INTERIM STIPULATED AGREEMENT
FOR AREAS WITHIN AND NEAR IDWR ADMINISTRATIVE BASIN 35

This Interim Stipulated Agreement (Agreement) is entered into between the undersigned ground water users and surface water users, or their representatives, in consideration of the promises stated in this Agreement.

1. This Agreement is made in reference to the following facts:

   1.1 The Director of the Idaho Department of Water Resources (Director) stated his intent to entirely curtail diversions under certain water rights for ground water beneath portions of administrative surface water sub-basins consisting of Basins 27, 29, 35, 36, 41, 43, and 45 (the Basins). The Director's intent was based upon his findings, set forth in his administrative order designating the American Falls Ground Water Management Area dated August 3, 2001, that diversions of ground water under such rights cause significant reductions in the gains to the American Falls reach of the Snake River, and that those reductions will further reduce the diminished water supply available to satisfy senior priority surface water rights should current drought conditions continue into the 2002 water year;

   1.2 The parties are unable to agree to the extent of interconnection of ground water and surface water sources in the Snake River Basin and any alleged injury to surface water rights as a right of the diversion of water from the Eastern Snake Plain Aquifer (ESPA);

   1.3 The Idaho Department of Water Resources (IDWR) has committed to complete reformulating and recalibrating the ESPA Ground Water Model by December 31, 2003, contingent on continued funding from the Idaho Legislature and other entities;

   1.4 The new ESPA Ground Water Model is expected to provide the parties with more reliable information regarding the alleged impacts of ground water diversions from the ESPA on spring discharges and flows in defined reaches of the Snake River; and

   1.5 The parties desire to avoid the need for litigation at this time on the nature and extent of the alleged injury to senior priority surface water rights caused by diversions of ground water under junior priority water rights within the Basins pending the completion of the new ESPA Ground Water Model.

2. Interim Stipulated Agreement:

   2.1 The undersigned holders of ground water rights in the Basins or their representatives agree that in exchange for the safe harbor provided in paragraph 2.3, they will use their best efforts to provide annually 28,500 acre feet of replacement water during the 2002 and 2003 irrigation seasons. The agreed

obligation to provide 28,500 acre feet of water will be reduced by any other replacement water provided, on either a temporary or permanent basis, by other entities within the Basins. The replacement water will be provided to holders of senior priority surface water rights in a manner determined by the Director, after consultation with the holders of senior priority surface water rights, to provide the maximum benefit to the holders of senior priority surface water rights.

2.2 In the event the undersigned holders of junior priority ground water rights or their representatives do not provide the full amount of water required by paragraph 2.1 by April 1 in any year, the undersigned holders of junior priority ground water rights agree to reduce their diversion and use of ground water under their water rights for irrigation during that year by fifteen (15) percent based on power and fuel consumption records, or other basis acceptable to the Director, reduced pro rata by the volume of any other replacement water otherwise provided in that year. In lieu of individual reductions, ground water districts may achieve the fifteen (15) percent reduction on a district-wide basis.

2.3 In exchange for the commitments by the holders of junior priority ground water rights enumerated in paragraphs 2.1 and 2.2, the undersigned holders of senior priority surface water rights and their representatives agree not to seek either judicially or administratively the curtailment or reduction, other than as provided in paragraph 2.2, of the ground water rights held or represented by the undersigned within the Basins for the term of this Agreement.

2.4 By providing replacement water or in the alternative agreeing to a pro rata reduction in ground water diversions, the undersigned holders of junior priority ground water rights and their representatives do not concede that diversions of ground water are causing injury to senior priority surface water rights, nor do the undersigned holders of senior priority surface water rights and their representatives concede that the amount of replacement water accepted under this stipulated agreement fully compensates for the extent of the injury they allege.

2.5 The parties agree not to oppose the State of Idaho's motion to the District Court for the Snake River Basin Adjudication requesting authority for the Director to implement interim administration of water rights in the Basins, and other related administrative areas outside of the Basins. The parties also agree not to oppose the Director's instructions to any watermasters to administer ground water rights that are in accordance with this Agreement. The parties understand that water districts to be created as a result of this Agreement are intended to include only ground water rights but may include certain surface water rights not already included in water districts, if any, that are required to be included for proper administration. The parties further agree to work collaboratively with the Director to expeditiously create water districts to implement this Agreement.

2.6 Holders of junior priority ground water rights within the Basins who are not party to this or other stipulated agreement, either directly or as a member of a

participating ground water district, shall not be entitled to the benefits of the safe harbor provided by paragraph 2.3. The parties agree to request that the Director notify holders of ground water rights in the Basins who are not party to this or another stipulated agreement that they may be subject to curtailment under the prior appropriation doctrine as established by Idaho law.

3. Process for Future Conflicts:

3.1 The undersigned parties agree to develop a process by December 1, 2001, for ascertaining the extent of any injury caused by ground water diversions in the Basins under junior priority water rights to senior priority surface water rights and for the development of any mitigation plans subsequently required.

3.2 The parties agree to meet with IDWR on at least a quarterly basis during the term of this Agreement to discuss and attempt to negotiate settlements of issues regarding the administration of water rights from connected surface and ground water sources in the Snake River Basin between Shelley, Idaho and Milner Dam. These discussions and negotiations will include, among other things:

.1 Adoption of statewide water management rules to govern IDWR's overall administration of water rights from surface and ground water sources.

.2 Adoption of conjunctive administration rules based on the results from the new ESPA ground water model and other necessary information to more specifically govern IDWR's administration of water rights from connected sources of surface and ground water within the ESPA.

.3 Consideration of a mechanism to account for changes in the use of water rights since the commencement of the SRBA and development of a means to administer water rights in the context of such changes.

3.3 The parties agree to meet at the offices of the Twin Falls Canal Company within 90 days of the date of this Agreement to begin the process of sharing relevant information to facilitate the development of a long-term settlement agreement. The representatives of the undersigned holders of ground water rights, through Tim Deeg, and holders of surface water rights, through Chuck Coiner, will exchange lists of desired information. The parties agree in good faith to provide the requested information in a timely manner.

4. Enforcement:

4.1 The parties understand the Director intends to approve this stipulated Agreement in lieu of issuing curtailment orders under Idaho Code § 42-233b, and that in the event this Agreement is breached, any party may petition the Director, or the Director on his own initiative, may seek an appropriate remedy.

4.2 Upon the SRBA District Court's issuing an order for interim administration of water rights within the Basins and related areas, this Agreement will be enforced through such administration.

5. Disclaimers:

5.1 This Agreement represents a settlement of disputed issues regarding the administration of water rights from interconnected ground water sources and surface water sources within portions of the Snake River Basin. The undersigned are unable to agree on the extent and locations of interconnections of ground water and surface water sources in the Snake River Basin along the reach of the Snake River between Shelley, Idaho and Milner Dam and the extent of injury, if any, to senior priority surface water rights as a result of ground water diversions from the ESPA under junior priority water rights. In order to avoid litigation of these issues at this time, the undersigned have entered into this Agreement. Because this Agreement does not fully resolve the issues, the parties agree that this Agreement shall not be construed or interpreted so as to waive or prejudice any contention by any party regarding the legal or factual relationship between water rights from surface and ground water sources in the Snake River Basin along the reach of the Snake River between Shelley, Idaho and Milner Dam.

5.2 This Agreement has been reached as the result of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceedings.

6. Dismissal or Stay of Pending Actions:

Based upon the foregoing and the parties' understanding that the Director will stay further administrative proceedings regarding his Order In The Matter of Designating the American Falls Ground Water Management Area, and unless this Agreement is breached, the parties agree as follows:

6.1 The Idaho Ground Water Appropriators, Inc. and other plaintiffs agree to secure voluntary dismissal, without prejudice, of their Petition for Judicial Review and Complaint for Preliminary Injunction, Writ of Mandate, and for Declaratory Relief that they previously filed in the Sixth Judicial District Court.

6.2 Representatives of the holders of surface water rights agree to withdraw their July 2001 petitions seeking the establishment of ground water management areas, and the holders of ground water rights agree to withdraw their pleadings filed in response to the same.

7. General Provisions:

7.1 The provisions of this Agreement are not several.

7.2 This Agreement shall bind and inure to the benefit of the respective successors of the parties.

7.3 This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

7.4 Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

7.5 This Agreement is executed in triplicate. Each of the three (3) Agreements with an original signature of each party shall be an original.

7.6 This Agreement shall be effective from October 11, 2001.

7.7 This Agreement shall expire on December 31, 2003, unless extended by mutual written consent of the parties.

The parties have executed this Agreement the date following their respective signatures.