

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF 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

**MITIGATION AGREEMENT**

The Idaho Dairymen's Association (the "Association"), the Thousand Springs Water Users Association ("TSWUA"), Clear Springs Foods, Inc. ("Clear Springs"), and the Surface Water Coalition, by and through their undersigned counsel, hereby stipulate and agree as follows:

**I.  
RECITALS**

1. The Association is an Idaho non-profit cooperative association, duly organized and existing under the provisions of Chapter 3, Title 30, Idaho Code. In addition to other purposes which are not relevant to this action, the Association was formed to promote the dairy interests of and in the state of Idaho, and to take such action as the Association deems necessary or advisable to stabilize and protect the dairy industry of Idaho. The regular membership of the

Association consists of every person, firm, corporation, or association current in their payment of the Idaho State Tax on the production of milk. This group includes virtually all dairy owners/operators in Idaho, who sell milk to dairy processors for ultimate human consumption.

2. The parties acknowledge that the Association does not have the authority to legally bind or require any of its members to participate in this mitigation plan. By executing this Agreement, the Board of Directors of the Association commits that it will convene meetings of its members within thirty (30) days after the date of the last signature of this Agreement to explain the negotiations that led to this Agreement, the terms of the Agreement, and the opportunity for the Association members, who divert water from the Eastern Snake Plain Aquifer (“ESPA”), to execute this Agreement and fully participate as “Mitigating Dairymen,” as described herein.

3. The TSWUA is an Idaho nonprofit corporation, duly organized under Idaho law. The purposes of the TSWUA are to promote the common interests of its members in restoring their water supplies in the Thousand Springs and the hydraulically connected ESPA, and to obtain mitigation and other forms of relief for their losses resulting from their declining spring water supplies. Exhibit A hereto is a list of the members of the TSWUA, who agree to be bound by this Agreement by ratifying and executing it.

4. The parties acknowledge that the TSWUA does not own water rights, and has not been granted authority by any of its members to subordinate their water rights, or to accept the mitigation plan offered by the Association. By executing this Agreement, the Board of Directors of the TSWUA commits that it will convene a meeting of its members within thirty (30) days after the date of the last signature of this Agreement to explain the negotiations that have led to this Agreement and the terms of this Agreement, and to provide its members the opportunity to

individually ratify this Agreement, and thereby to individually accept this Agreement in lieu of priority curtailment of the Mitigating Dairywomen's ground water rights.

5. The Surface Water Coalition is comprised 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 (the "Surface Water Coalition") with surface water rights relying upon spring discharge in the proximity of the American Falls reach of the Snake River. Said surface water rights being the beneficiaries of this Mitigation Agreement.

6. Clear Springs is an aquaculture facility with water rights located within Water District No. 130. Said water rights rely upon spring discharges from an area commonly known as the Thousand Springs reach.

7. The Association members who operate dairy facilities located within the ESPA ("Dairywomen") are authorized to divert ground water, under valid existing water rights, for operation of their milk production facilities and sustenance of their dairy cows. The source of water for those ground water rights is the ESPA. The ESPA and these ground water rights are hydraulically connected to the spring and spring fed surface water sources which are used to fulfill water rights of the TSWUA's members, Clear Springs, and the Surface Water Coalition's members.

8. For purposes of this Agreement, the ratifying members of the TSWUA, Clear Springs, and the Surface Water Coalition accept the representation of the Association that:

a. based on the analysis attached hereto as **Exhibit B**, the depletion of the ESPA for each cow is 29.1 gallons of water per day.

## **II. MITIGATION**

9. Exhibit C is a complete list of all Association members who have chosen to execute this Agreement and who divert ground water from the ESPA . Exhibit C includes the estimated total number of mature dairy cows owned by each Mitigating Dairyman. The Mitigating Dairyman shall provide mitigation for their aggregate annual depletion of the spring and spring fed surface water supplies which are hydraulically connected to the ESPA. The aggregate annual depletion shall be calculated by multiplying the 29.1 gallons per cow, per day figure in Article 8 herein, times 365 days, times the number of mature dairy cows owned by the Mitigating Dairyman (29.1 gpd x 365 days x number of cows = Aggregate Annual Depletion).

10. If any of the conditions identified below in this paragraph occur following approval by the Idaho Department of Water Resources, there will be a corresponding, proportional change to the mitigation provided under this Agreement:

- a. the number of dairy cows owned by the Mitigating Dairyman changes; or
- b. the number of Mitigating Dairyman changes; or
- c. if further analysis shows that the depletion to the ESPA per cow changes;.

The Mitigating Dairyman shall provide all other parties to this Agreement, biennial reports of the number of cows owned by the Mitigating Dairyman, which use water from the ESPA, and the parties agree that Exhibit B and Exhibit C shall be revised, as necessary to show all Mitigating Dairyman that divert water from the ESPA and all dairy cows owned by such members. Such biennial reports shall include verification data from the Dairy Division of the Idaho Department of Agriculture.

11. The Mitigating Dairyman stipulate and agree to acquire sufficient lands (“Mitigation Acres”) with appurtenant ESPA ground water rights (“Mitigation Water Rights”) to

mitigate for their Aggregate Annual Depletions. Such lands shall be purchased by the Mitigating Dairymen, through the Idaho Dairy Land Trust, and irrigation water use from appurtenant ground water rights shall thereafter cease, as provided herein.

If for whatever reason mitigating acres are not purchased in accordance with paragraph 12 below, the Mitigating Dairymen shall seek to lease storage water from the Water District 1 rental pool for the purposes of delivery in the North Side Canal Company system for mitigation. If rental water is not available from the rental pool, North Side Canal Company agrees to lease and convey in the North Side system rental water in the amount identified as the depletions associated with the Association's members operations, and the Association hereby agrees to lease and pay conveyance charges as agreed to by the Association and North Side. The Association and North Side Canal Company shall make every reasonable effort to deliver the mitigation water to locations which simulate mitigation as identified in paragraph 12.f, recognizing that North Side's primary obligation is to deliver water to North Side shareholders.

12. Mitigation Acres and Mitigation Water Rights shall be subject to the following conditions:

a. Each Mitigation Acre must have been irrigated with the appurtenant Mitigation Water Right(s) during the irrigation season prior to the date of acquisition;

b. The portion of mitigation to be provided under this Mitigation Agreement which will be attributed to a Mitigation Acre shall be the maximum annual volume of consumptive use of the water right prior to the date of this Mitigation Agreement, as established through records of crop production on the Mitigation Acre or ground water pumping records;

c. No Mitigation Water Right may be used upon any Mitigation Acre, or transferred or used on any other land;

d. No water shall be pumped from the ESPA and applied to a Mitigation Acre;

e. The distribution of Mitigation Acres and Mitigation Water Rights between Water District 130, to increase spring flows below Milner Dam and Water District 120, to increase the ESPA, and spring and spring fed surface flows shall be proportional to the distribution of the depletions by the Mitigating Dairymen. The Mitigating Dairymen, through the Idaho Dairy Land and Water Trust, will make every reasonable effort to acquire Mitigation Acres and Mitigation Water Rights within Water District 130 located south of Highway 26, from Bliss to Shoshone, and south of Highway 24, from Shoshone to Minidoka.

f. The Mitigating Dairymen, through the Idaho Dairy Land Water Trust, will make every reasonable effort to acquire Mitigation Acres and Mitigation Water Rights which will actually mitigate for their annual depletions in the ESPA and Snake River reaches identified and which are in the closest proximity to water supplies below Milner Dam or reaches above Milner Dam that are inadequate to fulfill senior water rights.

g. No supplemental ground water rights, appurtenant to lands primarily irrigated with surface water, shall be eligible for purchase under the terms of this Agreement.

13. In accordance with the provisions of Paragraph 9 to fully mitigate for the Aggregate Annual Depletions, Mitigating Dairymen agree to acquire real property with appurtenant ground water rights to fulfill their obligations under this Stipulation in the following amounts in the time frames specified below:

a. Mitigation Acres generating 25 percent of the AFA in mitigation for those Mitigating Dairymen shall be acquired within twelve (12) months of the effective date of this Mitigation Agreement;

b. Mitigation Acres generating 60 percent of the AFA in mitigation for those Mitigating Dairymen shall be acquired within eighteen (18) months of the effective date of this Mitigation Agreement;

Mitigation Acres generating 100 percent of the AFA in mitigation for those Mitigating Dairymen shall be acquired within twenty-four (24) months of the effective date of this Mitigation Agreement.

14. Within 12 months of the effective date of this Agreement, the Mitigating Dairymen shall provide a report to the parties hereto and to the Director setting forth (1) the number of acres purchased, (2) the location thereof, and (3) the quantity of appurtenant water rights; or the amount of water leased.

Within 18 months of the effective date of this Agreement, the Mitigating Dairymen shall provide a second report to the parties hereto and to the Director setting forth (1) the number of acres purchased, (2) the location thereof, and (3) the quantity of appurtenant water rights; or the amount of water leased.

Within 24 months of the effective date of this Agreement, the Mitigating Dairymen shall provide a third report to the parties hereto and to the Director setting forth (1) the number of acres purchased, (2) the location thereof, and (3) the quantity of appurtenant water rights; or the amount of water leased.

15. The parties agree that the mitigation provided for in this Agreement will be discontinued when the spring and spring fed surface sources used by the ratifying TSWUA

members, Clear Springs, and the members of the Surface Water Coalition generate sufficient flows to fully satisfy their existing water rights of those parties for five consecutive calendar years, without the mitigation provided for herein.

16. If the conditions of paragraph 15 occur, the parties agree they shall jointly request the Director of IDWR (“Director”) to stay the mitigation provided for in this Agreement for as long as the conditions of paragraph 15 exist. If those conditions cease to exist, the parties agree they shall jointly request the Director to reimpose the mitigation provided for in this Agreement.

### **III. ADDITIONAL PROVISIONS**

17. The parties further agree they will not object to any provisions set forth herein, unless the Agreement is amended by the Director without prior previous agreement of all parties to this Agreement.

18. The parties agree that this Agreement does not apply to water rights of the Mitigating Dairyman which are used solely for irrigation purposes.

19. The parties agree that the Association shall be free to join other mitigation plans approved by the Director and upon written notice by the Director of such joinder, the Parties may terminate this Agreement.

20. If a dairy owner/operator chooses to execute this Agreement after filing this Agreement with IDWR or after the effective date of this Agreement, that dairy owner/operator shall be entitled to participate in the Agreement and become a Mitigating Dairyman by executing a copy of the effective Agreement and submitting that executed Agreement to the Director with copies to all other parties to the Agreement.

21. This Agreement shall be effective upon final approval without appeal of this Agreement by the Director.

22. The parties to this Agreement understand and hereby acknowledge that any Association member not choosing to execute this Agreement shall be subject to administration of their water rights pursuant to administrative or court order.

#### IV. MOTION

Therefore, the parties to this Agreement move the Director for Orders accomplishing the following:

1. Approving this Agreement and retaining jurisdiction over the implementation of this Agreement to ensure that a groundwater right purchased and retired pursuant to this Agreement is not subject to any curtailment order based upon the priority date of the right.
2. Excluding the Mitigating Dairymen from any curtailment order or other water use restriction regarding their water usage under existing water rights solely for use of their dairy cows and milk production facility which may occur as a result of the delivery calls in the ESPA currently pending before the Director or any subsequent delivery call involving springs tributary to the ESPA which could result in curtailment of those Mitigating Dairymen water rights, so long as the requirements set forth in this Agreement are met.

DATED this 13<sup>th</sup> day of April, 2007.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year indicated immediately below.

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**IDAHO DAIRYMEN'S ASSOCIATION**

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

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

**THOUSAND SPRINGS WATER USERS ASSOCIATION**

By: John W. Jones Jr.  
Its: PRESIDENT

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

**SENIOR WATER USERS COALITION**

A&B Irrigation District

American Falls Reservoir District #2

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

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

Burley Irrigation District

Milner Irrigation District

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

By: Scott B. Reedberg  
Its: CHAIRMAN

Minidoka Irrigation District

North Side Canal Company

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

By: Jean H. Marshall  
Its: Chairman

Twin Falls Canal Company

Clear Springs Foods, Inc.

By: Tom N. Shumaker  
Its: Pres.

By: John R. MacMill  
Its: VICE PRESIDENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year indicated immediately below.

DATED as of the \_\_\_\_ day of \_\_\_\_\_, 2006.

**IDAHO DAIRYMEN'S ASSOCIATION**

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

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

**THOUSAND SPRINGS WATER USERS ASSOCIATION**

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

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

**SENIOR WATER USERS COALITION**

A&B Irrigation District

American Falls Reservoir District #2

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

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

Burley Irrigation District

Milner Irrigation District

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

By: Scott B. Neidermyer  
Its: Chairman

Minidoka Irrigation District

North Side Canal Company

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

By: John H. Marshall  
Its: Chairman

Twin Falls Canal Company

Clear Springs Foods, Inc.

By: Don N. Alvarado  
Its: Pres.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year indicated immediately below.

DATED as of the \_\_\_\_ day of \_\_\_\_\_, 2006.

**IDAHO DAIRYMEN'S ASSOCIATION**

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

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

**THOUSAND SPRINGS WATER USERS ASSOCIATION**

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

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

**SENIOR WATER USERS COALITION**

A&B Irrigation District

By: *Don Schmitt*  
Its: *Pres.*

American Falls Reservoir District #2

By: *Bob Peterson*  
Its: \_\_\_\_\_

Burley Irrigation District

By: *Dean Edgan*  
Its: *President*

Milner Irrigation District

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

Minidoka Irrigation District

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

North Side Canal Company

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed

as of the day and year indicated immediately below.

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**IDAHO DAIRYMEN'S ASSOCIATION**

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

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

**THOUSAND SPRINGS WATER USERS ASSOCIATION**

By: John W. Jones Jr.  
Its: PRESIDENT

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

**SENIOR WATER USERS COALITION**

A&B Irrigation District

American Falls Reservoir District #2

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

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

Burley Irrigation District

Milner Irrigation District

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

By: Scott B. Neuhoff  
Its: Chairman

Minidoka Irrigation District

North Side Canal Company

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

By: John W. Marshall  
Its: Chairman

Twin Falls Canal Company

Clear Springs Foods, Inc.

By: Alan N. Stumaker  
Its: Pres.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year indicated immediately below.

DATED as of the \_\_\_\_ day of \_\_\_\_\_, 2006.

**IDAHO DAIRYMEN'S ASSOCIATION**

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

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

**THOUSAND SPRINGS WATER USERS ASSOCIATION**

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

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

**SENIOR WATER USERS COALITION**

A&B Irrigation District

American Falls Reservoir District #2

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

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

Burley Irrigation District

Milner Irrigation District

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

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

Minidoka Irrigation District

North Side Canal Company

By: Mike Wilkins

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year indicated immediately below.

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**IDAHO DAIRYMEN'S ASSOCIATION**

By: Jack Davis  
Its: President

By: Bob Mendenhall  
Its: Executive Director

**THOUSAND SPRINGS WATER USERS ASSOCIATION**

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

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

**SENIOR WATER USERS COALITION**

A&B Irrigation District

American Falls Reservoir District #2

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

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

Burley Irrigation District

Milner Irrigation District

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

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

Minidoka Irrigation District

North Side Canal Company

**EXHIBIT A**

[List of TSWUA Members Participating and Their Water Rights]

**EXHIBIT B**

[Depletion Calculation]

**EXHIBIT C**

[Idaho Dairymen's Association Mitigating Members and Their Water Rights]