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April 29, 2020

Southern Region
Idaho Department of Water Resources
650 Addison Ave. W, Suite 500
Twin Falls, ID 83301-5858

Re: Buckeye Farms, Inc. Applications for Permit Nos. 36-17121 and 36-17122

Dear Clerk,

Enclosed for filing, please find one original and the first page of the following documents:

1. *Stipulation for Withdrawal of Protest* (executed between Idaho Power Company and Buckeye Farms, Inc.); and
2. *Second Amended Stipulated Mitigation Plan and Request for Order*.

Please file stamp the copies and return to our office in the enclosed pre-addressed postage paid envelope.

Please contact me should you have any questions.

Very truly yours,
BARKER ROSHOLT & SIMPSON LLP

Jessica L. Witt, Assistant to
John K. Simpson

JKS/jlw
Enclosures

ORIGINAL

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 36-17121 & 36-17122 In the name of Buckeye Farms.	**STIPULATION FOR WITHDRAWAL OF PROTEST**

COMES NOW, Idaho Power Company (the "Company") and Buckeye Farms, ("Applicant"), collectively "Parties" and hereby stipulate and agree to the withdrawal of the Company's protest in this matter upon the following conditions:

Any permit granted:

1. Shall acknowledge that the water being appropriated is trust water as defined by the Idaho Department of Water Resources Water Appropriation Rules and shall provide that should a violation of the Swan Falls minimums as defined by the Water Appropriation Rules occur, diversions under the permits shall cease until the violation is remedied, unless there is an approved mitigation plan;
2. Shall acknowledge that the subject applications are subject to the on-going Moratorium, and as such require the appropriate mitigation as defined by the Idaho Department of Water Resources administrative rules;
3. That the conditions identified in Exhibit "A" to this Stipulation reflect the current conditions placed on new trust water applications within the moratorium area and

shall be included in any permit.

4. Shall reference and incorporate the attached operating plan (Exhibit "B") associated with diversion and use of water under the permits identified.

The Parties acknowledge that any permit issued may include other provisions or conditions not identified in this Stipulation, provided such conditions are not inconsistent with this Stipulation. Each party reserves, and neither waives nor relinquishes, its respective rights or interests as to any such conditions not identified in this Stipulation.

Further, the Parties agree that this Stipulation shall be filed with the hearing officer, and the Company's protest withdrawn upon entry of an appropriate order providing that the above conditions be placed on any permit granted.

DATED this 28th day of April, 2020.

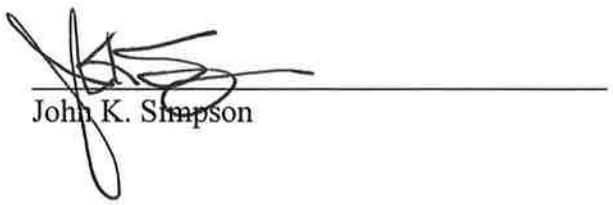
Buckeye Farms

Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2020, I caused to be served a true and correct copy of the foregoing **STIPULATION FOR WITHDRAWAL OF PROTEST** by the method indicated below, and addressed to each of the following:

Idaho Department of Water Resources Southern Region 650 Addison Ave. W., Ste. 500 Twin Falls, ID 83301-5858	_x_ U.S. Mail, postage prepaid ____ Hand Delivery ____Facsimile ____ Email
Responsible Citizens Association William K. Chisholm 19073 Highway 30 Buhl, ID 83316-5060	_x_ U.S. Mail, postage prepaid ____ Hand Delivery ____Facsimile ____ Email
Idaho Power Company Scott Pugrud P.O. Box 70 Boise, ID 83707-0070	_x_ U.S. Mail, postage prepaid ____ Hand Delivery ____Facsimile ____ Email
City of Pocatello c/o Sarah Klahn Somach Simmons & Dunn 2701 Lawrence St., Ste 113 Denver, CO 80205	_x_ U.S. Mail, postage prepaid ____ Hand Delivery ____Facsimile ____ Email
City of Bliss, et al. McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702	_x_ U.S. Mail, postage prepaid ____ Hand Delivery ____Facsimile ____ Email
Randall C. Budge Thomas J. Budge Racine Olson 201 E. Center St. Pocatello, Idaho 83201	_x_ U.S. Mail, postage prepaid ____ Hand Delivery ____Facsimile ____ Email



John K. Simpson

EXHIBIT A

Exhibit A

Buckeye agrees and requests that the following provision be inserted into each permit granted:

"This right is for the use of trust water which is identified and defined in the 1984 Swan Falls Agreement and subsequent Settlement. The right shall be subject to review <5> years after its initial approval (date of permit approval) to re-evaluate the availability of Trustwater for the authorized use and to re-evaluate the public interest criteria for reallocating trust water. This right shall remain subject to review by the Director consistent with the terms and limits imposed upon trust water rights issued by the State and arising out of the 1984 Swan Falls Settlement.

Further, this right is within a moratorium area requiring 100% mitigation as provided below. Regulation of this right to satisfy the minimum flows of 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31 at the Murphy gage shall not be required so long as mitigation is satisfied. The right holder has submitted an operating plan to IDWR for approval with mitigation to satisfy the Moratorium and Trustwater evaluations. This operating plan shall be subject to review as the relationship between the Snake River and ground water tributaries is further developed.

The total combined diversion rate for irrigation under water right nos. 36-17121 and 36-17122 shall be limited to not more than 10 cfs at all times."

EXHIBIT B

Exhibit B

Buckeye Operating Plan for 36-17121 and 36-17122
2-06-2020

Buckeye's ground water applications are intended to supplement the diminished surface water supply historically used for irrigation and other purposes on the ranch. Both applications will be used to the extent surface water is not available to provide supplemental irrigation and to provide water to the ponds on the ranch. There are 1,123 acres of irrigation on the ranch, 1,109 of which are covered by these ground water applications, and 166 acres of ponds covered by existing water rights.

Buckeye primarily raises corn, small grains and pasture, and maintains a number of ponds in its current operation. No additional acres of irrigation are proposed under these applications. Assuming corn is more water consumptive than small grains the total annual depletion can be calculated as 2.40 AF/acre/year for corn, 3.68 AF/acre/year for high management pasture and 2.86 AF/acre/year for ponds kept full year-round based on precipitation deficit amounts from Et Idaho.

Assuming 555 acres of corn and 555 acres of high management pasture along with 166 acres of ponds are supplied by ground water, the total annual depletion from ground water would average 3,849 AF/year. (Actual area of pasture is less than corn and small grains, but this analysis provides a conservative estimate of average annual depletion.)

Mitigation provided by the June 14, 2017 Settlement Agreement between Buckeye Farms and the Ground Water Districts provides Buckeye up to 7.5 cfs of mitigation credit from the Districts, Settlement Agreement at 2.3. At 7.5 cfs the average annual volume of mitigation is 5,430 AF/year. Since the ground water is supplemental to existing surface water rights, the average annual depletion will be less than the available mitigation.

IDWR has raised concerns that available mitigation must be capable of mitigating the most water consumptive crop grown in the area. Based on Et Idaho, frequent cutting alfalfa is the most water consumptive crop grown in the area and has a precipitation deficit of 3.79 AF/acre/year. If all 1,109 acres were used to raise frequent cutting alfalfa, the annual depletion would be 4,203 AF/year plus 475 AF/year depletion for 166 acres of ponds results in a total annual depletion of 4,678 AF/year. The total annual depletion if alfalfa were raised is well within the available mitigation of 5,430 AF/year.

If the ground water pumping is assumed to have an impact on the discharge of the Snake River within a month of the time the pumping occurs, the analysis of available mitigation can be limited to the irrigation season since the peak depletion does not occur in the last month of the irrigation season. During the 289 days from February 15 to November 30, 7.5 cfs of mitigation will yield 4,299 ac-ft of mitigation, more than the 3,849 ac-ft required if the irrigated area is half corn and half high management pasture plus ponds assuming no surface water is available for either irrigation or pond maintenance. Since pond depletion is negative during January and December, no mitigation should be required during those months and the negative depletion is larger than the February depletion. Since these applications are being applied for as supplemental to existing surface water rights, the entire annual depletion should never be assumed to be satisfied entirely from the ground water supply.

Prior to each irrigation season Buckeye will identify the crops expected to be planted and the number of acres for each crop in order to ensure that the estimated depletion doesn't exceed the mitigation provided. The monthly depletion can also be estimated based on Et Idaho precipitation deficit for the acreage of each crop proposed to be irrigated by ground water during the month and the depletion for ponds to be supplied with ground water can be determined in the same manner. If there are fields or ponds to be supplied with both surface and ground water, the total depletion will be split based on the relative amounts of surface and ground water available to make up the total water supply.

During the year, if Buckeye is informed mitigation water is not available in, or upstream from, the reaches in which depletion from Buckeye's ground water pumping occurs and Buckeye is not able to present appropriate substitute mitigation, Buckeye will cease pumping from such wells until appropriate mitigation credit is obtained. [1]

The applicant, through the ground water districts, will commit the amount of mitigation necessary to cover the depletion for each month during the year. The following procedure will be used to identify the amount of mitigation available and the amount of mitigation required each month of the prior year.

Annually, by April 1, the Ground Water Districts will submit a report to Buckeye identifying the mitigation actions taken on the Eastern Snake Plain, the associated ESPAM or equivalent modeling of the actions taken and the resulting monthly benefits to the reaches of the Snake River below Milner Dam.[2] Further, the Districts will confirm through a Certified Water Right Examiner's report that the 7.5 cfs of mitigation credit assigned to Buckeye is based upon the best available science, is present in the Snake River each month of the year and in fact is mitigating for the pumping from the Buckeye wells. This report will be similar to the reports described in the attached Addendum dated May 15, 2019. The availability of mitigation credit will be determined by the gains to Devil's Washbowl, Devil's Corral and Box Canyon spring complexes, or their equivalent in later versions of ESPAM, plus gains to base flow, if needed to identify 7.5 cfs mitigation credit, in the Kimberly to King Hill reach downstream to model cell row 36 column 14 in ESPAM2.1.

Buckeye in turn will report annually on a monthly basis to IDWR by April 15 all pumping from the wells developed in addition to the acreage of each crop irrigated, and the area of ponds supplied with ground water. Buckeye will include the report from the Ground Water Districts along with its ground water pumping report. Buckeye will report the crops irrigated and the months during which they were irrigated from ground water as well as the period of the year ground water is used to maintain ponds.[3] Precipitation deficit for the period of the prior calendar year during which ground water was being used will be determined from the Glenns Ferry AgriMet, or other more suitable AgriMet station in the future,

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[1] Neither the proposed Buckeye wells nor the adjacent reach of the Snake River are within the boundary of the current ESPAM 2.1 ground water model. Until a ground water model is developed that includes the proposed wells and adjacent reach of the Snake River the nearest downstream cell within the boundaries of the ground water model will be the location for compliance with this provision. In the current ESPAM 2.1 ground water model that cell is located in row 36 column 14.

[2] The timing of the report is consistent with the IGWA/SWC Agreement upon which much of the reporting activity is based.

[3] Mitigation based on actual crop mix is spelled out in the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, Findings of Fact Section II.C. Since the actions of the Ground Water Districts are dependent on the conditions in each year, the measure of the amount of mitigation needed should also be determined for conditions in that year.

or from Et Idaho if updated data become available from Et Idaho in the future. The Buckeye report will be prepared by a CWRE with final review and approval of all information to be submitted to IDWR.

This operating plan recognizes that the State of Idaho is continuing to develop a methodology to forecast Snake River Flows at the Murphy gage and the impact on those flows from ground and surface water depletions which could lead to a violation of the established minimum stream flows of 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31 at the Murphy gage. During the non-irrigation season, diversions will be non-consumptive. Given the close proximity of the diversions to the Snake River, impacts will coincide closely with the ground water pumping and any water not consumed by irrigated crops or pond evaporation will be returned to the river primarily through gravity runoff with a small amount through ground water seepage to the river.

Recognizing that the operating plan contemplates non-consumptive diversions in addition to supplemental irrigation, Buckeye agrees that if the minimum streamflow at the Murphy gage is violated, it will limit irrigation diversions to 7.5 cfs under the rights until the violation is resolved. Should the predictive methodology be developed which results in an approved rule applicable to this operating plan, Buckeye agrees to review the operating plan.

Exhibit B

Addendum to Buckeye Operating Plan For 36-17121 and 36-17122

Using ESPAM2.1 to Quantify Mitigation to the Snake River Between Kimberly and King Hill

May 15, 2019

ESPAM2.1 is a regional ground water model that is currently the most thoroughly calibrated model of the ESPA in existence and is the best available tool for understanding the interaction between ground water and surface water on the eastern Snake Plain.[1] The final calibrated ESPAM2.1 model shows a significantly better fit to observed data than ESPAM1.1 and is calibrated to 23.5 years of data compared to ESPAM1.1 that was calibrated to 17 years of data.

Even though ESPAM2.1 is a regional model, it has been calibrated to spring specific discharge measurements in the Magic Valley as well as gains to base flow in the Kimberly to King Hill reach of the Snake River. This additional calibration sets ESPAM2.1 apart from ESPAM1.1 which was calibrated to reaches in the Kimberly to King Hill reach. The additional calibration makes ESPAM2.1 the best available tool for calculating the change in base flow and spring discharge in the Kimberly to King Hill reach resulting from actions on the ESPA.

Two IDWR reports are available demonstrating the use of ESPAM2.1 to quantify the changes to the gains in the Kimberly to King Hill reach. The first is a Memorandum from Jennifer Sukow to Tim Luke dated March 29, 2016 titled Post audit of 2015 aquifer enhancement activities. The Memorandum described the gains to the Curren Tunnel and the Kimberly to King Hill reach from activities on the ESPA in 2015 and prior years. The analysis included both steady state and transient analysis. This analysis determined the impact to the reach if the 2015 activities were continued and determined the impact if the 2015 activities did not continue.

The second Memorandum from Jennifer Sukow to Mathew Weaver with a copy to Tim Luke dated April 11, 2017 titled Post audit of 2016 aquifer enhancement activities for mitigation, Rangen delivery call (CM-MP-2014-001) and Magic Springs pipeline (36-17028). The analysis was similar to the 2016 analysis using ESPAM2.1 in both the steady state and transient mode to evaluate the aquifer enhancement activities if they were to continue into the future or if they were to end with the 2016 activity.

Finally, use of ESPAM2.1 is cited favorably in the Amended Final Order Approving Application for Transfer No. 79560 dated March 18, 2015 as the currently appropriate tool to predict the benefit to the Snake River in the Kimberly to King Hill reach resulting from aquifer enhancement activities by IGWA and Southwest Irrigation District on the ESPA. IDWR estimated the benefit to this reach of the river to be 48.5 cfs between

[1] IDWR, Enhanced Snake Plain Aquifer Model Version 2.1, Final Report, January 2013.

April 2014 and March 2015 and 67.5 cfs at steady state if the actions on the ESPA are continued.

Even with the additional calibration in the Kimberly to King Hill reach, ESPAM2.1 remains a regional model and is best suited to evaluating broad scale actions on the ESPA as described in the Memorandums and Decision referenced above. The model is not well suited to evaluate the impact of a single well on any reach of the Snake River or the impact of a recharge event on a particular model cell. While the calibration of the model within the Kimberly to King Hill reach was extensive, the calibration of the model to ground water levels in each model cell has not occurred and as a result, the reliability of modeling results from activity in a single model cell is uncertain.

Conclusions Regarding the Application of ESPAM2.1 to the Analysis of Mitigation to the Snake River for Proposed Buckeye Ground Water Diversions

Factual Considerations:

1. The proposed PODs for the Buckeye ground water applications are outside of the ESPAM2.1 model boundary.
2. The ESPAM2.1 model boundary is marked by the springs and base flow in the Kimberly to King Hill reach of the Snake River.
3. Ground water proposed to be pumped from the applied for PODs is presumed to be connected to the Snake River.
4. Because the Buckeye proposed PODs are outside the model boundary, analyzing the impact of the proposed diversions on the adjacent river reach is not possible with ESPAM2.1.

Reasonable Conclusions:

1. Due to the calibration of the ESPAM2.1 model to the springs and baseflow in the Kimberly to King Hill reach, and the proximity of the proposed ground water PODs to the river reach, use of the ESPAM2.1 model to confirm mitigation consistent with the moratorium, is reasonable and technically defensible.
2. If the actions on the ESPA continue to occur, the mitigation provided is sufficient and consistent with the technical conclusions offered in the Sukow memos and the Transfer Decision.
3. The use of activities on the ESPA as mitigation for compliance with the present moratorium should be limited to those factual circumstances where ESPAM2.1 is able to provide a reliable quantification of that mitigation given ESPAM2.1's limitations as a regional ground water model.