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*Attorneys for The Idaho Dairymen's Association*

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

IN THE MATTER OF THE 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

**STIPULATION AND AGREEMENT  
REGARDING CERTAIN DAIRY  
GROUND WATER USE**

The undersigned parties, through their respective counsel, hereby stipulate and agree as follows:

Recitals

A. In 2005, the A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company (collectively the "SWC") initiated this matter by filing water delivery calls, pursuant to the Conjunctive Management Rules ("CM Rules"), seeking administration of junior ground water rights in the Eastern Snake Plain Aquifer ("ESPA"), including ground water rights held by members of the Idaho Dairymen's Association, Inc. ("IDA") and others.

B. In response, the Idaho Department of Water Resources (“Department”) issued emergency orders requiring certain ground water users to provide replacement water or be subject to curtailment. These orders resulted in the instant contested case proceedings.

C. In April 2007, the SWC, Clear Springs Foods, and the Thousand Springs Water Users Association (“TSWUA”) entered an agreement with IDA (the “Mitigation Agreement”) pursuant to which IDA committed to provide certain water for replacement and mitigation to or for the benefit of Clear Springs, TSWUA, and SWC in return for excluding from any curtailment order those IDA members who participate in the Mitigation Agreement (the “Mitigating Dairymen”). The Mitigation Agreement was filed with the Department on April 13, 2007. A copy of the Mitigation Agreement is attached hereto as Exhibit A.

D. The Mitigation Agreement is premised on the Mitigating Dairymen, through IDA, providing mitigation via ground water retirement on irrigated farm lands and/or replacement water through the North Side Canal in the amount of 29.1 gallons per day for each lactating cow owned or managed by the Mitigating Dairymen as described in the Mitigation Agreement. The Mitigation Agreement was not approved by the Department for use in 2007. Using the 29.1 gallons per day number, the Mitigating Dairymen’s 2007 obligation for replacement water under the Mitigation Agreement would have been calculated at 5,682 acre-feet. Due to certain orders of the Department, in 2007 IDA provided approximately 9,500 acre-feet of mitigation and/or replacement water.

E. IDA became a party to this contested case to ensure that the Mitigation Agreement is implemented and that the Mitigating Dairymen are protected from curtailments of certain of their ground water wells. The other parties signatory to this Stipulation, likewise wish to secure the agreements and commitments set forth in the Mitigation Agreement.

F. The Department and the other parties signatory to this Stipulation also wish to secure such commitments on an interim basis as well as the additional agreements and covenants set forth in this Stipulation and Agreement (“Stipulation”), to avoid risks and uncertainties with regard to proof as to the Mitigating Dairymen’s water use, and to expedite the contested case hearing.

Therefore, in consideration of the covenants and agreements contained herein, the undersigned parties hereby stipulate and agree as follows:

#### Agreement Terms

1. Implementing the Mitigation Agreement for the years 2007, 2008, 2009, and 2010 will, for these years:

a. offset the impacts of ground water depletions, including any material injury, associated with the diversion and use of ground water from the ESPA for commercial and livestock uses by the Mitigating Dairymen (“Dairy Diversions”); and

b. mitigate any material injury caused by Dairy Diversions to the water rights of senior surface and/or spring water users diverting from hydraulically-connected sources, including all water rights of the parties signatory hereto.

2. IDA, on behalf of its members, including the Mitigating Dairymen, shall:

a. conduct a competent scientific study, to be complete and filed with the Department and provided to the parties before January 1, 2011, to further investigate and determine the average amount of diversions and consumptive use of ground water, on a per cow basis, of the IDA members' commercial and stock water operations (the "Dairy Water Use Study"); and

b. continue to implement the Mitigation Agreement in the years 2008, 2009, and 2010.

3. The Department shall:

a. by appropriate order, and subject to procedural rights of any parties deeming themselves aggrieved thereby, approve the Mitigation Agreement, and IDA's implementation of it as sufficient replacement water and/or mitigation for the effects of Dairy Diversions during the interim period of the years 2007, 2008, 2009, and 2010;

b. provide the Mitigating Dairymen credit, as carryover mitigation applicable to future years or otherwise, for that amount of replacement water in excess of 5,682 acre-feet of water that IDA provided as mitigation or replacement in 2007;

c. cooperate with IDA in conducting the Dairy Water Use Study, which cooperation is to include, without limitation, providing a critique of the study design at the outset and suggesting any needed changes before data gathering begins; and

d. process the Mitigation Agreement as a mitigation plan submitted by the Mitigating Dairymen, through IDA, under Rule 43 of the CM Rules, but schedule any necessary hearing on such mitigation plan to begin no earlier than sixty days after the completion and submission of the Dairy Water Use Study.

4. Any final order in the above-captioned contested matters shall not impair IDA's ability to advance and offer proof and legal argument in support of the Mitigation Agreement or any mitigation or replacement water plan it may propose in other proceedings.

5. The signatory parties consent to issuance of an order in this matter substantially in conformance with the above terms.

Dated this 21<sup>th</sup> day of February, 2008.

IDAHO DEPARTMENT OF WATER  
RESOURCES

  
By: David R. Tuthill, Jr., Director

IDAHO DAIRYMEN'S  
ASSOCIATION, INC.

  
By: Michael C. Creamer  
Givens Pursley LLP, attorneys for Idaho  
Dairymen's Association, Inc.

A&B IRRIGATION DISTRICT.

\_\_\_\_\_  
By:

AMERICAN FALLS RESERVOIR  
DISTRICT NO.2

\_\_\_\_\_  
By:

BURLEY IRRIGATION DISTRICT

\_\_\_\_\_  
By:

MILNER IRRIGATION DISTRICT

\_\_\_\_\_  
By:

NORTH SIDE CANAL COMPANY

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By:

TWIN FALLS CANAL COMPANY

\_\_\_\_\_  
By:

**STIPULATION AND AGREEMENT  
REGARDING CERTAIN DAIRY GROUND WATER USE - 4**

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RESOURCES

IDAHO DAIRYMEN'S  
ASSOCIATION, INC.

\_\_\_\_\_  
By: David R. Tuthill, Jr., Director

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By: Michael C. Creamer  
Givens Pursley LLP, attorneys for Idaho  
Dairymen's Association, Inc.

A&B IRRIGATION DISTRICT.

AMERICAN FALLS RESERVOIR  
DISTRICT NO.2

  
\_\_\_\_\_  
By: HAROLD MEDALMAN  
CHAIRMAN

\_\_\_\_\_  
By:

BURLEY IRRIGATION DISTRICT

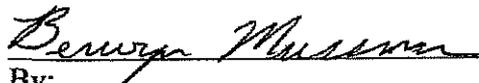
MILNER IRRIGATION DISTRICT

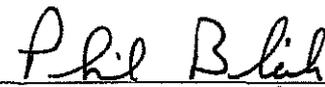
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By:

NORTH SIDE CANAL COMPANY

TWIN FALLS CANAL COMPANY

  
\_\_\_\_\_  
By:

  
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By: Phil Blick  
chairman

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By: David R. Tuthill, Jr., Director

By: Michael C. Creamer  
Givens Pursley LLP, attorneys for Idaho  
Dairymen's Association, Inc.

A&B IRRIGATION DISTRICT.

AMERICAN FALLS RESERVOIR  
DISTRICT NO.2

  
By: HAROLD M. JOHNSON  
Chairman

  
By:

BURLEY IRRIGATION DISTRICT

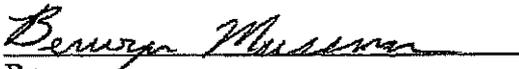
MILNER IRRIGATION DISTRICT

By:

By:

NORTH SIDE CANAL COMPANY

TWIN FALLS CANAL COMPANY

  
By:

  
By: Phil Blick  
Chairman

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By: Michael C. Creamer  
Givens Pursley LLP, attorneys for Idaho  
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A&B IRRIGATION DISTRICT.

AMERICAN FALLS RESERVOIR  
DISTRICT NO.2

By:

By:

BURLEY IRRIGATION DISTRICT

MILNER IRRIGATION DISTRICT

By: Dean Edga

By:

NORTH SIDE CANAL COMPANY

TWIN FALLS CANAL COMPANY

By: Berny Mussman

By: Phil Blick  
Phil Blick  
chairman

**STIPULATION AND AGREEMENT  
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By: Michael C. Creamer  
Givens Pursley LLP, attorneys for Idaho  
Dairymen's Association, Inc.

A&B IRRIGATION DISTRICT.

AMERICAN FALLS RESERVOIR  
DISTRICT NO.2

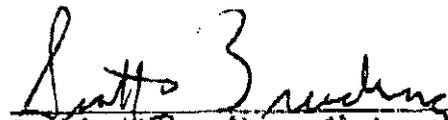
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By:

BURLEY IRRIGATION DISTRICT

MILNER IRRIGATION DISTRICT

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By:

  
By: Scott Breeding, Chairman

NORTH SIDE CANAL COMPANY

TWIN FALLS CANAL COMPANY

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By:

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By:

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**REGARDING CERTAIN DAIRY GROUND WATER USE - 4**

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MILNER IRRIGATION DISTRICT

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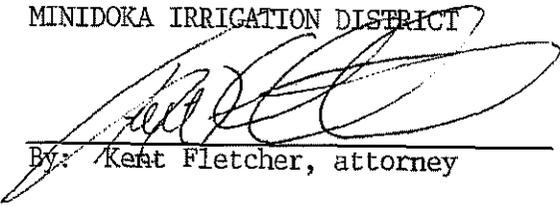
NORTH SIDE CANAL COMPANY

TWIN FALLS CANAL COMPANY

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

MINIDOKA IRRIGATION DISTRICT

  
\_\_\_\_\_  
By: Kent Fletcher, attorney

**STIPULATION AND AGREEMENT  
REGARDING CERTAIN DAIRY GROUND WATER USE - 4**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of February 2008, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

Mr. David R. Tuthill, Director	<input type="checkbox"/>	U.S. Mail
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322 East Front Street	<input type="checkbox"/>	Overnight Mail
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Candice M. McHugh, Esq.	<input type="checkbox"/>	Facsimile
Racine, Olson, Nye, Budge & Bailey	<input type="checkbox"/>	Overnight Mail
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John K. Simpson	<input checked="" type="checkbox"/>	U.S. Mail
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