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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE
DISTRIBUTION OF WATER TO
VARIOUS WATER RIGHTS HELD BY
AND 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

Docket No. CM-DC-2010-001

**Surface Water Coalition's and IGWA's
Stipulated Motion to Reinstate The Third
Amended Order Regarding Methodology for
Determining Material Injury to Reasonable
In-Season Demand and Reasonable
Carryover**

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 (collectively the "Surface Water Coalition" or "SWC"), and the Idaho Ground Water Appropriators, Inc. ("IGWA") hereby move the Director for an order reinstating the *Third Amended Order Regarding Methodology for Determining Material Injury to*

Reasonable In-Season Demand and Reasonable Carryover, originally dated April 17, 2015 (“Third Methodology Order”).

PROCEDURAL POSTURE

1. On April 17, 2015, the Director issued the *Third Amended Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*.

2. On April 17, 2015, the Director issued the *Final Order Regarding April 2015 Forecast Supply* (“April As-Applied Order”), determining, among other things, that there would be a predicted demand shortfall of 73,700 AF for TFCC and 15,300 AF shortfall for AFRD#2.

3. Beginning in April, 2015, the SWC and IGWA began negotiating a settlement to the ongoing SWC delivery call.

4. On April 30, 2015, IGWA filed a *Petition for Reconsideration and Clarification of the Third Methodology Order* and a *Petition for Reconsideration and Clarification of April 2015 As-Applied Order*. Each petition requested a hearing.

5. On May 8, 2015, and in light of the ongoing negotiations, the SWC and IGWA filed a *Stipulation & Joint Motion Regarding April As Applied Order and Third Methodology Order*. That motion asked that the Director withdraw the Third Methodology Order and the April As-Applied Order to allow the parties to continue negotiations.

6. On May 8, 2015, the Director issued the *Order Approving Stipulation and Granting Joint Motion*, thereby withdrawing the Third Methodology Order and the April As-Applied Order.

7. As a result of the negotiations, the SWC and IGWA entered into the *Settlement Agreement entered into June 30, 2015, between participating members of the Surface Water Coalition and participating members of the Idaho Ground Water Appropriators, Inc. and Addendum to Settlement Agreement* (collectively the “SWC-IGWA Settlement Agreement”). A copy of the SWC-IGWA Settlement Agreement, and *Addendum* thereto, are attached to the *Stipulated Mitigation Plan and Request for Order*, filed concurrently herewith.

8. In addition, A&B Irrigation District and IGWA members entered into an *Agreement*, dated October 7, 2015, also attached to the *Stipulated Mitigation Plan and Request for Order* (“A&B-IGWA Settlement Agreement”).

STIPULATION TO REINSTATE THIRD METHODOLOGY ORDER

9. The SWC stipulates that provided the agreements are implemented, the mitigation provided by participating groundwater users pursuant to the SWC-IGWA Settlement Agreement is sufficient to mitigate for any material injury caused by those participating groundwater users to the SWC.

10. Junior ground water right holders who do not implement the required actions or who do not otherwise have an approved Rule 43 mitigation plan will be subject to conjunctive administration pursuant to the Director's orders in the above-captioned matter.

11. In order to proceed with administration, the Director must reinstate the Third Methodology Order.

12. Accordingly, the SWC and IGWA request that the Director reinstate the Third Methodology Order for the 2016 irrigation season and proceed with conjunctive administration under the SWC delivery call.

13. IGWA renews its prior request for a hearing on Third Methodology Order, pursuant to Idaho Code § 42-1701A(3) and IDAPA 37.01.01.740.02.b.

14. The SWC and IGWA request that the Director grant a hearing on the Third Methodology Order, but stay any action on the Third Methodology Order, including a determination of the scope of that hearing, pursuant to IDAPA 37.01.01.780. This will allow the terms of the SWC-IGWA Settlement Agreement and A&B-IGWA Settlement Agreement to be implemented. The Parties stipulate that the Director should continue administration pursuant to the Third Methodology Order during the stay of the hearing.

15. The SWC and IGWA will notify the Director when they request that the stay be lifted.

Therefore, the SWC and IGWA stipulate and request that the Director:

- (a) Reinstate the Third Methodology Order;
- (b) Proceed with conjunctive administration for 2016 under the SWC delivery call, IDWR Docket No. CM-DC-2010-001, and if necessary, administer, by priority, all groundwater users who are not protected by an the SWC and IGWA stipulated Mitigation Plan, or any other mitigation plan, to the extent necessary to offset any material injury to the SWC's senior surface water rights;
- (c) Grant IGWA's request for hearing on the Third Methodology Order; and
- (d) Stay all proceedings on the hearing on the Third Methodology Order, including a determination of the scope of that hearing, until requested by the SWC and/or IGWA to proceed.

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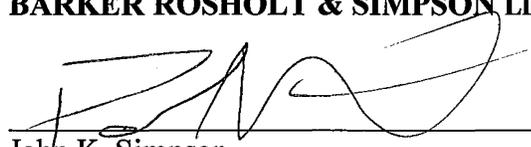
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DATED this 9th day of March, 2016.

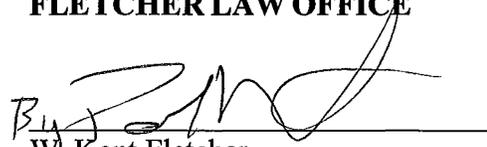
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Randall C. Budge

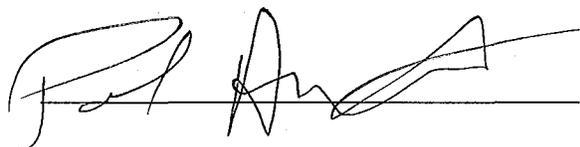
Attorneys for Idaho Ground Water Appropriators, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2016, I served a true and correct copy of the foregoing on the following by the method indicated:

<p>Director Gary Spackman c/o Deborah Gibson State of Idaho Dept of Water Resources 322 E Front St Boise, ID 83720-0098 *** service by electronic mail</p> <p>facsimile – 208-287-6700 gary.spackman@idwr.idaho.gov <u>v</u> deborah.gibson@idwr.idaho.gov <u>v</u></p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234</p> <p>*** service by electronic mail only</p> <p>mhoward@pn.usbr.gov emcgarry@pn.usbr.gov</p>	<p>IDWR – Eastern Region 900 N. Skyline Dr., Suite A Idaho Falls, ID 83402-1718</p> <p>*** service by electronic mail only lyle.swank@idwr.idaho.gov</p>
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<p>Michael C Creamer Jeffrey C. Fereday Givens Pursley 601 W Bannock St Ste 200 P.O. Box 2720 Boise, ID 83701-2720 *** service by electronic mail only mcc@givenspursley.com jcf@givenspursley.com</p>	<p>Kathleen Carr US Dept Interior, Office of Solicitor Pacific Northwest Region, Boise 960 Broadway Ste 400 Boise, ID 83706 *** service by electronic mail only facsimile – 208-334-1918 kathleenmarion.carr@sol.doi.gov v</p>	
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A handwritten signature in black ink, appearing to read "Paul Anderson", is written over a horizontal line.