

2024 MEMORANDUM OF AGREEMENT

This 2024 Memorandum of Agreement (“Agreement”) is entered into between the parties defined in section 1.

Background

A. The SWC and certain Districts previously entered into the *Settlement Plan Entered Into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of Idaho Ground Water Appropriators, Inc.*, which was amended and clarified by the *Plan* dated October 7, 2015, the *Addendum to Settlement Plan* dated October 19, 2015, and the *Second Addendum to Settlement Plan* dated December 14, 2016 (collectively, the “2015 Plan”). Through the 2015 Plan, the parties sought to mitigate for material injury to senior surface water rights held by the SWC and to provide safe harbor from curtailment to the Districts that divert ground water from the Eastern Snake Plain Aquifer (“ESPA”).

B. The Idaho Department of Water Resources (“Department”) approved the 2015 Plan as a mitigation plan under Rule 43 of the Department’s *Rules for Conjunctive Management of Surface and Ground Water Resources* (“CM Rules”) pursuant to the *Final Order Approving Stipulated Mitigation Plan* issued May 2, 2016, and the *Final Order Approving Amendment to Stipulated Mitigation Plan* issued May 9, 2017, in IDWR Docket No. CM-MP-2016-001.

C. Disputes have arisen between the parties concerning interpretation and implementation of the 2015 Plan, leading to extensive litigation concerning the 2015 Plan and the filing of individual mitigation plans by several Districts.

D. The parties desire to cooperatively resolve their disputes and all outstanding litigation between them related to the 2015 Plan on the terms and conditions set forth in this Agreement and the 2024 Stipulated Mitigation Plan (“Plan”) executed contemporaneous herewith.

Agreement

Therefore, with the foregoing definitions incorporated herein by reference, and in consideration of the terms, conditions, and obligations set forth below and in the 2024 Stipulated Mitigation Plan, the parties agree as follows:

1. Parties. The parties to this Agreement are (a) the members of the SWC, (b) ground water districts that sign this Agreement by November 14, 2024, (c) ground water districts and other entities representing groundwater users that subsequently participate in this Agreement pursuant to section 9, and (d) Idaho Ground Water Appropriators, Inc. (“IGWA”).

1.1 Surface Water Coalition. The members of the SWC are A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (individually, a “SWC member,” collectively, the “SWC”). Each member of the SWC is a party to this Plan.

1.2 Ground Water Districts. The ground water districts initially invited to participate in this Agreement are Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Henry’s Fork Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District. Only those ground water districts who sign this Agreement by November 14, 2024, or who participate in this Agreement pursuant to section 9, are parties to this Agreement. Ground water districts and other entities who participate in this Agreement are referred

to herein individually as “District” and collectively as the “Districts.” Any ground water district that does not sign this Agreement by November 14, 2024, or who does not participate in this Agreement pursuant to section 9, shall not be a party to this Agreement, shall not be bound by the terms of this Agreement, and shall not benefit from this Agreement.

2. Approval Process and Effective Date. This Agreement shall be submitted to the boards of the SWC and the ground water districts identified in sections 1.1 and 1.2 for review by November 1, 2024. Ground water districts that elect to participate in this Agreement pursuant to section 1.2 will have until November 14, 2024, to sign this Agreement. The SWC will have until November 15, 2024, to sign this Agreement. This Agreement shall be effective once it is signed by all members of the SWC and at least five of the nine ground water districts identified in section 1.2.

3. Support of Storage Water Acquisition. It is the mutual desire of the parties to create a vehicle enabling the Districts to consistently secure the storage water required by section 6 of the Plan at a stable and reasonable price. The parties will work cooperatively in good faith to develop one or more alternative vehicles to ensure that the Districts can consistently secure the storage water required by section 6 of the Plan at a stable and reasonable price. Failure to create a new vehicle shall not be the basis for termination of either this Agreement or the Plan.

4. Recharge Site Priority. Managed aquifer recharged performed by Districts under section 4.5 of the Plan shall be subject to the following conditions:

4.1 Recharge Sites Within District Boundary. Subject to sections 4.2 and 4.3 of this Agreement, each District shall have first priority to utilize recharge sites within its District boundary. To the extent a District does not utilize all recharge capacity within its boundary, other Districts may utilize such excess capacity.

4.2 District-Developed Recharge Sites. If a District develops a recharge site at its expense, whether inside or outside its District boundary, such District shall control the use and priority of recharge conducted at such site.

4.3 Idaho Water Resource Board Recharge Sites. Section 4 of this Agreement has no bearing on the use of recharge sites owned or controlled by the Idaho Water Resource Board (the “Board”).

5. Dismissal/Stay of Litigation. Within 10 days after Department approval of the Plan as a stipulated mitigation plan under rule 43 of the Conjunctive Management Rules, the parties will jointly request (a) dismissal with prejudice of all litigation in IDWR Docket No. CM-MP-2016-001, Ada County Case No. CV01-24-10821, Idaho Supreme Court Docket No. 51784-2024, and Bonneville County case no. CV10-24-2909; (b) a stay of proceedings on IGWA’s Petition for Clarification filed July 31, 2024, in IDWR Docket No. CM-DC-2010-001, during the term of the Plan; (c) a stay of litigation in Ada County Case No. CV01-23-13173, during the term of the Plan; (d) dismissal without prejudice of all mitigation plans filed individually by the Districts in IDWR Docket Nos. CM-MP-2023-001, CM-MP-2023-002, CM-MP-2023-003, CM-MP-2023-004, CM-MP-2023-005, and CM-MP-2024-001; and (e) dismissal of the mitigation plans previously approved in IDWR Docket Nos. CM-MP-2016-001, CM-MP-2009-006 and CM-MP-2009-007. The Districts and IGWA further agree to not participate in Idaho Supreme Court Docket No. 52102-2024.

6. Alternative Mitigation Plans. While the Plan is in effect, no District will attempt to mitigate injury to the SWC under any other mitigation plan. No District shall, more than one year prior to termination of the Plan, file with the Department a petition for approval of a mitigation plan that may be implemented after the term of the Plan.

7. Board's Managed Recharge Program. The parties recognize that the Board's managed recharge program is an important action relative to the health of the ESPA. Hence, the parties will agree to support and will advocate for the state of Idaho to increase the Board's ESPA managed aquifer recharge target from 250,000 acre-feet to 350,000 acre-feet on average annual basis as defined by the Board, including supporting the Board's efforts at the Legislature, with an emphasis on recharge sites above American Falls Reservoir prioritizing benefit to the Near Blackfoot to Minidoka reach of the Snake River. Failure to expand the Board's managed recharge program shall not be the basis for termination of either this Agreement or the Plan.

8. Administration of Water Rights in Expanded Area of Common Ground Water Supply. The parties agree to support state's administration of water rights included in the area of common ground water supply through SB 1341 (2024), prioritizing those tributaries with the most ground water use and areas with the greatest impact to the Near Blackfoot to Minidoka reach of the Snake River.

9. Additional Organized Ground Water Groups May Join Agreement. Ground water districts or other entities representing groundwater users brought into the area of common ground water supply through the passage of Senate Bill 1341 (2024) or brought in through expansion of the area of common ground water supply as allowed by Senate Bill 1341 (2024) may seek to join this Agreement. Upon the written consent of all parties, which consent shall not be unreasonably withheld, the parties and the entity joining this Agreement shall execute an addendum to this Agreement whereby the joining entity consents to be bound by all terms of this Agreement on the same terms and conditions as the Districts.

10. Resolution. The parties agree to work in good faith to develop a concurrent resolution for consideration by the Idaho Legislature during the 2025 session to support the implementation and enforcement of this Agreement and the 2024 Stipulated Plan.

11. Dispute Resolution. Any material dispute between the parties concerning this Agreement will be resolved in accordance with the following provisions:

11.1 Good Faith Negotiation. Upon written notice from one party to the other, authorized representatives of the parties will attempt in good faith to resolve the dispute by negotiation. The written notice shall include a general statement of the claims and positions of the aggrieved party.

11.2 Litigation. Litigation regarding this Agreement is allowed between the parties only for the purpose of enforcing this Agreement.

11.3 Attorney Fees. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs, but not to exceed the total cumulative liability of the non-prevailing party.

11.4 Governing Law, Jurisdiction, and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction and agree that Ada County is the proper venue. Each party waives, to the extent permitted under applicable law, any right it may have to assert the doctrine of *forum non conveniens* or to object to venue to the extent any proceeding is brought in accordance with this section 11.

11.5 Exclusive Procedures. The procedures specified in this section 11 shall be the sole and exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the procedures specified in this section 11 are pending.

12. Miscellaneous.

12.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and the successors of the parties.

12.2 Entire Agreement. This Agreement sets forth all understandings between the parties with respect to subject matter hereof. There are no other understandings, covenants, promises, plans, conditions, either oral or written, between the parties other than those contained herein and in the Plan. The parties expressly reserve all rights not settled by this Agreement.

12.3 Amendment. This Agreement may be amended only by a written instrument signed by all parties.

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

12.5 Notices. Notices required or permitted to be given to any party under this Agreement shall be in writing and shall be effective (a) when personally delivered, (b) three days after mailing via U.S. Postal Service certified mail, (c) upon delivery by a reputable overnight courier, or (d) upon delivery via email to an authorized representative of the party. Notices sent by email shall be deemed received when the designated recipient acknowledges receipt via reply email.

12.6 No Third-Party Obligations or Beneficiaries. The obligations and benefits of this Agreement apply only to the parties.

12.7 Construction. Each party participated in the negotiation and drafting of this Agreement; therefore, this Agreement shall not be construed more strongly in favor of or against any party regardless of who was more responsible for its preparation and shall be construed simply according to its fair meaning.

12.8 Waiver. No term or provision hereof shall be deemed waived, and no performance shall be excused hereunder unless prior waiver or consent shall be given in writing signed by the party against whom it is sought to be enforced. Any waiver of any default by either party shall not constitute a waiver of the same or different default on a separate occasion.

12.9 Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one and the same plan.

12.10 Digital Signatures. Digital and scanned signatures to this Agreement shall be valid and effective to bind the party so signing.

[End of text; signature pages below]

GROUND WATER DISTRICT SIGNATURES

North Snake Ground Water District

By: _____
Lynn Carlquist, Chairman

Date: _____

Magic Valley Ground Water District

By: _____
Dean Stevenson, Chairman

Date: _____

Carey Valley Ground Water District

By: _____
Leta Hansen, Chairwoman

Date: _____

Aberdeen-American Falls Ground Water District

By: _____
Tim Deeg, Chairman

Date: _____

Bingham Ground Water District

By: _____
Connie Christensen, Chairwoman

Date: _____

Bonneville-Jefferson Ground Water District

By: _____
Stephanie Mickelsen, Chairwoman

Date: _____

Jefferson-Clark Ground Water District

By: _____
Kirk Jacobs, Chairman

Date: _____

Madison Ground Water District

By: _____
Bevan Jeppsen, Chairman

Date: _____

Henry's Fork Ground Water District

By: _____
Jeff Raybould, Chairman

Date: _____

IDAHO GROUND WATER APPROPRIATORS, INC SIGNATURE

Idaho Ground Water Appropriators, Inc

By: _____
Stephanie Mickelsen, Chairwoman

Date: _____

SURFACE WATER COALITION SIGNATURES

Twin Falls Canal Company

By: _____
Roger Blass, Chairman

Date: _____

North Side Canal Company

By: _____
Mike Elliott, Chairman

Date: _____

American Falls Reservoir District No. 2

By: _____
Ellis Gooch, Chairman

Date: _____

Milner Irrigation District

By: _____
Scott Breeding, Chairman

Date: _____

Burley Irrigation District

By: _____
Clifford Searle, Chairman

Date: _____

A&B Irrigation District

By: _____
Harold Mohlman, Chairman

Date: _____

Minidoka Irrigation District

By: _____
Ronald D. Kowitz, Chairman

Date: _____