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Attorneys for North Snake and Magic Valley Ground Water Districts

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
0413A, 36-04013B AND 36-7148

(Snake River Farm)

**2009 REPLACEMENT WATER PLAN
AND THIRD MITIGATION PLAN
(OVER-THE-RIM) OF NORTH SNAKE
GROUND WATER DISTRICT AND
MAGIC VALLEY GROUND WATER
DISTRICT**

COMES NOW North Snake Ground Water District (NSGWD) and Magic Valley Ground Water District (MVGWD) (collectively "Ground Water Districts"), through counsel, and on behalf of their ground water district members and those ground water users who are non-member participants in the Ground Water Districts' mitigation activities, and hereby submit this 2009 Replacement Water Plan pursuant to the July 8, 2005 Order and Third Mitigation Plan (collectively referred to as "Plan")¹ pursuant to Conjunctive Management Rule 43, IDAPA 37.03.11.043 to provide direct replacement water sufficient to offset the depletive effect of ground water withdrawal to satisfy the rights of diversion from the surface or ground water

¹ The Ground Water Districts are providing this Plan as both a Replacement Water Plan that the Director can approve on an interim basis in response to a curtailment order and as a Mitigation Plan under CM Rule 43 which requires other procedures to be followed. Both the Replacement Water Plan and the Mitigation Plan are identical in substance but are submitted pursuant to different authority held by the Director and the Plan provides sufficient relief to Clear Springs to alleviate injury under water right nos. 36-04913B and 36-7148.

source under Clear Springs Food, Inc.'s - Snake River Farm's Right Nos. 36-04913B and 36-07148 (collectively "the Snake River Farm Water Rights"). This Plan takes into consideration the history and seasonal availability of water for diversion under said rights so as to not require replacement water at times when the rights have not historically received a full supply, such as during seasonal and yearly low-flow periods. This Plan is provided in response to the Idaho Department of Water Resources (IDWR or Department) Director's July 8, 2005, *Order in the Matter of Distribution of Water to Water Rights Nos. 36-04013A, 36-04013B, and 36-07148* (Snake River Farm), subsequent orders thereto and specifically pursuant to the *Final Order Accepting Ground Water Districts' Withdrawal of Amended Mitigation Plan, Denying Motion to Strike, Denying Second Mitigation Plan and Amended Second Mitigation Plan in Part; and Notice of Curtailment* dated March 5, 2009. These orders are referred to herein collectively as the Director's Orders.

I. RESERVATION OF DEFENSES

By submitting this Plan, the Ground Water Districts do not waive and expressly reserve any and all objections and defenses they have made to the Director's Orders.

II. INTRODUCTION

The Director's Orders require that the Ground Water Districts provide mitigation in lieu of involuntary curtailment of ground water rights located in Water District 130. The Director's Orders provided for an accelerated schedule of curtailment or mitigation over a five year period.²

² The July 8, 2005 Order at page 37 provided that "involuntary curtailment and substitute curtailment together must be implemented in 2005, 2006, 2007, 2008 and 2009, such that based on simulations using the Department's Ground Water Model for the ESPA, phased curtailment will result in simulated cumulative increases to the average discharge of springs in the Buhl Gauge to Thousand Springs Reach . . . for the water rights held by Clear Springs for **2009 REPLACEMENT WATER PLAN AND THIRD MITIGATION PLAN (OVER-THE-RIM) OF NORTH SNAKE GROUND WATER DISTRICT AND MAGIC VALLEY GROUND WATER DISTRICT**"

The Director's Orders further provide that Snake River Farm gets 6.9 percent of the Buhl Gauge to Thousand Springs reach gain.³ In the March 5, 2009 Curtailment Order, the Director increased the amount of mitigation owed to the Buhl Gauge to Thousand Springs spring reach to 38.72 cfs. See March 5, 2009 Curtailment Order at 6 ¶¶23 and 24. Accordingly, the 2009 delivery requirement to Snake River Farm to comply with the Director's Orders is 2.67 cfs.⁴ Id.

III. 2005, 2006, 2007 and 2008 REPLACEMENT WATER PLANS

The Ground Water Districts previously submitted Replacement Water Plans for 2005, 2006, 2007 and 2008. Orders were entered approving the 2005, 2007 and 2008 Replacement Water Plans. Because of litigation and appeal relating to the constitutionality of the Conjunctive Management Rules, in *American Falls Reservoir Dist. No 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862, 154 P.3d 433 (2007), the Director did not issue any order approving or disapproving the Ground Water Districts' 2006 Replacement Water Plan.

IV. REPLACEMENT WATER PLAN AND MITIGATION PLAN

(1) Submission of Plan

This proposed Plan is submitted to the Director to provide "replacement water" to the Clear Springs Food, Inc's Snake River Farm facility intake sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source,

Snake River Farm, at steady state conditions of at least 8 cfs, 16 cfs, 23 cfs, 31 cfs, and 38 cfs, for each year respectively." The March 5, 2009 Order at page 6 increased the 2009 obligation to 38.72 cfs.

³ Finding of Fact 9 at page 3 of the Final Order Regarding Blue Lakes and Clear Springs Delivery Calls dated July 11, 2008

⁴ The 2009 reach gain requirement for the Buhl to Thousand Springs Reach of 38.72 cfs multiplied by 6.9% equals 2.67 cfs.

with consideration to be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when these rights historically have not received the full supply.

The following information is provided:

(a) The names and mailing addresses of the Ground Water Districts submitting the plan are:

North Snake Ground Water District
1092 South 2500 East
Hazelton, Idaho 83335

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

(b) The water rights for which benefit the Third Mitigation Plan is proposed are: 36-04013B, 36-07148 (“Snake River Farm Water Rights”).

(2) Mitigation Requirement

Based on simulations using the Department’s Ground Water Model for the ESPA, the July 8, 2005 Order at page 37 required simulated cumulative increases to the average discharge of springs to the Buhl Gauge to Thousand Springs spring reach for steady-state conditions. The amount of cumulative increases required to the Buhl Gauge to Thousand Springs spring reach is 38.72 cfs for 2009. March 5, 2009 Curtailment Order at 6. Because the Director’s Orders state that Snake River Farm gets 6.9 percent of the Buhl Gauge to Thousand Springs reach gain, the 2009 delivery requirement to Snake River Farms to comply with the Director’s Orders is 2.67 cfs.

The Department calculated that 2008 CREP lands and conversions are anticipated to provide 9.88 cfs to the Buhl to Thousand Springs reach as described in the Director's March 5, 2009 Curtailment Order on page 8 as follows:

Using the ESPA Model, the simulated benefit to the Buhl Gage to Thousand Springs spring reach from those activities is 9.88 cfs, or 0.66 cfs directly to Clear Springs (6.9% of 9.88 cfs). Because the Ground Water Districts are required to provide 38.72 cfs to the Buhl Gage to Thousand Springs spring reach or 2.67 cfs directly to Clear Springs in 2009, the resulting deficiency is 28.84 cfs to the reach, or 1.99 cfs to Clear Springs (6.9% of 28.87 cfs).

Based upon the foregoing calculations of the Department and the same estimated CREP and conversions benefit of 9.88 cfs to the Buhl to Thousand Springs reach, the Ground Water Districts' remaining mitigation requirement to Snake River Farm for 2009 is 1.99 cfs. The method used by the Department, although subject to dispute by the Ground Water Districts, meets the requirements of CM Rule 43.03.d. e. f. and g.

(2) Plan Proposals

(a) CREP and Conversion Deliveries

This part of the Plan has been approved by the Director's March 5, 2009 Order and included herein for convenient reference.

Flows to the Buhl to Thousand Springs spring reach will be increased by the Conservation Reserve Enhancement Program (CREP) and by the delivery of water to acres that have been converted from ground water irrigation to surface water irrigation within the North Snake Ground Water District ("conversion deliveries"). Reach gains resulting from CREP may vary annually based upon increases or decreases in CREP acreage. Reach gains resulting from conversion acres may increase or decrease annually depending on the amount of water delivered annually to conversion acres.

Approximately 9,300 acres within the North Snake Ground Water District have been converted from ground water irrigation to surface water irrigation to increase incidental recharge to the aquifer. The Ground Water Districts plan to continue to deliver 35,000 acre feet of water for the existing 9,300 acres of conversions as they have done for the past several years. The same Water Conveyance Agreement entered into in previous years between the Ground Water Districts and NSCC is expected to be renewed to provide for the delivery of 35,000 AF of storage water to be delivered through conversion acres through the NSCC system. The Ground Water Districts have several water leases which are ongoing that have supplied ample mitigation water to meet all Mitigation Plan requirements in Water Districts 120 and 130 since 2005. The amounts committed by these Lessors for 2009 far exceed the 35,000 AF required under this Mitigation Plan. The Lessors include the following:

- Aberdeen-Springfield Canal Company
- New Sweden Irrigation District
- People's Canal and Irrigation Company
- Snake River Valley Irrigation District
- City of Pocatello
- Enterprise Canal Company
- Idaho Irrigation District

The Ground Water Districts also intend to continue to support and fund the CREP program.

(b) "Over-the-Rim" Replacement Water Plan and Mitigation Proposal

This Plan provides for the "Over-the-Rim" direct delivery of ground water from existing wells to Snake River Farm's intake. This proposal will convert up to 2,000 acres from ground water irrigation to surface water irrigation irrigated farmland of certain existing members of North Snake Ground Water District farming near the canyon rim above Snake River Farm. Surface water leased from the Upper Snake reservoir system will be delivered through the North Side Canal Company ("NSCC") "S Coulee" to replace the ground water irrigation. **Exhibit 1**

provides further detail of the Plan. The Ground Water Districts will lease the water rights of the members converted to surface water and utilize their existing wells, pumps and motors to pump water into such additional pipelines and facilities as needed to deliver pumped ground water directly from the wells to Snake River Farm. **Exhibit 2** shows a schematic showing locations, places of use, and proposed pipeline routes. Depicted on this exhibit are wells of North Snake Ground Water District members that committed to convert to surface water irrigation and lease their water rights to the Ground Water Districts to facilitate this Plan to deliver direct replacement water over-the-rim together with a schematic of the facilities necessary to accomplish this delivery.

The converted ground water rights will be the supply of water to Snake River Farm. **Exhibit 3** is a table showing number of acres, wells, well owners, water rights and historical average pumping for these water rights for the water rights owners who have currently committed to participate in the conversions and water leases with the Ground Water Districts. The total acres proposed to be converted is approximately 1,060 acres. Additionally, these land owners and others near the rim have committed to provide the necessary pipeline easements to facilitate the delivery of replacement water. Based on a commitment of cooperation from NSCC representatives, it is anticipated that a second long-term Conveyance Agreement will be entered into with the Districts to supply surface water for these conversions. The proximity of these conversions lands to each other, to NSCC's "S Coulee" and the canyon rim demonstrates that replacement surface water supplies can readily be delivered to the lands participating in the over-the-rim project and the replacement water delivered from their wells to Snake River Farm.

The data in **Exhibit 3** show that the targeted wells have historically pumped more water on an annual basis than is required for full mitigation at Snake River Farm. The full mitigation

requirement, from the 2005 Order and with the 2009 increase can be provided to Snake River Farm as a continuous flow of 1.99 cfs or 1,441 acre-feet per year. The average annual pumping of the targeted wells over the last three years is about 2,400 acre-feet per year; thus, these wells are able to supply more than 3.0 cfs on a continuous basis. The Ground Water Districts intend to design and implement the over-the-rim delivery to provide as much as possible above the 1.99 cfs requirement up to a maximum of 3.0 cfs of direct delivery to Snake River Farm in order to make up for any previous year short falls and in recognition of the fact that some further delay in delivering this replacement water will be incurred until the necessary construction of the facilities has been completed.

Based on this commitment to “over-mitigate” for such period of time as is necessary to fully make up any shortfall, the Ground Water Districts request immediate action to rescind the pending 2009 Curtailment Order. This commitment will in fact prevent any material injury by providing Snake River Farm more mitigation water both in quantity, certainty and duration than it would realize from the curtailment of ground water users, which is estimated to be only 0.7 cfs for the first year of curtailment of 41,000 acres.

The Ground Water Districts will file Transfer Applications with IDWR for each of the leased water rights as may be required by IDWR to change the place of use, period of use and nature of use for year-round mitigation and fish propagation at Snake River Farm. However, the annual amount of pumping from those wells will not increase from what has historically been done and will likely be less.

Because the source of replacement water is the identical source used by Snake River Farm, ground water from the Eastern Snake Plain Aquifer, water quality of pumped ground water is expected to be the same as that emanating from the springs.

The final design and engineering of the facilities to fully implement the Plan is in process and construction will begin as soon as possible upon the Director's approval of the Plan. **Exhibit 4** shows a table of projected engineering components and approximate costs associated with the delivery of water for the over-the-rim proposal.

(c) Alternative and/or Supplemental Mitigation Through Direct Delivery of Idaho Fish and Game Water Right No. 36-4076

In the event the over-the-rim mitigation proposal set forth above is rejected or conditioned, or to the extent the the quantity supplied is inadequate, the following alternative and/or supplemental mitigation proposal is presented.⁵ **Exhibit 5** provides a schematic of this part of the Plan. The water right proposed to be used for mitigation consists of up to 3.59 cfs of water available under Decreed Water Right No. 36-4076 with a priority date of January 1, 1893, which will be delivered directly to the head of the Snake River Farm raceway. The priority date of Water Right No. 36-4076 is earlier than all Snake River Farm water rights and all other known rights in the vicinity. Recent spot measurements by Watermaster Cindy Yenter indicate that the flows available from the springs supplying this right sometimes are less than the decreed quantity and may not be adequate on a continuous basis to meet the full mitigation requirement, but there is consistently about 1.1 cfs of water available which would be an adequate supplemental or additional supply of water for Snake River Farm. **Exhibit 6** is a table of components and costs for this part of the plan.

Exhibit 7 is a copy of the Lease Agreement entered into on May 28, 2008, between the Ground Water Districts and the Idaho Department of Fish and Game ("IDFG") pursuant to which the Ground Water Districts have leased the water available under Decreed Right No. 36-4076.

⁵ Exhibit 1 also provides a description for this part of the Plan

The Lease Agreement was entered into for the specific purpose of providing mitigation and replacement water to Snake River Farms (§ 1); provides the Ground Water Districts access to the IDFG property as may be necessary to provide mitigation or replacement water to Snake River Farms (§ 4); authorizes the Ground Water Districts to divert and utilize the entire right non-consumptively to provide replacement water to Snake River Farms' raceway (§ 5); authorizes the Ground Water Districts to construct and maintain all pumps, pipes, diversion and delivery facilities and other improvements in order to utilize the water right for mitigation and replacement water purposes to the head of the Snake River Farm's raceway, including any changes or improvements to the point of diversion or other elements of the water right (§ 5a); and, authorizes the Ground Water Districts to amend any elements of the water rights as may be required by the Department to accomplish the contemplated use (§ 5c). As a condition of the lease, the Ground Water Districts agree to provide replacement water to the IDFG wetlands in an amount equal to the amount of water provided to Snake River Farm (§ 6).

Water Right 36-4076 exists by way of a Partial Decree entered August 27, 2001, with a year-round use in the amount of 3.59 cfs with a priority date of January 1, 1893, and is therefore more than adequate to meet the alternative or supplemental mitigation requirements under this part of the Plan.

REQUESTED ACTION

The Ground Water Districts request:

A. That an Order be entered approving the 2009 Replacement Water Plan on a temporary basis, forestalling physical curtailment and rescinding the March 5, 2009 Curtailment Order. This request is based on the Ground Water Districts' commitment to over-design the over-the-rim delivery system to exceed the 1.99 cfs obligation to Snake River Farm and to

directly deliver up to 3.0 cfs to the Snake River farm intake for such period as the Director deems necessary to make up for any shortfall during the period of construction of the facilities together with any past shortfall. Clear Springs will thereby receive more water in quantity, certainty and duration than it could anticipate from curtailment.

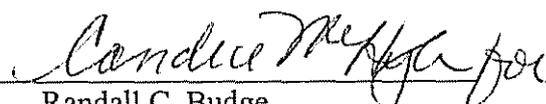
B. That the Director expedite the processing of the Transfer Applications deemed necessary to implement the proposed over-the-rim replacement water plan.

C. That the Third Mitigation Plan be set for hearing with notice given to the parties as deemed necessary pursuant to CM Rule 43.02.

D. That an Order to be entered authorizing the parties to conduct discovery in the form of interrogatories, requests for production, requests for admissions and depositions with respect to this Plan and any objections filed thereto.

DATED this 12th day of March, 2009.

RACINE OLSON NYE BUDGE &
BAILEY CHARTERED

By: 
Randall C. Budge
Attorneys for North Snake and
Magic Valley Ground Water Districts

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of March, 2009, the above and foregoing was sent to the following by U.S. Mail, proper postage prepaid and by e-mail for those with listed e-mail addresses:

Randall C. Budge Candice M. McHugh RACINE OLSON NYE BUDGE & BAILEY, CHTD P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net jdj@racinelaw.net cmn@racinelaw.net	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/> Hand Delivery
John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON LLP 1010 W. Jefferson, Suite 102 P.O. Box 2139 Boise, Idaho 83701 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail

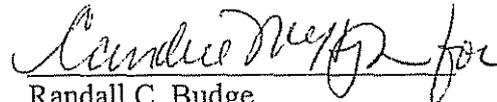

 Randall C. Budge

Exhibit 1

Description of Infrastructure and Operation associated with Direct Delivery of Replacement Water to Snake River Farm

**Prepared for:
North Snake Ground Water District
and
Magic Valley Ground Water District**

March 2009

**Prepared by:
AMEC Earth and Environmental
1002 Walnut Street, Suite 200
Boulder, CO 80302**



IMPORTANT NOTICE

This document was prepared exclusively for the Idaho Ground Water Appropriators by AMEC Earth & Environmental, Boulder Office (AMEC). The quality of information, conclusions and estimates contained herein is consistent with the level of effort involved in AMEC's services and based on: i) information available at the time of preparation, ii) data supplied by outside sources and iii) the assumptions, conditions and qualifications set forth in this report. This document is intended to be used by the Idaho Ground Water Appropriators only, subject to the terms and conditions of its contract with AMEC. Any other use of, or reliance on, this document by any third party is at that party's sole risk.

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1.0 INTRODUCTION

A direct replacement water plan has been developed to offset the depletive effect of junior-priority ground water withdrawals on the Snake River Farm's (SRF) water rights. This plan includes the direct delivery of replacement water from existing wells on the Plain above SRF over the canyon rim and down to the SRF facility. A back-up plan for delivery of replacement water from spring rights leased from the Idaho Department of Fish and Game (IDF&G) is provided to supplement the over-the-rim delivery, if necessary. This report describes the conceptual design of the direct delivery and back-up plans.

2.0 DIRECT DELIVERY TO SNAKE RIVER FARM

Under this plan the North Snake and Magic Valley Ground Water Districts ("Districts") have secured the agreement of certain ground water right holders on the Eastern Snake River Plain immediately above SRF to convert their irrigation operations from ground water to surface water supply, to lease their ground water rights to the Districts and authorizing Transfer Applications to be filed with IDWR to change the points of diversion, place of use, period of use and nature of use as needed to enable these ground water rights to be used pursuant to the Districts Mitigation Plan at SRF. The existing wells will continue to pump ground water at their historical annual rates, but rather than applying that water to irrigated crop land will deliver it via a collection pipeline to SRF. The mitigation benefits to SRF will include this direct water delivery plus incidental recharge associated with delivery and use of surface water on the converted parcels.

The Districts have effected similar conversion of approximately 9300 acres of ground water-supplied parcels within their boundaries which have been functioning for several years. Mitigation credit for incidental recharge from these conversions has been approved by the IDWR Director. It is anticipated that this direct delivery and incidental recharge will provide a benefit to SRF in excess of the 1.99 cfs replacement water requirement imposed by the Director's Order of March 9, 2009, and up to as much as 3.0 cfs. It is anticipated that amounts in excess of the 1.99 cfs requirement will be delivered upon completion of the necessary construction in order to "over-mitigate" for such period as may be required by the Director to make up any shortfall resulting from prior years and during the construction.

A schematic of the proposed direct delivery system is shown in Exhibit 2. The wells and water rights subject to conversion are described in Exhibit 3. Authorized Places-of-Use (POU) of the water rights are also shown by shading on Exhibit 2. The wells for the participating water rights will pump their historical annual volumes on a continuous basis. Water will be collected in a pipeline network and delivered to a point on the canyon rim above SRF. The pipeline will then drop into the canyon to a pressure-reducing facility from whence it will be delivered via pipeline to a point in the hatchery complex designated by SRF. At that point it will be blended with diversions from the SRF spring outlet. Because the water so delivered comes from the same

source as feeds the SRF spring outlet, this blending will not materially affect the quality of water used in SRF operation.

It is anticipated that existing well pumps can be utilized for this direct delivery operation, since required instantaneous delivery rates from each well will be less than their historical values. This will also provide redundant delivery capacity in the event of maintenance or failure of any individual well pump. The Ground Water Districts will evaluate and replace well pumps as necessary to provide sufficient delivery rates and pressures to effect the operation.

The extent and alignment of the collection pipeline shown in Exhibit 2 may be adjusted based on more complete pumping records and more detailed design to address property boundaries and utility locations. Exhibit 4 summarizes the major physical components of the direct delivery plan and their estimated costs. This is a preliminary conceptual estimate of infrastructure requirements and does not include minor components and connections, such as those into SRF facilities. A more detailed design will be prepared upon authorization and direction by the IDWR to further pursue this plan.

The direct delivery plan would not impact any other water users within the local area as pumping will simply continue at historical annual rates. The use of replacement water delivered under this alternative is non-consumptive and, consequently, all water delivered to SRF will flow to Clear Lake and the Snake River. Detailed negotiation and coordination with affected non-participating landowners is in progress and is expected to result in the various conversion and lease agreements as well as such easements and rights-of-way as may be necessary to undertake and complete the project.

3.0 DELIVERY OF IDF&G WATER RIGHT NO: 36-4076 TO SNAKE RIVER FARM (BACK-UP ALTERNATIVE)

If for unanticipated reasons the direct delivery plan cannot provide at least the minimum replacement water requirement of 1.99 cfs required by the March 2009 Order, the Districts may pursue a supplemental plan using the water rights leased from IDF&G. The IDF&G owns and manages the Clear Lake Grade wetland mitigation site neighboring SRF to the east. The Districts entered a Lease Agreement on May 28, 2008, with the IDF&G for IDF&G's Decreed Water Right No. 36-4076 for the purpose of providing mitigation and replacement water to SRF.

The IDF&G currently receives water from at least four spring outlets on the north side of the Snake River Canyon near the Clear Lakes Grade, as shown in Exhibit 5. The supplemental replacement supply will be derived by capturing the discharge of the westernmost of these outlets in enclosed spring boxes and delivered via pipeline to a point designated by SRF where it will be blended with discharge from the SRF spring outlet. Enclosed collection and delivery will insure that no contaminants are introduced into the spring water. Since the IDF&G springs

emanate from a source common to the SRF spring outlet, the blending of these waters will not materially affect the quality of water used in SRF operation.

Replacement water will be provided to IDF&G from the Snake River as necessary to maintain wetlands function. This water would be pumped from the Snake River to the inlet of the IDF&G wetlands south of the highway, as shown in Exhibit 5.

Exhibit 6 summarizes the major components and estimated costs for this back-up plan. This is a preliminary conceptual estimate of infrastructure requirements and does not include power supply, connections to the SRF raceway inlet, and other minor components. A more detailed design will be prepared upon direction by the IDWR to further pursue this back-up plan.

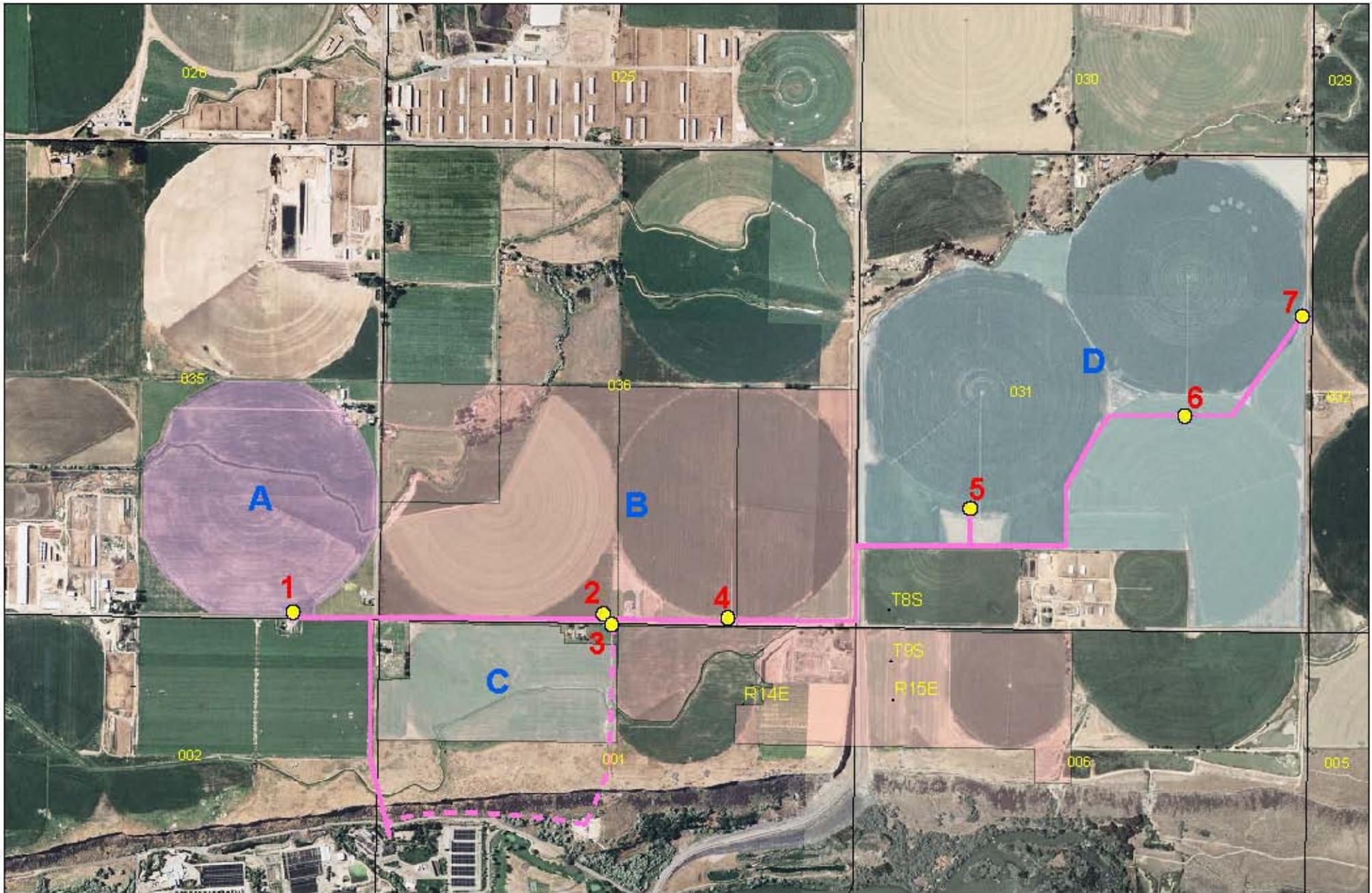
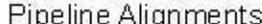
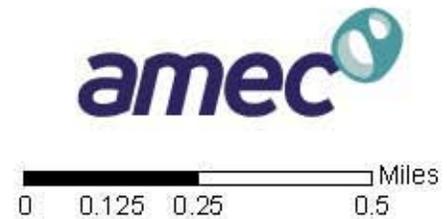


Exhibit 2
Over-the-Rim
Delivery Plan Schematic



- | | | | |
|--------------------------------------------------------------------------------------|---------------------------------|---------------------------------------------------------------------------------------|-------|
|  | Wells for Over-the-Rim Delivery |  | POU A |
|  | Pipeline Alignments |  | POU B |
|  | Proposed |  | POU C |
|  | Alternative |  | POU D |



**Exhibit 3
Parcels, Wells and Water Rights to be Converted**

Place of Use	Wells	Owner	Water Rights	Historical Average Pumping 2003-2007 (af/yr)	POU acres
A	1	Box Canyon Dairy	36-2426 36-10044	322.9	124
B	2 & 4	Mary Jane & Thomas Heida Grace V & John Madalena	36-2493B 36-07682 36-2228B 36-07597B 36-02228A (1) 36-07597A (1) 36-02493C 36-8276 (1)	724.2	412
C	3	Melvin & Norma Brown	36-4046	238.1	80
D	5 & 6	Box Canyon Dairy	36-16256 36-16258 36-16260 36-16262 36-16264 36-16266 36-16268 36-16270 36-16272 36-16274 36-16276 36-16278 36-16280 36-16282 36-16284	946.5	444
	7	Same as 5 & 6	Same as 5 & 6	211.9	
Total				2443.6	1060

Exhibit 4 Principal Constructed Components of Plan

Name	Quantity	Estimated cost (2008)
Proposed Pipeline	16,000 feet of 8" PVC pipe (low pressure)	\$290,000
	900 feet of 6" ductile iron pipe	\$32,000
Road crossing	100 feet jacking	\$146,000
Pressure reducing facility	Cast in place vault and pressure reducing valve	\$6,000
Proposed Pipeline Total Estimated Costs:		\$474,000
Alternative Pipeline	4,000 feet of 8" PVC pipe (low pressure)	\$73,000
	700 feet of 6" ductile iron pipe	\$25,000
Alternative Pipeline Total Estimated Costs:		\$98,000



Exhibit 5

IDF&G Back-up Delivery Plan
Snake River Farm Delivery Call



Exhibit 6 - Principal Components of IDF&G Back-up Plan

<u>Component</u>	<u>Quantity</u>	<u>Approximate Cost</u>
Spring collection box	2	\$ 10,000
Pump station 5 hp	1	\$ 10,000
Delivery pipeline 6-inch dia.	1100 l.f.	\$ 10,000
		<u>\$ 30,000</u>
Pump station 10 hp	1	\$ 15,000
Delivery pipeline 10-inch dia.	500 l.f.	\$ 5,000
		<u>\$ 20,000</u>
	Total	\$ 50,000

**IDAHO FISH & GAME LEASE FOR
WATER RIGHT NO. 36-4076
DATED MAY 28, 2008**

EXHIBIT 3

**WATER LEASE
WATER RIGHT NO. 36-4076**

This Lease Agreement ("Lease") is made and entered into this 28th day of May, 2008, between the IDAHO DEPARTMENT OF FISH AND GAME COMMISSION, whose mailing address is P.O. Box 25, Boise, Idaho 83701 ("LESSOR"); and the NORTH SNAKE GROUND WATER DISTRICT and the MAGIC VALLEY GROUND WATER DISTRICT whose joint mailing address for purposes of this Lease is P.O. Box 1391, Pocatello, Idaho 83204 (hereinafter referred to collectively as "LESSEE").

RECITALS:

WHEREAS, LESSOR is the owner of the decreed Water Right No. 36-4076, pursuant to the records of the Idaho Department of Water Resources ("IDWR") in multiple spring discharges near Clear Lakes in the cumulative amount of up to 3.59 cubic feet per second "cfs" of non-consumptive use water with a priority date of January 1, 1893 (hereinafter referred to as the "Water Right" or the "Leased Water"), which Water Right is graphically represented by the following table:

Water Right No.	Source	Quantity	Point of Diversion	Priority Date
36-4076	Springs	3.59 cfs	SWSWNE Lt 7 SWSENE Lt 8 SESENE Lt 8 SESWNW Lt 5 SESENW Lt 13, Sec. 1, T. 9S R. 14E, Gooding Cty SESENE Lt 5, Sec. 2, T. 9S R. 14E, Gooding Cty SWSWNW Lt 5, Sec. 6, T. 9S R15B, Gooding Cty	01-01-1893

AGREEMENT:

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually agree as follows:

1. Lease Property. LESSEE leases from LESSOR, and LESSOR leases to LESSEE, the Leased Water for the purpose of providing mitigation or replacement water to Snake River Farms.

2. Term. The initial term of this Lease shall be for a term of four (4) years, commencing effective as of May 1, 2008. Thereafter, this Lease shall be renewed for two successive terms of three (3) years each provided the parties can reach agreement on the lease amount which shall be subject to renegotiation and unless either party gives notice of intention not to renew the Lease to the other party not less than 180 days notice prior to the end of the

Lease, which may be given at any time prior to the expiration of the original term or any successive term(s). Additionally, LESSEE reserves the right to terminate this Lease upon ninety (90) days written notice to LESSOR in the event the Idaho Department of Water Resources does not approve LESSEE'S Mitigation or Replacement Water Plan to Snake River Farms and allow the use of the Leased Water for such purposes, or, if for any other reason LESSEE is unable to utilize the Leased Water for mitigation or replacement water purposes for Snake River Farms.

3. Rent. LESSEE shall pay to LESSOR rent in the amount of two hundred and fifty dollars (\$250) per month per cfs or pro rata for such portion of each cfs of water actually utilized by LESSEE, with the first monthly rental payment to be due and owing on the first day of the month following the execution of this Lease, and with each monthly payments due thereafter through the term of this Lease determined as provided herein..

4. Use by LESSOR. LESSOR reserves the unrestricted first right to use the Leased Water as allowed by the defined elements of the Water Right. LESSOR will have no responsibility for the operation, maintenance or use of LESSEE'S facilities or any damages related to, or caused by, LESSEE'S use of the Leased Water pursuant to this Lease. LESSOR grants LESSEE access to LESSOR'S property as may be necessary and appropriate to allow LESSEE to fulfill the purpose of this Lease to provide mitigation or replacement water to Snake River Farms.

5. Use by LESSEE. During the term of this Lease, LESSEE may, at LESSEE'S sole cost and risk (including but not limited to those risks identified in paragraph 6 below), divert and utilize the Leased Water non-consumptively (except for minor evaporation) for mitigation purposes to provide replacement water to Snake River Farm's raceway.

- a. LESSEE may design, construct and maintain at its sole risk and expense all pumps, pipes, diversion and delivery facilities and other improvements in order to utilize the Leased Water for mitigation or replacement water purposes to the head of the Snake River Farm raceway. This includes any changes or improvements LESSOR may wish to make to the point(s) of diversion or other elements of the Water Right.
- b. LESSEE shall submit the design of any facilities and improvements to be constructed and operated to LESSOR for approval prior to the commencement of construction.
- c. LESSEE shall comply with any permit requirements and any water right amendment requirements that may be determined necessary by any state agency to accomplish the use of the water contemplated by LESSEE, with LESSEE authorized to procure the same at their sole expense, and providing copies to LESSOR.

6. Available Water. As a condition of this Lease, LESSEE agrees to provide and make available to LESSOR'S wetlands an amount equal to the amount of water provided to Snake River Farms and of acceptable quality. Additionally, LESSEE shall comply with all terms and conditions of LESSOR'S water right.

7. Indemnification. LESSEE shall indemnify, protect, defend and hold LESSOR and its elected and appointed officials, officers, agents and employees, and each of them, free and harmless from any and all liabilities, claims, losses, damages, actions, costs and expenses of every kind (including defense costs and legal fees), which they, or any of them, may suffer or incur by any reason arising by reason of bodily injury, death, personal injury or property damage

resulting from the use or diversion of the Leased Water under this Lease by or from LESSEE, or any agent, employee, guest or invitee of LESSEE.

8. Default and Termination. If LESSEE fails to perform any obligation required of it hereunder, and such default continues for a period of 30 days after written notice thereof has been mailed or delivered to LESSEE by LESSOR, the LESSOR may, at its option, in addition to all other rights provided hereunder or otherwise available to LESSOR by law, immediately curtail and prevent the use and continued use of the Leased Water by LESSEE; and/or terminate this Lease; whereupon all rights accruing to LESSEE hereunder shall cease

9. Notices. All notices required or provided for by this Lease shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the each of the respective parties at the following addresses:

To LESSOR:

Idaho Department of Fish and Game Commission
P.O. Box 83720
Boise, Idaho 83720-0098

To LESSEE:

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

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

With a copy to:

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, Idaho 83201

10. Warranty of Authority. LESSOR warrants and represents that it is the lawful owner of the Water Right and has all necessary power and authority to enter into this Lease.

11. Assignment and Subletting. LESSEE shall not assign or sublet any portion of the Water accruing to the Water Right, nor any interest in this Lease without LESSOR'S consent which will not be unreasonably withheld.

12. Law. This Lease shall be governed by the laws of the state of Idaho.

LESSOR:

**IDAHO DEPARTMENT OF
FISH AND GAME**

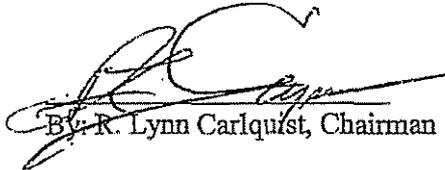
Dated: 5-28-08, 2008


By: Cal Groen, Director

LESSEE:

**NORTH SNAKE GROUND WATER
DISTRICT**

Dated: 6/3/08, 2008


By: R. Lynn Carlquist, Chairman

**MAGIC VALLEY GROUND WATER
DISTRICT**

Dated: 6/9, 2008


By: Orlo Maughan, Chairman