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RECEIVED

Feb 12, 2024

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

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

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

Docket No. CM-MP-2016-001

**DECLARATION OF ELISHEVA M.
PATTERSON IN SUPPORT OF IGWA'S
MOTION FOR SUMMARY JUDGMENT
AND MOTION IN LIMINE TO
EXCLUDE PAROL EVIDENCE**

1. I am one of the attorneys of record representing Idaho Ground Water Appropriators, Inc. ("IGWA") in the above-captioned matters.

2. The above-captioned matters are contested cases of the Idaho Department of Water Resources ("Department") governed by the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code.

3. *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, IDWR Docket No. CM-DC-2010-001, involves a water right delivery call filed by the Surface Water Coalition.

4. *In the Matter of IGWA's Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001, involves a water rights mitigation plan filed by IGWA.

5. Attached hereto as **Exhibit A** is a copy of the *Memorandum Decision and Order* issued on June 1, 2015, in *Rangen, Inc. v. Idaho Dep't of Water Res.*, Case no. CV-2014-4970, Twin Falls Cnty. Dist. Ct.

6. Attached hereto as **Exhibit B** is a copy of the *Settlement Agreement Dated June 30, 2015, Between Participating Members of the Surface Water Coalition and Participating Members of Idaho Ground Water Appropriators, Inc.*, ("2015 Agreement"). The 2015 Agreement was submitted to the Department as an attachment to the *Surface Water Coalition's and IGWA's Stipulated Mitigation Plan and Request for Order* filed March 9, 2016, in IDWR Docket No. CM-MP-2016-001.

7. Attached hereto as **Exhibit C** is a copy of the *Second Addendum to Settlement Agreement* dated December 14, 2016, executed by IGWA and the SWC. This Second Addendum was submitted to the Department as an attachment to the *Surface Water Coalition's and IGWA's Stipulated Amended Mitigation Plan and Request for Order* filed on February 7, 2017 in IDWR Docket No. CM-MP-2016-001.

8. Attached hereto as **Exhibit D** is a spreadsheet summarizing references to IGWA's three approved mitigation plans contained in the Department's As-Applied and Curtailment Orders issued in IDWR Docket No. CM-DC-2010-001.

RESPECTFULLY SUBMITTED this 12th day of February, 2024.

RACINE OLSON, PLLP

By: 

Elisheva M. Patterson
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2024, I caused the foregoing document to be served on the persons below via email at the address shown:


Elisheva M. Patterson

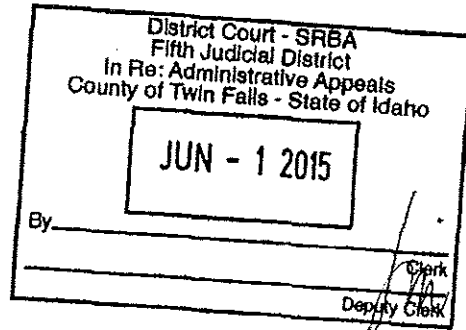
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EXHIBIT A



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

RANGEN, INC.)	Case No. CV 2014-4970
)	
Petitioner,)	MEMORANDUM DECISION
)	AND ORDER
vs.)	
)	
)	
THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his capacity as Director of the Idaho Department of Water Resources,)	
)	
Respondents,)	
)	
and)	
)	
IDAHO GROUND WATER APPROPRIATORS, INC.,)	
)	
)	
Intervenor.)	
)	
)	
)	

**I.
STATEMENT OF THE CASE**

A. Nature of the Case.
This case originated when Rangen, Inc. ("Rangen") filed a *Petition* seeking judicial review of a final order of the Director of the Idaho Department of Water Resources ("IDWR" or

“Department”). The order under review is the Director’s *Order Granting Rangen’s Motion to Determine Morris Exchange Water Credit; Second Amended Curtailment Order* issued on November 21, 2014 (“*Final Order*”). The *Final Order* grants a motion filed by Rangen to recalculate mitigation credit previously awarded to juniors and amends a curtailment order. Rangen asserts that the Director exceeded his authority in the *Final Order*, and requests that this Court set it aside and remand for further proceedings.

B. Course of Proceedings and Statement of Facts.

On December 13, 2011, Rangen filed a *Petition for Delivery Call* with the Department. It alleged Rangen is short water under two senior rights due to junior ground water use. The Director subsequently issued a curtailment order concluding that Rangen’s senior rights are being materially injured by junior ground water pumpers.¹ *Supp. A.R. CM-DC-2011-001*, pp.1-104.² The curtailment order provided for the curtailment of certain junior ground water rights that divert from the Eastern Snake Plain Aquifer. *Id.* at p.42. The Director instructed, however, that affected juniors could avoid curtailment if they proposed and had approved a mitigation plan that provided Rangen with phased-in mitigation over a five-year period as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year. *Id.* The time period associated with the first year was to begin April 1, 2014 and end March 31, 2015. 2935 R., p.296. Thereafter, the second year would commence April 1, 2015, and so on and so forth. *Id.*

The Idaho Ground Water Appropriators, Inc. (“IGWA”) submitted several mitigation plans on behalf of affected users. The first was on February 11, 2014. 2446 R., pp.1-13. It set forth nine proposals for juniors to meet their mitigation obligations. *Id.* The Director approved it in part, granting IGWA a total of 3.0 cfs of mitigation credit from April 1, 2014 to March 31, 2015. *Id.* at pp.484. Of that, 1.2 cfs was attributable to IGWA’s aquifer enhancement activities, including conversions from ground water to surface water irrigation, voluntary “dry-ups” of

¹ The term “curtailment order” as used herein refers to the Director’s *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962*, dated January 29, 2014. The Director’s curtailment order is not at issue in this proceeding, but was previously addressed by this Court on judicial review in Twin Falls County Case No. CV-2014-1338.

² There are multiple agency records made part of the record in this matter. The citation “4970, R., ___” refers to the agency record compiled for this judicial review proceeding. The citation “2935 R., ___” refers to the agency record compiled for Twin Falls County Case No. CV-2014-2935. The citation “1338 R., ___” refers to the agency record compiled for Twin Falls County Case No. CV-2014-1338, etc.

irrigated acreage, and ground water recharge. *Id.* at p.483. The remaining 1.8 cfs was attributable to the direct delivery of surface water to Rangen as a result of a water exchange agreement between the North Snake Ground Water District (“NSGWD”) and Butch Morris (“Morris”). *Id.* at p.484. This agreement will be referred to as the “Morris Exchange Agreement” or “Agreement.” Morris holds senior water rights that divert from the same source as Rangen, the Martin-Curren Tunnel. *Id.* at 471. Under the Morris Exchange Agreement, Morris authorized NSGWD to use his senior water rights as needed to provide direct delivery of mitigation water to Rangen. *Id.*

Although IGWA was originally granted 3.0 cfs of mitigation credit under its first mitigation plan (0.4 cfs short of its first year mitigation obligation), the Director subsequently recalculated the amount of credit granted to juniors for the Morris Exchange Agreement. *Supp. A.R. CM-DC-2011-001*, pp.368-369. As part of the recalculation, the Director determined that the Agreement would result in the delivery of an average rate of 2.2 cfs of mitigation water to Rangen for 293 days. *Id.* When added to the mitigation credit of 1.8 cfs granted for aquifer enhancement activities, the recalculation resulted in a total mitigation credit of 3.4 cfs from April 1, 2014 to January 18, 2015. *Id.* This recalculation changed the dynamic of the first mitigation plan. It resulted in IGWA being granted full mitigation credit of 3.4 cfs, but only for a portion of the first mitigation year. *Id.* This left a first year mitigation deficiency of 2.2 cfs from January 19, 2015 to March 31, 2015, due to the predicted exhaustion of the Morris Exchange Agreement mitigation source as of that date. To address the deficiency, the Director looked to other mitigation plans purposed by IGWA, which are not at issue in this proceeding. At any rate, it was solely pursuant to mitigation activities approved under IGWA’s first mitigation plan that the Director determined juniors had met their mitigation obligation from April 1, 2014 to January 18, 2015.

As the first mitigation year got underway, Rangen realized it was not receiving the full amount of mitigation water the Director determined it would receive. As a result, Rangen submitted a *Motion to Determine Morris Exchange Water Credit and Enforce Curtailment* to the Director on October 31, 2014. 4970 R., pp.1-10. The *Motion* asked the Director to recalculate the mitigation credit awarded to juniors under the Morris Exchange Agreement. *Id.* at pp.1-2. The Director’s calculation of that credit was based on anticipated flows in the Martin-Curren Tunnel during the first mitigation year. *Supp. A.R. CM-DC-2011-001*, pp.368-369. Rangen

asserted that the Director overestimated those flows to its detriment, resulting in a mitigation deficiency. 4970 R., pp.1-10. Rangen supported its argument with flow data acquired for 2014, which established that actual Martin-Curren Tunnel flows had been, and continued to be, less than anticipated by the Director. *Id.* Rangen argued that the mitigation deficiency resulted in unmitigated material injury to its senior rights. It moved the Director to curtail junior users to address that injury. *Id.* at p.8.

Rangen's *Motion* was unopposed. 4970 R., p.99. The uncontroverted evidence established that the Morris Exchange Agreement in actuality only provided mitigation water for 184 days – not 293. *Id.* at p.101. The mitigation source was exhausted by October 2, 2014. *Id.* This resulted in a mitigation deficiency of 2.2 cfs from that date to January 18, 2015. *Id.* The Director acknowledged the Agreement mitigation source had been exhausted:

The Director previously concluded that the Morris Exchange Agreement provided mitigation credit to IGWA through January 19, 2015, based on predicted Martin-Curren Tunnel flows. Because the 2014 Martin-Curren Tunnel flow data establishes that actual flows were less than predicted, the mitigation credit from the Morris Exchange Agreement must be reconsidered and adjusted. The Director concurs with Rangen's calculations that the Morris Exchange Agreement credit has expired *and that the Director must order curtailment to address the shortfall.*

Id. at pp.101-102 (emphasis added). However, the Director did not proceed to curtail offending junior users. *Id.* at p.102. He ruled that under the circumstance, “[s]ufficient time must be granted to junior ground water users to prepare for curtailment.” *Id.* The Director gave juniors until January 19, 2015, an additional sixty days, to prepare for curtailment or provide an alternative source of mitigation. *Id.*

The January 19th date is significant. At the time the Director issued his *Final Order*, he had already conditionally approved IGWA's fourth proposed mitigation plan. 4663 R., pp.178-240. The fourth plan consisted generally of a pump and pipeline project to provide for direct delivery of up to 10 cfs of water to Rangen from another spring user in the Hagerman area. *Id.* at pp.180-181. In conditionally approving the plan, the Director ordered that if IGWA failed to complete the project and provide the requisite amount of mitigation water to Rangen by January 19, 2015, junior users would be curtailed. *Id.* at p.198. Thus, in his *Final Order*, the Director noted that junior users should already be planning for the possibility that curtailment could occur come January 19th. 4970 R., p.102.

On December 19, 2014, Rangen filed the instant *Petition for Judicial Review*. It asserts that the Director exceeded his authority by failing to curtail once he determined a mitigation deficiency exists. The case was reassigned by the clerk of the court to this Court on December 23, 2014.³ On January 27, 2015, the Court entered an *Order* permitting IGWA to appear as an intervenor. The parties subsequently briefed the issues raised on judicial review. A hearing on the *Petition* was held before this Court on May 20, 2015. The parties did not request the opportunity to submit additional briefing and the Court does not require any. Therefore, this matter is deemed fully submitted for decision on the next business day or May 21, 2015.

II.

STANDARD OF REVIEW

Judicial review of a final decision of the director of IDWR is governed by the Idaho Administrative Procedure Act (“IDAPA”). Under IDAPA, the court reviews an appeal from an agency decision based upon the record created before the agency. I.C. § 67-5277. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. I.C. § 67-5279(1). The court shall affirm the agency decision unless it finds that the agency’s findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or, (e) arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). Further, the petitioner must show that one of its substantial rights has been prejudiced. I.C. § 67-5279(4). Even if the evidence in the record is conflicting, the Court shall not overturn an agency’s decision that is based on substantial competent evidence in the record. *Barron v. IDWR*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). The Petitioner bears the burden of documenting and proving that there was not substantial evidence in the record to support the agency’s decision. *Payette River Property Owners Assn. v. Board of Comm’rs.*, 132 Idaho 552, 976 P.2d 477 (1999).

³ The case was reassigned to this Court pursuant to the Idaho Supreme Court Administrative Order Dated December 9, 2009, entitled: *In the Matter of the Appointment of the SRBA District Court to Hear All Petitions for Judicial Review From the Department of Water Resources Involving Administration of Water Rights*.

III.
ANALYSIS

A. The Director exceeded his authority under the CM Rules by failing to timely implement the mitigation plan's contingency.

When the Director makes a determination that material injury exists in the context of a call, he must engage in one of two actions. He may regulate and curtail the diversions causing injury, or he may approve a mitigation plan that permits offending out-of-priority diversions to continue. IDAPA 37.03.11.040.01.a,b. The Director took the latter action in this case. He approved two sources of mitigation under IGWA's first mitigation plan, and allowed continued out-of-priority water use. One of the approved mitigation sources – the direct delivery of water under the Morris Exchange Agreement – is at the center of this proceeding. However, the propriety of the Director's award of mitigation credit resulting from the Agreement is not at issue. That was addressed in Twin Falls County Case No. CV-2014-2446, wherein the Court reversed and remanded the award. *Respondents' Br.*, Appx. B.⁴ At issue in this proceeding is the premature exhaustion of the Agreement mitigation source, and the Director's ensuing response.

The Court notes initially that the mitigation source exhausted prematurely due to the Director's failure to adequately protect Rangen's rights when granting mitigation credit. The Court will not repeat the entirety of its previous analysis on this issue; however, a brief summary is necessary to set the stage. To determine the amount of mitigation credit to grant juniors as a result of the Agreement, the Director had to first predict how much water would emanate from the Martin-Curren Tunnel during the first mitigation year. He relied upon historical flow data associated with average Martin-Curren Tunnel flows to accomplish this task. The Director's credit award thus rested on the assumption that average flows would emanate from the Martin-Curren Tunnel throughout the first mitigation year. On judicial review, the Court determined that the Director's use of average flow data did not adequately protect Rangen's senior rights:

Using data associated with an average year by its very definition will result in an over-prediction of Martin-Curren Tunnel flows half of the time. When that occurs, Rangen's senior rights will not be protected, resulting in prejudice and the diminishment of Rangen's substantial rights. This Court agrees . . . that "equality in sharing the risk will not adequately protect the senior priority surface water

⁴ A copy of this Court's *Memorandum Decision and Order* entered in Twin Falls County Case No. CV-2014-2446 on December 3, 2014, is attached as Appendix B to the Respondents' Brief.

right holder from injury,” and that “predictions based on average data unreasonably shifts the risk of shortage to the senior surface water right holder.”

Respondents’ Br., Appx. B, pp.13-14. On those grounds, the Court reversed and remanded the Director’s award.⁵ *Id.*

When the Court addressed the credit award previously, actual Martin-Curren Tunnel flow data for the first mitigation year was not before it. Now that it is, the data supports the concerns set forth by the Court in its remand order. 4970 R., pp.28-39. It establishes that the Director’s assumption was erroneous. *Id.* Historically average flows did not emanate from the Martin-Curren Tunnel during the first mitigation year; less than average flows did. *Id.* As a result, the Agreement mitigation source exhausted prematurely on October 2, 2014, resulting in material injury to Rangen’s rights. 4970 R., p.101. It was therefore the Director’s failure to adequately protect Rangen’s senior rights from the outset that set the stage for the current predicament.

It is with this background in mind the Court turns to the present issue – whether the Director’s response to the premature exhaustion of the mitigation source adequately protected Rangen’s senior rights. The Court holds it did not. When the Director considers a proposed mitigation plan, he may approve the plan only if it includes “contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable.” IDAPA 37.03.11.043.03.c. It is undisputed that the Agreement mitigation source became unavailable as of October 2, 2014. 4970 R., pp.28-39 &101. Once that determination was made, the Director was required to effectuate the plan’s contingency to assure protection of Rangen’s senior rights. IDAPA 37.03.11.043.03.c. IGWA’s first mitigation plan did not provide for an alternative source of mitigation water as the contingency. The only contingency under the plan was curtailment.

While the Director recognized that “he must order curtailment to address the shortfall,” he in fact did not proceed to curtail. 4970 R., p.102. Rather, he ruled that “[s]ufficient time must be granted to junior ground water users to prepare for curtailment,” and granted juniors an additional sixty days to continue their out-of-priority diversions. *Id.* Curtailment fashioned in this manner is not an “adequate contingency” as contemplated by the CM Rules. It fails “to assure protection of the senior-priority right in the event the mitigation water source becomes

⁵ The Court entered its judgement in Twin Falls County Case No. CV-2014-2446 on December 3, 2014. No appeal has been taken by any party and the time for an appeal has expired.

unavailable.” IDAPA 37.03.11.043.03.c. To the contrary, Rangen’s senior rights were prejudiced and subjected to unmitigated material injury while junior users were permitted to continue out-of-priority diversions. Such a result is not contemplated by the CM Rules. The Director’s rationale for his decision centered on the state of junior users. He reasoned that “[m]any of the junior ground water users diverting water this time of year are dairies and stockyards,” and opined that “[i]t is not reasonable to order curtailment that would immediately eliminate what is likely the sole source of drinking water for livestock.” 4970 R., p.102. Further, that “[o]ther [junior] water users such as commercial and industrial water uses should also be afforded time to plan for elimination of what may be their sole source of water.” *Id.* Should not the same considerations weigh equally, if not more so, in favor of the senior right holder under a prior appropriation system? Yet, under the Director’s rationale, the senior user’s water use and operations should be disrupted so as to not unduly disrupt the juniors’. This is contrary to the CM Rules and Idaho’s prior appropriation doctrine. When the Director approves a mitigation plan, there should be certainty that the senior user’s material injury will be mitigated throughout the duration of the plan’s implementation. This is the price of allowing junior users to continue their offending out-of-priority water use. It is for this very reason the Rules require mitigation plans to have “contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable.” If an approved mitigation source fails, the resulting material injury cannot go unaddressed to the detriment of the senior. The contingency should be implemented to address the injury.

If junior users wish to avoid curtailment by proposing a mitigation plan, the risk of that plan’s failure has to rest with junior users. Junior users know, or should know, that they are only permitted to continue their offending out-of-priority water use so long as they are meeting their mitigation obligations under a mitigation plan approved by the Director. IDAPA 37.03.11.040.01.a,b. If they cannot, then the Director must address the resulting material injury by turning to the approved contingencies. If there is no alternative source of mitigation water designated as the contingency, then the Director must turn to the contingency of curtailment. Curtailment is an adequate contingency if timely effectuated. In this same vein, if curtailment is to be used to satisfy the contingency requirement, junior uses are on notice of this risk and should be conducting their operations so as to not lose sight of the possibility of curtailment. A senior user can expect no more under the prior appropriation doctrine than for offending junior

user's to be curtailed to address material injury. However, given the circumstances presented here, there are simply no grounds under the CM Rules for the Director to permit juniors to continue their out-of-priority diversions for sixty days in the face of existing material injury to Rangen's senior rights. The Court therefore holds that the Director exceeded his authority under the CM Rules by failing to timely implement the plan's contingency (i.e., curtailment) once he determined the Agreement mitigation source had become unavailable. The Court further finds that Director's exceedance resulted in prejudice to Rangen's substantial rights in the form of unmitigated material injury to its senior water rights.

B. The Director's conditional approval of the fourth mitigation plan does not alter the analysis.

At the time the Director issued his *Final Order*, he had already conditionally approved IGWA's fourth proposed mitigation plan. 4663 R., pp.178-240. However, the Director's conditional approval did not authorize the out-of-priority diversions permitted under the *Final Order*. The conditions of approval were not met at the time the Director issued his *Final Order*, nor was the pump and pipeline project contemplated under the fourth plan constructed or operational. This Court has already held that while the Director may conditionally approve a mitigation plan consistent under the CM Rules, he may not permit out-of-priority water use to occur under that plan prior to the conditions of approval being satisfied. *Memorandum Decision*, Twin Falls County Case No. CV-2014-4633, pp.7-8 (May 13, 2015). Therefore, the fact that the Director has conditionally approved IGWA's fourth mitigation plan at the time he issued his *Final Order* does not alter or affect the Court's preceding analysis.

C. The Director did not make a finding of futile call.

Futile call may be a defense to curtailment under Idaho law. The junior bears the burden of proving the defense. *American Falls Res. Dist. No. 2. v. Idaho Dept. of Water Resources*, 143 Idaho 862, 878, 154 P.3d 433, 449 (2007). Such burden must be carried by clear and convincing evidence in the record. *In Matter of Distribution of Water to Various Water Rights Held By or For Ben. of A & B Irr. Dist.*, 155 Idaho 640, 653, 315 P.3d 828, 841 (2013). In his *Final Order*, the Director stated that his "delay in curtailment is reasonable because instantaneous curtailment will not immediately increase water supplies to Rangen." 4970 R., p.102. It is unclear whether

the Director intended this statement to justify his failure to timely curtail on the grounds that such curtailment would be futile. Aside from this conclusory statement, the Director did not engage in a futile call analysis in his *Final Order*. There certainly is not clear and convincing evidence in the record supporting a futile call determination. Therefore, if the Director intended the above-quoted statement to be a futile call determination, the Court reverses and remands the same on the grounds that it is not supported by clear and convincing evidence in the record.

D. Rangen is not entitled to an award of attorney's fees on judicial review.

In its *Petition*, Rangen seeks an award of attorney fees under Idaho Code § 12-117. While Rangen seeks an award in its *Petition*, it has not supported that request with any argument or authority in its briefing. On that ground, Rangen is not entitled to an award of attorney fees on judicial review, and its request must be denied. *See e.g., Bailey v. Bailey* 153 Idaho 526, 532, 284 P.3d 970, 976 (2012) (providing “the party seeking fees must support the claim with argument as well as authority”). Additionally, the Court does not find the arguments of the Department to be frivolous or unreasonable. Therefore an award of attorney fees under Idaho Code § 12-117 is not warranted.


IV.

ORDER

For the reasons set forth above, the Director's *Final Order* is set aside and remanded for further proceedings as necessary consistent with this decision.

IT IS SO ORDERED.

Dated June 1, 2015


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER was mailed on June 01, 2015, with sufficient first-class postage to the following:

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ORDER

Page 1 6/01/15

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Deputy Clerk

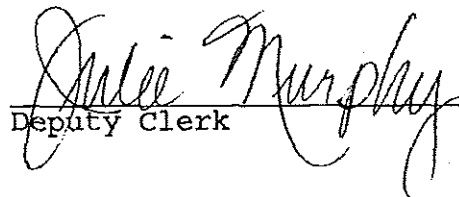


EXHIBIT B

SETTLEMENT AGREEMENT ENTERED INTO JUNE 30, 2015 BETWEEN PARTICIPATING MEMBERS OF THE SURFACE WATER COALITION¹ AND PARTICIPATING MEMBERS OF THE IDAHO GROUND WATER APPROPRIATORS, INC.²

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.

¹ 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.

² 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 3rd 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.

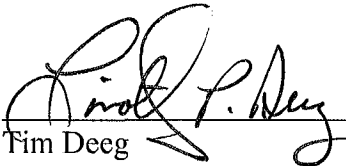
The parties have executed this Agreement on the date following their respective signatures.

RACINE OLSON NYE BUDGE AND BAILEY, CHARTERED

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

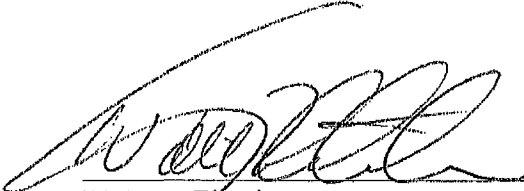
Attorney for Idaho Ground Water Appropriators, Inc.

IDAHO GROUND WATER APPROPRIATORS, INC.

 7/1/2015
Tim Deeg / Date

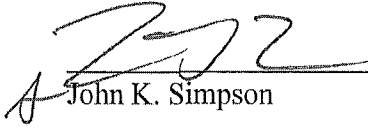
President

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

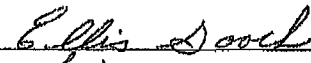


W. Kent Fletcher Date 7-7-15

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*

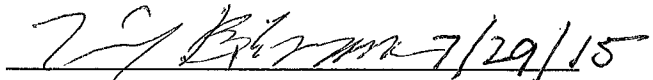
ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT

 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

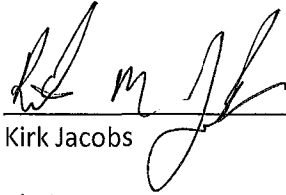
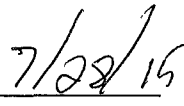
CAREY VALLEY GROUND WATER DISTRICT

Leta Hansen *7/27/15*

Leta Hansen Date

Chairman

JEFFERSON CLARK GROUND WATER DISTRICT

Kirk Jacobs

Date

Chairman

MADISON GROUND WATER DISTRICT


Jason Webster 7-23-15

Jason Webster

Date

Chairman

MAGIC VALLEY GROUND WATER DISTRICT

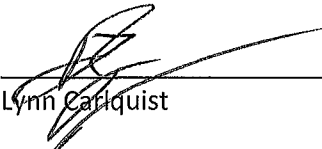
 7/14/2015

Dean Stevenson

Date


Chairman

NORTH SNAKE GROUND WATER DISTRICT



Lynn Carlquist 7/22/2015
Chairman Date

FREEMONT MADISON IRRIGATION DISTRICT



Dale L. Swenson Date
Jeff Raybould
Manager Chairman

SOUTHWEST IRRIGATION DISTRICT

RANDY BROWN

Date

Chairman

EXHIBIT C

SECOND ADDENDUM TO SETTLEMENT AGREEMENT

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

RECITALS

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

COVENANTS

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

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

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

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

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

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

i. The Parties and their consultants will work with the Department to collect, process, archive and submit sentinel well data to the Steering Committee within 30 days of collection.

ii. The Parties and their consultants will use the *Technique For Calculating Groundwater Level Index and Determining Compliance with Settlement* ("Calculation Technique") to determine if the groundwater level benchmarks and goal are met by June 1 of the year identified. This information shall be provided for use by the Steering Committee. Following experience with the Calculation Technique the technical working group may recommend amendments for approval by the Steering Committee.

iii. The Parties will request the Department to verify each District's annual diversion volume, and other diversion reduction data (recharge, CREP, conversions, end-gun removals, etc.) to confirm the accuracy of the data. The Department's analysis shall be provided to the Steering Committee no later than July 1 for the previous irrigation season.

iv. Any District may elect to report to the Department and request enforcement against any individual member of that District that is not in compliance with any mitigation plan or activity implemented by the District. Such members will not be protected under the Settlement Agreement. It is the Parties' intent that the Director will evaluate the breach and, if a breach is found to exist, provide notice of violation and opportunity to cure to the breaching member. If the member fails to cure the breach the Parties will request the Director to issue an order

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

c. Section 3.m (Steering Committee):

- i. The Steering Committee will review the technical information supplied by the Department together with technical reports compiled by the Parties' consultants.
- ii. If, based on the information reported and available, the Surface Water Coalition and IGWA find that the Long Term Practices as set forth in paragraph 3 of the Agreement have been performed but the groundwater level benchmarks or goal set forth in 3.e.ii have not been met, the Steering Committee shall recommend additional actions to be undertaken by the Districts pursuant to 3.m.iii of the Settlement Agreement. If the Surface Water Coalition and IGWA do not agree upon additional actions prior to March 1 of the following year, the Steering Committee will request that the Director issue an order requiring additional actions to be undertaken by the Districts to achieve the benchmarks or goal not met.
- iii. If, based on the information reported and available, the Steering Committee finds any breach of the Long Term Practices as set forth in paragraph 3 of the Agreement, the Steering Committee shall give ninety (90) days written notice of the breach to the breaching party specifying the actions that must be taken to cure such breach. If the breaching party refuses or fails to take such actions to cure the breach, the Steering Committee shall report the breach to the Director with all supporting information, with a copy provided to the breaching party. If the Director determines based on all available information that a breach exists which has not been cured, the Steering Committee will request that the Director issue an order specifying actions that must be taken by the breaching party to cure the breach or be subject to immediate curtailment pursuant to CM Rule 40.05.
- iv. If the Surface Water Coalition and IGWA do not agree that a breach has occurred or cannot agree upon actions that must be taken by the breaching party to cure the breach, the Steering Committee will report the same to the Director and request that the Director evaluate all available information, determine if a breach has occurred, and issue an order specifying actions that must be taken by the breaching party to cure the breach or be subject to curtailment.
- v. The Steering Committee will submit a report to the Parties and the Department prior to May 1 annually reporting on: (a) progress on implementation and achieving the benchmarks and goals of the

Settlement Agreement, (b) performance of the Long Term Practices set forth in paragraph 3 of the Settlement Agreement, (c) the status and resolution of any breaches, and (d) adaptive water management measures recommended and implemented pursuant to paragraph 4 of the Settlement Agreement.

d. Section 4 (Adaptive Water Management Measures):


i. The intent of the Adaptive Management Provision is to provide a forum for the Parties to resolve implementation issues without a party seeking an enforcement order from the Department or a district court. The terms of the Settlement Agreement and the Director's Final Order approving the same as a mitigation plan control and satisfy any mitigation obligations imposed by the Methodology Order on the Parties to the Settlement Agreement.

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

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

SURFACE WATER COALITION:


BARKER ROSHOLT & SIMPSON LLP



John K. Simpson 1/3/17
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



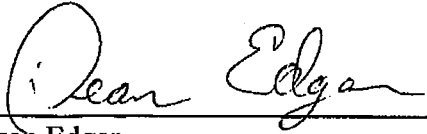
W. Kent Fletcher 1-3-17
Date

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

AMERICAN FALLS RESERVOIR DISTRICT NO. 2

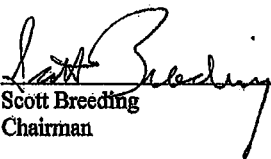
Ellis Gooch 1-3-17
Ellis Gooch Date
President

BURLEY IRRIGATION DISTRICT

 12/13/2014

Dean Edgar Date
Chairman

MILNER IRRIGATION DISTRICT

 12/14/16

Scott Breeding Date
Chairman

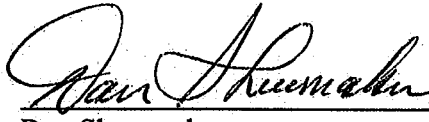
MINIDOKA IRRIGATION DISTRICT

Frank Hunt 12-20-16
Frank Hunt Date
Chairman

NORTH SIDE CANAL COMPANY

John Beukers 12-16-16
John Beukers Date
Chairman

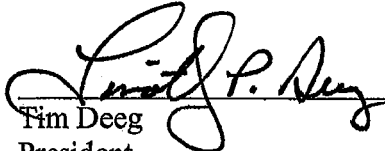
TWIN FALLS CANAL COMPANY

 12-13-16

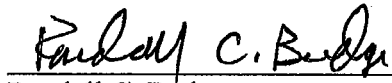
Dan Shewmaker
Chairman

Date

IDAHO GROUND WATER APPROPRIATORS, INC.:

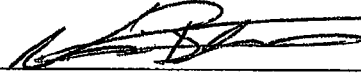
 12/14/16
Tim Deeg Date
President

RACINE OLSEN NYE BUDGE & BAILEY, CHTD.

 12/14/16
Randall C. Budge Date


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

ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT

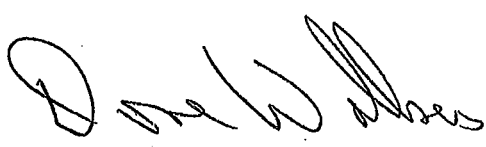



Nick Behrend 12-14-16
Chairman Date

BINGHAM GROUND WATER DISTRICT

 12-14-14
Craig Evans Date
Chairman

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

Dane Watkins
Chairman

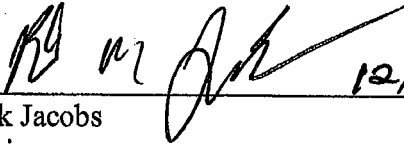
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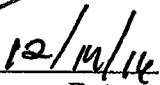
CAREY VALLEY GROUND WATER DISTRICT

Leta Hansen *12/26/16*

Leta Hansen Chairman Date

JEFFERSON CLARK GROUND WATER DISTRICT

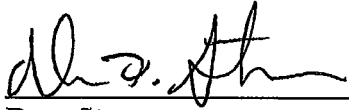

Kirk Jacobs
Chairman


Date

MADISON GROUND WATER DISTRICT

Jason Webster 1-9-17
Jason Webster Date
Chairman

MAGIC VALLEY GROUND WATER DISTRICT

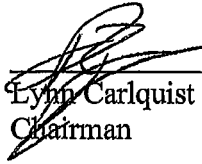


12/14/16

Dean Stevenson
Chairman

Date

NORTH SNAKE GROUND WATER DISTRICT


Lynn Carlquist
Chairman

12/14/16
Date

FREEMONT MADISON IRRIGATION DISTRICT

Dale L. Swenson 12-14-16

Dale L. Swenson
Manager

Date

EXHIBIT D

Issuance Date	Shortfall (ac-ft)	Order Type	Step	Relevant Language	Order Title and reference page number
April 19, 2016	44,200	As-Applied	Steps 1-3	"There are three approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District, 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), and 3) the Idaho Ground Water Appropriators, Inc. ("IGWA"). A&B Irrigation District's proportionate share of the predicted DS of 44,200 acre-feet is 3,463 acre-feet. SWID's proportionate share of the predicted DS of 44,200 acrefeet is 956 acre-feet. Due to the nature of SWID's mitigation plan, SWID does not need to establish that it can mitigate for its proportionate share of the predicted DS. The remaining share of the predicted DS is 39,783 acrefeet. The Department does not have sufficient information to determine IGWA's proportionate share of the remainder because the Department does not have an accurate list of all ground water rights covered under IGWA's mitigation plan."	Final Order Regarding April 2016 Forecast Supply (Methodology Steps 1-3), p. 5 fn.4
May 18, 2016	NA	Curtailment Order	NA	"When the Director issued the As-Applied Order, three mitigation plans were approved for the SWC delivery call. The first approved mitigation plan was filed by the Idaho Ground Water Appropriators, Inc. ("IGWA"), in Docket No. CM-MP 2009-007 ("IGWA Plan") on November 9, 2009. The IGWA 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 Director issued an Order Approving Mitigation Plan on June 3, 2010. In the As-Applied Order, the Director explained "[t]he Department does not have sufficient information to determine IGWA's proportionate share" of the predicted DS of 44,200 acre-feet "because the Department does not have an accurate list of all ground water rights covered under" the IGWA Plan. As-Applied Order at 5, n.4."	Final Order Curtailing Ground Water Rights Junior to February 8, 1989, p. 1-2
July 22, 2016	25,200	As-Applied	Step 6	NA	Order Revising April 2016 Forecast Supply and Amending Curtailment Order (Methodology Step 6)
November 29, 2016	39,500	As-Applied	Step 9	" Mitigation plans filed by the Idaho Ground Water Appropriators, Inc. ("IGWA"); A&B Irrigation District ("A&B"); Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"); and the City of Pocatello, City of Idaho Falls, and Coalition of Cities1 (collectively, "Cities") are currently approved for the SWC delivery call to mitigate for material injury to in-season demand and reasonable carryover. Final Order Approving Mitigation Credits Regarding SWC Delivery Call, CM-MP-2009-006 (July 19, 2010); Order Approving Mitigation Plan, CM-MP-2009-007 (June 3, 2010); Final Order Approving Mitigation Plan, CM-MP-2015-003 (Dec. 16, 2015); Final Order Approving Mitigation Plan for 2016, CM-MP-2010-001 (Mar. 29, 2016); Final Order Approving Mitigation Plan for 2016, CM-2016-002 (Apr. 27, 2016); Final Order Approving Stipulated Mitigation Plan, CM-MP-2016-001 (May 2, 2016)As noted in Finding of Fact 3, mitigation plans filed by IGWA, A&B, SWID, and the Cities are currently approved for the SWC delivery call to mitigate for material injury to reasonable carryover. Participants in the mitigation plans approved for IGWA, SWID, and the Cities do not need to establish their ability to mitigate for their proportionate share of the reasonable carryover shortfall. However, due to the nature of A&B's mitigation plan, A&B must establish to the satisfaction of the Director its ability to mitigate for its proportionate share of the reasonable carryover shortfall, which is 2,122 AF. See Order Designating April 2016 Forecast Supply Order Final as Modified, CM-DC-2010-001 (Sept. 2, 2016)."	Final Order Establishing 2016 Reasonable Carryover (Methodology Step 9), p. 2, 6 fn. 12
April 13, 2017	0	As-Applied	Steps 1-3	NA	Final Order Regarding April 2017 Forecast Supply (Methodology Steps 1-3)
August 3, 2017	0	As-Applied	Steps 5-6	NA	Order Revising April 2017 Forecast Supply and Resinding Curtailment Order (Methodology Steps 5 & 6)
November 30, 2017	0	As-Applied	Step 9	NA	Final Order Establishing 2017 Reasonable Carryover (Methodology Step 9)
April 17, 2018	0	As-Applied	Steps 1-3	NA	Final Order Regarding April 2018 Forecast Supply (Methodology Steps 1-3)
July 23, 2018	0	As-Applied	Steps 5-6	NA	Order Revising April 2018 Forecast Supply (Methodology Steps 5 & 6)
November 30, 2018	0	As-Applied	Step 9	NA	Final Order Establishing 2018 Reasonable Carryover (Methodology Step 9)

Issuance Date	Shortfall (ac-ft)	Order Type	Step	Relevant Language	Order Title and reference page number
April 11, 2019	20,900	As-Applied	Steps 1-3	"There are six approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District, 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), 3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), and 4) certain cities commonly referred to as the "Coalition of Cities." "	Final Order Regarding April 2019 Forecast Supply (Methodology Steps 1-3), p. 5 fn 4
June 7, 2019	NA	Curtailment Order	NA	"There are currently six approved mitigation plans in place responding to the SWC delivery call: (1) Docket No. CM-MP-2009-007 for the benefit of Idaho Ground Water Appropriators, Inc. ("IGWA") (delivery of stored water); (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups and recharge); (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan); . . ."	Final Order Curtailing Non-Enlargement Ground Water Rights Junior to April 12, 1994, and Enlargement Ground Water Rights Junior to March 14, 1971, p. 2
July 17, 2019	0	As-Applied	Steps 5-6	NA	Order Revising April 2019 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6)
November 27, 2019	0	As-Applied	Step 9	NA	Final Order Establishing 2019 Reasonable Carryover (Methodology Step 9)
April 20, 2020	0	As-Applied	Steps 1-3	NA	Final Order Regarding April 2020 Forecast Supply (Methodology Steps 1-3)
July 14, 2020	0	As-Applied	Steps 5-6	NA	Order Revising April 2020 Forecast Supply (Methodology Steps 5 & 6)
November 27, 2020	0	As-Applied	Step 9	NA	Final Order Establishing 2020 Reasonable Carryover (Methodology Step 9)
April 19, 2021	40,500	As-Applied	Steps 1-3	"There are six approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District; 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), 3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), and 4) certain cities commonly referred to as the "Coalition of Cities." "	Final Order Regarding April 2021 Forecast Supply (Methodology Steps 1-3), p. 5 fn 5
May 20, 2021	NA	Curtailment Order	NA	"There are currently six approved mitigation plans in place responding to the SWC delivery call: (1) Docket No. CM-MP-2009-007 for the benefit of Idaho Ground Water Appropriators, Inc. ("IGWA") (delivery of stored water); (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups and recharge); (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan); . . ."	Final Order Curtailing Ground Water Rights Junior to May 30, 1989, p. 2
July 20, 2021	170,000	As-Applied	NA	"There are six approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District; 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), 3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), and 4) certain cities commonly referred to as the "Coalition of Cities." "	Order Revising April 2021 Forecast Supply (Methodology Steps 6), p. 10 fn 3
August 4, 2021	NA	Curtailment Order	NA	"There are currently six approved mitigation plans in place responding to the SWC delivery call: (1) Docket No. CM-MP-2009-007 for the benefit of Idaho Ground Water Appropriators, Inc. ("IGWA") (delivery of stored water); (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups and recharge); (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan); . . ."	Final Order Curtailing Ground Water Rights Junior to June 14, 1977, p. 2
August 23, 2021	142,700	As-Applied	Steps 7-8	NA	Order Revising July 2021 Forecast Supply (Methodology Steps 7-8)
December 21, 2021	64,647	As-Applied	Step 9	There are currently seven approved mitigation plans in place responding to the SWC delivery call: (1) Docket No. CM-MP-2009-007 for the benefit of Idaho Ground Water Appropriators, Inc. ("IGWA") (delivery of stored water); (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups and recharge); (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan);	Final Order Establishing 2021 Reasonable Carryover (Methodology Step 9), p. 2
January 11, 2022	NA	Curtailment Order	NA	"There are currently seven approved mitigation plans in place responding to the SWC delivery call: (1) Docket No. CM-MP-2009-007 for the benefit of Idaho Ground Water Appropriators, Inc. ("IGWA") (delivery of stored water); (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups and recharge); (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan); . . ."	Final Order Curtailing Ground Water Rights Junior to November 27, 1984, p. 2
April 20, 2022	162,600	As-Applied	Steps 1-3	"There are seven approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District, 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), 3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), 4) certain cities commonly referred to as the "Coalition of Cities", and 5) certain entities commonly referred to as the "Water Mitigation Coalition." "	Final Order Regarding April 2022 Forecast Supply (Methodology Steps 1-3), p. 5
May 5, 2022	NA	Curtailment Order	NA	"There are currently seven approved mitigation plans in place responding to the SWC delivery call: (1) Docket No. CM-MP-2009-007 for the benefit of Idaho Ground Water Appropriators, Inc. ("IGWA") (delivery of stored water); (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups and recharge); (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan); . . ."	Final Order Curtailing Ground Water Rights Junior to December 25, 1979, p.1-2

Issuance Date	Shortfall (ac-ft)	Order Type	Step	Relevant Language	Order Title and reference page number
July 20, 2022	52,600	As-Applied	Steps 5-6	"There are seven approved mitigation plans in place responding to the SWC delivery call filed by the following entities: (1) A&B Irrigation District, (2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), (3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), (4) certain cities commonly referred to as the "Coalition of Cities", and (5) certain entities commonly referred to as the "Water Mitigation Coalition." "	Order Revising April 2022 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6), p. 10
August 18, 2022	132,100	As-Applied	Steps 7-8	NA	Order Revising July 2022 Forecast Supply (Methodology Steps 7-8)
November 30, 2022	49,309	As-Applied	Step 9	"There are currently seven approved mitigation plans in place responding to the SWC delivery call: (1) Docket No. CM-MP-2009-007 for the benefit of Idaho Ground Water Appropriators, Inc. ("IGWA") (delivery of stored water); (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups and recharge); (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan); . . ."	Final Order Establishing 2022 Reasonable Carryover (Methodology Step 9), p. 2
December 14, 2022	NA	Curtailment Order	NA	"There are currently seven approved mitigation plans in place responding to the SWC delivery call: (1) Docket No. CM-MP-2009-007 for the benefit of Idaho Ground Water Appropriators, Inc. ("IGWA") (delivery of stored water); (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry ups and recharge); (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan); . . ."	Final Order Curtailing Ground Water Rights Junior to May 31, 1989, p. 1-2
April 21, 2023	75,200	As-Applied	Steps 1-3	"There are seven approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District, 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), 3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), 4) certain cities commonly referred to as the "Coalition of Cities", and 5) certain entities commonly referred to as the "Water Mitigation Coalition." A&B Irrigation District's proportionate share of the predicted DS of 75,200 acre-feet is 458 acre-feet. Due to the nature of the mitigation plans for SWID, the Coalition of Cities and the Water Mitigation Coalition, these entities do not need to establish that they can mitigate for their proportionate share of the predicted DS. IGWA has two approved mitigation plans. If IGWA is in compliance with mitigation plan CM-MP-2016-001, IGWA does not need to establish that it can mitigate for its proportionate share of the predicted DS. If IGWA seeks to provide mitigation by delivery of storage water as approved in mitigation plan CM-MP-2009-007, IG WA' s proportionate share of the predicted DS of 75,198 acre-feet is 63,645 acre-feet."	Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3), p. 5 fn 5
July 19, 2023	0	As-Applied	Steps 5-6	NA	Order Revising April 2023 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6)