

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE PURCHASE OF) A RESOLUTION AUTHORIZING
THE AQUA LIFE AQUACULTURE FACILITY) EXECUTION OF A PURCHASE
AND ASSOCIATED WATER RIGHTS) AND SALE AGREEMENT AND A
LETTER OF INTENT

WHEREAS, the Idaho Water Resource Board (the "Board") is a constitutional agency of the State of Idaho and empowered by Idaho Code § 42-1734 to acquire, purchase, lease or exchange land, rights, water rights, easements, franchises and other property deemed necessary or proper for the construction, operation and maintenance of water projects; and

WHEREAS, the Idaho Department of Parks and Recreation (Parks) owns certain real property and improvements, together with valuable water rights, commonly known by the parties as "Aqua Life Aquaculture Facility"; and

WHEREAS, Parks has determined that the Aqua Life Aquaculture Facility has limited potential for park and recreation purposes; and

WHEREAS, Parks is authorized by House Bill 644, adopted by the Sixty-second Legislature of the State of Idaho during its Second Regular Session in 2014, to sell the Aqua Life Aquaculture Facility to the Board for the July 11, 2011 appraised value of \$1,635,000; and

WHEREAS, the Board's acquisition of the Aqua Life Aquaculture Facility is in furtherance of the State's desire and goal to reduce demand on spring flows in the Hagerman Valley; and

WHEREAS, the Board's acquisition of the Aqua Life Aquaculture facility will also include associated water rights 36-1044, 36-2734, 36-15476, 36-2414, and 36-2338, as well as rights under NPDES Permit #IDG-13000; and

WHEREAS, the acquisition by the Board of the Aqua Life Aquaculture Facility and associated water rights is a necessary part of the State's plan to relocate an existing Idaho Department of Fish and Game (IDFG) fish hatchery to address water calls in the Hagerman Valley.

NOW, THEREFORE BE IT RESOLVED, that the Idaho Water Resource Board authorizes the Chairman to execute the "Agreement for the Purchase and Sale of the Aqua Life Aquaculture Facility" dated 5/7/2014, between the Board and Parks, on behalf of the Board.

NOW, THEREFORE BE IT FURTHER RESOLVED, the Board authorizes the Chairman to Execute the "Letter of Intent – Use of water from the Hagerman State Hatchery, Construction of Pump Station and Pipeline, and Construction of Improvements and the Aqua


Life Aquaculture Facility” dated 5/7/2014 , between the Board, IDFG, and the Idaho Ground Water Appropriators.

DATED this 7th day of May, 2014.

ATTEST:



ROGER CHASE, Chairman



BOB GRAHAM, Secretary

LETTER OF INTENT

USE OF WATER FROM THE HAGERMAN STATE HATCHERY, CONSTRUCTION OF PUMP STATION AND PIPELINE AND CONSTRUCTION OF IMPROVEMENTS AT THE AQUA LIFE AQUACULTURE FACILITY

This Letter of Intent ("LOP") is entered into by and between Idaho Ground Water Appropriators, Inc. ("IGWA"), and the State of Idaho, by and through the Idaho Department of Fish and Game ("IDFG") and the Idaho Water Resource Board ("IWRB").

RECITALS

A. In response to Rangen, Inc.'s ("Rangen") water delivery call, the Idaho Department of Water Resources ("IDWR") determined in its January 29, 2014 order that holders of ground water rights junior to July 13, 1962 must provide 9.1 cfs of direct flow to Rangen.

B. IGWA represents ground water districts whose members consist of irrigators, municipalities, and commercial and industrial entities with ground water rights. Many of the ground water districts' member's water rights are junior to Rangen's water rights and are subject to curtailment unless a mitigation plan is approved providing replacement water.

C. IDFG owns and operates the Hagerman State Hatchery ("HSH") and is willing to make available to IGWA ten (10) cfs of its Tucker Springs Water Rights as needed to meet the mitigation obligation to Rangen.

D. IDFG's offer to make available the use of 10 cfs of its HSH water to IGWA is subject to transfer of the Aqua Life Aquaculture Facility ("Aqua Life") by IWRB to IDFG, and subsequent modifications to Aqua Life to be funded by IGWA to a condition acceptable to IDFG.

E. IWRB, IDFG and IGWA intend to commence negotiation of a final agreement consistent with the terms set forth below.

TERMS

The Agreement shall have the following terms and conditions:

1. The Agreement will be contingent upon IDFG acquiring title to Aqua Life from IWRB. IDFG, IWRB and IGWA acknowledge that House Bill 644, adopted by the Sixty-second Legislature of the State of Idaho during its Second Regular Session in 2014 authorizes Idaho Parks and Recreation to sell Aqua Life to the IWRB.

2. IDFG will lease ten (10) cfs of water from the HSH to IGWA for an annual lease fee in an amount to be determined.

3. IGWA will pay all costs to design, construct, operate and maintain the water collection and intake system pump station, pipeline and other facilities necessary to deliver 10 cfs of water from the HSH to the head of Billingsley Creek directly up gradient from the Rangen hatchery. IGWA will ensure that the diversion structure to be constructed will not interfere with IDFG's remaining diversion to HSH. IGWA shall be responsible to secure from IDWR approval of a transfer application to change the point of diversion and place of use as needed to accomplish the delivery of HSH's Tucker Springs water rights to Billingsley Creek.

4. IDFG will grant IGWA a permanent easement at its HSH to design, construct, operate and maintain the water intake and collection facilities, pump station, pipeline and other facilities as necessary for the delivery of the 10 cfs of water to Billingsley Creek. IDFG will convey to IGWA a permanent easement to access and maintain the pump station and water supply pipeline.

5. IGWA will pay for costs to upgrade the Aqua Life to a condition acceptable to IDFG for use as a hatchery.

6. IDFG and IWRB will cooperate with IGWA and provide all necessary documents to conduct such investigation as it shall deem appropriate.

7. All transaction fees for closing and all recording fees will be shared equally by IDFG, IGWA and IWRB. Each party will be responsible to pay its own legal fees.

8. The Agreement will be contingent upon: (a) IGWA securing an order from IDWR approving a mitigation plan providing for the delivery of 10 cfs from HSH's Tucker Springs water rights to satisfy the mitigation obligations to Rangen; (b) IGWA securing an order from IDWR approving the transfer of the point of diversion and place of use of the 10 cfs from HSH's Tucker Springs water rights to the head of Billingsley Creek and, (c) IGWA proceeding to implement the plan.

This LOI may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this LOI via facsimile transmission shall be as effective as delivery of an original signed copy. Thereafter, the parties shall exchange executed originals of this LOI.

This LOI is intended as a general expression of the terms and conditions, under which the parties are willing to proceed to prepare, negotiate and if acceptable to all parties in their respective sole discretion, execute a final Agreement. Neither this LOI nor the execution hereof as provided below, shall be binding on any party until the formal Agreement is executed by all parties.

Please indicate your acceptance and agreement with the terms of this LOI and desire to proceed to negotiate a final Agreement incorporating the terms and conditions as outlined above by executing the enclosed copy of this LOI in the space provided below and return such executed copy to the other parties.

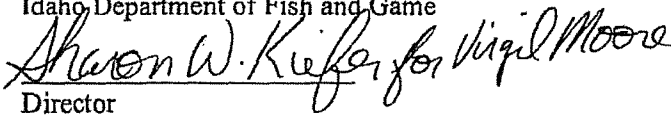
Sincerely,

Idaho Ground Water Appropriators, Inc

By: 


AGREED AND ACCEPTED this 1st day of May, 2014.

Idaho Department of Fish and Game


Director

AGREED AND ACCEPTED this 7th day of May, 2014.

Idaho Water Resource Board


Chairman

AGREEMENT FOR THE
PURCHASE AND SALE OF
AQUA LIFE AQUACULTURE FACILITY

This agreement is entered into by and between Idaho Department of Parks and Recreation (hereinafter "PARKS"), and the Idaho Water Resource Board (hereinafter "BOARD").

WITNESSETH:

WHEREAS, PARKS on October 19, 2012, acquired certain real property and improvements, together with valuable water rights, commonly known by the parties as "Aqua Life Aquaculture Facility"; and

WHEREAS, PARKS has determined that the Aqua Life Aquaculture Facility has limited potential for park and recreation purposes, and has caused the Facility to be placed into the Park Land Trust pursuant to the terms of Idaho Code § 67-4241; and

WHEREAS, PARKS is authorized by House Bill 644, adopted by the Sixty-second Legislature of the State of Idaho during its Second Regular Session in 2014, to sell the Aqua Life Aquaculture Facility to the BOARD for the July 11, 2011 appraised value of \$1,635,000; and

WHEREAS, this agreement by the BOARD to pay the PARKS for the acquisition of rights to the use of water at the Aqua Life Aquaculture Facility is a necessary part of the State's plan to relocate an existing Idaho Department of Fish and Game (IDFG) fish hatchery to address water calls in the Hagerman Valley;

NOW THEREFORE, for and in consideration of the following promises, covenants and conditions by the parties as set forth herein, the BOARD and PARKS agree as follows:

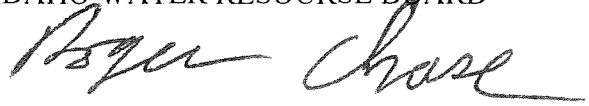
1. **COST TO BOARD:** Unless otherwise agreed, within 60 days of the date of this Agreement, the BOARD shall pay PARKS the amount of one million six hundred thirty five thousand dollars (\$1,635,000), in cash, or in such other funds which the PARKS may determine in its discretion to be adequate.
2. **WATER RIGHTS:** In exchange for the payment of one million six hundred thirty five thousand dollars by the BOARD, the PARKS shall convey to the BOARD by quit claim deed the following decreed water rights identified as follows:
 1. Water Right no. 36-4011
 2. Water Right no. 36-2734
 3. Water Right no. 36-15476
 4. Water Right no. 36-2414
 5. Water Right no. 36-2338

3. CHATTELS: PARKS shall create a list of chattels, if any, to be included in the sale with the real property. The chattel list shall be identified as Exhibit 'B' and attached to a Bill of Sale conveying the chattels to the BOARD.
4. CONTINGENCIES: The parties agree that their duties and obligations to perform in accordance with the terms of this Agreement are subject to the following contingencies, the existence of any one of such contingencies, unless waived by the party affected by the inability to perform, shall obviate such party's performance of the duties and obligations set forth in this Agreement:
 - A. PARKS shall obtain within 60 days a survey legally describing the approximately 17 acres of real property that will be conveyed to the BOARD, as identified in the Confined Animal Feeding Permit for the Aqua Life Aquaculture Facility. The survey and legal description shall be identified as Exhibit 'A' and attached to the quit claim deed conveying title to the BOARD. The BOARD shall reimburse PARKS for one-half the cost of such survey.
5. BEST EFFORTS: The parties agree to use their best efforts to satisfy any contingency affecting any such party's duty or obligation set forth herein.
6. EASEMENTS AND ACCESS: At closing, PARKS agrees to convey to the BOARD an easement over and across PARK's adjacent property to operate and maintain the levee, diversion structure, and ditch conveying water to the Aqua Life Aquaculture Facility, in the form attached hereto as Exhibit 'C'. The BOARD will assume all maintenance and operation responsibilities for the levee, diversionary structure, and ditch. In return, the BOARD agrees to allow continued public access to the designated parking lot and along Billingsley Creek for public hunting and fishing. Public use of the parking lot and access easement shall be subject to Idaho Department of Fish and Game regulation as necessary to protect hatchery operations. PARKS shall be responsible for maintenance of the existing parking lot during such time as the BOARD retains ownership of the Aqua Life Aquaculture Facility; at the time the Facility is conveyed to IDFG or another entity, such maintenance responsibility will cease.
 - A. PARKS and the BOARD shall cooperate in establishing the boundaries of the above-described easements, and PARKS shall obtain within 60 days a survey legally describing the above-described easements. The surveys and legal description shall be incorporated into Exhibits 'C' and 'D'. The BOARD shall reimburse PARKS for one-half the cost of such surveys.
7. USE OF AQUA LIFE FACILITY: It is understood and agreed that for at least 6 months following the acquisition of the Facility by the Board, that the Board intends to lease all or any portion of the Aqua Life Facilities to SeaPac of Idaho, Inc. PARKS agrees to cooperate and provide assistance to the BOARD and IDFG to facilitate an orderly transition of any existing lease between PARKS and SeaPac of

Idaho, Inc. Lease payments shall be prorated between PARKS and BOARD as of the date of closing.

8. NPDES PERMIT. Discharges of waste water from the Property are governed by a National Pollutant Discharge Elimination System (NPDES) Permit #IDG-13000 for Aquaculture Facilities in Idaho Subject to Wasteload Allocations, administered by the United States Environmental Protection Agency ("EPA"). Upon closing, or as soon thereafter as possible, PARKS shall cooperate with the BOARD in obtaining the transfer of the NPDES Permit (together with any other permit) used by PARKS in the operation of the Aqua Life Aquaculture Facility including permits authorizing the continued operation of the Aqua Life Aquaculture Facility in the name of SeaPac under the existing lease. The BOARD shall be responsible for submitting a Notice of Intent to Operate Under NPDES General Permit #IDG-13000 and any other documentation required by the EPA.
9. INDEPENDENT ANALYSIS: Each of the party's to this Agreement has had the opportunity to review the real property and water rights and neither party is or has relied upon any representation by the other.
10. CLOSING. Closing shall occur on or before June 1, 2014, unless mutually agreed otherwise by the parties.

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD



Dated: 5-7-2014

By: ROGER CHASE
Its: Chairman

ATTEST:



By: Bob Graham, Secretary

STATE OF IDAHO
IDAHO DEPARTMENT OF PARKS AND
RECREATION

Dated: _____

By: NANCY MERRILL
Its: Director

ATTEST:

By: