

**SUMMARY OF IGWA WATER LEASES FOR 2007**

<b>Water Leased from:</b>	<b>Lessee:</b>	<b>Amount of Water Leased</b>	<b>Comments</b>
Aberdeen Springfield Canal Co.	American Falls-Aberdeen; Bingham; Bonneville-Jefferson; Magic Valley & North Snake Ground Water Districts	20,000 AF	Storage Contract Nos. 14-06-W-24, 14-06-W-245, 5-07-10-W0557, 5-07-10-W555, 5-07-10-W1080
City of Pocatello	IGWA on behalf of American Falls-Aberdeen; Bingham; Bonneville-Jefferson; Magic Valley & North Snake Ground Water Districts	10,000 AF	Palisades Storage Contract No. 14-06-100-1825
Enterprise Canal Co.	IGWA on behalf of American Falls-Aberdeen; Bingham; Bonneville-Jefferson; Magic Valley & North Snake Ground Water Districts	12,000 AF	
FMC Idaho, LLC	American Falls-Aberdeen; Bingham; & Bonneville-Jefferson Ground water Districts	5,000 AF	Palisades Storage under Contract No. 14-06-100-1836
SE Idaho Energy, LLC	American Falls-Aberdeen; Bingham; & Bonneville-Jefferson Ground water Districts	6,153.8AF	Water Rights Nos. 29-2284 and 29-2301
Snake River Valley Irrigation District	IGWA on behalf of American Falls-Aberdeen; Bingham; Bonneville-Jefferson; Magic Valley & North Snake Ground Water Districts	10,000 AF	
<b>TOTAL</b>		<b>63,153.80 AF</b>	



LEASE SUMMARY:

Lease No. 2006-1

Lessor: Aberdeen-Springfield Canal Company

Contract Nos. 14-06-W-24, 14-06-W-24S, 5-07-10-W0557

5-07-10-W0555, 5-07-10-W1080

Quantity: \_\_\_\_\_ CFS \_\_\_\_\_ AF, Acres \_\_\_\_\_

**WATER RIGHTS LEASE AGREEMENT**

Lease Agreement made and entered into between the undersigned Lessor, and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), acting for and on behalf of American Falls-Aberdeen, Bingham, Bonneville, Jefferson, Magic Valley, and North Snake Ground Water Districts, whose address is P.O. Box 1391, Pocatello, Idaho 83204 (hereinafter "Lessee"):

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain storage water rights identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

Storage Water Contract No. (Bureau of Reclamation)	Quantity CFS/AF
14-06-W-24, 14-06-W-24S, 5-07-10-W0557, 5-07-10-W0555, 5-07-10-W1080	20,000 AF

The foregoing water rights will hereafter be referred to as the "leased water".

1.1 Either party may reduce the quantity of leased water to as low as 10,000 AF by providing the other party written notice of the amount of the reduction down to the minimum no later than May 1.

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing February 1, 2006, and terminating on January 31, 2007. Thereafter, this Lease will be automatically renewed and extended for successive additional one (1) year terms, unless and until terminated by either party upon written notice provided on or before February 1.

3. **Rent.** For the use of the leased water rights Lessee shall pay to Lessor rent annually in an amount equal to the per-acre foot District One Rental Pool Lease price in effect each year, plus \$1 per AF. The rent shall be paid one-half on May 1 and one-half on November 1.

3.1 Lessee shall pay all Water Bank transfer and administration fees.

4. **Non-Use by Lessor.** Lessor covenants that it will not divert or utilize the leased water right during the term of this Lease.

5. **Use by Lessee.** During the term of this Lease, Lessee will not divert or utilize the leased water rights except for mitigation purposes. Lessee will have no responsibility for the operation, maintenance, use or any damages related to or caused by lands idled pursuant to this Lease Agreement.

6. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owner of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. **Indemnification of Lessee.** Lessor agrees to indemnify and hold harmless Lessee, its officers, agent and employees, from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind for injury to or death of a person, or for loss of or damage to any property resulting from any act or omission of Lessor, its employees, agents or contractors, relating to or arising out of this Lease Agreement.

8. **Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect any or all of the following cumulative remedies:

- (a) To terminate this Lease Agreement;
- (b) To seek specific performance of this Lease Agreement;
- (c) To recover any damages arising out of the breach;
- (d) To pursue any and all other remedies under Idaho law by reason of such breach.

9. **Assignment.** This Agreement may not be assigned by Lessee without the express written consent of Lessor.

10. **Choice of Law.** The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Idaho. Any required mediation and arbitration shall occur in Bannock County Idaho. Jurisdiction and venue for any litigation shall be in the District Court of the State of Idaho in Bannock County.

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

11.1 Mediation. The parties shall designate a single mediator and appear before the mediator and attempt to mediate a settlement of the dispute. In the event the parties cannot agree to a mediator, then each party shall designate a representative and they will appoint a single mediator who shall serve as the mediator for the parties.

11.2 Arbitration. In the event the dispute between the parties cannot be settled as a result of mediation as described in paragraph 11.1 above, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall select a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties. The arbitrator's decision shall be non-appealable.

11.3 Litigation. Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's tor.

12. Attorney Fees. In the event of any arbitration or litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

13. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

DATED this 17 day of May, 2006.

LESSEE:

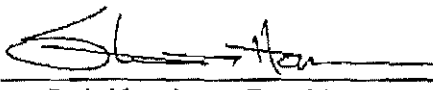
IDAHO GROUND WATER  
APPROPRIATORS, INC.

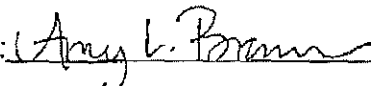
By: \_\_\_\_\_  
Tim Deeg, President

Attest: \_\_\_\_\_

LESSOR:

ABERDEEN-SPRINGFIELD  
CANAL COMPANY

By:   
~~Bob K... .., President~~  
Steven T. Howser, General Manager

Attest: 

- 11.1 Mediation. The parties shall designate a single mediator and appear before the mediator and attempt to mediate a settlement of the dispute. In the event the parties cannot agree to a mediator, then each party shall designate a representative and they will appoint a single mediator who shall serve as the mediator for the parties.
- 11.2 Arbitration. In the event the dispute between the parties cannot be settled as a result of mediation as described in paragraph 13.1 above, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall select a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties. The arbitrator's decision shall be non-appealable.
- 11.3 Litigation. Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's tor.

12. Attorney Fees. In the event of any arbitration or litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

13. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

DATED this 19<sup>th</sup> day of MAY, 2006.

LESSEE:

IDAHO GROUND WATER  
APPROPRIATORS, INC.

By:   
Tim Deeg, President

Attest: \_\_\_\_\_

LESSOR:

ABERDEEN-SPRINGFIELD  
CANAL COMPANY

By: \_\_\_\_\_  
Bob Knudson, President

Attest: \_\_\_\_\_

LEASE SUMMARY:  
Lease No. 4-2007  
Lessor: City of Pocatello, Idaho  
Water Right Nos.  
Quantity: 10,000AF

## WATER RIGHTS LEASE AGREEMENT

This Lease Agreement is made and entered into between the CITY OF POCATELLO, a municipal corporation of Idaho ("City"), whose address is P.O. Box 4169, Pocatello, Idaho 83205, hereinafter referred to as "Lessor", and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), acting for and on behalf of Aberdeen-American Falls, Bingham, Bonneville, Jefferson, Magic Valley, and North Snake Ground Water Districts, whose address is P.O. Box 1391, Pocatello, Idaho 83204, hereinafter referred to as "Lessee":

WHEREAS, Lessor has equitable title and contractual rights under the contract it entered into with the U.S. Bureau of Reclamation under Contract No. 14-06-100-1825 dated January 8, 1960 (hereinafter "Contract") and later confirmed by decree in Aberdeen-Springfield Canal Co et al v. Henry Eagle (7th Jud. Dist. 03/12/1969). Under the Contract, the City of Pocatello is entitled to 4.1667% of the reservoir capacity of Palisades Reservoir, which is 50,000 acre feet at the estimated active capacity of 1,200,000 acre feet; and

WHEREAS, the U.S. Bureau of Reclamation holds IDWR water right license 01-2068 for Palisades Reservoir and IDWR has recommended 01-2068 for decree in the SRBA, which has a priority date of July 28, 1939; and

WHEREAS, Lessor filed and is pursuing SRBA Claim 01-2068Y based on its contractual and equitable rights to 4.1667% of the reservoir capacity of Palisades Reservoir; and

WHEREAS, on March 9, 2007 the Idaho Supreme Court in United States of America v. Pioneer Irrigation District, et al., Docket No. 31790 (In Re SRBA Case No. 39576 (Subcase 91-63), affirmed the equitable title of those who make beneficial use of storage water in U. S. Bureau of Reclamation facilities; and

WHEREAS, Lessor covenants and represents that it is the true and lawful owner of the equitable title and contractual rights represented by SRBA claim 01-2068Y and that it is the true and lawful owner of the equitable title and contractual rights of the portion of water right 01-2068 represented by Contract No. 14-06-100-1825 dated January 8, 1960, and that neither of these water rights have lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights; and

WHEREAS, Lessor acquired this storage water to mitigate and replace to the Snake River, in accordance with applicable law, depletions attributable to the City's diversion of ground water and surface water for municipal uses within the City's service area; and

WHEREAS, subject to this primary mitigation and replacement purpose, and to the extent Lessor's fill for its Palisades Reservoir storage water right is in excess of the amount necessary to meet this primary mitigation and replacement purpose, the Lessor rents its Palisades Reservoir water to other users for irrigation, power, domestic, municipal, industrial, commercial, mitigation, and recharge purposes; and

WHEREAS, Lessee desires to lease storage water from Lessor for the sole purpose of mitigation;

NOW, THEREFORE, the parties agree as follows:

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor 10,000 acre feet of Lessor's storage water right under Contract No. 14-06-100-1825, a storage water right identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

<b>Water Right No.</b>	<b>Priority</b>	<b>Water Right Quantity</b>	<b>Lessor's Portion of Water Right Quantity</b>	<b>Quantity Lessor is leasing to IGWA</b>
01-2068 in the name of the US Bureau of Reclamation	July 28, 1939	1,200,000 acre feet (estimated active capacity of Palisades Reservoir )	50,000 acre feet (based on Contract No. 14-06-100-1825 that provides for 4.1667% of the estimated active capacity of Palisades Reservoir)	10,000 Acre Feet of the fill under Contract No. 14-06-100-1825
01-2068Y in the name of the City of Pocatello	July 28, 1939	50,000 acre feet (Under Contract No. 14-06-100-1825, the City of Pocatello is entitled to 4.1667% of the reservoir capacity of Palisades Reservoir, which is 50,000 acre feet at the estimated active capacity of 1,200,000 acre feet.)	50,000 acre feet	10,000 Acre Feet of the fill under Contract No. 14-06-100-1825

2. **Term.** The term of this Lease shall be for a term of one (1) water accounting year, commencing April 1, 2007, and terminating on October 31, 2007.

3. **Rent.** The rent for the leased water is \$10.00 per acre foot. Lessee shall pay \$100,000 to Lessor on or before September 15th, 2007. Any rent not paid by September 30<sup>th</sup>, 2007, shall bear interest at the rate of 12% per annum until paid.

3.1 Lessee shall pay any and all administrative charges in connection with the 10,000 acre feet of leased water. The administrative charges are due on or before September 15th, are based on the WD01 rental pool procedures in effect when the rent is due, and are paid to Water District 01. At present, those administrative charges include the Water District 01 administrative fee of \$.80/AF (\$8,000) and the IWRB 10% surcharge (\$1/AF= \$10,000). Any administrative charges not paid by September 30th shall bear interest at the rate of 12% per annum until paid.

4. **Non-Use by Lessor.** Lessor covenants that it will not divert or utilize the leased water right during the term of this Lease.

5. **Use by Lessee.** During the term of this Lease, Lessee will not divert or utilize the leased water rights except for mitigation purposes. Lessee will have no responsibility for the operation, maintenance, use or any damages related to or caused by lands idled pursuant to this Lease Agreement.

6. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owner of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. **Indemnification of Lessee.** Lessor agrees to indemnify and hold harmless Lessee, its officers, agent and employees, from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind for injury to or death of a person, or for loss of or damage to any property resulting from any act or omission of Lessor, its employees, agents or contractors, relating to or arising out of this Lease Agreement.

8. **Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect any or all of the following cumulative remedies:



- (a) To terminate this Lease Agreement;
- (b) To seek specific performance of this Lease Agreement;
- (c) To recover any damages arising out of the breach;
- (d) To pursue any and all other remedies under Idaho law by reason of such breach.

9. **Assignment.** This Agreement may not be assigned by Lessee without the express written consent of Lessor.

10. **Choice of Law.** The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Idaho. Any required mediation and arbitration shall occur in Bannock County Idaho. Jurisdiction and venue for any litigation shall be in the District Court of the State of Idaho in Bannock County.

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

- 11.1 **Mediation.** The parties shall designate a single mediator and appear before the mediator and attempt to mediate a settlement of the dispute. In the event the parties cannot agree to a mediator, then each party shall designate a representative and they will appoint a single mediator who shall serve as the mediator for the parties.
- 11.2 **Arbitration.** In the event the dispute between the parties cannot be settled as a result of mediation as described in paragraph 13.1 above, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall select a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties. The arbitrator's decision shall be non-appealable.
- 11.3 **Litigation.** Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's decision. The parties agree the proper venue for litigation instituted pursuant to this Agreement shall be the Sixth District Court, Bannock County, Idaho.

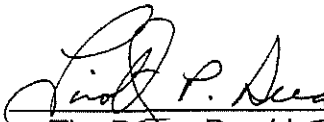
12. **Attorney Fees.** In the event of any arbitration or litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

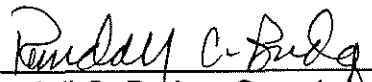
13. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

DATED this 20<sup>th</sup> day of JUNE, 2007.

**LESSEE:**

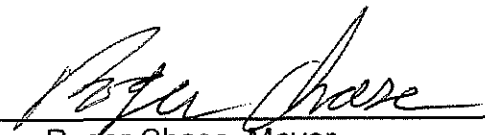
IDAHO GROUND WATER  
APPROPRIATORS, INC.

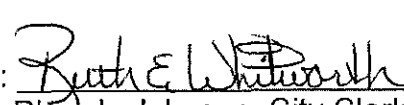
By:   
Tim Deeg, President

Attest:   
Randall C. Budge, Secretary

**LESSOR:**

CITY OF POCA TELLO, IDAHO

By:   
Roger Chase, Mayor

Attest:  Deputy  
for Rhonda Johnson, City Clerk  
Clerk

LEASE SUMMARY:  
Lease No. 5-2007  
Lessor: Enterprise Canal Company  
Water Right Nos. \_\_\_\_\_  
Quantity 15,000AF

## WATER LEASE AGREEMENT

Lease Agreement made and entered into between the undersigned Lessor, and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), acting for and on behalf of American Falls-Aberdeen, Bingham, Bonneville, Jefferson, Magic Valley, and North Snake Ground Water Districts, whose address is P.O. Box 1391, Pocatello, Idaho 83204 (hereinafter "Lessee"):

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain storage water rights identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

Storage Water Right No.	Priority	Quantity CFS/AF
		15,000 AF

The foregoing water rights will hereafter be referred to as the "leased water".

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing April 1, 2007, and terminating on March 31, 2008. Thereafter, this Lease will be automatically renewed and extended for successive additional one (1) year terms, unless and until terminated by either party upon written notice provided on or before April 1.

3. **Rent.** For the use of the leased water Lessee shall pay to Lessor rent annually in the amount equal to the per-acre foot District One Rental Pool Lease price in effect each year, plus \$1.00 per AF. The rent shall be paid on or before November 15.

3.1 Lessee shall pay all Water Bank transfer and administration fees, consisting of the \$0.80 per AF Water District 01 Rental Pool fee and the 10% State Water Bank fee.

4. **Non-Use by Lessor.** Lessor covenants that it will not divert or utilize the leased water right during the term of this Lease.

5. **Use by Lessee.** During the term of this Lease, Lessee will not divert or utilize the leased water rights except for mitigation purposes. Lessee will have no responsibility for the operation, maintenance, use or any damages related to or caused by lands idled pursuant to this Lease Agreement.

6. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owner of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. **Indemnification of Lessee.** Lessor agrees to indemnify and hold harmless Lessee, its officers, agent and employees, from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind for injury to or death of a person, or for loss of or damage to any property resulting from any act or omission of Lessor, its employees, agents or contractors, relating to or arising out of this Lease Agreement.

8. **Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect any or all of the following cumulative remedies:

- (a) To terminate this Lease Agreement;
- (b) To seek specific performance of this Lease Agreement;
- (c) To recover any damages arising out of the breach;
- (d) To pursue any and all other remedies under Idaho law by reason of such breach.

9. **Assignment.** This Agreement may not be assigned by Lessee without the express written consent of Lessor.

10. **Choice of Law.** The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Idaho. Any required mediation and arbitration shall occur in Bannock County Idaho. Jurisdiction and venue for any litigation shall be in the District Court of the State of Idaho in Bannock County.

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

- 11.1 **Mediation.** The parties shall designate a single mediator and appear before the mediator and attempt to mediate a settlement of

the dispute. In the event the parties cannot agree to a mediator, then each party shall designate a representative and they will appoint a single mediator who shall serve as the mediator for the parties.

11.2 Arbitration. In the event the dispute between the parties cannot be settled as a result of mediation as described in paragraph 13.1 above, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall select a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties. The arbitrator's decision shall be non-appealable.

11.3 Litigation. Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's tor.

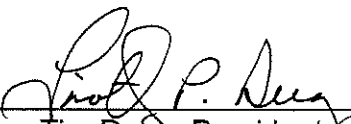
12. Attorney Fees. In the event of any arbitration or litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

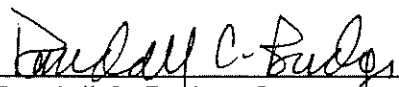
13. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

DATED this 20<sup>th</sup> day of June, 2007.

**LESSEE:**

IDAHO GROUND WATER  
APPROPRIATORS, INC.

By:   
Tim Deeg, President

Attest:   
Randall C. Budge, Secretary

**LESSOR:**

ENTERPRISE CANAL COMPANY

By: \_\_\_\_\_  
Darrell Ker, President

Attest: \_\_\_\_\_

## LEASE OF WATER RIGHTS

Lease Agreement made and entered into May 22<sup>nd</sup>, 2002, between FMC IDAHO, L.L.C., whose address is P.O. Box 4111, Pocatello, Idaho 83202 (hereinafter "Lessor") and AMERICAN FALLS-ABERDEEN AREA GROUND WATER DISTRICT, BINGHAM GROUND WATER DISTRICT, and BONNEVILLE-JEFFERSON GROUND WATER DISTRICT, whose address is in care of Timothy P. Deeg, P.O. Box 70, American Falls, Idaho 83211 (hereinafter "Lessee"):

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain water rights identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

Water Right No.	Priority	Quantity	Purpose
A29-02284	3/02/49	4.5 cfs	Industrial
A29-2301	4/24/51	3.82 cfs*	Industrial
A29-11342	7/24/52	<u>1.10 cfs</u>	Municipal
		9.42 cfs	

(\*FMC retaining 0.18 cfs for continuing plant needs.)

Together with 5000 AF of Palisades Storage pursuant to U.S. Department of Interior, Bureau of Reclamation, Contract No. 14-06-100-1836, Palisades Water Users, Inc. - A01-10214.

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing April 15, 2002, and terminating on April 14, 2003. Thereafter, this Lease will be automatically renewed and extended for successive additional one-year terms, unless and until terminated by either party as hereafter provided.

Either party may terminate this Lease at the end of any lease term upon not less than ninety (90) days advance written notice.

3. **Rent.** For the use of the lease property Lessee shall pay to Lessor on or before April 15 of each year rent in the amount of \$2.95 per acre foot for ground water and \$3.45 per acre foot for Palisades Storage. The rent shall be due upon approval of the lease by IDWR allowing the use of the water by Lessee for mitigation purposes.

3.1 The calculated amount of ground water pursuant to this Lease is 18.68 AF per day or 6,819.87 AF per year based upon the historic year-round use of these rights. This amount is subject to adjustment to the actual amount which IDWR will credit Lessee for mitigation purposes.

3.2 Lessor has retained all of Water Right No. A29-02255E and A29-2255C, plus 0.18 cfs of Water Right No. A29-2301 to meet continuing water needs at Lessor's Pocatello plant for culinary purposes, irrigation of

landscaping, dust control and other industrial purposes calculated by Lessor to be necessary for such purposes.

4. Non-Use by Lessor. Lessor covenants that it will not divert or utilize the described water right during the term of this Lease.

5. Use by Lessee. During the term of this Lease and during any extension, Lessee shall place to beneficial use each year, all waters approved for use under the water rights and shall comply with all applicable federal, state and local laws and all rules and regulations of any agency, including IDWR applicable to such water rights, together with all state and federal environmental and water quality laws.

6. Representations by Lessor. Lessor covenants and represents that it is the true and lawful owners of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. Transfer Application. The parties acknowledge and agree that it will be necessary to submit this Lease and obtain IDWR approval of the use of said water rights by Lessee for mitigation purposes.

7.1 Lessee and Lessor will jointly seek approval of this Lease from IDWR and will cooperate with each other in securing such approval.

7.2 Lessee shall be responsible for all costs associated with accomplishing the approval of this lease and, including but not limited to, paying all applicable Water Bank and other administrative fees owing to IDWR.

7.3 This Lease is conditioned upon IDWR's approval of the use of the water by Lessee for mitigation purposes, and acknowledgment by IDWR that Lessee's use of the water under the Lease and/or placement of the water in the state water bank constitutes beneficial use of the water and will not subject any of the rights to forfeiture. In the event the approval is not obtained, the Lease may be terminated by either party.

8. Indemnification of Lessor. Lessee agrees to indemnify and hold harmless Lessor from any and all claims and demands, including legal attorney fees and costs, which may arise directly or indirectly as a result of this lease or the transfer or use of the water rights by Lessee pursuant to this Lease.

9. Breach. In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect to terminate this Lease and recover any damages or pursue any other remedy available under Idaho law by reason of such breach.

10. Assignment. This Agreement may not be assigned by Lessee without the express written consent of Lessor.

11. Attorney Fees. In the event of any litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

12. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.



LESSOR:

FMC IDAHO, L.L.C.

By Rob J. Hartman  
Rob J. Hartman  
Vice President

Date: May 22, 2002

LESSEE:

AMERICAN FALLS-ABERDEEN  
AREA GROUND WATER DISTRICT

By \_\_\_\_\_  
KEVIN MICHAELSON, President  
Date:

BINGHAM GROUND WATER  
DISTRICT

By \_\_\_\_\_  
CRAIG EVANS, President  
Date:

BONNEVILLE-JEFFERSON GROUND  
WATER DISTRICT

By \_\_\_\_\_  
WILLIAM TAYLOR,  
President  
Date:

**LESSOR:**

**FMC IDAHO, L.L.C.**

By \_\_\_\_\_  
Rob J. Hartman  
Vice President

Date:

**LESSEE:**

**AMERICAN FALLS-ABERDEEN  
AREA GROUND WATER DISTRICT**

By *Kevin Michaelson*  
KEVIN MICHAELSON, President  
Date: *5-22-02*

**BINGHAM GROUND WATER  
DISTRICT**

By *Craig Evans*  
CRAIG EVANS, President  
Date: *May 22, 2002*

**BONNEVILLE-JEFFERSON GROUND  
WATER DISTRICT**

By *William Taylor*  
WILLIAM TAYLOR,  
President  
Date: *May 22, 2002*

## LEASE OF WATER RIGHTS

This Lease Agreement ("Lease") is made and entered into between SOUTHEAST IDAHO ENERGY, L.L.C., a Delaware limited liability company whose address is 71 Goldens Bridge Road, Katonah, New York 10536 (hereinafter "Lessor") and AMERICAN FALLS-ABERDEEN AREA GROUND WATER DISTRICT, BINGHAM GROUND WATER DISTRICT, and BONNEVILLE-JEFFERSON GROUND WATER DISTRICT, whose address is in care of Timothy P. Deeg, P.O. Box 70, American Falls, Idaho 83211 (collectively hereinafter "Lessee").

### RECITALS

- A. Lessor is successor in interest to and assignee of the water rights hereinafter described ("Water Rights") pursuant to a Water Rights General Warranty Deed and Assignment executed by FMC Idaho LLC ("FMC") as seller on December 18, 2006. Lessor also is the assignee pursuant to a Partial Assignment and Assumption of Lease of Water Rights dated December 18, 2006 assigning a portion of FMC's interest in a Lease of Water Rights dated May 22, 2002 previously entered into between FMC and Lessee (the "FMC Lease") to the extent the FMC Lease affected the Water Rights.
- B. This Lease is effective upon the date executed by all of the four parties.
- C. FMC did not convey to Lessor, and this Lease does not affect, certain other water rights that are subject to the FMC Lease, in particular, FMC's Palisades storage entitlement and water right no. 29-11342.
- D. Lessor and Lessee desire to enter into a separate lease agreement with respect to the Water Rights described herein that clarifies the rights and responsibilities of the parties going forward and that replaces and supercedes the terms of the FMC Lease with respect to said Water Rights.
- E. When the FMC Lease was entered into, the parties thereto understood that water right no. 29-2301 authorized a diversion rate of 8.0 cfs, and FMC withheld 0.18 cfs of that right from the FMC Lease for its own use. Subsequently, water right no. 29-2301 was decreed with a diversion rate of 4.0 cfs, all of which was acquired from FMC by Lessor, and all of which is intended to be subject to this Lease. The FMC Lease was subsequently amended by agreement of its parties to reflect that the quantity of water right no. 29-2301 leased under the FMC Lease would be 3.82 cfs (that being 4.0 cfs less 0.18 cfs retained by FMC).

## AGREEMENT

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Water Rights identified by the records of the Idaho Department of Water Resources ("IDWR") as follows:

Water Right No.	Priority	Quantity	Purpose
29-2284	3/02/49	4.5 cfs/3257.9 AF	Industrial
29-2301	4/24/51	4.0 cfs/2895.9 AF	Industrial
Total		8.5 cfs/6153.8 AF	

2. **Term.** This Lease shall be for a term of one (1) year, commencing April 15, 2007, and terminating on April 14, 2008. Thereafter, this Lease may be automatically renewed and extended for successive, additional one-year terms, subject to the renewal and termination provisions as hereafter provided (the "Lease Term").

3. **Renewal and Termination.** This Lease may be renewed by Lessee upon giving written notice of intent to renew to Lessor on or before December 31<sup>st</sup> of the then-current Lease Term. Such renewal shall be effective on the same terms unless Lessor affirmatively declines to renew the Lease, or elects to reduce the quantity that may be leased, by providing written notice thereof to Lessee on or before December 31<sup>st</sup> of the then-current Lease Term.

4. **Rent.** For the use of the Water Rights Lessee shall pay to Lessor on or before April 15<sup>th</sup> of each year (the "Rent Due Date") at the address set forth below, annual Rent in the total amount of \$18,153.71, which amount is based on a price of \$2.95 per acre-foot of divertible quantity under the Water Rights as described in Section 1 of this Lease.

5. **Non-Use by Lessor.** Lessor covenants that it will not divert or utilize the described Water Rights during the Lease Term.

6. **Use by Lessee.** During the initial Lease Term and during any permitted renewal of the Lease Term, Lessee shall place the Water Rights to beneficial use by placing same in the Idaho Water Resource Board ("IWRB") Water Bank, and shall comply with all applicable federal, state and local laws and all rules and regulations of any agency, including the Idaho Department of Water Resources ("IDWR"), applicable to such Water Rights, together with all state and federal environmental and water quality laws. It is the parties' express understanding and intent that it is Lessee's duty under this Lease to do all things necessary to ensure that the Water Rights are not subject at any time to any claim or determination of forfeiture, abandonment or reduction in transferable quantity based in whole or in part on Lessee's use or non-use of the Water Rights during such Lease Term or renewal thereof.

7. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owner of the Water Rights, that the Water Rights have not lapsed, been abandoned, or forfeited, either in whole or in part as a result of any action or inaction of Lessor, that nothing

restricts or precludes Lessor from entering into this Lease, and Lessor has no knowledge of any reason why Lessee may not use the described Water Rights for the purposes contemplated by this Lease.

**8. Applications and Approvals.** The parties acknowledge and agree that it will be necessary to submit this Lease to the IWRB and IDWR and obtain IWRB acceptance of the Water Rights into the Water Bank and IDWR approval of the use of said Water Rights by Lessee for mitigation purposes.

- 8.1. Lessee and Lessor will jointly seek approval of this Lease from IWRB and IDWR, and will cooperate with each other in securing such approvals. The foregoing notwithstanding, Lessee shall be responsible for preparing and filing all necessary IWRB Water Bank rental and lease applications and IDWR mitigation or replacement water plans, and for all costs associated with accomplishing the approval of this Lease by IDWR and the IWRB, including but not limited to, paying all applicable Water Bank and other administrative fees owing to IWRB, IDWR or Water District 01 in a timely manner so as to obtain all such approvals prior to the April 15 Rent Due Date.
- 8.2. Lessee agrees to provide Lessor with copies of all applications or submittals to, correspondence with, and decisions of, the IWRB and IDWR regarding Lessee's use of the Water Rights, and, no later than January 15<sup>th</sup> of each year, with an annual summary accounting of the use and disposition of the Water Rights during the previous twelve months.
- 8.3. This Lease is conditioned upon IWRB's acceptance of the Water Rights into the Water Bank and IDWR's approval of the use of the Water Rights by Lessee for mitigation purposes, and acknowledgment by IDWR that Lessee's use of the Water Rights under the Lease and/or placement of the Water Rights in the IWRB Water Bank constitutes beneficial use of the water and will not subject any portion of the Water Rights to forfeiture. In the event such approvals are not obtained, the Lease may be terminated by either party.

**9. Indemnification of Lessor.** Lessee agrees to indemnify and hold harmless Lessor from any and all claims and demands, including legal attorney fees and costs, which may arise directly or indirectly as a result of this Lease or the transfer or use of the Water Rights by Lessee pursuant to this Lease.

**10. Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect to terminate this Lease and recover any damages or pursue any other remedy available under Idaho law by reason of such breach.

**11. Assignment.** This Agreement may be assigned by Lessor but may not be assigned by Lessee without the express written consent of Lessor.

12. **Attorney Fees.** In the event either party brings an action to enforce this Lease, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.

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

14. **Notices.** Any notice required to be given hereunder by either party to the other shall be given in writing by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of personal delivery or three (3) days after the date of mailing. Notices shall be addressed as set forth below, but each party may change the address set forth below by written notice to the other party in accordance with this paragraph.

To Lessor:

Ramesh Raman  
President & Manager  
Southeast Idaho Energy, LLC  
71 Goldens Bridge Road  
Katonah, NY 10536

With copy to:

Christopher H. Meyer  
Givens Pursley LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, ID 83701

To Lessee:

Timothy P. Deeg  
P.O. Box 70  
American Falls, Idaho 83211

With copy to:


Randall C. Budge  
Racine, Olson, Nye, Budge & Bailey  
201 East Center, Suite A2  
P.O. Box 1391  
Pocatello, ID 83204-1391

15. **No Third-Party Beneficiaries.** This Lease is entered into by, and intended solely for the benefit of, Lessor and Lessee, and no other person or entity, public or private, shall have any right, title, interest or benefit in this Lease or the Water Rights leased hereby.

16. Prior Lease Superseded. This Lease replaces and supercedes in all respects the lease terms contained in the FMC Lease with respect to the Water Rights described herein and the parties hereto shall be bound by the terms of this Lease with respect to the Water Rights and all matters set forth herein; provided however, that this Lease shall in no way affect the rights of Lessee and FMC under the FMC Lease with respect to water rights that are not the subject of this Lease; and further provided that the FMC Lease shall remain in effect in any event until the expiration of the current lease term under that lease ending on April 14, 2007.


**LESSOR:**

**SOUTHEAST IDAHO ENERGY, L.L.C.**

By:   
RAMESH RAMAN, President  
Date: 3-8-2007

**LESSEE:**


**AMERICAN FALLS-ABERDEEN AREA  
GROUND WATER DISTRICT**

By:   
KEVIN MICHAELSON, President  
Date: 2-7-07

**BINGHAM GROUND WATER DISTRICT**

By:   
CRAIG EVANS, President  
Date: 2-1-2007

**BONNEVILLE-JEFFERSON GROUND  
WATER DISTRICT**

By:   
DAVE WATKINS ~~WILLIAM TAYLOR~~, President  
Date: 2/1/07

Confidential Draft 4/18/07

**LEASE SUMMARY:**

Lease No. 3-2007

Lessor: Snake River Valley Irrigation District  
Water Right Nos.

Quantity: \_\_\_\_\_ CFS \_\_\_\_\_ AF, Acres

### WATER RIGHTS LEASE AGREEMENT

Lease Agreement made and entered into between the undersigned Lessor, and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), acting for and on behalf of American Falls-Aberdeen, Bingham, Bonneville, Jefferson, Magic Valley, and North Snake Ground Water Districts, whose address is P.O. Box 1391, Pocatello, Idaho 83204 (hereinafter "Lessee"):

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain storage water rights identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

Storage Water Right No.	Priority	Quantity CFS/AF
		10,000 AF

The foregoing water rights will hereafter be referred to as the "leased water".

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing April 1, 2007, and terminating on March 31, 2008. Thereafter, this Lease will be automatically renewed and extended for successive additional one (1) year terms, unless and until terminated by either party upon written notice provided on or before April 1.

3. **Rent.** For the use of the leased water rights Lessee shall pay to Lessor rent annually in the amount of \$6.00 per acre foot (an amount equal to the per-acre foot District One Full Pool Lease price in effect, plus \$1 per AF). The rent shall be paid one-half on June 15 and one-half on November 15.

3.1 Lessee shall pay all Water Bank transfer and administration fees, consisting of the \$0.80 per AF Water District 01 Rental Pool fee and the 10% State Water Bank fee.

LEASE OF WATER RIGHTS - 1

SR Valley



4. **Non-Use by Lessor.** Lessor covenants that it will not divert or utilize the leased water right during the term of this Lease.

5. **Use by Lessee.** During the term of this Lease, Lessee will not divert or utilize the leased water rights except for mitigation purposes. Lessee will have no responsibility for the operation, maintenance, use or any damages related to or caused by lands idled pursuant to this Lease Agreement.

6. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owner of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. **Indemnification of Lessee.** Lessor agrees to indemnify and hold harmless Lessee, its officers, agent and employees, from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind for injury to or death of a person, or for loss of or damage to any property resulting from any act or omission of Lessor, its employees, agents or contractors, relating to or arising out of this Lease Agreement.

8. **Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect any or all of the following cumulative remedies:

- (a) To terminate this Lease Agreement;
- (b) To seek specific performance of this Lease Agreement;
- (c) To recover any damages arising out of the breach;
- (d) To pursue any and all other remedies under Idaho law by reason of such breach.

9. **Assignment.** This Agreement may not be assigned by Lessee without the express written consent of Lessor.

10. **Choice of Law.** The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Idaho. Any required mediation and arbitration shall occur in Bannock County Idaho. Jurisdiction and venue for any litigation shall be in the District Court of the State of Idaho in Bannock County.

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

11.1 **Mediation.** The parties shall designate a single mediator and appear

before the mediator and attempt to mediate a settlement of the dispute. In the event the parties cannot agree to a mediator, then each party shall designate a representative and they will appoint a single mediator who shall serve as the mediator for the parties.

11.2 Arbitration. In the event the dispute between the parties cannot be settled as a result of mediation as described in paragraph 13.1 above, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall select a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties. The arbitrator's decision shall be non-appealable.

11.3 Litigation. Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's tor.

12. Attorney Fees. In the event of any arbitration or litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

13. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

DATED this 23 day of April, 2007.



**LESSEE:**

IDAHO GROUND WATER  
APPROPRIATORS, INC.

**LESSOR:**

SNAKE RIVER VALLEY IRRIGATION  
DISTRICT

By: *Tim Deeg*  
Tim Deeg, President

By: *Carlos S. Nielson*  
Carlos S. Nielson, President

Attest: *Randall C. Budge*  
Randall C. Budge, Secretary

Attest: *Yvonne Landon*  
Yvonne Landon, Secretary/Treas.

Address: 221 S. Emerson  
Shelley, Idaho 83274  
Phone: 208-356-3420