will be deducted from any obligation of the Ground Water Users.

This proposed condition ignores core principles of delivery of water in the arid West. A SWC member might have to divert its full authorized flow rate on the hottest day of the year and may not have to divert its full natural flow rate water on a cooler, rainy day. The SWC should not be penalized for simply using water as needed. The interim director rejects this proposed limitation in its entirety.

(9) In no event will any actual shortfall be made up by the Ground Water Users as determined by the Watermaster which exceeds the actual current shortfall to Twin Falls Canal Company as determined by the Director of the Department.

This proposed limitation is confusing and ambiguous and the interim director rejects the limitation in its entirety.

(10) The calculated amount of the Minidoka Dam Return Flow Credit shall be deducted from any obligation of the Ground Water Users.

Twin Falls Canal Company and North Side Canal Company are required to provide the Minidoka Dam Return Flow Credit to upstream SWC members. The return flow credit is part of the historical water supply, and is implicitly included in the Director’s determination of obligation in the Methodology Order. The interim director rejects this limitation in its entirety.



## **FINDINGS OF FACT**

The mitigation plan contains sufficient information, as augmented by the information presented in the contested case for the delivery call and the hearing on the mitigation plan, to allow the interim director to evaluate the mitigation plan to determine its adequacy.

During many irrigation seasons, IGWA can rent or acquire options to rent storage water in the Snake River Reservoirs to supply mitigation or replacement water to the SWC.

IGWA can rent or acquire options to rent storage water prior to or at the beginning of the irrigation season.

Rental or acquisition of an option to rent storage water prior to or at the beginning of the irrigation season will assure the SWC of an adequate quantity of water for the upcoming irrigation season.

The rental of storage water by IGWA will not diminish the supply of water available to the SWC.

Storage water must also be provided for reasonable storage carryover at the end of the irrigation season.

## **CONCLUSIONS OF LAW**

IGWA's proposed rental of storage water and delivery of the storage water and use of water pursuant to the mitigation plan is in compliance with Idaho law.

The mitigation plan will provide replacement water at the time and place required by the senior-priority water right. During many years, there will be sufficient storage water to offset the depletive effect of ground water withdrawal on the water available in the Snake River at such time and place as necessary to satisfy the rights of diversion from the Snake River.

The mitigation plan provides replacement water supplies to the senior-priority water right when needed during a time of shortage even though the effect of pumping is spread over many years.

Approval of the mitigation plan requires pre-irrigation season commitment of rented storage water to the SWC. This commitment must be proven by executed contract documents and obligation to the Upper Snake River Rental Pool of the storage for mitigation.

A contingency of the mitigation plan approval is that, if insufficient water is committed to assure protection of the senior-priority water rights, junior-priority ground water rights will be curtailed.

Storage in the Snake River reservoirs is a reliable source of replacement water.

The mitigation plan does not propose enlargement of the rate of diversion, seasonal quantity, or time of diversion under any water right being proposed for use in the mitigation plan.

The mitigation plan will maximize the beneficial use of water in the State of Idaho and promote conservation of water resources.

Use of storage water for mitigation is in the public interest and will not injure other water rights.

The mitigation plan, with flexibility for determining annual and seasonal requirements as set for in the Methodology Order, provides for monitoring and adjustment as necessary to protect senior-priority water rights from material injury.

## **ORDER**

IT IS HEREBY ORDERED that *IGWA'S Mitigation Plan for the Surface Water Coalition Delivery Call* is **Approved**, subject to the following conditions:

IGWA's obligation to provide storage water shall be determined as set forth in the Methodology Order. The obligation includes mitigation for material injury to the SWC's reasonable in-season demand and reasonable carryover.

IGWA must provide proof of rental or an option to rent storage water and of a commitment of the storage water to the SWC within the deadlines provided by the Methodology Order and any order of the Director implementing the Methodology Order for a given year. Proof of rental or an option to rent storage water shall consist of fully executed and irrevocable contracts with holders of Snake River storage (fully disclosed in the contracts). Storage shall be committed to the SWC by IGWA submitting the storage rental or storage option contracts to the Upper Snake River Rental Pool and the Director with a written instruction to the Watermaster of Water District 01 that the underlying storage water is committed solely for mitigation to the SWC and that the contracts or options may only be released back to IGWA or the storage water lessors by directive to the Watermaster by the Director of the Department.

Waste by a SWC member will be subtracted from the storage water mitigation requirement for the SWC member.

Water rented to another water user by a SWC member will be subtracted from the storage water mitigation requirement for the SWC member. In addition, water placed in the rental pool by a SWC member and used for any purpose, including hydropower and flow augmentation below Milner Dam, shall be subtracted from IGWA's obligation to the SWC member.

IT IS FURTHER ORDERED that IGWA's obligation for mitigation shall be determined as set forth in the Methodology Order. When the obligations for reasonable in-season demand and reasonable carryover are established, the determination of obligation shall be subject to a

hearing but the obligation will not be stayed during the pendency of hearing preparation and response by the Director to the request for hearing.

IT IS FURTHER ORDERED that, if IGWA does not provide proof of acquisition of storage water and commitment of storage water as set forth above, ground water rights pumping from the Eastern Snake Plain Aquifer will be curtailed according to the Methodology Order to provide water to the SWC.

DATED this 3<sup>rd</sup> day of June, 2010.

  
\_\_\_\_\_  
GARY SPACKMAN  
Interim Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of June, 2010, the above and foregoing, was served by the method indicated below, and addressed to the following:

RANDY BUDGE (x) U.S. Mail, Postage Prepaid  
CANDICE MCHUGH ( ) Facsimile  
THOMAS BUDGE (x) E-mail

RACINE OLSON  
PO BOX 1391  
POCATELLO ID 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[cmm@racinelaw.net](mailto:cmm@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)

JOHN SIMPSON (x) U.S. Mail, Postage Prepaid  
BARKER ROSHOLT ( ) Facsimile  
PO BOX 2139 (x) E-mail  
BOISE ID 83701-2139  
[jks@idahowaters.com](mailto:jks@idahowaters.com)

TRAVIS THOMPSON (x) U.S. Mail, Postage Prepaid  
PAUL ARRINGTON ( ) Facsimile  
BARKER ROSHOLT (x) E-mail  
113 MAIN AVE WEST STE 303  
TWIN FALLS ID 83301-6167  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)  
[pla@idahowaters.com](mailto:pla@idahowaters.com)

TOM ARKOOSH (x) U.S. Mail, Postage Prepaid  
CAPITOL LAW GROUP ( ) Facsimile  
PO BOX 32 (x) E-mail  
GOODING ID 83330  
[tarkoosh@capitolawgroup.net](mailto:tarkoosh@capitolawgroup.net)

W. KENT FLETCHER (x) U.S. Mail, Postage Prepaid  
FLETCHER LAW OFFICE ( ) Facsimile  
PO BOX 248 (x) E-mail  
BURLEY ID 83318-0248  
[wkf@pmt.org](mailto:wkf@pmt.org)

KATHLEEN CARR (x) U.S. Mail, Postage Prepaid  
U.S. DEPT INTERIOR ( ) Facsimile  
960 BROADWAY STE 400 (x) E-mail  
BOISE ID 83706  
[KathleenMarion.Carr@sol.doi.gov](mailto:KathleenMarion.Carr@sol.doi.gov)

MATT HOWARD  
US BUREAU OF RECLAMATION  
1150 N CURTIS ROAD  
BOISE ID 83706-1234  
[mhoward@pn.usbr.gov](mailto:mhoward@pn.usbr.gov)


U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

LYLE SWANK  
IDWR  
900 N SKYLINE DR  
IDAHO FALLS ID 83402-6105  
(208) 525-7177  
[lyle.swank@idwr.idaho.gov](mailto:lyle.swank@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

ALLEN MERRITT  
CINDY YENTER  
IDWR  
1341 FILLMORE ST STE 200  
TWIN FALLS ID 83301-3033  
(208) 736-3037  
[allen.merritt@idwr.idaho.gov](mailto:allen.merritt@idwr.idaho.gov)  
[cindy.yenter@idwr.idaho.gov](mailto:cindy.yenter@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

  
for Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources

## **EXHIBIT 4**

**IGWA's Mitigation Plan for the Surface Water Coalition  
Delivery Call (Nov. 9, 2009)**

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY  
CHARTERED**

W. MARCUS W. NYE  
RANDALL C. BUDGE  
JOHN A. BAILEY, JR.  
JOHN R. GOODELL  
JOHN B. INGELSTROM  
DANIEL C. GREEN  
BRENT O. ROCHE  
KIRK B. HADLEY  
FRED J. LEWIS  
ERIC L. OLSEN  
CONRAD J. AIKEN  
RICHARD A. HEARN, M.D.  
LANE V. ERICKSON  
FREDERICK J. HAHN, III  
DAVID E. ALEXANDER  
PATRICK N. GEORGE  
SCOTT J. SMITH  
JOSHUA D. JOHNSON  
STEPHEN J. MUHONEN  
BRENT L. WHITING  
JONATHAN S. BYINGTON  
DAVE BAGLEY  
CAROL TIPPI VOLYN  
THOMAS J. BUDGE  
CANDICE M. MCHUGH  
JONATHAN M. VOLYN  
MARK A. SHAFFER  
JASON E. FLAIG

101 SOUTH CAPITOL BOULEVARD  
SUITE 208  
BOISE, IDAHO 83702

TELEPHONE (208) 395-0011  
FACSIMILE (208) 433-0167

WWW.RACINELAW.NET

SENDER'S E-MAIL ADDRESS: CMM@RACINELAW.NET

POCATELLO OFFICE  
201 EAST CENTER STREET  
POST OFFICE BOX 1391  
POCATELLO, IDAHO 83201  
TELEPHONE: (208) 232-6101  
FACSIMILE: (208) 232-6109

IDAHO FALLS OFFICE  
477 SHOUP AVENUE  
SUITE 203A  
POST OFFICE BOX 50698  
IDAHO FALLS, ID 83402  
TELEPHONE: (208) 528-6101  
FACSIMILE: (208) 528-6109

COEUR D'ALENE OFFICE  
250 NORTHWEST  
BOULEVARD, SUITE 106A  
COEUR D'ALENE, ID 83814  
TELEPHONE: (208) 765-6888

ALL OFFICES TOLL FREE  
(877) 232-6101

LOUIS F. RACINE (1917-2005)  
WILLIAM D. OLSON, OF COUNSEL

November 9, 2009

Idaho Department of Water Resources  
Attn: Victoria Wigle, Assistant to Interim Director  
P.O. Box 83720  
Boise, ID 83720-0098

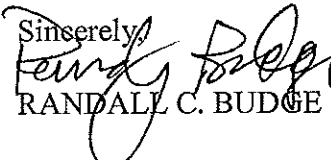
**Re: Docket No. CM-MP-2009-07**

Dear Victoria:

Enclosed please find for filing, publication, and processing, *IGWA's Mitigation Plan for the Surface Water Coalition Plan Delivery Call* which should be substituted for the mitigation plan titled *IGWA's Mitigation Plan for the Surface Water Coalition Delivery Call, Water District 120* which was filed on November 5, 2009. By this letter, IGWA withdraws the mitigation plan filed on November 5, 2009 and would like you to substitute the enclosed plan and file it and conform, stamp and return the extra copy enclosed herewith.

Please bring this matter to the attention of Director Spackman and proceed with advertisements. We have also provided courtesy copies to the Surface Water Coalition attorneys as indicated on the Certificate of Mailing.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,  
  
RANDALL C. BUDGE

Randall C. Budge, ISB #1949  
Candice M. McHugh, ISB #5908  
RACINE OLSON NYE  
BUDGE & BAILEY, CHARTERED  
PO Box 1391  
Pocatello, ID 83204-1391  
Telephone: (208) 395-0011  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[cmm@racinelaw.net](mailto:cmm@racinelaw.net)

*ATTORNEYS FOR THE IDAHO GROUND WATER APPROPRIATORS*

**BEFORE DEPARTMENT OF WATER RESOURCES**

**STATE OF IDAHO**

**IDAHO GROUND WATER  
APPROPRIATORS, INC.,  
Petitioners.**

Docket No.: CM-MP-2009-007

**IGWA'S MITIGATION PLAN FOR THE  
SURFACE WATER COALITION  
DELIVERY CALL**

COME NOW THE IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), through counsel and on behalf of its Ground Water District Members and its other water user members, which are set forth on Exhibit A attached hereto, for and on behalf of their respective members and those groundwater users who are non-member participants in their mitigation activities (collectively the "Ground Water Users") and hereby submit this *Mitigation Plan for the Surface Water Coalition Delivery Call* ("Mitigation Plan") pursuant to the Rules for the *Conjunctive Management of Surface and Ground Water Resources*, ("CM Rules") Rule 43, IDAPA 37.03.11.043.

IGWA'S MITIGATION PLAN FOR THE SURFACE WATER COALITION DELIVERY CALL – p. 1



## I. PRELIMINARY DETAILS

In support of this Mitigation Plan the following information is provided:

The name and mailing address of the parties filing the Mitigation Plan are:

Idaho Ground Water Appropriators, Inc.  
P.O. Box 2624  
Boise, ID 83701

Counsel of record:  
RACINE OLSON NYE BUDGE &  
BAILEY, CHARTERED  
Randall C. Budge  
Candice M. McHugh  
PO Box 1391  
Pocatello, ID 83204-1391

The water rights that will benefit from the mitigation activities under this proposed Mitigation Plan are any senior surface water rights diverting from the Snake River or its tributaries and administered by the Watermaster of Water District 01 that the Director has previously found or may in the future find to have been materially injured by the use of groundwater under junior groundwater rights. The water rights that may benefit from this Mitigation Plan include the surface water rights held by or on behalf of Twin Falls Canal Company, North Side Canal Company A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, and Minidoka Irrigation District. These irrigation entities are commonly known and hereafter referred to collectively as the Surface Water Coalition (“SWC”). Because future obligations for mitigation cannot be determined in advance, this Mitigation Plan is intended to secure advance approval of the mitigation methods and practices that junior groundwater users can rely upon and implement in order to avoid curtailment. It is the desire and intent of the Ground Water Users by this mitigation plan to have a permanent and ongoing mitigation plan in place that can be

IGWA’S MITIGATION PLAN FOR THE SURFACE WATER COALITION DELIVERY CALL – p. 2

implemented on a year-to-year basis as necessary to avoid or reduce curtailment.

This Mitigation Plan will allow the Director and the effected parties to timely comply with hearing and procedural requirements under the CM Rules as established by the Gooding County District Court in *Clear Springs Foods, Inc. v. Tuthill, Case No. 2008-444* (Fifth Jud. Dist., Gooding Co.). The storage water supply for use under this Mitigation Plan is secured by agreements entered into between IGWA and storage space holders in the Upper Snake Reservoir System. Through these existing agreements, IGWA has a reliable supply of up to 68,000 acre-feet of storage water that will be available on an annual basis for delivery to SWC entities as may be required by the Director's orders. The exact amount of water required to be delivered to SWC entities under this Mitigation Plan cannot be known in advance but can be expected to vary annually based upon the forecasted water supply and reasonable irrigation requirements which are used to determine the amount of water needed for the irrigation season and reasonable carryover storage.

## II. MITIGATION ACTIVITIES

This Mitigation Plan will mitigate any and all material injury by guaranteeing and underwriting the senior water user's water supply. If the Director projects material injury for a senior water user, then the Ground Water Users will provide water for mitigation in accordance with this Mitigation Plan for that mitigation year. The mitigation year is that part of any irrigation season and/or Water District 1 accounting year for which the Director has projected there will be material injury to a senior user caused by junior groundwater pumping. This Mitigation Plan will fully mitigate and compensate the senior water user for material injury by making water available for direct delivery of replacement water by the Water District 1 Watermaster when necessary during the irrigation season.

**a. Mitigation Plan Methodology and Details -- Twin Falls Canal Company**

Because the water supply of the Twin Falls Canal Company is most clearly established it is used as the example below. Yet, the same process described for Twin Falls Canal Company will be used to mitigate any material injury to other SWC entities.

The Director has determined that a full water supply for the Twin Falls Canal Company is 1,009,100 acre-feet based upon 5/8 inch per acre headgate delivery<sup>1</sup>. Accordingly, the Ground Water Users will underwrite Twin Falls Canal Company's supply to guarantee up to 1,009,000 acre-feet of water. Should the combined sum of the storage allocated to Twin Falls Canal Company and the natural flow delivered to Twin Falls Canal Company during the irrigation season be less than 1,009,100 acre-feet as calculated by the Water District 1 Watermaster in the manner described below, the Ground Water Users will supply sufficient water to eliminate the resulting water debt ("excess use") of Twin Falls Canal Company on the books of Water District 1. Twin Falls Canal Company's water supply shall be measured at the broad crested weir at the main canal headgate. In determining the water supply available to Twin Falls Canal Company and any actual shortfall to be made up by the Ground Water Users, the Watermaster shall apply established year-end accounting procedures used since 1978.

If Twin Falls Canal Company diverts its allocated natural flow and storage of 1,009,100 acre-feet or more, then there is no in-season injury and no mitigation is required. The Ground Water Users' commitment to underwrite Twin Falls Canal Company's water supply is subject to the following conditions:

- (1) If Twin Falls Canal Company does not divert 1,009,100 acre-feet no mitigation requirement shall exist if Twin Falls Canal Company has

---

<sup>1</sup> If in the future the Court determines that 3/4 inch per acre is the correct head gate delivery, then the amount of water guaranteed by this Mitigation Plan is 1,075,900 acre-feet and that amount should be substituted accordingly.

carryover storage remaining when the final Water District 01 Water Right Accounting is complete for the mitigation year.

- (2) All water spilled at the end of the Twin Falls Canal Company canal system shall be measured and accounted for by the Watermaster. Unreasonable waste shall be accounted for and deducted from any obligation of the Ground Water Districts.
- (3) Any water leased to others by Twin Falls Canal Company shall be considered a delivery to Twin Falls Canal Company for the purpose of calculating any obligation of the ground water users.
- (4) Only water diverted and used by Twin Falls Canal Company for beneficial purposes of providing irrigation water to its shareholders for irrigation of lands within the service area during the mitigation year shall be included in calculating the obligation of the Ground Water Districts.
- (5) Existing accounting procedures employed by Water District 01 should not be modified and the accounting will be the final year-end accounting by the Water District 01 Watermaster.
- (6) Any water released past Milner Dam during the mitigation year for hydropower generation or related to Endangered Species Act requirements shall be accounted for by the Water District 01 Watermaster and shall not increase the mitigation obligation of the Ground Water Users.
- (7) The Department of Water Resources shall examine the diversion and climate-based water requirements of the mitigation year and adjust mitigation obligations downward if sufficient precipitation or other circumstances indicate that a full water supply was available to Twin Falls with a diversion less than 1,009,100 acre-feet.
- (8) If on any day the Twin Falls Canal Company diverts less than the natural flow that is available to its water rights in priority, such foregone amount of natural flow diversion will be deducted from any obligation of the Ground Water Users.
- (9) In no event will any actual shortfall be made up by the Ground Water Users as determined by the Watermaster, which exceeds the actual current shortfall to Twin Falls Canal Company as determined by the Director of the Department.
- (10) The calculated amount of the Minidoka Dam Return Flow Credit shall

be deducted from any obligation of the Ground Water Users.

The mitigation obligation resulting from Twin Falls Canal Company's irrigation season diversions will be replaced by the Ground Water Districts by the delivery of storage water credited to the storage water account of Twin Falls Canal Company as determined by order of the Director. The mitigation water will be delivered to Twin Falls Canal Company as it is needed during the irrigation season.

In the event that direct replacement water from storage is not available, the Ground Water Users will reimburse Twin Falls Canal Company (or the senior water user who has been determined to be materially injured) for any actual seasonal water supply shortfall at the Water District 1 Rental Pool rate for the short-fall alleged by the Director to have occurred during the current season.

**b. Other SWC Entities**

The water supply of each member of the SWC is different. In the event there is a determination of material injury to other entities caused by groundwater pumping, the process for determining the amount of mitigation in all cases will be determined by the Watermaster in completing his annual final water distribution and accounting. Other material injury to other SWC Entities will be mitigated by underwriting and guaranteeing their supply in the same manner as described above for Twin Falls Canal Company.

The Ground Water Districts reserve the right to modify this Mitigation Plan as needed to secure approval and to comply with other requirements that may be imposed by the Director

**III. ADDITIONAL INFORMATION**

This Mitigation Plan is based upon the following facts:

- (1) By their delivery call, the Surface Water Coalition seeks to establish water

rights that are greater in quantity and reliability than what was originally appropriated. Their rights have yet to be adjudicated in the Snake River Basin Adjudication and remain pending subject to objections of record.

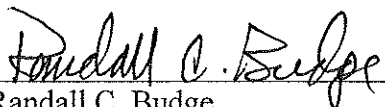
- (2) Ground Water Users are not responsible for reductions in water supply due to drought conditions or changed irrigation practices.
- (3) The Twin Falls Canal Company natural flow water rights are supplied primarily from the reach gains that accrue to the river in the Blackfoot to Neeley reach. These river gains have experienced substantial annual and seasonal variation in their natural flow supplies well before the beginning of groundwater development and Twin Falls Canal Company could never have expected their natural flow rights to be fully satisfied from reach gains arising below Blackfoot.
- (4) All other Surface Water Coalition members including American Falls Reservoir District No. 2 are totally dependent upon storage water that is supplied primarily from snow-melt and late spring runoff, and they have no entitlement to groundwater.

#### IV. RELIEF REQUESTED

The Ground Water Users requests that:

1. IDWR advertise this Mitigation Plan as required under the CM Rules;
2. IDWR hold any hearing as may be required;
3. The Director enter an order approving this Mitigation Plan upon such terms and conditions as may be reasonable and necessary to comply with CM Rule 43.
4. For such other and further relief as the Director may determine is reasonable and necessary to enable the Ground Water Users to mitigate for any material injury to senior surface water rights in Water District 120 to avoid or reduce curtailment.

Submitted this 9th day of November, 2009.

  
\_\_\_\_\_  
Randall C. Budge  
Candice M. McHugh

## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of November, 2009, I served a true and correct copy of the foregoing IGWA'S MITIGATION PLAN FOR THE SURFACE WATER COALITION DELIVERY CALL by delivering it to the following individuals by the method indicated below, addressed as stated:

Gary Spackman, Interim Director Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 Fax: 208-287-6700	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
C. Tom Arkoosh Arkoosh Law Offices, Chtd. 301 Main Street; P.O. Box 32 Gooding, ID 83330	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318-0248	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Roger D. Ling Ling, Robinson & Walker 615 H Street; P.O. Box 396 Rupert, Idaho 83350-0396	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
John A. Rosholt John K. Simpson Travis L. Thompson Barker, Rosholt & Simpson 113 Main Avenue W., Ste 303 Twin Falls, ID 83301-6167	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Kathleen Marion Carr U.S. Department of the Interior 960 Broadway, Ste 400 Boise, Idaho 83706	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Matt J. Howard U.S. Bureau of Reclamation Pacific Northwest Region 1150 N. Curtis Road Boise, ID 83706-1234	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email

Michael S. Gilmore Deputy Attorney General Civil Litigation Division P.O. Box 83720 Boise, ID 83720-0010	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Josephine P. Beeman Beeman & Associates 409 W. Jefferson Boise, Idaho 83702-6049	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Sarah H. Klahn White & Jankowski 511 16 <sup>th</sup> Street, Ste 500 Denver, CO 80202	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Terry T. Uhling J.R. Simplot Company P.O. Box 27 Boise, ID 83707	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Michael C. Creamer Jeffrey C. Fereday Givens Pursley P.O. Box 2720 Boise, Idaho 83701-2720	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
James C. Tucker Idaho Power Company P.O. Box 70 Boise, Idaho 83707	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, Idaho 83205	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email

Randall C. Budge



## **Exhibit A**

### **IGWA MEMBERS**

**November, 2009**

- Aberdeen American Falls Ground Water District
- Bingham Ground Water District
- Bonneville-Jefferson Ground Water District
- Clark Jefferson Ground Water District
- Madison Ground Water District
- Magic Valley Ground Water District
- North Snake Ground Water District
- Fremont Madison Irrigation District
- Goose Creek Irrigation District
- South West Irrigation District
- City of American Falls
- City of Blackfoot
- City of Chubbuck
- City of Heyburn
- City of Jerome
- City of Paul
- City of Rupert
- Busch Agricultural
- Jerome Cheese
- United Water of Idaho

## **EXHIBIT 5**

**Final Order Approving Stipulated Mitigation Plan (May 2,  
2016)**

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

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

Docket No. CM-MP-2016-001

**FINAL ORDER APPROVING  
STIPULATED MITIGATION  
PLAN**

IN THE MATTER OF IGWA'S SETTLEMENT AGREEMENT MITIGATION PLAN

The Director ("Director") of the Idaho Department of Water Resources ("Department") finds, concludes and orders as follows:

**FINDINGS OF FACT**

1. On March 9, 2016, the Idaho Ground Water Appropriator's Inc. ("IGWA"), and A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively referred to herein as "Surface Water Coalition" or "SWC"), submitted to the Department the *Surface Water Coalition's and IGWA's Stipulated Mitigation Plan and Request for Order* ("Request for Order").

2. Attached to the Request for Order as Exhibits B and C respectively are the *Settlement Agreement Entered Into June 30, 2015, Between Participating Members of the Surface Water Coalition and Participating Members of the Idaho Ground Water Appropriator's, Inc.* and the *Addendum to Settlement Agreement* (collectively the "SWC-IGWA Settlement Agreement"). Attached to the Request for Order as Exhibit D is the October 7, 2015, *Agreement* between A&B Irrigation District and the IGWA members who entered into the SWC-IGWA Settlement Agreement (the "A&B-IGWA Agreement"). The SWC and IGWA submitted the SWC-IGWA Settlement Agreement and the A&B-IGWA Agreement (collectively, the "Mitigation Plan") as a stipulated mitigation plan in response to the SWC delivery call. *Request for Order* at 3.

3. The Department published notice of the Mitigation Plan in the Idaho Mountain Express and Mountain Home News on March 16<sup>th</sup> and 23<sup>rd</sup>, 2016; and the Times News, Post Register, Idaho State Journal, and Idaho Statesman on March 17<sup>th</sup> and 24<sup>th</sup>, 2016.

4. The SWC “stipulates that the mitigation provided by participating IGWA members under the [Mitigation Plan] is, provided the [Mitigation Plan is] implemented, sufficient to mitigate for any material injury caused by the groundwater users who belong to, and are in good standing with, a participating IGWA member.” *Request for Order* at 3. The SWC and IGWA agree that “[n]o ground water user participating in the [Mitigation Plan] will be subject to a delivery call by the SWC members as long as the provisions of the [Mitigation Plan] are being implemented.” *Mitigation Plan* at Exhibit B, p. 5.

5. Through the Mitigation Plan, the SWC and IGWA members agree to: (a) a total ground water diversion reduction of 240,000 acre-feet annually, (b) annual delivery of 50,000 acre-feet “of storage water through private lease(s) of water from the Upper Snake Reservoir system, delivered to the SWC 21 days after the date of allocation,” (c) IGWA using “its best efforts to continue existing conversions in Water Districts 130 and 140,” (d) ground water users not irrigating sooner than April 1 or later than October 31, (e) installation of approved closed conduit flow meters on all remaining unmeasured and power consumption coefficient measured ground water diversions by the beginning of the 2018 irrigation season, (f) establishment of a ground water level goal and benchmarks to “[s]tabilize and ultimately reverse the trend of declining ground water levels,” (g) development of a method “to measure reach gain trends in the Blackfoot to Milner reach,” (h) contributions by the SWC and IGWA to the State sponsored managed recharge program, (i) support by the SWC and IGWA of “NRCS funded permanent water conservation programs,” (j) IGWA undertaking “additional targeted ground water to surface water conversions and/or fallow land projects above American Falls,” and (k) “[i]f any of the benchmarks or ground water level goal is not met, additional recharge, consumptive use reductions, or other measures as recommended by” a steering committee established by the SWC and IGWA. *Mitigation Plan* at Exhibit B, p. 2-5.

6. On April 4, 2016, the City of Pocatello (“Pocatello”) and the City of Idaho Falls (“Idaho Falls”) protested the Mitigation Plan.

7. On April 22, 2016, Pocatello and Idaho Falls filed a *Motion for Order Approving Stipulation to Conditionally Withdraw Protests* (“Motion”). Pocatello and Idaho Falls agreed to withdraw their protests to the Mitigation Plan if the Director includes provisions in an order approving the Mitigation Plan: (a) clarifying that the parties to the Mitigation Plan are responsible for the ongoing activities and ground water level goal and benchmarks identified in the Mitigation Plan, and (b) that approval of the plan does not create a ground water management area pursuant to Idaho Code § 42-233b.

## CONCLUSIONS OF LAW

1. Idaho Code § 42-602 authorizes the Director to supervise water distribution within water districts:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

2. Idaho Code § 42-1805(8) authorizes the Director to “promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department.”

3. Idaho Code § 42-603 grants the Director authority to adopt rules governing water distribution.

4. Pursuant to Chapter 52, Title 67, Idaho Code, and Sections 42-603 & 42-1805(8), Idaho Code, the Department promulgated the Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”), effective October 7, 1994. IDAPA 37.03.11.000-001.

5. The CM Rules “prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply.” IDAPA 37.03.11.001.

6. CM Rule 42.02 states: “The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan.” IDAPA 37.03.11.042.02.

7. CM Rule 43.03 establishes factors the Director may consider “in determining whether a proposed mitigation plan will prevent injury to senior rights.” IDAPA 37.03.11.043.03(a-o).

8. CM Rule 43.03(o) states: “Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions.” IDAPA 37.03.11.043.03(o).

9. The SWC and IGWA “have entered into an agreement on [a] . . . mitigation plan” in accordance with CM Rule 43.03(o). The SWC “stipulates that the mitigation provided by participating IGWA members under the [Mitigation Plan] is, provided the [Mitigation Plan] is implemented, sufficient to mitigate for any material injury caused by the groundwater users who belong to, and are in good standing with, a participating IGWA member.” *Request for Order* at 3. The SWC and IGWA agree that “[n]o ground water user participating in the [Mitigation Plan] will be subject to a delivery call by the SWC members as long as the provisions of the [Mitigation Plan] are being implemented.” *Mitigation Plan* at Exhibit B, p. 5.

10. As discussed above, the Mitigation Plan requires numerous ongoing activities, including: (a) annual ground water diversion reductions and storage water deliveries, (b) irrigation season reduction, (c) installation of measurement devices, (d) support of the State sponsored managed recharge program and NRCS funded permanent water conservation programs, (e) efforts to continue existing conversions, (f) additional conversions and/or fallow land projects, and (g) establishment of and oversight by a steering committee and technical work group. *Mitigation Plan* at Exhibit B, p. 2-5. The Mitigation Plan also references a ground water level goal and benchmarks, development of a method “to measure reach gain trends in the Blackfoot to Milner reach,” and additional recharge, consumptive use reductions, or other measures should any of the benchmarks or the ground water level goal not be met. *Id.* at Exhibit B, p. 3-5. The parties to the Mitigation Plan should be responsible for these activities and the ground water level goal and benchmarks should only be applicable to the parties to the Mitigation Plan as specified in the Mitigation Plan.

11. Having reviewed the Mitigation Plan, the CM Rules, and the proceedings herein, the Director will approve the Mitigation Plan.

### ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Mitigation Plan submitted by the SWC and IGWA is APPROVED with the following conditions:

- a. All ongoing activities required pursuant to the Mitigation Plan are the responsibility of the parties to the Mitigation Plan.
- b. The ground water level goal and benchmarks referenced in the Mitigation Plan are applicable only to the parties to the Mitigation Plan.
- c. Approval of the Mitigation Plan does not create a ground water management area pursuant to Idaho Code § 42-233b.

DATED this 2<sup>nd</sup> day of May 2016.

  
\_\_\_\_\_  
Gary Spackman  
Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of May 2016, the above and foregoing was served on the following by the method(s) indicated below:

John K. Simpson  
Travis L. Thompson  
Paul L. Arrington  
BARKER ROSHOLT & SIMPSON, LLP  
195 River Vista Place, Ste 204  
Twin Falls, ID 83301-3029  
[jks@idahowaters.com](mailto:jks@idahowaters.com)  
[slt@idahowaters.com](mailto:slt@idahowaters.com)  
[pla@idahowaters.com](mailto:pla@idahowaters.com)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

W. Kent Fletcher  
FLETCHER LAW OFFICE  
P.O. Box 248  
Burley, ID 83318  
[wkf@pmt.org](mailto:wkf@pmt.org)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Randall C. Budge  
Thomas J. Budge  
RACINE OLSON NYE BUDGE &  
BAILEY, CHTD.  
201 East Center Street  
P.O. Box 1391  
Pocatello, ID 83207-1391  
Telephone: (208) 395-0011  
Facsimile: (208) 232-6109  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

William A. Parson  
PARSONS SMITH & STONE  
P.O. Box 910  
Burley, ID 83318  
[wparson@pmt.org](mailto:wparson@pmt.org)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Matt Howard  
BUREAU OF RECLAMATION  
1150 N. Curtis Rd.  
Boise, ID 83706  
[mhoward@pn.usbr.gov](mailto:mhoward@pn.usbr.gov)  
[emcgarry@pn.usbr.gov](mailto:emcgarry@pn.usbr.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Kathleen Marion Carr  
US DEPT OF INTERIOR  
Office of Solicitor, PNW Region  
960 Broadway, Ste 400  
Boise, ID 83706  
[Kathleenmarion.carr@sol.doi.gov](mailto:Kathleenmarion.carr@sol.doi.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

David W. Gehlert  
Natural Resources Section  
US DEPT OF JUSTICE  
999 18<sup>TH</sup> Street  
South Terrace, Ste 370  
Denver, CO 80202  
[David.gehlert@usdoj.gov](mailto:David.gehlert@usdoj.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

A. Dean Tranmer  
City Attorney  
CITY OF POCATELLO  
P.O. Box 4169  
Pocatello, ID 83205  
[dtranmer@pocatello.us](mailto:dtranmer@pocatello.us)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Sarah Klahn  
Mitra Pemberton  
WHITE JANKOWSKI  
511 16<sup>th</sup> Street, Ste 500  
Denver, CO 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)  
[mitrap@white-jankowski.com](mailto:mitrap@white-jankowski.com)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Robert L. Harris  
Holden, Kidwell, Hahn & Crapo, PLLC  
P.O. Box 50130  
1000 Riverwalk Drive, Ste. 200  
Idaho Falls, ID 83405  
[rharris@holdenlegal.com](mailto:rharris@holdenlegal.com)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Randall D. Fife  
City Attorney  
City of Idaho Falls  
P.O. Box 50220  
Idaho Falls, ID 83405  
[rfife@idahofallidaho.gov](mailto:rfife@idahofallidaho.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



IDWR-Eastern Region  
900 N. Skyline Dr., Ste A  
Idaho Falls, ID 83402-1718  
[lyle.swank@idwr.idaho.gov](mailto:lyle.swank@idwr.idaho.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

IDWR-Southern Region  
1341 Fillmore St., Ste 200  
Twin Falls, ID 83301-3380  
[allen.merritt@idwr.idaho.gov](mailto:allen.merritt@idwr.idaho.gov)  
[cindy.yenter@idwr.idaho.gov](mailto:cindy.yenter@idwr.idaho.gov)

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



\_\_\_\_\_  
Kimi White

## **EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

### **REQUEST FOR HEARING**

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 section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department 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:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. 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 of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

## **EXHIBIT 6**

**Pages 840 through 844 in the Settled Agency Record on Appeal in  
IGWA v. IDWR, Case No. CV01-23-07893 (2016 through 2020)**

**2016 Performance Summary Table**

(all values in acre-feet)

	<b>Diversion Baseline</b>	<b>Target Conservation</b>	<b>Adjusted Baseline</b>	<b>2016 Usage</b>	<b>Diversion Reduction</b>	<b>Recharge</b>	<b>Total Conservation</b>	<b>Mitigation Balance</b>
Aberdeen - American Falls GWD	271,989	33,595	279,291	257,455	21,836	16,123	37,959	4,364
Bingham GWD	282,476	34,890	278,988	265,643	13,345	25,260	38,605	3,715
Bonneville - Jefferson GWD	147,337	18,198	150,838	148,298	2,540	10,612	13,152	-5,046
Carey Valley GWD	5,671	700	5,671	772	4,899	0	4,899	4,198
Jefferson - Clark GWD	438,634	54,178	438,979	416,405	22,574	32,193	54,767	589
Fremont-Madison ID/Madison GWD <sup>1</sup>	43,491	5,372	43,491	16,729	26,763	3,000	29,763	24,391
Magic Valley GWD	261,877	32,346	262,205	238,094	24,112	5,100	29,212	-3,134
A&B ID <sup>3</sup>	174,735	21,582	-	-	-	-	21,582	0
North Snake GWD <sup>2</sup>	205,501	25,382	205,219	173,992	31,228	0	31,228	5,846
Southwest ID <sup>3</sup>	104,417	12,897	-	-	-	-	12,897	0
Falls ID <sup>3</sup>	6,968	861	-	-	-	-	861	0
<b>Total:</b>	<b>1,943,096</b>	<b>240,000</b>	1,664,683	1,517,387	147,296	92,288	274,923	34,923

**Notes:**

(1) Includes Fremont- Madison Irrigation District, Madison Irrigation District and WD100. Mitigating by alternative means.

(2) North Snake GWD baseline includes annual average of 21,305 acre-feet of conversions.

(3) A&B ID, Southwest ID and Falls ID Total Conservation is unknown and assumed to meet Target.

**2017 Performance Summary Table**

(all values in acre-feet)

	<b>Diversion Baseline</b>	<b>Target Conservation</b>	<b>Adjusted Baseline</b>	<b>2017 Usage</b>	<b>Diversion Reduction</b>	<b>Recharge</b>	<b>Total Conservation</b>	<b>Mitigation Balance</b>	<b>Metered Diversions<sup>4</sup></b>
Aberdeen - American Falls GWD	271,989	33,715	285,585	240,361	45,224	50,627	95,851	62,136	360
Bingham GWD	282,476	35,015	281,918	231,152	50,766	33,671	84,437	49,422	286
Bonneville - Jefferson GWD	147,337	18,264	155,665	134,134	21,531	46,815	68,346	50,082	152
Carey Valley GWD	5,671	703	5,671	1,135	4,535	0	4,535	3,832	18
Jefferson - Clark GWD	438,634	54,373	438,814	370,936	67,878	58,878	126,756	72,383	272
Henry's Fork GWD <sup>1</sup>	43,491	5,391	45,648	14,987	30,661	3,000	33,661	28,270	16
Magic Valley GWD	261,877	32,462	262,471	233,600	28,872	8,000	36,872	4,410	358
A&B ID <sup>3</sup>	174,735	21,660	-	-	-	-	21,660	0	
North Snake GWD <sup>2</sup>	205,501	25,474	210,307	172,472	37,836	7,090	44,925	19,452	700
Southwest ID <sup>3</sup>	104,417	12,943	-	-	-	-	12,943	0	
<b>Total:</b>	<b>1,936,128</b>	<b>240,000</b>	1,686,080	1,398,777	287,303	208,081	529,987	289,987	2,162

**Notes:**

(1) Includes mitigation for Freemont- Madison Irrigation District, Madison Irrigation District and WD100. Mitigating by alternative means.

(2) North Snake GWD baseline includes annual average of 21,305 acre-feet of conversions.

(3) A&B ID and Southwest ID Total Conservation is unknown and assumed to meet Target.

(4) Reflects number of diversions with installed flowmeter as of Fall 2017. An update will be provided at the end of April.

**2018 Performance Summary Table**

(all values in acre-feet)

	Allocation Diversion Baseline	Target Conservation	Actual Baseline	2018 Usage	Diversion Reduction	Accomplished Recharge	Total Conservation	2018 Mitigation Balance
Aberdeen - American Falls GWD	271,989	33,715	292,784	282,272	10,512	56,267	66,779	33,063
Bingham GWD	282,476	35,015	281,918	249,324	32,594	20,500	53,094	18,079
Bonneville - Jefferson GWD	147,337	18,264	155,718	134,853	20,865	11,500	32,365	14,101
Carey Valley GWD	5,671	703	5,671	1,387	4,284	0	4,284	3,581
Jefferson - Clark GWD	438,634	54,373	441,092	371,537	69,555	17,101	86,656	32,283
Henry's Fork GWD <sup>1</sup>	43,491	5,391	66,337	16,467	49,870	7,151	57,021	51,630
Magic Valley GWD	261,877	32,462	257,019	217,824	39,195	6,100	45,295	12,833
A&B ID <sup>3</sup>	174,735	21,660	-	-	-	-	21,660	0
North Snake GWD <sup>2</sup>	205,501	25,474	206,777	168,162	38,614	3,822	42,436	16,962
Southwest ID <sup>3</sup>	104,417	12,943	-	-	-	-	12,943	0
<b>Total:</b>	<b>1,936,128</b>	<b>240,000</b>	1,707,315	1,441,826	265,489	122,441	422,533	182,533

\*background data will be supplied shortly

**Notes:**

(1) Includes mitigation for Fremont- Madison Irrigation District, Madison Irrigation District and WD100. Mitigating by alternative means.

(2) North Snake GWD baseline includes annual average of 21,305 acre-feet of conversions.

(3) A&B ID and Southwest ID Total Conservation is unknown and assumed to meet Target.

**2019 Performance Summary Table**

(all values in acre-feet)

	Allocation Diversion Baseline	Target Conservation	Actual Baseline	2019 Usage	Diversion Reduction	Accomplished Recharge	Total Conservation	2019 Mitigation Balance
Aberdeen - American Falls GWD	271,989	33,715	293,639	258,397	35,243	43,046	78,288	44,573
Bingham GWD	282,476	35,015	282,316	238,072	44,244	22,072	66,316	31,301
Bonneville - Jefferson GWD	147,337	18,264	155,713	136,683	19,030	14,103	33,133	14,869
Carey Valley GWD	5,671	703	5,671	883	4,787	0	4,787	4,084
Jefferson - Clark GWD	438,634	54,373	441,135	388,213	52,922	6,833	59,755	5,382
Henry's Fork GWD <sup>1</sup>	43,491	5,391	72,995	15,458	57,537	3,000	60,537	55,146
Magic Valley GWD	261,877	32,462	257,491	196,490	61,001	6,500	67,501	35,039
A&B ID <sup>3</sup>	174,735	21,660	-	-	-	-	21,660	0
North Snake GWD <sup>2</sup>	205,501	25,474	207,880	156,351	51,530	4,890	56,420	30,946
Southwest ID <sup>3</sup>	104,417	12,943	-	-	-	-	12,943	0
<b>Total:</b>	<b>1,936,128</b>	<b>240,000</b>	1,716,841	1,390,547	326,294	100,443	461,341	221,341

**Notes:**

(1) Includes mitigation for Freemont- Madison Irrigation District, Madison Ground Water District and WD100. Mitigating by alternative means.

(2) North Snake GWD baseline includes annual average of 21,305 acre-feet of conversions.

(3) A&B ID and Southwest ID Total Conservation is unknown and assumed to meet Target.

**2020 Performance Summary Table**

	<b>Target Conservation</b>	<b>Baseline</b>	<b>2020 Usage</b>	<b>Diversion Reduction</b>	<b>Accomplished Recharge</b>	<b>Total Conservation</b>	<b>2020 Mitigation Balance</b>
American Falls-Aberdeen	33,715	286,677	273,547	13,130	37,205	50,335	16,620
Bingham	35,015	277,173	264,343	12,830	25,898	38,728	3,713
Bonneville-Jefferson	18,264	156,140	150,588	5,551	5,482	11,033	-7,230
Carey	703	5,671	3,363	2,308	0	2,308	1,605
Jefferson-Clark	54,373	441,711	400,468	41,244	26,213	67,457	13,084
Henry's Fork <sup>1</sup>	5,391	82,823	24,641	58,181	3,000	67,892	62,501
Madison <sup>2</sup>		83,889	77,178	6,711			
Magic Valley	32,462	256,097	228,005	28,092	6,634	34,726	2,264
North Snake <sup>3</sup>	25,474	207,689	176,809	30,880	4,839	35,720	10,246
A&B	21,660	-	-	-	-	21,660	0
Southwest ID	12,943	-	-	-	-	12,943	0
<b>Total:</b>	<b>240,000</b>	<b>1,797,869</b>	<b>1,598,941</b>	<b>198,928</b>	<b>109,272</b>	<b>342,803</b>	<b>102,803</b>

**Notes:**

- (1) Includes mitigation for Freemont- Madison Irrigation District, Madison Ground Water District and WD100. Mitigating by alternative means.
- (2) Madison baseline is preliminary estimate, see note on district breakdown.
- (3) North Snake GWD baseline includes annual average of 21,305 acre-feet of conversions.
- (4) A&B ID and Southwest ID Total Conservation is unknown and assumed to meet Target.