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ATTORNEYS FOR THE IDAHO GROUND WATER APPROPRIATORS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

**IDAHO GROUND WATER
APPROPRIATORS, INC.,**
Petitioners

Docket No:

**IGWA'S MITIGATION PLAN FOR
CONVERSIONS, DRY-UPS AND
RECHARGE**

COME NOW THE IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), through counsel and on behalf of its Ground Water District Members and other water user members for and on behalf of their respective members and those ground water users who are non-member participants in their mitigation activities and hereby submit this *Mitigation Plan for Conversions, Dry-Ups and Recharge* ("Mitigation Plan") pursuant to the Rules for the *Conjunctive Management of Surface and Ground Water Resources*, ("CM Rules") Rule 43, IDAPA 37.03.11.043 to provide for the ongoing use as needed of any or all of the following mitigation activities: 1) existing and future conversions of acres irrigated from groundwater to surface water irrigation; 2) dried up acres through the Conservation Reserve Enhancement

Program (CREP), AWEP or other voluntary program resulting in the dry-ups of groundwater irrigated acres; and 3) groundwater recharge. These activities will be referred to herein as “Mitigation Activities” and will be pursued as needed in order to address material injury to senior water rights. This Mitigation Plan is submitted to the Director to secure advance approval of certain mitigation activities from which mitigation credit will be calculated for any and all existing and future mitigation activities to offset or reduce the depletive effect of groundwater withdrawal on the water available to senior surface and groundwater users.

This Mitigation Plan is proposed to provide IGWA and its members with the right to obtain mitigation credit for the Mitigation Activities that will then be applied in response to a finding of material injury to senior water rights under the CM Rules. This Mitigation Plan is proposed in response to the District Court’s *Order on Petition for Judicial Review Clear Springs Foods, Inc. v. Tuthill*, Case No. 2008-444, (Fifth Jud. Dist., Gooding Co) which found that the Director of IDWR does not have the authority to approve replacement water or mitigation plans or activities without following the procedures set forth in CM Rule 43. *Id.* at 47-55.

This Mitigation Plan is forward looking and is not intended to provide a specific response to specific delivery calls, nor to impose any obligation to continue to perform any existing or future Mitigation Activities. Rather this Mitigation Plan is intended to provide the Director, IGWA and water right holders with the authorization to implement any or all of the Mitigation Activities on an as needed basis in order to provide mitigation, prevent material injury to senior water rights and thereby reduce or avoid curtailment of junior groundwater users without the requirement of additional hearings to authorize the use of the Mitigation Activities. Once the nature, extent and location of a Mitigation Activity is determined in response to a delivery call or order from the Director, the exact amount of mitigation credit obtained from a specific

Mitigation Activity would be subject to analysis and calculation by the Director based upon the ESPA Model or other methodologies determined by the Department or the Courts.

The proposed Mitigation Activities are submitted for advance approval to provide authorized mitigation tools which could be used to obtain mitigation credit in response to findings of material injury in the existing and any future delivery calls placed by Clear Springs Foods, Inc. (Clear Springs), Blue Lakes Trout Farm, Inc. (Blue Lakes), the Surface Water Coalition (SWC) and any other person or entity where a determination of material injury to a senior water right holder has been determined for which junior groundwater rights must provide mitigation to avoid curtailment.

I. PRELIMINARY DETAILS

In support of this, Mitigation Plan the following information is provided:

The name and mailing address of the parties filing the Mitigation Plan are:

Idaho Ground Water Appropriators, Inc.
P.O. Box 2624
Boise, ID 83701

The water rights that will benefit from the mitigation activities under this proposed Mitigation Plan are any senior water rights that the Director has found or may find to have been materially injured by junior groundwater rights that must provide mitigation to avoid curtailment. The water rights that may benefit from such Mitigation Activities include but are not limited to water rights held by Clear Springs Foods, Inc., Blue Lakes Trout, Inc., and the Surface Water Coalition. At this time, IGWA is unaware of any other findings of material injury for senior surface or groundwater rights. However, in the future, if such findings are made on additional water rights owned by Clear Springs, Blue Lakes or the SWC or to water rights owned by other entities then the mitigation activities should be applied to mitigate the groundwater

depletion attributed to cause material injury to any such water rights.

The storage water supply for use under this Mitigation Plan is secured by existing and future lease agreements and option agreements entered into between IGWA and entities who own storage water in the Upper Snake Reservoir System. IGWA's existing lease agreements with Upper Snake Reservoir space holders provide up to 68,000 acre-feet of storage water on an annual basis. The amount of water used for the Mitigation Activities will vary annually depending on the water supply, the mitigation requirements under any findings of material injury to avoid curtailment and the nature and extent of the Mitigation Activities being utilized.

II. MITIGATION ACTIVITIES

The Mitigation Activities include the following types of activities.

A. CONVERSIONS

Flows to the Snake River (and springs tributary thereto) will be increased by the delivery of water to acres that have been converted from groundwater irrigation to surface water irrigation within areas on the Eastern Snake Plain. This occurs because the conversions decrease the amount of groundwater pumped and increase the amount of incidental recharge to the Eastern Snake Plain Aquifer (ESPA). Reach gains resulting from conversion acres may increase or decrease annually depending on the amount of water delivered to the conversion acres. The number of acres under conversions will vary from year to year but the intent is to maintain or increase acres when possible through voluntary conversions and with the assistance of such programs as Agricultural Water Enhancement Program (AWEP). The specific sub-reach of the Snake River that will benefit from the conversion mitigation activity will depend on the location of the conversion acres and the amount of surface water delivered thereto.

IGWA has continuously since 2005 supplied surface water to approximately 6,000 to 9,300 conversion acres in WD 130 which are ongoing. An ample and secure supply of mitigation water exists and has been used to support some Mitigation Activities in Water Districts 120 and 130 in each year since 2005 which included periods of extreme drought. The amounts committed by the Lessors for ongoing mitigation requirements exceed the previous and future anticipated water requirements to avoid any material injury based upon the existing orders issued by the Department .

1. North Snake Ground Water District Conversion Acres

Approximately 6,000 to 9,300 acres within the North Snake Ground Water District have been converted from groundwater irrigation to surface water irrigation over the past few years and have resulted in a decrease in the amount of groundwater withdrawn from the ESPA and an increase in incidental recharge to the ESPA. The Ground Water Users plan to continue to deliver surface water to conversion acres as may be needed in the future depending on annual mitigation requirements and other mitigation activities being utilized.

2. Other Conversions

Other Ground Water Districts or their members located on the Eastern Snake Plain may also convert groundwater irrigated lands to surface water irrigated lands. If such conversions occur, then benefits to the Snake River (or springs or groundwater) will occur because of a decreased demand from groundwater and increased incidental recharge from the use of surface water. IGWA and/or its members may elect to participate in the Conversion Activities for mitigation credit as may be needed

B. VOLUNTARILY DRIED UP ACRES

1. Conservation Reserve Enhancement Program (CREP)

CREP acres are taken out of production and no longer supplied with groundwater. As a result, demand for groundwater decreases and gains to the Snake River (or springs or groundwater) occur. The amount of such gains through the use of CREP may vary annually based upon increases or decreases in CREP acreage. IGWA and its members have provided financial support to the CREP program since 2005 and anticipate continuing this support.

2. Other Voluntary Dry-Ups

When groundwater acres are dried up and no longer provide groundwater, then the demand for groundwater from the ESPA is reduced and the ESPA and hydraulically connected surface water sources benefit. Ground Water Districts or their members may voluntarily dry-up their acres on a permanent or semi-permanent basis. The amount of voluntarily dried-up acres will vary from year-to-year and as such, the benefits to the ESPA and hydraulically connected surface water sources will also vary.

C. GROUNDWATER RECHARGE MITIGATION PLAN

Groundwater recharge is in keeping with the policy set forth by the Legislature that found that projects for groundwater recharge should be fully supported and that such activities are in keeping with the state's policy to "promote and encourage the optimum development and augmentation of the water resources of this state." I.C. § 42-234. Further, this Recharge Plan is in line with Policy 1J of the State Water Plan which states that "[i]t is the policy of the State of Idaho that managed recharge be encouraged pursuant to state law." In addition the State Water Plan in Policy 5H acknowledges that "[m]anaged recharge of the aquifers and continued efforts

to efficiently use groundwater are two strategies for maintaining spring discharges in these reaches.”

1. Groundwater Recharge Using North Side Canal Company’s Canal System

IGWA or its members may deliver surface water to the NSCC point of diversion at Milner Dam when there is capacity available during the year. The amount of water to be delivered will depend on the mitigation requirements and other Mitigation Activities being implemented. The surface water will be conveyed to Wilson Lake or throughout NSCC’s canal system including other recharge areas to be developed in order to enhance spring flows or aquifer levels. Delivery of surface water through the NSCC canal system will result in recharge to the aquifer in two ways: 1) from seepage or conveyance lost through the canal itself, and 2) seepage from the recharge sites themselves (i.e., at Wilson Lake). Prior recharge efforts have occurred as proposed in this Mitigation Plan and have resulted in enhanced reach gains to the Buhl Gauge to Thousand Springs spring reach of the Snake River. See for example, *Order Approving Dairymen’s and IGWA’s 2007 Replacement Water Plan, Rescinding 2007 Curtailment, and Setting Hearing and PreHearing Schedule* dated July 5, 2007, *In the Matter of Distribution of Water to Water Right Nos. 36-4013A, 36-4013B, and 36-7148 (Snake River Farm)*

2. Groundwater Recharge Using Other Conveyance Systems

Groundwater recharge proposed under this plan may also use other canal conveyance systems or other recharge sites located throughout the Eastern Snake Plain. The intent of this Recharge Plan is to enhance water levels in the ESPA and therefore, any recharge that is proposed will be located in such areas that are hydraulically connected to the ESPA.

3. Early and Late Season Recharge

This Recharge Plan proposes to perform groundwater recharge before the irrigation season begins or at the end of the irrigation season or both depending on the need and the availability and capacity of the conveyance systems.

D. Monitoring and Analysis

Through monitoring efforts by IDWR as supported by IGWA or its members, the benefits from specific mitigation activities in response to specific findings of material injury to specific senior water rights can be determined using the Eastern Snake Plain Aquifer Model and other administrative tools. IGWA will provide whatever data is available to it or its members and as is practical in order to assist in the monitoring efforts of any specific activities proposed.

E. Other Information

Any proposed Mitigation Activities under this Mitigation Plan will not injure other water rights and fully complies with the state's policy to conserve and enhance its water resources. Further, the proposed Mitigation Activities have and will continue to promote the optimum development of water resources in the public interest as set forth in Const. Art. XV § 7 and should be fully supported and encouraged. The benefits from any mitigation activities are expected to have positive and lasting effects on reaches to the Snake River, spring discharges and to the ESPA.

III. RELIEF REQUESTED

IGWA requests that IDWR advertise this Mitigation Plan as required under the CM Rules and hold any hearing as is found to be necessary. However, IGWA believes that a hearing is not necessary under this Mitigation Plan because on its face, the Mitigation Activities proposed herein are acceptable methods to mitigate material injury to senior water rights that have been

successfully used in the past and approved by the Department. The location and amount of the Mitigation Activities, which will need to be determined on a case-by-case basis in the future, should be evaluated when implemented at which time any dispute concerning the calculation of the mitigation credit, but not the Mitigation Activity itself could be subject to hearing.

Submitted this 6th day of October, 2009.



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