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Attorneys for Bonneville-Jefferson Ground Water District

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF POCATELLO, CITY OF IDAHO
FALLS, CITY OF BLISS, CITY OF BURLEY,
CITY OF CAREY, CITY OF DECLO, CITY OF
DIETRICH, CITY OF GOODING, CITY OF
HAZELTON, CITY OF HEYBURN, CITY OF
JEROME, CITY OF PAUL, CITY OF
RICHFIELD, CITY OF RUPERT, CITY OF
SHOSHONE, CITY OF WENDELL, BINGHAM
GROUND WATER DISTRICT, BONNEVILLE-
JEFFERSON GROUND WATER DISTRICT,
and MCCAIN FOODS USA, INC.,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, and GARY SPACKMAN in his
capacity as the Director of the Idaho
Department of Water Resources.

Respondents.

Case No. CV01-23-08258

**DECLARATION OF SKYLER C.
JOHNS IN SUPPORT OF
COMPLAINT FOR
DECLARATORY RELIEF AND
PETITION FOR WRIT OF
PROHIBITION**

**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

I, SKYLER C. JOHNS, under penalty of perjury, make this *Declaration in Support of Motion for Reconsideration of Denial of Continuance*.

1. I am over the age of eighteen (18) and competent to testify in this matter. I make this declaration based upon my own personal knowledge unless otherwise stated.

2. I am an attorney for the Bonneville-Jefferson Ground Water District (hereafter “Bonneville-Jefferson”) in the above-captioned matter, and I have personal knowledge of the matters involved in the legal proceedings. I have represented Bonneville-Jefferson since May, 2022.

3. Since the Complaint in this matter was filed, several events have occurred that affect Bonneville-Jefferson. This declaration is intended to provide additional information and documents for the Court to review prior to the June 1, 2023, hearing.

4. On April 21, 2023, the Idaho Department of Water Resources (hereafter “IDWR”) through its Director, Gary Spackman (hereafter “Director”) issued the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (hereafter “Fifth Methodology Order”) and the *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1–3)* (hereafter “April 2023 As-Applied Order”) for the reasons set forth herein.

5. As counsel for Bonneville-Jefferson, I received no notice and had no knowledge that the Director planned to make the changes to the fourth methodology found in the Fifth Methodology Order. I first learned that the Director had changed his method for calculating

material injury to the Surface Water Coalition (hereafter “SWC”) in Docket No. CM-DC-2010-001 on April 21, 2023, after I was served a copy of the Fifth Methodology Order.

6. On May 5, 2023, through IGWA, Bonneville-Jefferson submitted a *Notice of Ground Water District Mitigation*, whereby Bonneville-Jefferson offered 8,469 acre feet of storage water to SWC to mitigate Bonneville-Jefferson’s proportionate share of the 75,198 demand shortfall calculated under the Fifth Methodology Order. A true and accurate copy of the *Notice of Ground Water District Mitigation* is attached as Exhibit “A.”

7. On May 23, 2023, without holding a hearing, the Director issued his *Order Determining Deficiency in IGWA’s Notice of Secured Water*. A true and accurate copy of this Order is attached as Exhibit “B.” The order rejects Bonneville-Jefferson’s offer to mitigate and finds that Bonneville-Jefferson’s members are subject to curtailment during the 2023 irrigation season.

8. The Director has denied and limited Bonneville-Jefferson’s and other ground water users’ joint attempts to collect information related to the Orders during discovery. On May 12, 2023, Bonneville-Jefferson joined in a joint *I.R.C.P. 30(b)(6) Notice of Taking Deposition Duces Tecum of IDWR* (hereafter “I.R.C.P. 30(b)(6) Notice”) requesting additional information relevant to the proceedings from IDWR. On May 12, 2023, Bonneville-Jefferson also joined in a joint *Groundwater User’s First Set of Request for Production to IDWR; Or, Alternatively, Request for Public Records* (hereafter “Discovery and Public Records Request”). The Director has denied the *Motion for Reconsideration of Denial of Continuance* and the *Motion to Reconsider* the Fifth Methodology Order and April 2023 As-Applied Order.

9. Although Bonneville-Jefferson and other parties have filed petitions for judicial review in district court and such petitions are to be heard on June 1, 2023, it is unclear whether a timely ruling on any such petition will be issued prior to the June 6, 2023, hearing. As such,

Bonneville-Jefferson likely does not have a legal remedy available to avoid curtailment under the Director's 2023 orders and protect its members' real property rights if the Director requires the parties to participate in the June 6, 2023, hearing. An appeal of any decision issued by the Director regarding the Fifth Methodology Order following the June 6, 2023, hearing would likely not even be heard before the conclusion of the 2023 irrigation season. The June 6, 2023, hearing will take place in the middle of the irrigation season. Appeals take many months before a decision can be issued.

[Space intentionally left blank]

10. Further your declarant saith not.

DATED this 31st day of May, 2023.

OLSEN TAGGART PLLC

/s/ *Skyler C. Johns*
SKYLER C. JOHNS

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2023, I caused to be served a true and correct copy of the foregoing document on the persons listed below by E-service pursuant to the applicable Idaho Court Rules, or in such other manner as indicated below in accordance with Rule 5(b) of the I.R.C.P.

Gary Spackman, Director
Garrick Baxter, Deputy Attorney General
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P.O. Box 83720
Boise, Idaho 83720-0098
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/s/ Skyler C. Johns
SKYLER C. JOHNS

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Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF
A&B IRRIGATION DISTRICT, AMERI-
CAN 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

**Notice of Ground Water District
Mitigation**

Idaho Ground Water Appropriators, Inc. (“IGWA”), acting on behalf of North Snake Ground Water District, Carey Valley Ground Water District, Magic Valley Ground Water District, Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry’s Fork Ground Water District (collectively, the “Districts”), hereby provides notice that the Districts can mitigate for their proportionate share of the demand shortfall predicted in the Final Order Regarding April Forecast Supply (Methodology Steps 1-3) (“April 2023 As-Applied Order”) issued April 21, 2023, in this matter.

Background

The April 2023 As-Applied Order applies steps 1-3 of the Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover. It predicts that the Surface Water Coalition (“SWC”) will experience an in-season demand shortfall of 75,200 acre-feet in the absence of mitigation by junior-priority groundwater users. The order states: “On or before May 5, 2023, ground water users holding consumptive

water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan.” (April 2023 As-Applied Order, p. 6.) “IGWA’s proportionate share of the predicted DS of 75,200 acre-feet is 63,645 acre-feet.” *Id.* at 5, fn 5.

IGWA has three approved mitigation plans. Its “Storage Water Plan” authorizes the Districts to provide mitigation via the delivery of storage water to the SWC. (Order Approving Mitigation Plan, *In the Matter of the Idaho Ground Water Appropriators, Inc.’s Mitigation Plan in Response to the Surface Water Coalition’s Water Delivery Call*, IDWR Docket No. CM-MP-2009-007, June 3, 2010, p. 10.) Under this plan, “IGWA must provide proof of rental or an option to rent storage water and of a commitment of the storage water to the SWC within the deadlines provided by the Methodology Order and any order of the Director implementing the Methodology Order for a given year.” *Id.*

IGWA’s “Aquifer Enhancement Plan” authorizes the Districts to obtain mitigation credit for reach gains that accrue to the SWC as a result of (a) conversions of farmland from groundwater to surface water irrigation; (b) fallowing of groundwater-irrigated acres through the Conservation Reserve Enhancement Program (CREP), Agricultural Water Enhancement Program (AWEP), or other voluntary program; and (c) groundwater recharge.” (Order Approving Mitigation Plan, *In the Matter of the Idaho Ground Water Appropriators, Inc.’s Mitigation Plan for Conversions, Dry-Ups, and Recharge*, IDWR Docket No. CM-MP-2009-006, May 14, 2010, p. 1.) Under this plan, “[i]f mitigation credit is sought by IGWA, the Director shall determine the appropriate credit, if any, to provide.” *Id.* at 2.

IGWA’s “Settlement Agreement Plan” authorizes the Districts to obtain mitigation protection by complying with a settlement agreement entered into between the Districts and the SWC in 2015. (Final Order Approving Stipulated Mitigation Plan, *In the Matter of IGWA’s Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001, May 2, 2016; Final Order Approving Amendment to Stipulated Mitigation Plan, *In the Matter of IGWA’s Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001, May 9, 2017.) Under this plan, the Districts are required to conserve 240,000 acre-feet of water and deliver 50,000 acre-feet of storage annually to the SWC as set forth in the Amended Final Order Regarding Compliance with Approved Plan issued April 24, 2023.

Notice of Mitigation

The Districts identified in the following table will provide mitigation to the SWC under the Storage Water Plan. These districts’ proportionate shares of the 63,645 acre-feet demand shortfall predicted in the April 2023 As-Applied Order are as follows:

District	Proportionate Share
Bingham GWD	13,384
Bonneville-Jefferson GWD	8,469
Jefferson-Clark GWD	6,939
Total	28,792

Attached hereto as Appendix A are copies of storage water leases totaling 38,714 acre-feet, submitted on behalf of the above-identified Districts.

The Districts identified in the following table will provide mitigation under the Settlement Agreement Plan. These Districts' proportionate shares of the 240,000 acre-feet of conservation and the 50,000 acre-feet of storage obligations are as follows:

District	240,000 AF	50,000 AF
Aberdeen-American Falls GWD	39,395	8,705
Carey Valley GWD	821	173
Henry's Fork GWD + Madison GWD	6,299	0
Magic Valley GWD	37,931	8,000
North Snake GWD	29,765	6,410
Total	114,211	23,288

Each District's proportionate share of 240,000 is based on the Director's allocation set forth in the *Amended Final Order Regarding Compliance with Approved Mitigation Plan* issued April 24, 2023, in this matter. Each District's proportionate share of 50,000 is based on the allocation IGWA has utilized since the Settlement Agreement Plan was implemented in 2016. The Settlement Agreement Plan does not require that storage water contracts be reported to the SWC or IDWR; it simply requires that storage be "delivered to SWC 21 days after the date of allocation." However, IGWA reports voluntarily that the above-identified Districts have storage leases in place for 23,288 acre-feet.

Dated this 5th day of May, 2023.

RACINE OLSON, PLLP

By: 
Thomas J. Budge
Attorneys for IGWA

APPENDIX A

Storage Leases

Bingham Ground Water District
Bonneville-Jefferson Ground Water District
Jefferson-Clark Ground Water District

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Idaho Irrigation District (lessor) agrees to lease 6,678 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

Alan Peters 5-1-23 Ielako Irrigation
Lessor Signature Date Title, Canal Company
District

ML 5/5/23 BGWD
Lessee Signature Date Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Snake River Valley Irrigation District (lessor) agrees to lease 5,009 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

Lessor Signature 5-1-23 Date Manager SRWD
Title, Canal Company

Lessee Signature 5-1-23 Date BGWD Manager
Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

New Sweden Irrigation District (lessor) agrees to lease 5,009 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

Kent Stapp 5-1-23 MANAGER NS 11
Lessor Signature Date Title, Canal Company

Mh for 5/5/23 BGWD
Lessee Signature Date Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Enterprize Canal Company (lessor) agrees to lease 1,670 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

David K. [Signature]
Lessor Signature

Enterprise Canal Company
Title Canal Company

5/3/23
Date

Lessor Signature

Date

Canal Company or Diversion Name

[Signature]

5/5/23

BGWD

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Sunnydell Irrigation District (lessor) agrees to lease 334 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Aberdeen-Springfield Canal Co (lessor) agrees to lease 3,500 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

[Signature] 5/5/23 General Manager
Lessor Signature Date Title, Canal Company

[Signature] 5/5/23 BGWD
Lessee Signature Date Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Blackfoot Irrigation Company (lessor) agrees to lease 500 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Corbett Slough Ditch Company (lessor) agrees to lease 750 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Parsons Ditch Company (lessor) agrees to lease 100 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

Lessor Signature

Date

Title, Canal Company


Lessee Signature

5/5/23
Date

BGWD
Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Peoples Canal & Irrigation Co (lessor) agrees to lease 2,514 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

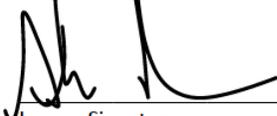


Lessor Signature

Date



Title, Canal Company



Lessee Signature

5/5/23

Date

BGWD

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Riverside Canal Company (lessor) agrees to lease 50 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

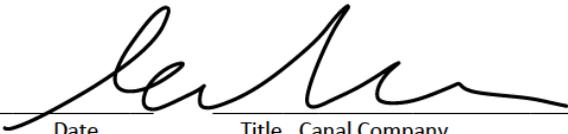
Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

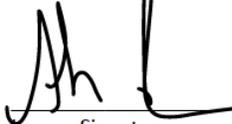
An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

7606 
Lessor Signature Date Title, Canal Company

An  5/5/23 BGWD
Lessee Signature Date Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

The United Canal Company (lessor) agrees to lease 400 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

[Handwritten Signature]

Lessor Signature

Date

[Handwritten Signature]

Title, Canal Company

[Handwritten Signature]

Lessee Signature

5/5/23

Date

B G W D

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Watson Canal Company (lessor) agrees to lease 50 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

Lessor Signature

Date

Title, Canal Company

Alc

5/5/23

BGWD

Lessee Signature

Date

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Wearyrick Ditch Company (lessor) agrees to lease 150 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.



Lessor Signature

Date



Title, Canal Company



Lessee Signature



Date



Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

STORAGE WATER LEASE

This Storage Water Lease ("Lease") is entered into between Enterprize Canal Co., whose mailing address is PO BOX 583, Ririe, ID 83443, ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

RECITALS

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
- B. BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
- C. Lessor desires to lease storage water to BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

LEASE

1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before May 1, of 2023, and the final installment on or before November 1, of 2023.
4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board.
5. **Use of Leased Water.**
 - 5.1 The assignment, delivery, and use of leased storage water will be determined by BONNEVILLE JEFFERSON GROUND WATER DISTRICT and is subject to the final accounting for the year by the Watermaster of Water District 1

and any applicable Water District 1 Rental Pool Rules.

5.2 This Lease does not include any right to use storage water below Milner Dam.

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water District to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

5.4 Any storage water not used or assigned by Bonneville Jefferson Ground Water District by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

5.5 Lessor understands that any storage water leased may be subject to the Water District 1 Rental Pool Rules.

6. Representations by Lessor. Lessor covenants and represents that:

6.1 It will provide to Bonneville Jefferson Ground Water District all storage water leased under this Lease.

6.2 It is the true and lawful owner of the storage water and that nothing restricts or precludes Lessor from entering into this Lease.

7. Breach. If either party defaults in the performance of its obligations under this Lease, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect to pursue remedies for breach of contract in district court.

8. Assignment. This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water District under this Lease may be assigned or otherwise made available to any other person or entity.

9. Dispute Resolution. Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

9.1 **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.

9.2 **Mediation.** If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation

by a mediator designated by mutual Lease of the parties. The mediation will be held in Bonneville County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

9.3 Litigation. Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement Lease entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

9.4 Governing Law, Jurisdiction, and Venue. This Lease 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 Bonneville County is the proper venue.

9.5 Exclusive Procedures. The procedures specified in this section 9 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 9.3 are pending.

10. Notices. All notices given pursuant to this Lease must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing for certified mail and regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:

Lessor: Enterprize Canal Co.
 PO BOX 583
 Ririe, ID 83443

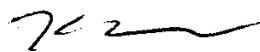
Lessee: Bonneville Jefferson Ground Water District:
 PO Box 51121
 Idaho Falls, ID 83405

Either party may change its designated address by providing written notice of such change to the other party.

11. **Binding Effect.** This Lease shall be binding upon the respective heirs, successors, and assigns of the parties.

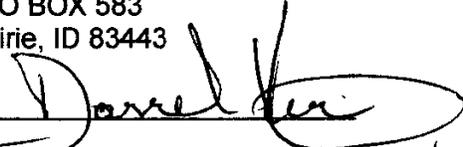
LESSEE:

Bonneville Jefferson Ground Water District
PO Box 51121
Idaho Falls, ID 83405

 4-21-23
By: Kirt Schwieder Date
Title: Treasurer

LESSOR:

Enterprize Canal Co.
PO BOX 583
Ririe, ID 83443

 4/20/23
By: Darrel Kerr Date
Title: Chairman

STORAGE WATER LEASE

This Storage Water Lease ("Lease") is entered into between Idaho Irrigation District, whose address is 496 E 14th St, Idaho Falls, ID 83404, Idaho Falls, Idaho 83402 ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

RECITALS

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
- B. BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
- C. Lessor desires to lease storage water to BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

LEASE

1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before ~~May 1~~ ^{JULY 15}, of 2023, and the final installment on or before November 1, of 2023.
4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board.
5. **Use of Leased Water.**
 - 5.1 The assignment, delivery, and use of leased storage water will be determined by BONNEVILLE JEFFERSON GROUND WATER DISTRICT and is subject to the final accounting for the year by the Watermaster of Water District 1

and any applicable Water District 1 Rental Pool Rules.

5.2 This Lease does not include any right to use storage water below Milner Dam.

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water District to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

5.4 Any storage water not used or assigned by Bonneville Jefferson Ground Water District by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

5.5 Lessor understands that any storage water leased may be subject to the Water District 1 Rental Pool Rules.

6. Representations by Lessor. Lessor covenants and represents that:

6.1 It will provide to Bonneville Jefferson Ground Water District all storage water leased under this Lease.

6.2 It is the true and lawful owner of the storage water and that nothing restricts or precludes Lessor from entering into this Lease.

7. Breach. If either party defaults in the performance of its obligations under this Lease, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect to pursue remedies for breach of contract in district court.

8. Assignment. This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water District under this Lease may be assigned or otherwise made available to any other person or entity.

9. Dispute Resolution. Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

9.1 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.

9.2 Mediation. If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation

11. **Binding Effect.** This Lease shall be binding upon the respective heirs, successors, and assigns of the parties.

LESSEE:

Bonneville Jefferson Ground Water District
PO Box 51121
Idaho Falls, ID 83405



4-21-23

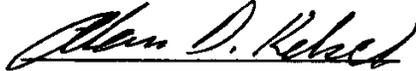
By: Kirt Schwieder

Title: Treasurer

Date

LESSOR:

Idaho Irrigation District
496 E 14th St.
Idaho Falls, ID 83404



4-18-2023

By: Alan Kelsch

Date

Title: Chairman – Idaho Irrigation District

STORAGE WATER LEASE

This Storage Water Lease ("Lease") is entered into between Snake River Valley Irrigation District, whose address is 816 N. 700 E., with a mailing address at PO BOX 70, Basalt, ID 83218, ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

RECITALS

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
- B. BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
- C. Lessor desires to lease storage water to BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

LEASE

1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before May 1, of 2023, and the final installment on or before November 1, of 2023.
4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board.
5. **Use of Leased Water.**
 - 5.1 The assignment, delivery, and use of leased storage water will be determined by BONNEVILLE JEFFERSON GROUND WATER DISTRICT and is subject to the final accounting for the year by the Watermaster of Water District 1 and any applicable Water District 1 Rental Pool Rules.

5.2 This Lease does not include any right to use storage water below Milner Dam.

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water District to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

5.4 Any storage water not used or assigned by Bonneville Jefferson Ground Water District by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

5.5 Lessor understands that any storage water leased may be subject to the Water District 1 Rental Pool Rules.

6. Representations by Lessor. Lessor covenants and represents that:

6.1 It will provide to Bonneville Jefferson Ground Water District all storage water leased under this Lease.

6.2 It is the true and lawful owner of the storage water and that nothing restricts or precludes Lessor from entering into this Lease.

7. Breach. If either party defaults in the performance of its obligations under this Lease, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect to pursue remedies for breach of contract in district court.

8. Assignment. This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water District under this Lease may be assigned or otherwise made available to any other person or entity.

9. Dispute Resolution. Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

9.1 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.

9.2 Mediation. If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation

by a mediator designated by mutual Lease of the parties. The mediation will be held in Bonneville County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

9.3 Litigation. Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement Lease entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

9.4 Governing Law, Jurisdiction, and Venue. This Lease 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 Bonneville County is the proper venue.

9.5 Exclusive Procedures. The procedures specified in this section 9 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 9.3 are pending.

10. Notices. All notices given pursuant to this Lease must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing for certified mail and regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:

Lessor: Snake River Valley
Irrigation District
816 N. 700 E.
PO Box 70
Basalt, ID 83218

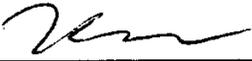
Lessee. Bonneville Jefferson Ground Water District:
PO Box 51121
Idaho Falls, ID 83405

Either party may change its designated address by providing written notice of such change to the other party.

successors, and assigns of the parties.

LESSEE:

Bonneville Jefferson Ground Water District
PO Box 51121
Idaho Falls, ID 83405

 _____ 4-21-23

By: Kirt Schwieder

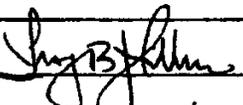
Title: Treasurer

Date

LESSOR:

Snake River Valley
Irrigation District
816 N. 700 E.
PO Box 70
Basalt, ID 83218

_____ 4-20-23

By:  _____
Title: President

Date

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:


Thomas J. Budge

Director Gary Spackman Garrick Baxter Sarah Tschohl Idaho Department of Water Resources 322 E Front St. Boise, ID 83720-0098	gary.spackman@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov
John K. Simpson Travis L. Thompson MARTEN LAW P. O. Box 63 Twin Falls, ID 83303-0063	tthompson@martenlaw.com jsimpson@martenlaw.com jnielsen@martenlaw.com
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Kathleen Marion Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706	kathleenmarion.carr@sol.doi.gov
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202	david.gehlert@usdoj.gov
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<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405</p>	<p>rharris@holdenlegal.com</p>
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405</p>	<p>rfife@idahofallsidaho.gov</p>
<p>Corey Skinner IDWR-Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033</p>	<p>corey.skinner@idwr.idaho.gov</p>
<p>Tony Olenichak IDWR-Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402</p>	<p>Tony.Olenichak@idwr.idaho.gov</p>
<p><i>COURTESY COPY TO:</i> William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318</p>	<p>wparsons@pmt.org</p>

**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

Docket No. CM-DC-2010-001

**ORDER DETERMINING
DEFICIENCY IN IGWA’S NOTICE
OF SECURED WATER**

BACKGROUND

On April 21, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”). The Methodology Order revised the nine steps used to determine material injury to members of the Surface Water Coalition (“SWC”).

Step 3 of the Methodology Order states that by May 1, or within fourteen days from issuance of a final order predicting a shortfall, “whichever is later in time, junior ground water users with approved mitigation plans for delivery of water must secure, to the satisfaction of the Director, a volume of water equal to their proportionate share” of any predicted shortfall unless the forecast is revised. *Methodology Order* at 40. Step 3 further states that “[t]he secured water will not be required to be delivered to the injured members of the SWC until the Time of Need.” *Id.*

On April 21, 2023, the Director also issued his *Final Order Regarding April 2023 Forecast Supply* (“As-Applied Order”) in which the Director determined the predicted shortfall obligation for junior ground water users for 2023. The Director concluded that Twin Falls Canal Company (“TFCC”) is the only entity with a predicted shortfall for 2023 and the shortfall value is 75,200 acre-feet. The Director ordered:

On or before May 5, 2023, ground water users holding consumptive water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted [demand shortfall] of 75,200 acre-feet in accordance with an approved mitigation plan. If a junior ground water user cannot establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted [demand shortfall] of 75,200 acre-feet in accordance with an approved mitigation

plan, the Director will issue an order curtailing the junior-priority ground water user.

As-Applied Order at 6.

On May 5, 2023, the Idaho Ground Water Appropriators, Inc. (“IGWA”), acting on behalf of certain water districts¹ (collectively “Districts”), filed with the Department a *Notice of Ground Water District Mitigation* (“Notice of Mitigation”). The Notice explains that “IGWA has three approved mitigation plans.” *Notice of Mitigation* at 2. IGWA states the first plan (the “2009 Storage Water Mitigation Plan”) “authorizes the Districts to provide mitigation via the delivery of storage water to the SWC.” *Id.* IGWA states that the second plan “authorizes the Districts to obtain mitigation credit” for various activities. *Id.* IGWA states the third plan (known as the “2015 Settlement Agreement Mitigation Plan”) authorizes the Districts to “obtain mitigation protection by complying with a settlement agreement entered into between the Districts and the SWC in 2015.” *Id.* IGWA recognizes that “[u]nder this plan, the Districts are required to conserve 240,000 acre-feet of water and deliver 50,000 acre-feet of storage annually to the SWC” *Id.*

Since the 2015 Settlement Agreement Mitigation Plan was approved by the Department, IGWA has only mitigated under that plan. This year, IGWA is proposing something new. Certain ground water district members are seeking to mitigate under the 2009 Storage Water Mitigation Plan and other ground water district members are seeking to mitigate under the 2015 Settlement Agreement Mitigation Plan. Instead of relying on one or two mitigation plans for all members, individual ground water districts are seeking to mitigate under different mitigation plans. IGWA states Bingham Ground Water District, Bonneville-Jefferson Ground Water District and Jefferson-Clark Ground Water District will provide mitigation under the 2009 Storage Water Mitigation Plan. *Notice* at 2. IGWA includes the following table to identify what it believes each district’s proportionate share of the shortfall is:

District	Proportionate Share
Bingham GWD	13,384
Bonneville-Jefferson GWD	8,469
Jefferson-Clark GWD	6,939
Total	28,792

Id.

IGWA states “Attached hereto as Appendix A are copies of storage water leases totaling 38,714 acre-feet, submitted on behalf of the above-identified Districts.” *Id.* at 3.

¹ IGWA’s submitted the Notice of Mitigation on behalf of: North Snake Ground Water District, Carey Valley Ground Water District, Magic Valley Ground Water District, Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry’s Fork Ground Water District. *Notice of Mitigation* at 1.
ORDER DETERMINING DEFICIENCY IN IGWA’S NOTICE OF SECURED WATER—
Page 2

IGWA includes the following table to identify the districts planning to mitigate under the 2015 Settlement Agreement Mitigation Plan and each district’s proportionate shares of the reduction obligation and the storage water obligation:

District	240,000 AF	50,000 AF
Aberdeen-American Falls GWD	39,395	8,705
Carey Valley GWD	821	173
Henry’s Fork GWD + Madison GWD	6,299	0
Magic Valley GWD	37,931	8,000
North Snake GWD	29,765	6,410
Total	114,211	23,288

Id.

IGWA states:

Each District’s proportionate share of 240,000 is based on the Director’s allocation set forth in the *Amended Final Order Regarding Compliance with Approved Mitigation Plan* issued April 24, 2023, in this matter. Each District’s proportionate share of 50,000 is based on the allocation IGWA has utilized since the Settlement Agreement Plan was implemented in 2016.

Id.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Idaho Code § 42-602, addressing the authority of the Director over the supervision of water distribution within water districts, states:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

2. The first question that must be answered is whether the ground water districts can mix the mitigation plans in the way they are proposing. IGWA’s “hybridization” of mitigation plans presents serious questions about whether mixing of mitigation plans is allowable.

2009 Storage Water Mitigation Plan

3. The 2009 Storage Water Mitigation Plan was submitted to the Department on November 9, 2010. IGWA's Mitigation Plan for the Surface Water Coalition Delivery Call at 7, *In re Idaho Ground Water Appropriators, Inc.'s Mitigation Plan in Response to the Surface Water Coalition's Water Delivery Call*, No. CM-MP-2009-007 (Idaho Dep't of Water Res. Nov. 9, 2009) [hereinafter "2009 Storage Water Mitigation Plan"]. The plan was submitted by IGWA "on behalf of its Ground Water District Members and its other water user members . . . , for and on behalf of their respective members and those groundwater users who are non-member participants in their mitigation activities. . . ." *2009 Storage Water Mitigation Plan* at 1.

4. The mitigation plan proposes supplying water stored in Snake River reservoirs to the SWC "that will be available on an annual basis for delivery to SWC entities as may be required by the Director's orders." *Id.* at 3. While the plan was submitted for the benefit of IGWA's members and non-member participants, the plan clearly states that IGWA will mitigate for all ground water users, not just its members and non-member participants:

This Mitigation Plan will mitigate *any and all* material injury by guaranteeing and underwriting the senior water user's water supply. If the Director projects material injury for a senior water user, then the Ground Water Users will provide water for mitigation in accordance with this Mitigation Plan for that mitigation year. . . . This Mitigation Plan will *fully mitigate and compensate* the senior water user for material injury by making water available for direct delivery of replacement water by the Water District 1 Watermaster when necessary during the irrigation season.
. . . .

[T]he Ground Water Users will supply sufficient water to eliminate the resulting water debt ("excess use") of Twin Falls Canal Company on the books of Water District 1."

Id. at 3–4 (emphasis added).

5. The *Order Approving Mitigation Plan* issued on June 3, 2010, makes clear that any obligation determined will be set based on the amount of shortfall determined through the methodology order process: "IGWA's obligation to provide storage water shall be determined as set forth in the Methodology Order"; "IGWA's obligation for mitigation shall be determined as set forth in the Methodology Order." *Order Approving Mitigation Plan* at 10, *In re Idaho Ground Water Appropriators, Inc.'s Mitigation Plan in Response to the Surface Water Coalition's Water Delivery Call*, No. CM-MP-2009-007 (Idaho Dep't of Water Res. Nov. 9, 2009).

6. The *Order Approving Mitigation Plan* makes clear that if IGWA does not provide the required storage, all ground water rights are subject to curtailment: "[I]f IGWA does not provide proof of acquisition of storage water and commitment of storage water as set forth above, ground water rights pumping from the Eastern Snake Plain Aquifer will be curtailed according to the Methodology Order to provide water to the SWC." *Id.* at 11.

7. Pursuant to the plain language of the 2009 Storage Water Mitigation Plan and *Order Approving Mitigation Plan*, IGWA cannot pick and choose who gets the benefit of storage water if IGWA is not providing storage water amounts equal to the shortfall obligation. If IGWA submits to the Director adequate contracts to establish it has secured storage water and the amount secured is less than the shortfall obligation, the Director will credit the contracted volume against the overall obligation, thus reducing the overall obligation for all ground water users. This approach is consistent with the plain language of the plan and the order approving the plan.

8. Furthermore, IGWA is required to provide the Director with legally enforceable contracts, options or similar documentation to establish that it has secured the water necessary to meet the carryover obligation. See *Order on Petition for Judicial Review at 19, A&B Irrigation Dist. v. Tuthill*, No. CV-2008-551 (Gooding Cnty. Dist. Ct. Idaho July 24, 2009). The Director concludes that IGWA has failed to provide documentation that satisfies this standard. Before the Notice of Mitigation was filed, the two entities listed on the contracts, Bingham Groundwater District and Bonneville-Jefferson Groundwater District, hired independent counsel. See *Notice of Substitution of Counsel for Bingham Ground Water District* at 1 (May 2, 2023) (“Pursuant to this substitution of counsel, Bingham Ground Water District will forthwith be represented independently of IGWA.”); *Substitution of Counsel* at 1 (Jan. 4, 2023) (“COMES NOW Skyler C. Johns, of Olsen Taggart PLLC, and hereby substitutes as counsel on behalf of Intervenor, Bonneville-Jefferson Ground Water District.”) Because the Notice of Mitigation was filed by counsel for IGWA, it is unclear whether IGWA has the authority to submit the ground water districts contracts to the Director for consideration. Second, even if IGWA had authority to submit the agreements, a review of the Departments records indicate that most of the leases have not been approved by Water District 01 due to a lack of payment of fees. Without payment of the required fees, the Districts have not yet secured the required water.

9. Because IGWA failed to provide appropriate contracts, ground water users are not in compliance with the 2009 Storage Water Mitigation Plan and will not be entitled to curtailment protection under the plan. If IGWA subsequently submits documentation establishing that it has authority to submit contracts on behalf of Bingham and Bonneville-Jefferson Groundwater Districts and pays the required Water District 01 fees, but the amount of water secured is less than the shortfall obligation, then the Director will credit the contracted volume against the overall shortfall obligation, thus reducing the overall obligation for all ground water users.

2015 Settlement Agreement Mitigation Plan

10. In 2015, the SWC and certain members of IGWA² entered into the *Settlement Agreement Entered into June 30, 2015 Between Participating Members of the Surface Water*

² The following eight ground water districts and one irrigation district are signatories to the SWC-IGWA Agreement: Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Fremont Madison Irrigation District, Jefferson Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District.

Coalition and Participating Members of the Idaho Ground Water Appropriators, Inc. (“SWC-IGWA Agreement”).

11. In October of 2015, the SWC and IGWA entered into an *Addendum to Settlement Agreement* (“First Addendum”).

12. On March 9, 2016, the SWC and IGWA submitted the *Surface Water Coalition’s and IGWA’s Stipulated Mitigation Plan and Request for Order* (“Request for Order”) to the Director. *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dept. of Water Res. Mar. 9, 2016). Attached to the Request for Order as Exhibits B, and C were the SWC-IGWA Agreement, the First Addendum. These documents were submitted as a stipulated mitigation plan in response to the SWC’s delivery call. *Request for Order* at 3.

13. On May 2, 2016, the Director issued the *Final Order Approving Stipulated Mitigation Plan* (“Order Approving Mitigation Plan”), which approved the parties’ mitigation plan subject to conditions. *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dept. of Water Res.).

14. On December 14, 2016, the SWC and IGWA entered into the *Second Addendum to Settlement Agreement* (“Second Addendum”). *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dept. of Water Res.). The *Second Addendum* amended the *SWC-IGWA Agreement* by providing additional details concerning the implementation of certain sections, most notably sections 3.a (Consumptive Use Volume Reduction); 3.e (Ground Water Level Goal and Benchmarks), 3.m (Steering Committee), and 4.a. (Adaptive Water Management). *Compare SWC-IGWA Agreement* §§ 3–4, with *Second Addendum* § 2.

15. On February 7, 2017, the SWC and IGWA submitted the *Surface Water Coalition’s and IGWA’s Stipulated Amended Mitigation Plan and Request for Order* (“Second Request for Order”). *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dept. of Water Res.). The SWC and IGWA requested that the Director issue an order approving the Second Addendum as an amendment to the mitigation plan. *Second Request for Order* ¶ 6.

16. On May 9, 2017, the Director issued the *Final Order Approving Amendment to Stipulated Mitigation Plan* (“Order Approving Amendment to Mitigation Plan”), approving the Second Addendum as an amendment to the parties’ mitigation plan subject to conditions. *Order Approving Amendment to Mitigation Plan* at 5, *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dept. of Water Res.).

17. In the SWC-IGWA Agreement, the SWC and IGWA members agreed, among other things, that “[t]otal ground water diversion shall be reduced by 240,000 ac-ft annually.” *SWC-IGWA Agreement* § 3.a.i. The SWC and IGWA stipulated that “[e]ach Ground Water and Irrigation District with members pumping from the ESPA shall be responsible for reducing their proportionate share of the total annual ground water reduction or in conducting an equivalent private recharge activity.” *SWC-IGWA Agreement* § 3.a.ii.

ORDER DETERMINING DEFICIENCY IN IGWA’S NOTICE OF SECURED WATER—

18. The parties also agreed that “IGWA will provide 50,000 ac-ft of storage water through private lease(s) of water from the Upper Snake Reservoir system, delivered to the SWC 21 days after the date of allocation, for the use to the extent needed to meet irrigation requirements.” *SWC-IGWA Agreement* § 3.b.i.

19. The SWC and IGWA also stipulated “that the mitigation provided by participating IGWA members under the [2015] Agreements is, provided the [2015] Agreements are implemented, sufficient to mitigate for any material injury caused by the groundwater users who belong to, and are in good standing with, a participating IGWA member.” *Request for Order* ¶ 8. The SWC and IGWA agreed “[n]o ground water user participating in this [SWC-IGWA] Agreement will be subject to a delivery call by the SWC members as long as the provisions of the [SWC-IGWA] Agreement are being implemented.” *SWC-IGWA Agreement* § 5.

20. In the Notice of Mitigation, the ground water districts wanting to mitigate pursuant to the 2015 Settlement Agreement Mitigation Plan have proportionately determined their individual obligations for both reduction obligations and storage obligations. While the 2015 Settlement Agreement Mitigation Plan allows for determining the proportionate share of the reduction obligation of the parties, it does not authorize the 50,000 acre-foot storage volume to be shared proportionately by the parties. To be in compliance with the plan, the entire 50,000 acre-feet must be provided.

21. Moreover, in response to a breach of the mitigation plan in 2021, the Director approved a one-year settlement agreement to remedy the 2021 breach. *Amended Final Order Regarding Compliance with Approved Mitigation Plan* at 20, *In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dept. of Water Res. Apr. 24, 2023). In the settlement agreement, the parties agreed that “IGWA will collectively provide to the SWC an additional 30,000 acre-feet of storage water in 2023 and an additional 15,000 acre-feet of storage water in 2024 within 10 days after the Date of Allocation of such year. Such amounts will be in addition to the long-term obligations set forth in section 3 of the Settlement Agreement and approved Mitigation Plan.” *Settlement Agreement* at 2. While we are not yet to the day of allocation, the Director wants to ensure that it is clear to the parties that, as with the 50,000 acre-foot obligation, this additional amount of storage water is not subject to proportional sharing.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that IGWA’s *Notice of Ground Water District Mitigation* is deficient and fails to demonstrate that IGWA is operating in accordance with an approved mitigation plan. If the Director issues an order of curtailment after the June 6–10, 2023 hearing, IGWA’s members and non-member participants will not be entitled to curtailment protection under either the 2009 Storage Water Mitigation Plan or 2015 Settlement Agreement Mitigation Plan.

Dated this 23rd day of May 2023.


GARY SPACKMAN
Director

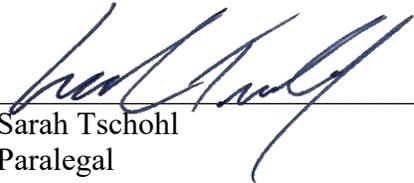
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson MARTEN LAW LLP P.O. Box 2139 Boise, ID 83701-2139 jsimpson@martenlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Travis L. Thompson MARTEN LAW LLP P.O. Box 63 Twin Falls, ID 83303-0063 tthompson@martenlaw.com jnielsen@martenlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Thomas J. Budge Elisheva M. Patterson RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 tj@racineolson.com elisheva@racineolson.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Sarah A Klahn Somach Simmons & Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 sklahn@somachlaw.com dthompson@somachlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>

<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205 rdiehl@pocatello.us</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert E. Williams WILLIAMS, MESERVY, & LOTH SPEICH, LLP P.O. Box 168 Jerome, ID 83338 rewilliams@wmlattys.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 rfife@idahofallsidaho.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC P.O. Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Dylan Anderson Dylan Anderson Law PLLC P.O. Box 35 Rexburg, Idaho 83440 dylan@dylanandersonlaw.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Tony Olenichak IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 Tony.Olenichak@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email

<p>Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 corey.skinner@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email
<p>COURTESY COPY TO: William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318 wparsons@pmt.org</p>	<input checked="" type="checkbox"/> Email



Sarah Tschohl
Paralegal