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

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
04103A, 36-04013B AND 36-7148 (Snake
River Farm)

(Water District Nos. 130 and 140)

**GROUND WATER DISTRICTS' SECOND
PLAN OF ACTION, PETITION FOR
RECONSIDERATION AND REQUEST
FOR STATUS CONFERENCE**

COME NOW North Snake Ground Water District and Magic Valley Ground Water District (collectively "Ground Water Districts"), through counsel of record and hereby submit this Second Plan of Action, Petition for Reconsideration and Request for Status Conference in response to the Interim Director's July 22, 2009 *Order Curtailing Ground Water Rights in Water Districts Nos. 130 and 140 Junior to January 8, 1981* ("July 22, 2009 Order") and July 29, 2009 *Order Regarding Ground Water Districts' Plan of Action* ("July 29, 2009 Order"). The July 22, 2009 Order directed that the Ground Water Districts submit a "plan of action" to comply with the terms of the May 15, 2009 *Partial Stay Order* on or before July 28, 2009; and, further, indicated that a petition for reconsideration of the final order may be submitted within fourteen (14) days of the service date. In response on July 28, 2009, the *Ground Water Districts' Plan of Action and Petition for Consideration* ("Plan of Action") was filed. In the July 29 2009 Order, the

Interim Director rejected the Ground Water Districts' Plan of Action indicating "the Director will not alter the requirement that ground water rights junior to January 8, 1981, must curtail on July 31, 2009, starting at 12:01 a.m." This filing is submitted by the Ground Water Districts to provide a Second Plan of Action, request further reconsideration of the July 22, 2009 Order, reconsideration of the July 29, 2009 Order and request an immediate status conference with Clear Springs.

The effect of the Interim Director's July 22 Order and July 29 Order is to reject the Ground Water Districts' request that the stay be lifted and that they be allowed to proceed to construct their over-the-rim facilities to deliver the full mitigation obligation of 2.67 cfs to Clear Springs in accordance with the March 26, 2009 *Order Approving Ground Water Districts' Replacement Water Plan for 2009* ("March 26 Approval Order"). While the Ground Water Districts considered the old 9,300 conversion acres as unnecessary and not a firm obligation, the Interim Director has ruled otherwise and effectively by the July 2009 Orders has changed the rules in the middle of the game ("irrigation season") that were established by the March 26 Approval Order approving the Ground Water Districts' 2009 Plan to deliver the full mitigation obligation directly to Clear Springs. According to the July 29 Order, this change was based on Judge Melanson's June 19, 2009 *Order on Petition for Judicial Review* finding that the Director should not have approved the Ground Water Districts' 2009 Plan as a replacement water plan without first conducting a hearing, notwithstanding the fact that Judge Melanson has now granted rehearing on that decision.¹

¹ It is noteworthy that the Ground Water Districts' 2009 Plan was also filed as a Rule CM 43 Mitigation Plan, that Clear Springs demanded an immediate hearing and that the matter has been assigned to Hearing Office Gerald Schroeder who has not yet scheduled a prehearing conference or hearing schedule, there being no urgency to do so by reason of the two-year Stay Order.

Certain ground water irrigators voluntarily participated in the old conversion program but converted back to ground water in 2009 reducing the 9,300 acres of old conversions to an estimated 4202.6 acres. July 22, 2009 Order, FF 27. The impact of the reduced acres on Clear Springs was estimated based on the model to reduce the flow to the Thousand Springs reach by 5.19 cfs and 0.35 cfs to Clear Springs when steady state is reached. July 22, 2009 Order, FF 5, 7. This Second Plan of Action is intended to address the reduction in conversion acres and 0.35 cfs steady state impact upon Clear Springs in the manner described below.

SECOND PLAN OF ACTION

The Ground Water Districts' Second Plan of Action proposes to immediately reduce and ultimately eliminate the 0.35 cfs impact on Clear Springs caused by the reduced conversion acres in the following ways: (1) by immediately increasing the old conversion acres to 7,745 acres; (2) by late season recharge through the North Side Canal Company system in 2009; and (3) by adding new conversion acres in 2010 in an effort to bring the total to over 9,000 acres. Since the July 29, 2009 Order was entered, the Ground Water Districts have made personal contact with each of the ground water irrigators they discovered had opted out of the conversion program this year. Of those, a total of 15 representing an additional 2,989 acres of conversion agreed to immediately discontinue all ground water pumping and fully convert back to surface water. Their names and acreage are set forth in Exhibit A attached. In addition, Robert Meyers has agreed to convert to surface water for the rest of this year. Notably, Mr. Meyers' well is located right above the rim at Clear Springs. The Ground Water Districts have also discovered that Loren Wert and McReits LLC have not pumped their wells at all this year and have been taking NSCC shares to irrigate their property. Exhibit A consists of the conversions that the Ground

Water Districts are aware of as of August 3, 2009 that relate to the old 9,300 acres; the new total is 7,745 including Mr. Meyers, Mr. Wert and McReits LLC.

From their existing Lessors² the Ground Water Districts have leased 27,500 AF to deliver storage water through the North Side Canal Company system to conversion acres. To the extent that amount is not fully delivered to conversion acres during the 2009 irrigation season, the Ground Water Districts will make that amount available to do late season recharge, first through the North Side Canal Company system to areas nearest the rim above Clear Springs, and then other areas within the system to where late season recharge was performed in previous years. Representatives of the Ground Water Districts have met with NSCC Manager Ted Diehl who has given a verbal committed to work with the Ground Water Districts on late season recharge this year the exact amount of which would depend upon the irrigation season and available capacity in their canal system.

Finally, the Ground Water Districts will use their best efforts to add new conversion acres in 2010 in an effort to provide at over 9,000 conversion acres in 2010. Some ground water irrigators have indicated a willingness to convert acres from ground water to surface water in 2010. The Ground Water Districts will make this option known to their members and help coordinate additional conversion efforts for the delivery of storage water through surface water delivery systems as feasible.

Representatives of the Ground Water Districts have recently met with representatives of Clear Springs and have discussed the general terms of the Second Plan of Action. A follow-up meeting is in the process of being scheduled to discuss the details now known and set forth in this Second Plan of Action in the hope that it will be deemed acceptable for purposes of the two-

² The Department has on file copies of the ongoing Lease Agreements which remain in effect between IGWA and eight Lessors pursuant to which IGWA has a minimum of 27,500 AF and maximum of 69,000 AF of water available each year based upon these Lessors' storage contracts in the Upper Snake Reservoir System.

year stay so that the parties' efforts to cooperatively explore other long-term solutions may continue.

PETITION FOR RECONSIDERATION

Based on the foregoing, the Ground Water Districts respectfully request that the Interim Director reconsider the July 22 and July 29, 2009 Orders. Specifically, the Ground Water Districts request: (1) that the curtailment of ground water pumping as ordered by the July 22, 2009 and July 29, 2009 Orders be suspended until such time as Clear Springs confirms whether or not this Second Plan of Action is acceptable; (2) that the Ground Water Districts' Second Plan of Action be approved and the July Curtailment Orders rescinded; (3) alternatively, that the scope of the curtailment be reevaluated and reduced to reflect resulting benefit to Clear Springs from the additional conversion acres added and late season recharge described in this Second Plan of Action.

REQUEST FOR STATUS CONFERENCE

The Ground Water Districts request a status conference be scheduled and conducted between the Ground Water Districts, Clear Springs and the Interim Director to discuss and determine if this Second Plan of Action is acceptable to Clear Springs or if it is acceptable to the Interim Director; and, if not, to discuss and determine the reduced acres, water rights and owners subject to the Curtailment Order and the enforcement procedures the Interim Director intends to take under Idaho Code §42-351, §42-1701B of §42-607 or otherwise. This is important to effectively communicate to the farmers subject to curtailment to avoid misunderstandings, and reduce the potential risk of property damage or personal injury arising out of the use of force.

DATED this 3rd day of August, 2009.

RACINE, OLSON, NYE, BUDGE & BAILEY



RANDALL C. BUDGE, Attorneys for
North Snake and Magic Valley Ground
Water Districts

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August, 2009, the above and foregoing was served by first class U.S. Mail and/or electronic mail to the following:

Idaho Department of Water Resources Interim Director Gary Spackman P.O. Box 83720 Boise, Idaho 83720-0098 Victoria.wigle@idwr.idaho.gov phil.rassier@idwr.idaho.gov chris.bromley@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
John Simpson Barker Rosholt PO Box 2139 Boise, ID 83701-2139 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Mike Creamer Jeff Fereday Givens Pursley PO Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jeffereday@givenspursley.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Robert Williams Fredericksen Williams Meservy 153 E. Main St. PO Box 168 Jerome, ID 83338-0168 rewilliams@cableone.net	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Allen Merritt Cindy Yenter Watermaster-WD 130, 140 IDWR – Southern Region 1341 Fillmore St, Ste 200 Twin Falls, ID 83301-3380 Allen.merritt@idwr.idaho.gov Cindy.yenter@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail

Candace Neff

NAME	ACRES	Continued Conversions for 2009	Renewed as of August 3, 2009	No Ground water pumped 2009
Benedictine Monks of ID Inc.	425	x		
Bettencourt (Rodney Bolich)	304	x		
Bettencourt Dairies	435	x		
Big Sky West	304	x		
Claar, Ron	160	x		
C. DeKruyf Dairy Partnership	163	x		
Niagra - Adrian Boer Canyonside /K&W Dairy	1010	x		
Hults, Kay (Harm's place)	22	x		
Henry Farms	286	x		
Huettig Brothers	160	x		
Huettig Brothers	100	x		
Ravenscroft, Bryan	27	x		
Roth Family LLC	161	x		
Ruby, Ken	134	x		
Sawtooth Sheep Co. Inc.	374	x		
Sawtooth Sheep Co. Inc.	352	x		
Subtotal	4417			
2+ (Adrian Boer) - Miller Farms	345		x	
Anderson, Ken	144		x	
Boer Dairy LLC (Davis Place S,M, N)	405		x	
Brandsma Dairy	140		x	
Brandsma Dairy - lost well	160		x	
Dewit Dairy	144		x	
Dewit Dairy	80		x	
Hirai, Jack	75		x	

Johnson Jr., Elmer	231		x	
Richard Trail Trust	500		x	
Ted Miller Dairy	130		x	
Strickland, Evelyn	41		x	
U-U Ranch LLC	130		x	
Veenstra, Frank	320		x	
Wert, Keith	144		x	
Subtotal	2989			
Robert Meyers*	70		x	
Wert, Loren**	40			x
McReits LLC**	229			x
Subtotal	339			
GRAND TOTAL AS OF 8/3/09	7745			
* New as of 8/3/09.				
** Prior converters who purchased water directly from NSCC				