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Facsimile: (208) 344-6034
jks@idahowaters.com

Attorney for Buckeye Farms

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

IN THE MATTER OF:
WATER RIGHTS HELD BY BUCKEYE
FARMS, INC. &
APPLICATION FOR PERMIT NOS. 36-
17121 & 36-17122

**SECOND AMENDED STIPULATED
MITIGATION PLAN AND REQUEST
FOR ORDER**

COMES NOW, Buckeye Farms Inc. ("Buckeye"), by and through its counsel of record, Barker Rosholt & Simpson LLP, North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Southwest Irrigation District, American Falls-Aberdeen Ground Water district, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, Fremont-Madison Irrigation District, and Jefferson-Clark Ground Water district (herein "Districts") and the Idaho Ground Water Appropriators, Inc. ("IGWA"), by and through their respective counsel of record, collectively ("Parties"), pursuant to IDAPA 37.01.11.043.03(o), and hereby stipulate and agree to the following:

1. Buckeye and the Districts entered into a Settlement Agreement ("Settlement") executed prior to September 22, 2017, a copy of which is attached hereto as Exhibit A, in order to resolve any and all prospective delivery calls by Buckeye.

2. Pursuant to paragraph 3.5 of the Settlement, the Parties agree that the Settlement is intended to be part of a mitigation plan as defined in the Conjunctive Management Rules and request the Director of IDWR issue an Order confirming the Settlement Agreement as a component of the Final Mitigation Plan.

3. A Stipulated Mitigation Plan referencing the Settlement was filed with the Idaho Department of Water Resources ("IDWR") on September 22, 2017.

4. Consistent with the Settlement, amount of mitigation, the mitigation actions, and obligations and duties of the Parties, are as follows:

- a. That the Districts agreed to provide up to 7.5 cfs of mitigation as identified and described in the Settlement.
- b. That Buckeye filed applications for permits nos. 36-17121 and 36-17122 to effectuate the terms of the Settlement and use of the mitigation as provided in the February 6, 2020 Operating Plan identified in Exhibit B.
- c. That the Operating Plan identifies the Parties' prospective actions to verify the 7.5 cfs of mitigation provided and the IGWA Expert Report dated February 7, 2020 filed in the above-captioned matter attached as Exhibit C supports the adequacy of said mitigation to the Snake River as required, for the applications identified herein.

5. Wherefore, the Parties request that the Director upon the issuance of permits nos. 36-17121 & 36-17122, enter an order without further notice or hearing accepting the Agreement and Operating Plan together as a complete and final Second Amended Stipulated Mitigation Plan in accordance with the parties' provisions as contained in the Agreement.

///

DATED this 29th day of April, 2020.

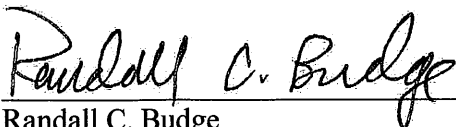
BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Attorney for Buckeye Farms, Inc.

DATED this 29th day of April, 2020.

RACINE OLSON, NYE & BUDGE,



Randall C. Budge
Thomas J. Budge
Attorneys for IGWA and Ground Water Districts

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2020, I caused to be served a true and correct copy of the foregoing **STIPULATED MITIGATION PLAN AND REQUEST FOR ORDER** by the method indicated below, and addressed to each of the following:

Idaho Department of Water Resources
Southern Region
650 Addison Ave. W., Ste. 500
Twin Falls, ID 83301-5858

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email

Responsible Citizens Association
William K. Chisholm
19073 Highway 30
Buhl, ID 83316-5060

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email

Idaho Power Company
James Tucker
P.O. Box 70
Boise, ID 83707-0070

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email

City of Pocatello
c/o Sarah Klahn
Somach Simmons & Dunn
2701 Lawrence St., Ste 113
Denver, CO 80205

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email

City of Bliss, et al.
McHugh Bromley, PLLC
380 S. 4th St., Ste. 103
Boise, ID 83702

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email

Randall C. Budge
Thomas J. Budge
Racine Olson
201 E. Center St.
Pocatello, Idaho 83201

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email


John K. Simpson

EXHIBIT A

SEP 22 2017

DEPARTMENT OF
WATER RESOURCES**SETTLEMENT AGREEMENT**

COPY

This Settlement Agreement ("**Agreement**") is made and entered into effective , June 14, 2017, by and between Buckeye Farms, Inc., an Idaho corporation ("**Buckeye**"), and North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Southwest Irrigation District, American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, Fremont-Madison Irrigation District, and Jefferson-Clark Ground Water District (collectively "**the Districts**"). Buckeye and the Districts are referred to as "**Parties**" and each a "**Party**".

RECITALS:

A. Buckeye is owner of water rights from surface water sources in the Hagerman Valley that are hydraulically connected to the Eastern Snake Plain Aquifer ("ESPA"). Buckeye has been unable to divert the full rate of diversion authorized under its water rights due to shortages in water.

B. Pursuant to their commitments to the Thousand Springs Water Supply Settlement Framework and the Buckeye Farms Amended and Restated Settlement Term Sheet dated June 14, 2017 ("**Term Sheet**"), Buckeye and the Districts, with the support and assistance of their consultants and the Idaho Department of Water Resources ("**Department**"), have evaluated Buckeye's irrigation demands as well as potential mitigation obligations of junior groundwater users if curtailed in response to a delivery call.

C. Following ongoing negotiations, the parties have entered into the Term Sheet and this Agreement for the purpose of fully and finally resolving and settling Buckeye's potential delivery call and the Districts' potential mitigation obligations.

D. In consideration for the compensation paid and this Agreement, Buckeye has agreed to limit future calls or requests for administration of Buckeye water rights as set forth herein in more detail.

AGREEMENT

NOW, THEREFORE, in consideration of this Agreement and the terms and conditions contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

DEFINED TERMS

In addition to those terms defined herein, the following definitions shall apply to this Agreement:

"Conjunctive Management Rules" means the Rules for Conjunctive Management of Surface and Ground Water Resources IDAPA 37.03.11, adopted pursuant to the Idaho Administrative Procedures Act and Section 42-603, Idaho Code, as they now exist or may hereafter be amended.

Exhibit A

"Members of the District" means any present or future member of a ground water district as defined in Title 42, Chapter 52 of Idaho Code, or any present or future qualified voter of an irrigation district as defined by Title 43, Chapter 1 of Idaho Code, that is a member of IGWA, including IGWA, together with any member who has joined a district for mitigation purposes.

"Water Rights" mean all water rights owned by Buckeye as fully described in Exhibit A attached hereto and incorporated by reference.

"Water Rights of Members of the District" means any decreed, licensed or permitted groundwater right and pending groundwater applications of a District Member with a priority date prior to the date of this Agreement.

1. Purpose and Objectives. The purpose and objectives of the Parties are as follows:

1.1 To fully compromise and settle all present and future delivery calls and any and all water right claims of Buckeye as against the Water Rights of the Members of the Districts in this Agreement;

1.2 To pay monetary compensation to Buckeye in return for Buckeye's agreement to forever limit Buckeye's future calls against the Water Rights of Members of the Districts participating in this Agreement;

1.3 To mutually release each other from any and all claims arising directly or indirectly out of the foregoing; and

1.4 To provide for cooperation, encouragement and participation in efforts made by the State of Idaho and other users of the waters of the State of Idaho to promote the recharging, stabilization and sustaining of the ESPA.

2. Compensation. The Signatory Districts agree to pay monetary compensation of \$1,110,000 to Buckeye as mitigation for depletions caused to Buckeye's water right by Members of the Districts participating in this Agreement. .

2.1 This one-time total payment will be made within ninety (90) days after the contingencies set forth in this agreement have been met and the IDWR Director has entered a final order accepting this Settlement Agreement as a complete Stipulated Mitigation Plan in accordance with the provisions of this Agreement.

2.2 The payment to Buckeye is to contribute towards costs Buckeye may incur to construct, operate and maintain one or more groundwater wells to develop a 10 cfs groundwater right or towards other facilities Buckeye may construct to augment its water supply as determined by Buckeye in its sole discretion to mitigate for the shortage of water for Buckeye's water rights.

2.3 A new groundwater well or wells or other facilities constructed by Buckeye may require mitigation of impacts to senior water rights from the Snake River. In support of Buckeye's application for new water rights or the transfer of existing surface rights as described

Exhibit A

in paragraphs 2.2 and 2.4, the Districts agree to assign mitigation credit from its ESPA aquifer enhancement activities to Buckeye to mitigate up to 7.5 cfs of the actual consumptive use mitigation requirement as determined by the Department.

2.4 Nothing in this Term Sheet prohibits, nor do the Districts object to, Buckeye returning to full utilization of its Billingsley Creek water rights or acquiring additional water rights should the water supply be available in the future to mitigate for declining spring flows. In order to fully mitigate for declining spring flows available to Buckeye's water rights and in recognition of Buckeye waiving its right to seek future administration if spring flows impact all its other water rights¹, Buckeye shall have at its own expense: (1) the right granted by the State to acquire, construct, operate and maintain one or more groundwater wells for an additional 10 CFS groundwater right near the wells described in paragraph 1 at the outlet of the South Bar S pipeline or other appropriate location as identified by Buckeye; and (2) the right to transfer all or part of existing Buckeye Ditch, Weatherby Springs and/or Riley Creek surface rights to additional points of diversion on the Snake River. These actions, (1) and (2) described herein shall be an integral part of the stipulated mitigation plan referenced in paragraph 2.1 above and the approval of these additional rights is a condition of the settlement agreement. If these conditions are not met, the parties agree to meet and attempt to negotiate an amendment to the settlement agreement prior to terminating this Term Sheet and the settlement agreement.

3. Limitations on Future Delivery Calls/Participation in Aquifer Management.

3.1 Buckeye's Water Rights. Buckeye agrees not to make any delivery calls or request administration against the Water Rights of District Members under the Conjunctive Management Rules. This Agreement shall be referenced in the Buckeye's water rights in Exhibit A as a condition of administration.

3.2 No Third Party Rights. The rights established in this Settlement Agreement are not intended and do not create any right in any person or entity other than the Members of the District and Buckeye. These rights shall not be assigned to except as set forth in Section 9.3 below.

3.3 No Prohibition on Enforcement of Rights. Notwithstanding any contained herein, this Agreement shall not be interpreted or applied to preclude either party from pursuing remedies against: (a) an unauthorized diversion of water; (b) water rights or water diversions not covered by this Agreement; (c) water right transfers which do not comply with Idaho law; or (d) water right transfers which will reduce water supplies available to fulfill the water rights identified in this Agreement.

3.4 Aquifer Management Participation. The Parties will cooperate, encourage and participate in efforts made by the State of Idaho and other uses of the waters of the State of Idaho to promote the recharging, stabilization and sustaining of the ESPA.

¹ In addition to the Curren ditch water rights identified herein, other water rights as identified in paragraph 5 subject to this waiver of right to make a delivery call include 36-3H, 36-7739, 36-8335, 36-1, 36-2, 36-7741, 36-8729 and 36-8785.

Exhibit A

3.5 Memorialization of Settlement and Mitigation Plan. The Parties do hereby acknowledge that this Agreement is intended to be a "Mitigation Plan" as such term is defined by the Conjunctive Management Rules. A copy of this Agreement shall be filed with IDWR. The Parties will request the Director of IDWR issue a final order confirming this Agreement as a final Mitigation Plan pursuant to the provisions of the Conjunctive Management Rules.

3.6 Right to Beneficial Use. Buckeye retains the sole and exclusive right to beneficially use any and all water available under the Water Rights identified in Exhibit A and acquired pursuant to this Agreement.

4. Contingencies. The conditions precedent to settlement must each be fully satisfied or waived in writing before the Parties are obligated to perform under the terms of this Agreement. The Districts' conditions precedent to settlement are as follows:

4.1 The Parties all have executed the Stipulated Mitigation Plan and Request for Order regarding Buckeye's Water Rights in the form attached hereto as Exhibit "B".

4.2 The IDWR Director entering a final order accepting this Settlement Agreement as a complete and final Stipulated Mitigation Plan in accordance with the provisions of this Agreement.

4.3 Satisfaction of Buckeye's contingencies described in paragraph 2.4 (1) and (2) above.

If any of the conditions are not satisfied, then this Agreement may be terminated at the option of the Parties consistent with the terms of this Agreement.

5. Limited Beneficiaries to Settlement. The sole parties to and beneficiaries of this Agreement are Buckeye and the Water Rights of the Members of the Districts. Only the parties to and beneficiaries specified in this section shall (i) have any right or interest under this Agreement; (ii) be a beneficiary of the duties, rights and obligations created hereby; or (iii) have the right to enforce this Agreement. Buckeye shall have the right to pursue legal and administrative remedies against any person or entity that is not a specified beneficiary hereunder and their water rights. No other person or individual shall have any rights hereunder.

6. Release. Buckeye and the Districts mutually release each other from any and all claims, losses, or damages arising directly or indirectly out of the use of their respective water rights as decreed or permitted, together with any and all past, present or pending administrative or legal proceedings pertaining thereto. All parties shall bear their own attorney's fees, costs and expenses incurred in connection with the preparation and finalization of this Agreement.

7. Default. In the event any Party fails to perform any of the terms, conditions or provisions of this Agreement and such default is not cured within thirty (30) days of receipt of written notice thereof to cure or correct the noticed default, the non-defaulting Party may elect any or all of the following cumulative remedies, to-wit:

7.1 To require specific performance of this Agreement.

Exhibit A

7.2 To pursue any and all other remedies allowed by Idaho law.

8. Notice. Any notices and communications between the parties for the purpose of complying with or enforcing the terms of this Agreement shall be in writing and delivered to the other party either personally or by certified mail, return receipt requested at the addresses provided below:

BUCKEYE: Buckeye Farms, Inc.
c/o Brian Barsotti
P.O. Box 370
Ketchum, Idaho 83340

Copy to: John K. Simpson
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, Idaho 83701-2139

Districts:

Randall C. Budge
Thomas J. Budge
Racine, Olson, Nye, Budge & Bailey, Chartered
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391

North Snake Ground Water District
152 E. Main Street
Jerome, Idaho 83338

Magic Valley Ground Water District
P.O. Box 430
Paul, Idaho 83347

Southwest Irrigation District
PO Box 668
Burley, Idaho 83318

Carey Valley Ground Water District
PO Box 261
Carey, Idaho 83320

American Falls-Aberdeen Ground Water District
PO Box 70
American Falls, Idaho 83211

Bingham Ground Water District
PO Box 1268
Blackfoot, Idaho 83221

Exhibit A

Bonneville-Jefferson Ground Water District
PO Box 51121
Idaho Falls, Idaho 83405

Madison Ground Water District
PO Box 321
Rexburg, Idaho 83440

Fremont-Madison Irrigation District
PO Box 15
St. Anthony, Idaho 83445

Jefferson-Clark Ground Water District
PO Box 1892
Idaho Falls, Idaho 83403

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed upon attempted delivery by the post office. Either party hereto shall give notice of a change of its address to the other party.

9. General Provisions.

9.1 Binding Effect. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto.

9.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same Agreement.

9.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. The Parties' duties, rights and obligations may only be assigned to a person or entity succeeding to and acquiring all of the interests of one of the Parties upon the written assumption by such person or entity acquiring the same evidencing its acceptance of all of the duties, rights, and obligations hereunder. Such shall include a successor entity acquiring and assuming all of the rights and obligations of Members of the Districts as well as a person or entity acquiring the Water Rights as part of a sale or other conveyance of Buckeye's operations or Water Rights as part of a sale.

9.4 Survival/Merger. Except as expressly provided herein, the covenants, terms, conditions, representations, indemnity agreements, and warranties contained in this Agreement shall survive any termination of this Agreement.

9.5 Entire Agreement. This Agreement, together with all exhibits hereto, shall constitute the entire Agreement between the parties and supersedes any and all previous oral or written agreements, understandings, representations, and warranties, if any, between the parties concerning the subject matters of this Agreement.

Exhibit A

9.6 Attorney Fees. In the event either party is required to retain the services of an attorney in order to enforce the terms or provisions of this Agreement, the prevailing party in any litigation arising therefrom shall be entitled to recover from the other party reasonable attorney fees and costs incurred.

9.7 Time of the Essence. Time is expressly made of the essence of all the provisions of this Agreement.

9.8 Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9.9 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

9.10 Waiver. The failure of a party hereto to insist upon strict performance of any of the terms set forth herein shall not be deemed a waiver of any rights or remedies that the party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms contained herein by the same or any other party.

9.11 Further Assurances. Each party hereto shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement.

9.12 Governing Law. This Agreement is made in the State of Idaho and the validity, meaning, effect, construction, and all rights under this Agreement shall be governed by the laws of the State of Idaho.

9.13 Representation of Authority. The Parties, and each of them, do hereby represent and warrant to each other Party that (a) they are in all respects competent to enter into this Agreement and, in addition, have no reason to believe that any other signatory hereof is not competent to enter into this Agreement, (b) they have relied upon the legal advice of their respective attorneys in entering into this Agreement, (c) the terms hereof are fully understood and voluntarily accepted; and (d) the signatories hereto have full legal right, power and authority to execute and fully perform each Parties' respective obligations under this Agreement. The Districts represent and warrant that they have the authority to execute this Agreement on behalf of the Members of the Districts.

(Signatures on following page)

Exhibit A

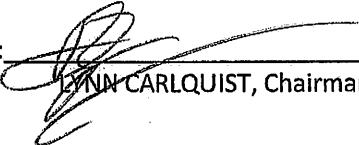
IN WITNESS WHEREOF, the parties have executed this agreement on the dates recited below:

BUCKEYE FARMS, INC.

By: 
BRIAN BARSOTTI, President

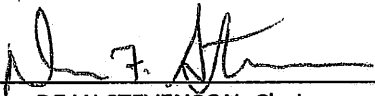
Date: 9/11/17

NORTH SNAKE GROUND WATER DISTRICT

By: 
LYNN CARLQUIST, Chairman

Date: 7/19/2017

MAGIC VALLEY GROUND WATER DISTRICT

By: 
DEAN STEVENSON, Chairman

Date: 8-19-17

CAREY VALLEY GROUND WATER DISTRICT

By: _____
LETA HANSON, Chairman

Date: _____

SOUTHWEST IRRIGATION DISTRICT

By: _____
RANDY BROWN, Chairman

Date: _____

ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT

By: 
NIC BEHREND, Chairman

Date: 7-19-17


Exhibit A

BINGHAM GROUND WATER DISTRICT

By: 
CRAIG EVANS, Chairman

Date: 7-19-17

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

By: 
DANE WATKINS, Chairman


Date: 7/19/17

MADISON GROUND WATER DISTRICT

By: _____
JASON WEBSTER, Chairman

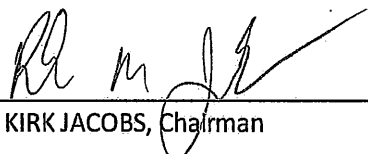
Date: _____

FREMONT-MADISON IRRIGATION DISTRICT

By: 
JEFF RAYBOULD, Chairman

Date: _____

JEFFERSON-CLARK IRRIGATION DISTRICT

By: 
KIRK JACOBS, Chairman

Date: 7/19/17

Exhibit A

CAREY VALLEY GROUND WATER DISTRICT

By: Leta Hansen, Chairman
LETA HANSEN, Chairman

Date: 8/10/17

Exhibit A

SOUTHWEST IRRIGATION DISTRICT

By: *Randy Brown*
RANDY BROWN, Chairman

Date: 7/23/17

Exhibit A

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

By: Carl Taylor
CARL TAYLOR, Chairman

Date: 8-2-17

Exhibit A


MADISON GROUND WATER DISTRICT

By: 
JASON WEBSTER, Chairman

Date: 7-21-17

Exhibit A

FREMONT-MADISON IRRIGATION DISTRICT

By: 
JEFF RAYBOULD, Chairman

Date: 7-25-17

EXHIBIT "A"**Water Rights**

Type	Basin	Sequence	Suffix	Basis	Priority Date	Div. Rate (cfs)	Source	Water Use
WR	36	1		Decreed	5/1/1883	12	RILEY CREEK	IRRIGATION
WR	36	2		Decreed	10/1/1908	10.45	RILEY CREEK	IRRIGATION
WR	36	3	H	Decreed	9/10/1884	11.9	BILLINGSLEY CREEK	IRRIGATION
WR	36	15		Decreed	3/8/1902	1.88	WEATHERBY SPRINGS	IRRIGATION
WR	36	18		Decreed	4/1/1917	5.8	BILLINGSLEY CREEK	IRRIGATION
WR	36	7739		License	8/1/1977	11.9	BILLINGSLEY CREEK	FISH PROPAGATION
WR	36	7740		License	8/1/1977	6.5	WEATHERBY SPRINGS	FISH PROPAGATION
WR	36	7741		License	8/1/1977	24	RILEY CREEK	FISH PROPAGATION, FISH PROPAGATION
WR	36	7742		License	8/1/1977	20	BILLINGSLEY CREEK	FISH PROPAGATION
WR	36	8335		License	9/24/1987	11.9	BILLINGSLEY CREEK	AESTHETIC STORAGE, DIVERSION TO STORAGE, RECREATION STORAGE, WILDLIFE STORAGE
WR	36	8424		License	5/24/1989	0.08	GROUND WATER	DOMESTIC

Exhibit A

Type	Basin	Sequence	Suffix	Basis	Priority Date	Div. Rate (cfs)	Source	Water Use
WR	36	8728		License	9/24/1987	6.5	WEATHERBY SPRINGS	AESTHETIC STORAGE, DIVERSION TO STORAGE, RECREATION STORAGE, WILDLIFE STORAGE
WR	36	8729		License	9/24/1987	24	RILEY CREEK	AESTHETIC STORAGE, DIVERSION TO STORAGE, DIVERSION TO STORAGE, RECREATION STORAGE, WILDLIFE STORAGE
WR	36	8730		License	9/24/1987	20	BILLINGSLEY CREEK	AESTHETIC STORAGE, DIVERSION TO STORAGE, RECREATION STORAGE, WILDLIFE STORAGE
WR	36	8785		License	10/29/1998	16	RILEY CREEK	AESTHETIC, FISH PROPAGATION, RECREATION, WILDLIFE
WR	36	11146		Decreed	3/9/1971	0.04	GROUND WATER	DOMESTIC
WR	36	16987		Decreed	3/8/1902	4.62	WEATHERBY SPRINGS	IRRIGATION
WR	36	16988		Decreed	4/1/1917	14.2	BILLINGSLEY CREEK	IRRIGATION
WR App	36	16382			10/21/2005	11.63	WASTE WATER	AESTHETIC, FISH PROPAGATION, RECREATION, WILDLIFE

Exhibit A

EXHIBIT "B"

Stipulated Mitigation Plan and Request for Order

SEP 22 2017

DEPARTMENT OF
WATER RESOURCES

Randall C. Budge, ISB No. 1949
 Thomas J. Budge, ISB No. 7465
 RACINE, OLSON, NYE & BUDGE, CHARTERED
 P.O. Box 1391; 201 E. Center
 Pocatello, Idaho 83204-1391
 Telephone: 208-232-6101
rcb@racinelaw.net
tjb@racinelaw.net

Attorneys for IGWA and Ground Water Districts

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

IN THE MATTER OF THE DISTRIBUTION OF)
 WATER TO WATER RIGHTS HELD BY)
 BUCKEYE FARMS, INC.)
)
)
)
)

**STIPULATED MITIGATION
 PLAN AND REQUEST
 FOR ORDER**

COME NOW Buckeye Farms, Inc. ("Buckeye"), and North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Southwest Irrigation District, American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, Fremont-Madison Irrigation District, and Jefferson-Clark Ground Water District (herein "Districts"), pursuant to IDAPA 37.01.11.043.03(o), by and through their respective attorneys of record and do hereby stipulate and agree as follows:

1. Buckeye, the Districts and IGWA have entered into a Settlement Agreement dated June 14, 2017 ("Settlement Agreement"), a copy of which is attached hereto as Exhibit A.

2. Pursuant to Settlement Agreement and in consideration of the mitigation, Buckeye has agreed to limit future calls or requests for administration of certain water rights pursuant to paragraph 3 of the Settlement Agreement which shall be noted by IDWR as a condition upon the Buckeye water rights and incorporated by reference.

3. The parties agree that the Settlement Agreement together is intended to be a mitigation plan as defined in the Conjunctive Management Rules and request the Director of IDWR issue an Order confirming the Settlement Agreement as a Final Mitigation Plan.


STIPULATED MITIGATION PLAN AND REQUEST FOR ORDER – Page 1

Exhibit A

WHEREFORE, the parties request that the Director enter an order without further notice or hearing and accepting and approving the Settlement Agreement as a complete and final Stipulated Mitigation Plan;

DATED this 22nd day of SEPTEMBER, 2017

RACINE, OLSON, NYE & BUDGE,
CHARTERED

By: 
RANDALL C. BUDGE
THOMAS J. BUDGE
*Attorneys for IGWA and
Ground Water Districts*

BARKER ROSHOLT & SIMPSON LLP

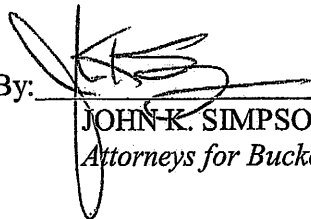
By: 
JOHN K. SIMPSON
Attorneys for Buckeye Farms, Inc.

Exhibit A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of SEPTEMBER, 2017, the above and foregoing document was served in the following manner:

Director Gary Spackman
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, Idaho 83720-0098

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

John K. Simpson
BARKER ROSHOLT & SIMPSON, LLP
163 2nd Avenue West
P.O. Box 63
Twin Falls, Idaho 83303-0063
jks@idahowaters.com

- ☐ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☒ E-mail

Buckeye Farms, Inc.
c/o Brian Barsotti
P.O. Box 370
Ketchum, Idaho 83340

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

North Snake Ground Water District
152 E. Main Street
Jerome, Idaho 83338

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Magic Valley Ground Water District
P.O. Box 430
Paul, Idaho 83347

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Southwest Irrigation District
PO Box 668
Burley, Idaho 83318

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Carey Valley Ground Water District
PO Box 261
Carey, Idaho 83320

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Exhibit A

American Falls-Aberdeen Ground Water
District
PO Box 70
American Falls, Idaho 83211

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Bingham Ground Water District
PO Box 1268
Blackfoot, Idaho 83221

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Bonneville-Jefferson Ground Water District
PO Box 51121
Idaho Falls, Idaho 83405

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Madison Ground Water District
PO Box 321
Rexburg, Idaho 83440


- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Fremont-Madison Irrigation District
PO Box 15
St. Anthony, Idaho 83445

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail

Jefferson-Clark Ground Water District
PO Box 1892
Idaho Falls, Idaho 83403

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-mail



For RANDALL C. BUDGE
THOMAS J. BUDGE
Attorneys for IGWA and Ground
Water Districts

EXHIBIT B

Exhibit B

Buckeye Operating Plan for 36-17121 and 36-17122 2-06-2020

Buckeye's ground water applications are intended to supplement the diminished surface water supply historically used for irrigation and other purposes on the ranch. Both applications will be used to the extent surface water is not available to provide supplemental irrigation and to provide water to the ponds on the ranch. There are 1,123 acres of irrigation on the ranch, 1,109 of which are covered by these ground water applications, and 166 acres of ponds covered by existing water rights.

Buckeye primarily raises corn, small grains and pasture, and maintains a number of ponds in its current operation. No additional acres of irrigation are proposed under these applications. Assuming corn is more water consumptive than small grains the total annual depletion can be calculated as 2.40 AF/acre/year for corn, 3.68 AF/acre/year for high management pasture and 2.86 AF/acre/year for ponds kept full year-round based on precipitation deficit amounts from Et Idaho.

Assuming 555 acres of corn and 555 acres of high management pasture along with 166 acres of ponds are supplied by ground water, the total annual depletion from ground water would average 3,849 AF/year. (Actual area of pasture is less than corn and small grains, but this analysis provides a conservative estimate of average annual depletion.)

Mitigation provided by the June 14, 2017 Settlement Agreement between Buckeye Farms and the Ground Water Districts provides Buckeye up to 7.5 cfs of mitigation credit from the Districts, Settlement Agreement at 2.3. At 7.5 cfs the average annual volume of mitigation is 5,430 AF/year. Since the ground water is supplemental to existing surface water rights, the average annual depletion will be less than the available mitigation.

IDWR has raised concerns that available mitigation must be capable of mitigating the most water consumptive crop grown in the area. Based on Et Idaho, frequent cutting alfalfa is the most water consumptive crop grown in the area and has a precipitation deficit of 3.79 AF/acre/year. If all 1,109 acres were used to raise frequent cutting alfalfa, the annual depletion would be 4,203 AF/year plus 475 AF/year depletion for 166 acres of ponds results in a total annual depletion of 4,678 AF/year. The total annual depletion if alfalfa were raised is well within the available mitigation of 5,430 AF/year.

If the ground water pumping is assumed to have an impact on the discharge of the Snake River within a month of the time the pumping occurs, the analysis of available mitigation can be limited to the irrigation season since the peak depletion does not occur in the last month of the irrigation season. During the 289 days from February 15 to November 30, 7.5 cfs of mitigation will yield 4,299 ac-ft of mitigation, more than the 3,849 ac-ft required if the irrigated area is half corn and half high management pasture plus ponds assuming no surface water is available for either irrigation or pond maintenance. Since pond depletion is negative during January and December, no mitigation should be required during those months and the negative depletion is larger than the February depletion. Since these applications are being applied for as supplemental to existing surface water rights, the entire annual depletion should never be assumed to be satisfied entirely from the ground water supply.

Exhibit B

Prior to each irrigation season Buckeye will identify the crops expected to be planted and the number of acres for each crop in order to ensure that the estimated depletion doesn't exceed the mitigation provided. The monthly depletion can also be estimated based on Et Idaho precipitation deficit for the acreage of each crop proposed to be irrigated by ground water during the month and the depletion for ponds to be supplied with ground water can be determined in the same manner. If there are fields or ponds to be supplied with both surface and ground water, the total depletion will be split based on the relative amounts of surface and ground water available to make up the total water supply.

During the year, if Buckeye is informed mitigation water is not available in, or upstream from, the reaches in which depletion from Buckeye's ground water pumping occurs and Buckeye is not able to present appropriate substitute mitigation, Buckeye will cease pumping from such wells until appropriate mitigation credit is obtained.¹

The applicant, through the ground water districts, will commit the amount of mitigation necessary to cover the depletion for each month during the year. The following procedure will be used to identify the amount of mitigation available and the amount of mitigation required each month of the prior year.

Annually, by April 1, the Ground Water Districts will submit a report to Buckeye identifying the mitigation actions taken on the Eastern Snake Plain, the associated ESPAM or equivalent modeling of the actions taken and the resulting monthly benefits to the reaches of the Snake River below Milner Dam.² Further, the Districts will confirm through a Certified Water Right Examiner's report that the 7.5 cfs of mitigation credit assigned to Buckeye is based upon the best available science, is present in the Snake River each month of the year and in fact is mitigating for the pumping from the Buckeye wells. This report will be similar to the reports described in the attached Addendum dated May 15, 2019. The availability of mitigation credit will be determined by the gains to Devil's Washbowl, Devil's Corral and Box Canyon spring complexes, or their equivalent in later versions of ESPAM, plus gains to base flow, if needed to identify 7.5 cfs mitigation credit, in the Kimberly to King Hill reach downstream to model cell row 36 column 14 in ESPAM2.1.

Buckeye in turn will report annually on a monthly basis to IDWR by April 15 all pumping from the wells developed in addition to the acreage of each crop irrigated, and the area of ponds supplied with ground water. Buckeye will include the report from the Ground Water Districts along with its ground water pumping report. Buckeye will report the crops irrigated and the months during which they were irrigated from ground water as well as the period of the year ground water is used to maintain ponds.³ Precipitation deficit for the period of the prior calendar year during which ground water was being used will be determined from the Glenns Ferry AgriMet, or other more suitable AgriMet station in the future,

¹ Neither the proposed Buckeye wells nor the adjacent reach of the Snake River are within the boundary of the current ESPAM 2.1 ground water model. Until a ground water model is developed that includes the proposed wells and adjacent reach of the Snake River the nearest downstream cell within the boundaries of the ground water model will be the location for compliance with this provision. In the current ESPAM 2.1 ground water model that cell is located in row 36 column 14.

² The timing of the report is consistent with the IGWA/SWC Agreement upon which much of the reporting activity is based.

³ Mitigation based on actual crop mix is spelled out in the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, Findings of Fact Section II.C. Since the actions of the Ground Water Districts are dependent on the conditions in each year, the measure of the amount of mitigation needed should also be determined for conditions in that year.

Exhibit B

or from Et Idaho if updated data become available from Et Idaho in the future. The Buckeye report will be prepared by a CWRE with final review and approval of all information to be submitted to IDWR.

This operating plan recognizes that the State of Idaho is continuing to develop a methodology to forecast Snake River Flows at the Murphy gage and the impact on those flows from ground and surface water depletions which could lead to a violation of the established minimum stream flows of 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31 at the Murphy gage. During the non-irrigation season, diversions will be non-consumptive. Given the close proximity of the diversions to the Snake River, impacts will coincide closely with the ground water pumping and any water not consumed by irrigated crops or pond evaporation will be returned to the river primarily through gravity runoff with a small amount through ground water seepage to the river.

Recognizing that the operating plan contemplates non-consumptive diversions in addition to supplemental irrigation, Buckeye agrees that if the minimum streamflow at the Murphy gage is violated, it will limit irrigation diversions to 7.5 cfs under the rights until the violation is resolved. Should the predictive methodology be developed which results in an approved rule applicable to this operating plan, Buckeye agrees to review the operating plan.

Exhibit B

Addendum to Buckeye Operating Plan For 36-17121 and 36-17122

Using ESPAM2.1 to Quantify Mitigation to the Snake River Between Kimberly and King Hill

May 15, 2019

ESPAM2.1 is a regional ground water model that is currently the most thoroughly calibrated model of the ESPA in existence and is the best available tool for understanding the interaction between ground water and surface water on the eastern Snake Plain.¹ The final calibrated ESPAM2.1 model shows a significantly better fit to observed data than ESPAM1.1 and is calibrated to 23.5 years of data compared to ESPAM1.1 that was calibrated to 17 years of data.

Even though ESPAM2.1 is a regional model, it has been calibrated to spring specific discharge measurements in the Magic Valley as well as gains to base flow in the Kimberly to King Hill reach of the Snake River. This additional calibration sets ESPAM2.1 apart from ESPAM1.1 which was calibrated to reaches in the Kimberly to King Hill reach. The additional calibration makes ESPAM2.1 the best available tool for calculating the change in base flow and spring discharge in the Kimberly to King Hill reach resulting from actions on the ESPA.

Two IDWR reports are available demonstrating the use of ESPAM2.1 to quantify the changes to the gains in the Kimberly to King Hill reach. The first is a Memorandum from Jennifer Sukow to Tim Luke dated March 29, 2016 titled Post audit of 2015 aquifer enhancement activities. The Memorandum described the gains to the Curren Tunnel and the Kimberly to King Hill reach from activities on the ESPA in 2015 and prior years. The analysis included both steady state and transient analysis. This analysis determined the impact to the reach if the 2015 activities were continued and determined the impact if the 2015 activities did not continue.

The second Memorandum from Jennifer Sukow to Mathew Weaver with a copy to Tim Luke dated April 11, 2017 titled Post audit of 2016 aquifer enhancement activities for mitigation, Rangen delivery call (CM-MP-2014-001) and Magic Springs pipeline (36-17028). The analysis was similar to the 2016 analysis using ESPAM2.1 in both the steady state and transient mode to evaluate the aquifer enhancement activities if they were to continue into the future or if they were to end with the 2016 activity.

Finally, use of ESPAM2.1 is cited favorably in the Amended Final Order Approving Application for Transfer No. 79560 dated March 18, 2015 as the currently appropriate tool to predict the benefit to the Snake River in the Kimberly to King Hill reach resulting from aquifer enhancement activities by IGWA and Southwest Irrigation District on the ESPA. IDWR estimated the benefit to this reach of the river to be 48.5 cfs between

¹ IDWR, Enhanced Snake Plain Aquifer Model Version 2.1, Final Report, January 2013.

Exhibit B

April 2014 and March 2015 and 67.5 cfs at steady state if the actions on the ESPA are continued.

Even with the additional calibration in the Kimberly to King Hill reach, ESPAM2.1 remains a regional model and is best suited to evaluating broad scale actions on the ESPA as described in the Memorandums and Decision referenced above. The model is not well suited to evaluate the impact of a single well on any reach of the Snake River or the impact of a recharge event on a particular model cell. While the calibration of the model within the Kimberly to King Hill reach was extensive, the calibration of the model to ground water levels in each model cell has not occurred and as a result, the reliability of modeling results from activity in a single model cell is uncertain.

Conclusions Regarding the Application of ESPAM2.1 to the Analysis of Mitigation to the Snake River for Proposed Buckeye Ground Water Diversions

Factual Considerations:

1. The proposed PODs for the Buckeye ground water applications are outside of the ESPAM2.1 model boundary.
2. The ESPAM2.1 model boundary is marked by the springs and base flow in the Kimberly to King Hill reach of the Snake River.
3. Ground water proposed to be pumped from the applied for PODs is presumed to be connected to the Snake River.
4. Because the Buckeye proposed PODs are outside the model boundary, analyzing the impact of the proposed diversions on the adjacent river reach is not possible with ESPAM2.1.

Reasonable Conclusions:

1. Due to the calibration of the ESPAM2.1 model to the springs and baseflow in the Kimberly to King Hill reach, and the proximity of the proposed ground water PODs to the river reach, use of the ESPAM2.1 model to confirm mitigation consistent with the moratorium, is reasonable and technically defensible.
2. If the actions on the ESPA continue to occur, the mitigation provided is sufficient and consistent with the technical conclusions offered in the Sukow memos and the Transfer Decision.
3. The use of activities on the ESPA as mitigation for compliance with the present moratorium should be limited to those factual circumstances where ESPAM2.1 is able to provide a reliable quantification of that mitigation given ESPAM2.1's limitations as a regional ground water model.

EXHIBIT C

Exhibit C

EXPERT REPORT OF THE IDAHO GROUND WATER APPROPRIATORS, INC. (IGWA)

Re: Buckeye Application for Permit Nos. 36-17121 and 36-17122

February 7th. 2020

This memorandum summarizes my opinions to date regarding the application of aquifer enhancement benefits and the mitigation activities undertaken by the Idaho Ground Water Appropriators (IGWA) on the Eastern Snake Plain Aquifer (ESPA). On behalf of IGWA I have also reviewed the Applicant's (Buckeye Farms) proposed Operating Plan, as of November 19, 2019, in the application for permit numbers 36-17121 and 36-17122. The applications are concerning the permit of new groundwater rights, adjacent to the Snake River at Buckeye Farms, for supplemental irrigation and pond maintenance. IGWA will provide mitigation supplies to Buckeye for use in their Operating Plan. A mitigation concern for IGWA in these groundwater right applications is that a breach in the Swan Falls Minimums¹, from any unmitigated pumping, will result in curtailment. IGWA is at risk in the event of a breach in the Swan Falls Minimums and has an interest in the adequacy of the Buckeye mitigation plan to prevent depletions that might effect flows at the Murphy gauge and a Swan Falls breach. Section 1 will describe how IGWA's mitigation credits were developed using aquifer enhancement activities, the mitigation benefits to the major spings in the Hagerman area and Snake River gains above the Murphy gauge, and how they have been applied for mitigation in previous water delivery calls. Section 2 will summarize preliminary concerns and recommendations regarding the adequacy of the proposed Buckeye Operating Plan to offset depletions and mitigation concerning a Swan Falls Minimum breach.

Section 1: Eastern Snake Plain Aquifer Enhancement

Snake River reach gains below Milner resulting from IGWA's historical and ongoing mitigation activities in Water District 130 were derived from ESPAM2.1 model runs done by the Idaho Department of Water Resources (IDWR) as part of a post audit of 2016 aquifer enhancement activities for mitigation concerning the Rangen Delivery call (CM-MP-2014-001) and Magic Springs pipeline (36-17028). The IDWR memorandum (Sukow, April 11, 2017) regarding the 2016 post audit describes the model simulations of aquifer enhancement activities performed by the Idaho Ground Water Appropriators, Inc. (IGWA), and Southwest Irrigation District (SWID). The Enhanced Snake Plain Aquifer Model Version 2.1 (ESPAM2.1) was used to simulate aquifer enhancement projects and the predicted impacts to aquifer discharge. The methods used to simulate the impacts of aquifer enhancement activities are described in detail in the IDWR memorandum.

The transient analyses simulated the effect of documented and approved aquifer enhancement activities that occurred between 2005 and 2016. For each year, the volume of aquifer enhancement activities was input into ESPAM2.1 at a constant rate distributed over a one-year stress period beginning in April 1. Recharge at Sandy Ponds is modeled slightly differently due to the proximity to aquifer discharge boundaries. Recharge at Sandy Ponds was simulated over a

¹ Pursuant 1984 Swan Falls Settlement

Exhibit C

Expert Report of the Idaho Ground Water Appropriators, Inc (IGWA)
Concerning Application for Permit Nos. 36-17121 and 36-17122
February 7th, 2020



214-day stress period representing the irrigation season. Aquifer enhancement activities are limited to Great Rift trim line. The transient analyses did not consider impacts of aquifer enhancement post 2016, with 2017 being the last year these benefits were analyzed by IDWR.

IGWA has agreed to assign up to 7.5 cfs of these credits to Buckeye pursuant to the settlement agreement between the parties. IGWA mitigation activities contributing to gains in spring discharges below Milner include irrigated lands dry-ups under Idaho's Conservation Reserve Enhancement Program (CREP), voluntary dry-ups, conversions, and recharge undertaken by IGWA and SWID. Some of these activities have been underway since 2005, and all of the aquifer enhancement activities modeled in the IDWR 2016 aquifer post audit either predate and/or are independent of the conservation activities under IGWA's settlement agreement and terms with the Surface Water Coalition. The mitigation credits assigned to Buckeye are for Buckeye's exclusive use and to the extent used will not be used by IGWA for other mitigation activities.

I modified the IDWR 2016 post audit transient model simulation by extending some of the aquifer enhancement activities through 2019. The purpose is to evaluate the expected mitigation supply available to Buckeye for offsetting reach gains to the Snake River from their proposed pumping. Conversion and CREP activities by IGWA and SWID have been relatively consistent over the historical period and the 2016 activities can reasonably be expected to remain constant or be close to those that occurred in 2017, 2018 and 2019. Table 1 shows the spring or Snake River gains from IGWA and SWID aquifer enhancement activities 2005-2019, assuming activities in 2017, 2018 and 2019 are the same as those for 2016 regarding CREP, voluntary dry-ups and conversions. When these credits are applied in the Buckeye Operating Plan spring and reach gains in any upcoming year can reasonably be expected to be slightly larger in magnitude, since these activities are ongoing every year.

Springs that discharge to surface flows are represented by drain cells in ESPAM2.1. Those springs that were used as calibration targets are classified as either A, B, or C, depending on the flow data collection methods. Class A and B springs have systematic measurement by the USGS and water users, respectively. Class C springs have only spot or sporadic measurements. Subsurface flows from the ESPA directly into the Snake River are represented by General Head Boundary (GHB) cells in the model. Table 1 shows the annual average spring or reach gain in cubic feet per second (cfs).

The Department has recognized mitigation credits for these aquifer enhancement activities (conversions, recharge, and voluntary curtailments) in the Rangen case². The Amended Order approving the methods for determining the mitigation found that the "use of the average annual mitigation requirement promotes annual planning and is a reasonable time period for model prediction and analysis" (Amended Final Order, page 5). These data have also been recognized by the Department in other conjunctive management contested cases as a reliable representation of previous aquifer enhancement activities by IGWA³.

² Amended Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; In the Matter of the Mitigation Plan Filed by the Idaho Ground Water Appropriators for the Distribution of Water to Water Right Nos. 36-02551 and 36-07694 in the name of Rangen, Inc.

³ Final Order Approving Mitigation Credits Regarding SWC Delivery Call, In the Matter of the Idaho Ground Water Appropriators, Inc.'s Mitigation Plan for Conversions, Dry-ups, and Recharge

Exhibit C

Section 2: Buckeye Operating Plan

The subject ground water applications are for new wells, adjacent to the Snake River at Buckeye Farms, for supplemental irrigation and pond maintenance. IGWA will provide mitigation supplies to Buckeye for use in their Operating Plan. A mitigation concern with these groundwater right applications is that a breach in the Swan Falls Minimums, from any unmitigated pumping, will result in curtailment. IGWA is at risk in the event of a breach in the Swan Falls Minimums and has an interest in the adequacy of the Buckeye mitigation plan to prevent depletions that might effect flows at the Murphy gauge and a Swan Falls breach.

As shown in Table 1 the aquifer enhancement activities by IGWA result in benefits to numerous springs below Milner tributary to the Snake River between Kimberly and King Hill, as well as, gains to Snake River baseflows Kimberly to King Hill. Most of the springs listed in Table 1 discharge directly to the Snake River through powerplants or fish hatcheries, which are non-consumptive uses. For these there is very little if any opportunity for subsequent re-diversion to consumptive use. Of the listed springs, only those serving the National Fish Hatchery and those discharging to Billingsley Creek present significant potential for re-diversion. Minor re-diversion is possible at Blue Lakes and Clear Springs Lake. Increased flows from GHB cells occur directly in the river and present no opportunity for re-diversion. Mitigation benefits to the major springs in the Hagerman area resulting from IGWA aquifer enhancement activities are expected to increase flows by 60 and 68 cfs in the year 2020 for the A and B, and Class C springs, respectively.

The demonstrated offsetting reach gains that benefit Swan Falls minimum flows is significantly more than the 7.5 cfs assigned to Buckeye ongoing. A properly designed operating plan should ensure their pumping is adequately mitigated and does not increase risk of breach of Swan Falls Minimums. Prior to the irrigation season the Applicant should demonstrate that their mitigation supply is adequate to cover any potential supplemental groundwater pumping and consumptive loss associated with pond maintenance throughout the peak demands during the irrigation season. If the Applicant contemplates continued use of these supplemental groundwater rights during a breach of the Swan Falls Minimums in-season and accurate accounting will be necessary to ensure 100% mitigation. Groundwater supplied to irrigation and groundwater supplied for pond maintenance should be separately measured and accounted for.

Conclusion

From the comparison of offsetting reach gains calculated in Table 1, I would conclude that ongoing increase in spring discharges to the Snake River above the Murphy gauge, and thus benefiting Swan Falls minimum flows, from ongoing IGWA mitigation activities substantially exceed the 7.5 cfs assigned to Buckeye for mitigation. Accordingly, a properly designed operating plan does not present risk to minimum flows called for in the Swan Falls Agreement.

Exhibit C

Table 1: Predicted Mitigation Benefit to Spring Cell(s) & GHBs Tributary to Snake River (cfs)

	Predicted average benefit to baseflow & spring cells (cfs)						
	Year 1 (4/2014- 3/2015)	Year 2 (4/2015- 3/2016)	Year 3 (4/2016- 3/2017)	Year 4 (4/2017- 3/2018)	Year 5 (4/2018- 3/2019)	Year 6 (4/2019- 3/2020)	Year 7 (4/2020- 3/2021)
Three Springs (tributary to Billingsley Creek)	1.41	1.40	1.69	1.70	1.77	1.85	1.91
Thousand Springs	5.43	5.43	8.67	6.68	6.89	7.18	7.41
Malad	3.98	4.01	4.53	4.81	5.02	5.24	5.42
Box Canyon Springs	7.64	7.70	8.90	9.34	9.82	10.24	10.56
Crystal Springs	5.27	5.39	5.92	6.56	6.92	7.21	7.44
Clear Lake Springs	4.62	4.64	5.31	5.66	5.97	6.22	6.41
Blue Lake Springs	3.82	3.90	4.10	4.64	4.87	5.04	5.18
Niagara Springs	3.57	3.61	4.00	4.38	4.62	4.81	4.96
Sands Springs	2.04	2.06	2.47	2.50	2.62	2.73	2.82
Devils C Springs	1.77	1.74	1.91	2.13	2.21	2.28	2.33
Devils WB Springs	1.37	1.35	1.49	1.65	1.72	1.77	1.81
NFHatchery Springs	1.23	1.23	1.84	1.50	1.55	1.62	1.67
Briggs Springs	0.12	0.13	0.14	0.15	0.16	0.17	0.17
Rangen (tributary to Billingsley Creek)	1.94	1.93	2.51	2.35	2.44	2.55	2.63
Total AB Springs	44.23	44.52	53.47	54.06	56.59	58.90	60.71
Total baseflow & Devils WB & Devils C & Box	14.68	14.74	16.34	17.25	17.91	18.52	18.98
Class C Springs Kimberly to King Hill	60.74	62.39	64.23	65.57	66.33	67.54	68.29
Baseflow (GHBs) Kimberly to King Hill	3.91	3.95	4.05	4.12	4.15	4.23	4.28