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

IN THE MATTER OF THE APPLICATION OF THE CITY OF POCATELLO, BASIC AMERICAN FOODS, INC., CON AGRA/LAMB WESTON, AND THE J. R. SIMPLOT COMPANY FOR APPROVAL OF A MITIGATION PLAN FOR GROUND WATER WITHDRAWALS FROM THE EASTERN SNAKE PLAIN AQUIFER	)	**WATER RESOURCE COALITION AMENDED APPLICATION FOR APPROVAL OF A MITIGATION PLAN**

COME NOW the City of Pocatello ("Pocatello"), Basic American, Inc. ("Basic American"), Con Agra/Lamb Weston ("Lamb Weston"), and the J.R. Simplot Company ("Simplot") (collectively the "Applicants"), and hereby submit to the Idaho Department of Water Resources ("IDWR") this Amended Application for Approval of a Mitigation Plan ("Plan"), in accordance with the constitutional, common law, and statutory principles of the prior appropriation doctrine and the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11.

In accordance with the May 2, 2005 Amended Order, clarifying amendments were made to paragraphs 6.2 and 7.1, Exhibit A and Exhibit B of the Water Resource Coalition's April 29, 2005 Mitigation plan. In addition the City of Pocatello's storage contract in Palisades was added as a mitigation source on Exhibit B.

1. **Names, Addresses and Telephone Numbers of Applicants:**

Dean Tranmer
City of Pocatello
P. O. Box 4169
Pocatello, ID 83205
(208) 234-6149

Robert G. Bloom
Con Agra/Lamb Weston
P. O. Box 489
American Falls, ID 83211
(208) 226-2301 x. 63400

Bruce Wright
Basic American, Inc.
415 Collins Road
Blackfoot, ID 83221
(208) 785-8590

Terry T. Uhling
J. R. Simplot Company
P. O. Box 27
Boise, ID 83707
(208) 389-7317

2. **Notice of Appearance:**

Notice is hereby given that Josephine P. Beeman will be acting as attorney at law on behalf of the Applicants. All notices required by law to be mailed by the Director to the Applicants should be mailed to the address listed below:

Josephine P. Beeman
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, Idaho 83702
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3. Introduction:

3.1 The Applicants each divert and use ground water from the Eastern Snake Plain Aquifer ("ESPA"). The April 19, 2005 Order 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 ("Curtailment Order") affects ground water uses within Water District Nos. 120 and 130 that have priority dates equal to or junior to February 27, 1979. Certain of the Applicants' ground water rights and wells are affected by the Curtailment Order, and these ground water rights and wells are covered by this Mitigation Plan.

3.2 The City of Pocatello ("Pocatello") provides municipal water service to an area within the Portneuf River basin, a tributary of the Snake River. A portion of Pocatello's water supply is derived from wells that divert from the ESPA in the vicinity of the Pocatello Airport. One of these wells is junior to the February 27, 1979 curtailment date and this well is included in the Plan.

3.3 Basic American, Inc. ("Basic American") operates three potato processing plants within the eastern Snake River basin. The Rexburg and Shelley facilities are located outside the boundaries of Water District Nos. 120 and 130 and are not subject to the Curtailment Order. Basic American's Blackfoot facility is within Water District 120; however the water rights associated with this facility are not subject to the Curtailment Order.

3.4 Con Agra / Lamb-Weston ("Lamb-Weston") operates a potato processing plant near American Falls in Water District 120 and one of its water rights is subject to the curtailment order and is covered by this plan.

3.5 The J. R. Simplot Company ("Simplot") operates potato processing and other commercial/industrial facilities within the Eastern Snake River basin. Simplot is submitting a separate application for a mitigation plan for its water rights that are subject to the Curtailment Order. However, Simplot has made available certain replacement supplies for use in this Plan.

3.6 By submitting this Application for Approval of a Mitigation Plan, the Applicants do not concede that material injury to senior surface water rights has occurred, is occurring, or has been demonstrated. Applicants also do not waive any factual or legal arguments that they may choose to maintain regarding the Curtailment Order. For example, but without limitation, Applicants do not concede approval of provisions of the Curtailment Order relating to depletions from pumping, injury to senior surface

water rights, the priority date of curtailment, mitigation requirements and other matters. Also, The Applicants also reserve the right to amend this Plan as necessary in response to amendments to the Curtailment Order.

4. **Purpose of Mitigation Plan:**

The purpose of the Plan is to provide protection and certainty for existing beneficial uses of ESPA ground water as described in the Plan.

5. **Term of the Mitigation:**

The term of this mitigation plan shall be for one year from May 6, 2005 through May 5, 2006. The plan may be extended beyond May 5, 2006 upon request by the Applicants at the discretion of the IDWR Director.

6. **Ground Water Uses and Mitigation Requirements:**

6.1 Ground Water Uses – The Plan will cover uses of ESPA ground water by the Applicants in association with the Applicants' commercial, municipal, and industrial facilities and operations, to the extent the Applicants' ESPA ground water uses are subject to curtailment pursuant to the Curtailment Order and are not covered by a separate mitigation plan (*e.g.*, Simplot's ground water uses). The ESPA ground water uses and ground water rights that are covered by this Plan are listed in Exhibit A.

6.2 Mitigation Requirements –The mitigation requirements for this Plan were determined based on the principles described in the Curtailment Order, IDWR News Release 2005-39 Re: Clarification on Replacement Water Required Under Order Issued in Response to Surface Water Coalition Calls, the April 27, 2005 and the April 29, 2005 status conferences held by IDWR and the May 2, 2005 Amended Order concerning matters related to the Curtailment Order. In accordance with these principles, the Applicants' total replacement obligation over time was determined based on the depletions to the Near Blackfoot to Minidoka reach of the Snake River resulting from curtailing use of the junior ground water rights in 2005 that are subject to the Curtailment Order. The minimum amount of replacement water provided will be at least equal to the simulated increase in gains to the Near Blackfoot to Minidoka reach of the Snake River during the 2005 plan year that would result from curtailment of the affected ground water rights based on simulations using IDWR's ground water model for the ESPA. The remainder of the accruals to the subject reach resulting from curtailment during the 2005 plan year would occur in subsequent years, and these amounts would be provided in future mitigation plans, subject to the obligation being cancelled by filling of the reservoir space of the Surface Water Coalition members. Exhibit A summarizes the 2005 mitigation requirements for this Plan and how those amounts were derived.

7. **Mitigation Sources:**

7.1 Replacement Water Sources - The Applicants will meet the mitigation requirements for 2005 by making available replacement water from various sources that are currently held by the Applicants or which become available to the Applicants. The mitigation sources

available to the Applicants are summarized in Exhibit B. This summary identifies the source of supply, the amount available, and how the amount available was determined. Water from the mitigation sources listed in Exhibit B is only made available to the extent necessary to meet the minimum mitigation requirements for the term of the Plan specified in Paragraph 5. Any water not made available from the mitigation sources is reserved by the Applicants.

7.2 Non-Water Mitigation - In lieu of replacement water sources, Applicants may provide mitigation through payments to the mitigation fund at IDWR in 2005 in the amount of $9.60 per acre foot.

8. Other:

8.1 Reporting Requirements - Applicants shall submit a report with IDWR that summarizes operation of and compliance with the Plan.

8.2 Modifications to the Plan - Applicants may modify the mitigation plan with the approval of the IDWR Director to add junior ground water rights and wells, mitigation sources and make other appropriate modifications.

9. Wherefore, the Applicants pray that the Director of the Department of Water Resources of the State of Idaho take the following actions:

9.1 Find that the Applicants are entitled to file their own mitigation plan without requiring that the Applicants join a Ground Water District for mitigation purposes.

9.2 Find that the Applicants be allowed to continue diverting ground water during such reasonable time period as is required for IDWR to review and approve their mitigation plan(s).

9.3 Find that the Applicants' mitigation plan application be afforded full consideration of its adequacy in accordance with Idaho Law prior to the Director curtailing any ground water diversions by the Applicants.

9.4 Find that the Applicants' mitigation plan is adequate to prevent material injury to senior surface water rights held by members of the Surface Water Coalition.

Respectfully submitted this 5th day of May 2005.

BEEMAN & ASSOCIATES, P.C.

By: Josephine P. Beeman
Josephine P. Beeman

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