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Attorneys for Henry's Fork Ground Water District and Madison Ground Water District

STATE OF 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-DC-2010-001

Docket No. CM-MP-2016-001

NOTICE OF INTENDED COMPLIANCE
WITH 2016 MITIGATION PLAN BY
HENRY'S FORK GROUND WATER
DISTRICT AND MADISON GROUND
WATER DISTRICT

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

NOTICE OF INTENDED COMPLIANCE WITH 2016 MITIGATION PLAN BY HENRY'S FORK
GROUND WATER DISTRICT AND MADISON GROUND WATER DISTRICT

Henry's Fork Ground Water District and Madison Ground Water District, through counsel, jointly submit this amended notice of mitigation compliance pursuant to the *Order Determining Deficiency in IGWA's May 17, 2024, Notice of Storage Water Leases* issued May 28, 2024.

Relevant Background

On April 18, 2024, the Director issued the *Final Order Regarding April 2024 Forecast Supply (Methodology Steps 1–3) ("April 2024 As-Applied Order")*, in which the Director that Twin Falls Canal Company ("TFCC") may incur an in-season demand shortfall ("IDS") of 74,100 acre-feet.

On May 2, 2024, North Snake and Magic Valley filed the *Joint Notice of Compliance—Magic Valley Ground Water District & North Snake Ground Water District's 2024 Irrigation Season Mitigation Commitments ("MV/NS Joint Notice")* proposing to provide 15,590 acre-feet of storage water to the Surface Water Coalition ("SWC") under IGWA's "2009 Storage Water Mitigation Plan." (*MV/NS Joint Notice*, p. 2-3.) The 15,590 acre-feet represents their proportionate shares of the 74,100 acre-feet IDS prediction based on steady-state modelling using ESPAM 2.2. *Id.*

On May 10, 2024, the Director issued the *Order Determining Deficiency in Notices of Secured Water ("May 10 Order")* accepting the mitigation proposal by North Snake and Magic Valley, but stating: "Unfortunately, Magic Valley and North Snake did not include contracts, leases, options, or similar documentation to establish that they had secured the water necessary to meet the obligation." (*May 10 Order*, p. 6.) The *May 10 Order* gave Magic Valley and North Snake until May 17 to submit documentation of storage water contracts for the 15,590 acre-feet offered to covered their proportionate shares of the 74,100 IDS. *Id.*

On May 14, 2024, IGWA filed *IGWA's Conditional Notice of Mitigation Compliance; Petition for Reconsideration* (“*IGWA's Conditional Mitigation Notice*”) which provided notice that North Snake, Magic Valley, Carey Valley, Bingham, Bonneville-Jefferson, Jefferson-Clark, Madison, and Henry’s Fork ground water districts have secured storage leases to mitigate their proportionate shares of the 74,100 acre-feet IDS, but that such leases could be utilized only to mitigate for material injury caused by groundwater use within the districts. Unlike the *MV/NS Joint Notice*, which proposed that the 74,100 acre-feet be allocated entirely among IGWA’s member ground water districts, *IGWA's Conditional Mitigation Notice* proposed that the 74,100 acre-feet be allocated among all groundwater users from the ESPA. The difference is that under *IGWA's Conditional Mitigation Notice* the collective storage water obligations of IGWA’s member districts is 66,102 acre-feet as opposed to 74,100 acre-feet.

On May 17, 2024, IGWA filed *IGWA's Notice of Storage Water Leases* (“*Lease Notice*”) which attached copies of storage water leases for 44,509 acre-feet. These leases were submitted to cover the proportionate mitigation obligations of North Snake, Magic Valley, Carey Valley, Bingham, Bonneville-Jefferson, Jefferson-Clark, Madison, and Henry’s Fork ground water districts which collectively total 43,104 acre-feet when apportioned in accordance with *IGWA's Conditional Mitigation Notice* (*i.e.* when the 74,100 acre-feet is apportioned among all ESPA groundwater users as opposed to IGWA members only). The *Lease Notice* states that the storage water could only be used to mitigate for groundwater use by IGWA’s members.

On May 28, 2024, the Director issued an *Order Denying IGWA's Second Petition for Reconsideration; Order Determining Deficiency in IGWA's May 17, 2024, Notice of Secured Storage Water Leases* (“*May 28 Order*”) rejecting IGWA’s proposal to mitigate only for material injury caused by its members. (*May 28 Order*, p. 4-7.) The Director ruled that IGWA must

mitigate for both its member and non-members under its *2009 Storage Water Mitigation Plan*. *Id.* And, the Director deemed IGWA's *Lease Notice* deficient since it was conditioned upon "the Director also accepting IGWA's argument that under the *2009 Storage Water Mitigation Plan* IGWA is not required to mitigate for all groundwater users." *Id.* at 8.

Also on May 28, 2024, the Director issued the *Amended Order Determining Deficiency in Notices of Secured Water* ("*Amended Deficiency Order*") which amended the *May 10 Order* addressing the mitigation notices submitted on May 2. The *Amended Deficiency Order* reaffirmed that North Snake and Magic Valley can comply with the *2009 Storage Water Mitigation Plan* by secure storage water lease contracts to cover their proportionate shares of the 74,100 IDS when allocated entirely among IGWA's member districts. (*Amended Deficiency Order*, p. 7.)

Pursuant to the Director's Order Granting Upper Valley Districts Limited Intervention and AFA's Motion for Reconsideration, dated May 28, 2024, which has apparently granted the right of individual ground water districts to individually comply with the 2016 Mitigation Plan; and, pursuant to the Director's requirement that all ground water districts notify the Director as to how they intend to comply with mitigation for this 2024 season by the end of day, on behalf of Henry's Fork Ground Water District (HFGWD) and Madison Ground Water District (MGWD) notice is hereby given to the Director that for the year 2024, they will comply with the 2016 mitigation plan as to their proportionate share, which by agreement with IGWA to date has been 1,500 acre feet of storage and 3,000 acre feet of recharge as well as any adaptive management which the Director imposes on said Districts should the various GWDs fail to agree to any proportionality. Furthermore, said 2024 mitigation is intended to fully mitigate not only under the

2016 mitigation plan, but also under any version of the 2009 mitigation plan, which is being proposed by other ground water districts.

Attached hereto is the lease of storage water to comply with the 1,500 acre feet of storage water to be provided for the benefit of HFGWD and MGWD.

Finally, for future years, HFGWD and MGWD will be relying on the Ground Water Management plan to set the stage for managing the aquifer and further intend to pursue their presently filed mitigation plans to cover any additional mitigation required in order to mitigate for their impacts to SWC and their Call.

DATED: May 29, 2024

A handwritten signature in black ink, appearing to read "Jerry R. Rigby", is written over a horizontal line. To the right of the signature, the letters "SJR" are written in a smaller, cursive hand.

Jerry R. Rigby
Attorney for Henry's Fork GWD and
Madison GWD

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2024, I served the foregoing document on the persons below via email as indicated:

<p>Director Mat Weaver Garrick Baxter Sarah Tschohl Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail mat.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov</p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234 *** service by electronic mail only mhoward@usbr.gov</p>	<p>Craig Chandler IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only craig.chandler@idwr.idaho.gov</p>
<p>T.J. Budge Elisheva Patterson Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only tj@racineolson.com elisheva@racineolson.com</p>	<p>Sarah A. Klahn Max C. Bricker Veva Francisco Somach Simmons & Dunn 2033 11th St., Ste. 5 Boulder, CO 80302 *** service by electronic mail only sklahn@somachlaw.com mbricker@somachlaw.com vfrancisco@somachlaw.com</p>	<p>David Gehlert ENRD – DOJ 999 18th St. South Terrace, Ste. 370 Denver, CO 80202 *** service by electronic mail only david.gehlert@usdoj.gov</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83201 *** service by electronic mail only rdiehl@pocatello.us</p>	<p>William A. Parsons Parsons, Smith & Stone LLP P.O. Box 910 Burley, ID 83318 *** service by electronic mail only wparsons@pmt.org</p>	<p>Corey Skinner IDWR – Southern Region 650 Addison Ave W, Ste. 500 Twin Falls, ID 83301-5858 *** service by electronic mail only corey.skinner@idwr.idaho.gov</p>
<p>W. Kent Fletcher Fletcher Law Offices P.O. Box 248 Burley, ID 83318 *** service by electronic mail only wkf@pmt.org</p>	<p>Kathleen Carr U.S. Dept. Interior, Office of Solicitor Pacific Northwest Region, Boise 960 Broadway, Ste. 400 Boise, ID 83706 *** service by electronic mail only kathleenmarion.carr@sol.doi.gov</p>	<p>Candice McHugh Chris M. Bromley McHugh Bromley, PLLC 380 South 4th Street, Ste. 103 Boise, ID 83702 *** service by electronic mail only cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>
<p>Robert E. Williams Williams, Meservy & Lothspeich, LLP P.O. Box 168 Jerome, ID 83338 *** service by electronic mail only rewilliams@wmlattvs.com</p>	<p>Robert L. Harris Holden, Kidwell, Hahn & Crapo, PLLC P.O. Box 50130 Idaho Falls, ID 83405 *** service by electronic mail only rharris@holdenlegal.com</p>	<p>Michael A. Kirkham City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 *** service by electronic mail only mkirkham@idahofallsidaho.gov</p>

NOTICE OF INTENDED COMPLIANCE WITH 2016 MITIGATION PLAN BY HENRY'S FORK
GROUND WATER DISTRICT AND MADISON GROUND WATER DISTRICT

<p>Skyler Johns Steven Taggart Nathan Olsen Olsen Taggart PLLC P.O. Box 3005 Idaho Falls, ID 83403 *** service by electronic mail only sjohns@olsentaggart.com staggart@olsentaggart.com nolsen@olsentaggart.com</p>	<p>Dylan Anderson Dylan Anderson Law PLLC P.O. Box 35 Rexburg, ID 83440 *** service by electronic mail only dylan@dylanandersonlaw.com</p>	<p>John K. Simpson. Travis L. Thompson. Abby R. Bitzenburg. MARTEN LAW LLP 163 Second Ave. West P.O. Box 63 Twin Falls, Idaho 83303-0063 abitzenburg@martenlaw.com isimpson@martenlaw.com tthompson@martenlaw.com</p>
<p>W. Kent Fletcher, ISB#2248 FLETCHER LAW OFFICE P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org</p>		



 Jerry R. Rigby

STORAGE WATER LEASE

This Storage Water Lease ("Agreement") is entered into between North Fork Reservoir Company, ("Lessor"), and Henry's Fork Groundwater District (the "District").

RECITALS

A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").

B. THE DISTRICT desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.

C. Lessor desires to lease storage water to the DISTRICT, and the DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

LEASE

1. Storage Water Lease. Lessor hereby leases to the DISTRICT storage water for 2021-2025 only, at which the DISTRICT is required to pay rent as follows:

1,500 acre-feet at \$20.00 per acre-foot. IGWA will pay \$1.30 acre-foot Water District 01 administrative fee and \$2.00 State Water Supply Bank Fee for a total payment of ~~\$2.30~~ per acre-foot.

2. Term. The initial term of this Lease shall commence March 13, 2021, and end November 30, 2025.

3. Payment of Rent. The DISTRICT will pay the rent to Lessor in one installment, on or before 1st day October, of each year.

4. Administrative Fees. IGWA will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board.

5. Use of Leased Water.

5.1 The assignment, delivery, and use of leased storage water will be determined by the DISTRICT and is subject to the final accounting for the year by the Water-master of Water District 1 and any applicable Water District 1 Rental Pool Rules.

5.2 This Lease does not include any right to use storage water below Milner Dam.

5.3 The storage water available to the DISTRICT under this Lease may be assigned and delivered by the DISTRICT to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

5.4 Any storage water not used or assigned by the DISTRICT by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

5.5 Lessor understands that any storage water leased may be subject to the Water District 1 Rental Pool Rules.

6. Representations by Lessor. Lessor covenants and represents that:

6.1 It will provide to the DISTRICT all storage water leased under this Lease.

6.2 It is the true and lawful owner of the storage water and that nothing restricts or precludes Lessor from entering this Lease.

7. Breach. If either party defaults in the performance of its obligations under this Lease, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect any or all of the following cumulative remedies:

(a) Terminate this Lease.

(b) Seek specific performance of this Lease;

8. Assignment. This Lease may not be assigned by the DISTRICT without the express written consent of Lessor, but the storage water leased by the DISTRICT under this Lease may be assigned or otherwise made available to any other person or entity.

9. Dispute Resolution. Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

9.1 **Good Faith Negotiation.** Upon written notice from one party to the other, authorized representatives of the parties will attempt in good faith to resolve the dispute by negotiation.

9.2 **Mediation.** If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation by a mediator designated by mutual Lease of the parties. The mediation will be held in Fremont County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

9.3 **Litigation.** Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement Lease entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

9.4 **Governing Law, Jurisdiction, and Venue.** This Lease will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction and agree that Fremont County is the proper venue.

9.5 **Exclusive Procedures.** The procedures specified in this section 9 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 9.1 and 9.2 are pending.

10. Notices. All notices given pursuant to this Lease must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing

for certified mail and regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:

Lessor: North Fork Reservoir Company
Michael Rasmussen, President
Address: PO Box 250
Rexburg, Idaho 83201

DISTRICT: Henry's Fork Groundwater District
Aaron Dalling, Secretary
Address: PO BOX 15 St. Anthony, Idaho 83445
Phone: 208-403-8474

Email: aaron.fmid@myidahomail.com

Either party may change its designated address by providing written notice of such change to the other party.

11. Binding Effect. This Agreement shall be binding upon the respective heirs, successors, and assigns of the parties.

DATED this 22 day of Aug, 2022.

DATED this 26 day of Aug, 2022.

LESSEE:
Henry's Fork Groundwater District

LESSOR:
North Fork Reservoir Company
PO Box 250
Rexburg, ID 83440

By: 
Aaron Dalling-Secretary

By: 
Michael Rasmussen-President