

## **AGENDA**

## IDAHO WATER RESOURCE BOARD

Special Board Meeting No. 13-25 Friday, October 31, 2025

1:00 PM Mountain Time / Noon Pacific Time

Water Center
Conference Rooms 602 C & D
322 E. Front Street
Boise

Livestream available at <a href="https://www.youtube.com/@iwrb">https://www.youtube.com/@iwrb</a>

## Jo Ann Cole-Hansen

Vice Chair Lewiston At Large

**Brad Little** 

**Jeff Raybould** 

Governor

Chairman

St. Anthony At Large

#### **Dean Stevenson**

Secretary
Paul
District 3

#### **Dale Van Stone**

Hope District 1

#### **Albert Barker**

Boise District 2

#### **Brian Olmstead**

Twin Falls At Large

#### **Marcus Gibbs**

Grace District 4

#### **Patrick McMahon**

Sun Valley At Large

- 1. Roll Call
- 2. Executive Session: Board will meet pursuant to Idaho Code § 74-206(1) subsection (f) to communicate with legal counsel regarding legal ramifications of and legal options for pending litigation or controversies not yet being litigated but imminently likely to be litigated. Topic: Dworshak Small Hydro Power Plant. Closed to the public.
- 3. Dworshak Small Hydro Power Plant \*
- 4. Measuring and Monitoring Grant Approvals \*
- 5. Flood Management Grants—Supplemental Application Cycle \*
- 6. Cloud Seeding Program
  - a. Bear River Project Authorization \*
  - b. High Country RC & D Funding Request \*
- 7. IWRB Recharge Water Right Non-Diversion Agreement \*
- 8. Mountain Home Air Force Base Water Resiliency Project
  - a. Beneficial Use Notice Letter \*
  - b. BLM Easement Transfer \*
  - c. Ownership Transfer Agreement \*
- 9. Non-Action Items for Discussion
- 10. Adjourn

<sup>\*</sup> Action Item: A vote regarding this item may be made at this meeting. Identifying an item as an action item on the agenda does not require a vote to be taken on the item. <u>Americans with Disabilities</u>: If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting Department staff by email <u>jennifer.strange@idwr.idaho.gov</u> or by phone at (208) 287-4800.

### Memorandum

To: Idaho Water Resource Board

From: Mike Morrison

Date: October 23, 2025

Re: Dworshak Small Hydroelectric Project--Resolution to execute an Operation and Maintenance

Services Support Agreement with OAC, Inc.

**REQUIRED ACTION:** The Board will consider approval of a resolution to enter into a contract with OAC, Inc. for Operation and Maintenance Services at the Dworshak Small Hydroelectric Project.

<u>Background:</u> Since May 5, 2021 Thompson Construction Group, Inc. ("Thompson") has operated the Dworshak Small Hydroelectric Project ("Power Plant") for the Board under a five-year contract. Most routine plant operations, recurring maintenance, and periodic maintenance were performed by two subcontractors employed by Thompson: OAC, Inc. ("OAC") and KME Specialties, Inc. ("KME").

On April 25, 2025 Thompson notified the Board that, pursuant to Section 9.F., it was terminating its contract with the Board effective October 22, 2025. Thompson stated that its decision to terminate the contract was the result of corporate restructuring and a decision to terminate its Idaho operations.

Subsequently, Staff negotiated a one-year, \$100,000 contract with OAC to continue operating the Power Plant for one year. Under this contract, OAC's tasks remain the same as those enumerated in the Thompson contract; however, tasks already completed by Thompson have been removed. KME will continue in its current role as OAC's subcontractor. Staff notes that the Board paid Thompson \$105,078.36 annually for this same work.

Staff notes that Section 18 of the Thompson contract required the contractor to post a payment bond. Under the OAC contract, this requirement has been changed to require OAC to include verification of payment to its subcontractors before it can be reimbursed by the Board. Staff also notes that Attachment B, Rates for Additional Services, has been updated to reflect rates for emergency repairs and other unanticipated work.

Since October 22nd, KME has continued to operate the Power Plant and perform basic O&M under a purchase order issued by the Board.

Over the next year, Staff plans to procure a contractor to operate the plant under a new five-year contract.

<u>Board Resolution</u>: Staff requests that the Board consider approval of the attached resolution authorizing its Executive Manager or designee to execute a contract with OAC for Operation and Maintenance Services at the Dworshak Small Hydroelectric Project.



#### **BEFORE THE IDAHO WATER RESOURCE BOARD**

IN THE MATTER OF THE DWORSHAK SMALL RESOLUTION TO EXECUTE AN OPERATION

	HYDROELECTRIC PROJECT	AND MAINTENANCE SERVICE SUPPORT AGREEMENT WITH OAC, INC.			
1 2	WHEREAS, the Idaho Water Resource Board Hydroelectric Project (Power Plant) located near Or	d (Board) owns and operates the Dworshak Small ofino, Idaho; and			
3 4	WHEREAS on May 5, 2021 the Board enter	ed into a five-year Contract with Thompson			
5	· · · · · · · · · · · · · · · · · · ·	d perform recurring and periodic maintenance at the			
6	Power Plant; and	a periodic receiving and periodic manner at the			
7					
8 9	WHEREAS, on April 25, 2025 Thompson not terminating its contract with the Board effective 22	cified the Board that, pursuant to Section 9.F., it was October, 2025; and			
10	WILEDEAC the Doord has possibled a new	and year agreement with OAC Inc. to energte and			
11 12	perform recurring and periodic maintenance at the	one-year agreement with OAC Inc. to operate and			
13	perform recurring and periodic maintenance at the	rowei Fidiit,			
14	NOW THEREFORE BE IT RESOLVED that the	e IWRB authorizes its Executive Manager or designee			
15					
16					
17					
	DATED this 31st day of October, 2025				
		JEFF RAYBOULD, Chairman			
		Idaho Water Resource Board			
	ATTEST	<u></u>			
	DEAN STEVENSON, Secretary				

Resolution No. \_\_\_\_\_

# OPERATION AND MAINTENANCE SERVICES FOR THE DWORSHAK SMALL HYDROELECTRIC PROJECT

Contract Number

## **Table of Contents**

1.	Definitions	l
2.	Attachments	2
3.	Services	2
4.	Limitations on Authority	4
5.	Compensation and Invoices	4
6.	Limitation of Program Funds	5
7.	Term	5
8.	General Termination Provisions	5
9.	Termination for Convenience	6
10.	Termination for Default	
11.	Dispute Resolution	7
12.	Force Majeure and Suspension.	8
13.	Indemnification	9
14.	Limitation of Liability	10
15.	Taxes	11
16.	Workers Compensation Insurance	11
17.	Insurance	11
18.	Payment Bond	11
19.	Relationship of the Parties	12
20.	Assignment of Benefits and Delegation of Duties	12
21.	Waiver, Modification, or Amendment	12
22.	Public Records	12
23.	Rights in Data	
24.	Retention of Records and Access to Facilities, Premises, and Records	13
25.	Illegal Aliens	13
26.	Entire Agreement	13
27.	Severability	14
28.	Survival	14
29.	No Waiver	14
30.	Effect of Section Headings	14
31.	Sovereign Immunity	14
32.	Governing Law	15
33.	Notices	15
34.	No Third-Party Rights	15
35.	Counterparts	15

This Operation and Maintenance Services Contract ("Contract") entered into between the Idaho Water Resource Board ("Board") and OAC, Inc. ("Contractor") is made in reference to the following facts:

- A. The Board is the owner and responsible for planning, financing, designing, and constructing, the Dworshak Small Hydroelectric Project ("Project").
- B. The Board has contracted out the operations of the Project to third parties since its commissioning in 2000.
- C. Water is supplied to the Project through the Clearwater Fish Hatchery ("Hatchery") pursuant to the June 5, 2000 Memorandum of Understanding for the Use of the Clearwater Fish Hatchery Water Supply Lines for the Operation of the Dworshak Small Hydroelectric Project ("Hatchery MOU") with the United States Fish and Wildlife Service ("FWS").
- D. The Bonneville Power Administration ("BPA") purchases all power generated by the Dworshak Small Hydroelectric Project pursuant to the April 30, 1990 Settlement and Contingent Power Purchase Agreement ("Power Agreement").
- E. Clearwater Power Company ("CPC") wheels the energy output from the Project to BPA pursuant to the January 19, 2000 Electric Power Wheeling and Maintenance Agreement ("Wheeling Agreement").
- F. On May 5, 2021, the Board entered into a contract with Thompson Construction Services, Inc. ("Thompson") to operate the project.
- G. On October 3, 2022, the Board and Thompson amended their contract to prepare invoices for BPA.
- H. On April 25, 2025, Thompson notified the Board that it was terminating the contract effective October 22, 2025.
- I. The Board and Contractor would like to enter into an agreement under which the Contractor assumes the duties formerly performed by Thompson.
- J. The Board intends to solicit bids for a new operations and maintenance agreement to begin on November 1, 2026.

The parties agree as follows:

#### 1. Definitions

- A. "Contract Manager" shall mean Michael W. Morrison, Ph.D., P.E. (telephone: (208) 287-4835, email: mike.morrison@idwr.idaho.gov) appointed by the Board to administer this Contract on behalf of the Board and includes, except as otherwise provided in this Contract, an authorized representative of the Contract Manager acting within the limits of their authority.
- B. "Contract Year" shall mean the 12-month period commencing on the Contract Date, and then each 12-month period thereafter.

- C. "Project" shall mean the Dworshak Small Hydroelectric Project located approximately one mile downstream of Dworshak Dam on the North Fork of the Clearwater River in Clearwater County, Idaho. The Project is licensed by the Federal Energy Regulatory Commission (FERC) as project no. 10819-002.
- D. "Project Coordinator" shall mean Randy Broesch (telephone: (208) 660-0135 RandallBroesch@OACIncorporated.onmicrosoft.com) appointed by the Contractor to administer this Contract on behalf of the Contractor and includes, except as otherwise provided in this Contract, an authorized representative of the Project Coordinator acting within the limits of their authority.

#### 2. Attachments

The following documents are attached and incorporated to this Contract:

Attachment	Document
A	Scope of Services
В	Rates for Additional Services
С	Power Agreement
D	Wheeling Agreement
Е	Hatchery MOU
F	Confidentiality Agreement

#### 3. Services

#### A. Project Operation & Maintenance

- i. Contractor shall perform the project management, administration, operations, and maintenance services needed so the Project is safe and reliable. The Contractor is responsible for providing all activities and tasks as follows and as set forth in Scope of Services in Attachment A:
  - a. annual updates to the project safety manual
  - b. participating in operations transition (at the beginning and end of the contract term)
  - c. normal and routine maintenance
  - d. preventive maintenance/testing
  - e. Project repairs
  - f. documentation/record keeping.
- ii. Contractor shall not conflict or interfere with work conducted by employees of the Hatchery related to the Project. Pursuant to the Hatchery MOU, the FWS has the right to inspect the Project. Timely written notice of inspections will be provided to Contractor.
- iii. Contractor shall maintain a Public Works Contractor License pursuant to Idaho Code Title 54, Chapter 19.

- iv. Contractor shall prepare a draft monthly invoice for BPA and submit it to the Board before the 7th of each month, troubleshoot any BPA Customer Portal system issues, and perform a QA/QC confirmation of BPA values with site production values.
- B. Project Materials, Equipment, Tools, Supplies, Consumables, and Other Items
  - i. The Board shall retain title to all materials, equipment, tools, supplies, consumables, and other items purchased or obtained by the Contractor using Board funds solely for the Project.
  - ii. The Contractor shall retain title to materials, equipment, tools, supplies, consumables, and other items purchased or obtained by the Contractor to be used for their purposes on this Project and other projects.

#### C. Additional Services

- i. The following activities and tasks are Additional Services not covered by the services in Section 3.A. The Contract Manager and Project Coordinator shall collaborate to identify which additional services need to occur and negotiate a cost proposal for the agreed upon additional services. Additional Services include but are not limited to:
  - a. capital improvements,
  - b. upgrades to Project assets/componentry,
  - c. when planned or programmed maintenance occurs sooner than scheduled because of an urgent condition,
  - d. predictive maintenance/testing/inspection,
  - e. programmed major maintenance,
  - f. services for updating software or subscriptions,
  - g. materials, equipment, tools, supplies, consumables, and other items needed for the Project not covered by services in Section 3.A
  - h. unscheduled training for Clearwater Fish Hatchery
  - i. unscheduled/unplanned maintenance
  - j. Project emergencies.
- ii. Contractor shall provide the Board a detailed cost proposal for proposed Additional Services, based on Rates for Additional Services in Attachment B. Absent an emergency, Contractor must receive the Board's approval prior to commencing any Additional Services. If the Contractor performs any Additional Services without written authorization, the Board may refuse to compensate the Contractor for the work.

#### 4. Limitations on Authority

Notwithstanding any provision in this Contract to the contrary, unless previously approved by the Board in writing, Contractor and any employee, representative, contractor or other agent of Contractor are prohibited from taking the following specified actions:

- A. Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of the Board, including any property or assets purchased by Contractor for exclusive use on the Project as contemplated in Section 3.B.i;
- B. Make, enter into, execute, amend, modify or supplement any contract or agreement (i) on behalf of, in the name of, or purporting to bind Board or (ii) that prohibits or otherwise restricts Contractor's right to assign such contract or agreement to Board at any time;
- C. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, Board or Contractor related to the Project, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;
- D. Create, incur or assume any lien upon the Project;
- E. Engage in any other transaction on behalf of Board or any other person or entity not expressly authorized by this Contract or that violates applicable Laws; or
- F. Enter into any agreement to do any of the foregoing.

#### 5. Compensation and Invoices

- A. The Board will pay, and the Contractor shall accept, a total annual operating fee of \$ 100,000.00, payable in monthly installments of \$8,333.33 to perform the Services in Section 3.A.
- B. In addition to the fee provided for under Section 5.A, the Board will pay for Additional Services in accordance with the Rates for Additional Services in Attachment B.
- C. Contractor shall submit an invoice to the Board monthly covering both the monthly fee and any Additional Services.
- D. Invoices shall be mailed to IDWR Payable, PO Box 83720, Boise, ID 83720-0098 or emailed to idwrpayable@idwr.idaho.gov. The Contractor shall supply the following information on the invoice:
  - i. Billing date
  - ii. Contractor's name, address, and telephone number
  - iii. Contract number
  - iv. Itemized activities performed during the billing period, receipts for materials, and sub-contractors invoices
  - v. Total amount being billed for the billing period

- vi. A written statement or receipt from each of the contractors subcontractors and suppliers verifying that they have received payment for any work or materials enumerated in the contractor's invoice to the Board.
- E. The Board will promptly process payment upon receipt of the complete invoice and the progress report in accordance with Idaho Code § 67-2302.
- F. The Contractor agrees to continue with the operation and maintenance of the Project for ninety days after the expiration of this Contract, for the current monthly fee, should the procurement process for a new contract take longer than expected.

#### 6. Limitation of Program Funds

- A. The Board cannot obligate funds prior to obtaining funding approval.
- B. The Board certifies that state funds are presently available and authorized for expenditure to pay the portion of costs which will accrue during the current state fiscal year.
- C. All obligations of the Board, including the continuance of payments under this Contract, are contingent upon the availability and continued appropriation of funds. In the event state funds become unavailable, as determined by the Board, the Board may immediately terminate this Contract or amend it accordingly. In no event shall the Board be liable for any payments in excess of approved or appropriated funds available for this project.

#### 7. Term

This Contract shall take effect when both parties have signed it. The Contract Date will be the date the Contract is signed by the last party to sign it and shall continue in effect until October 31, 2026.

#### 8. General Termination Provisions

Upon expiration or termination of this Contract for any reason:

- A. The Contractor shall cooperate with the Board in the transfer of the operations of the Project to the Board or a new contractor of the Project designated by the Board. Without limiting the foregoing, the Contractor shall train personnel of the Board or the new contractor with information and data necessary for the safe and efficient operation and maintenance of the Project.
- B. In connection to transfer of operations and training, the Contractor grants to the Board a non-exclusive license to use all Contractor-owned software, drawings, hardware, patents and other proprietary data that the Board deems necessary for the operation of the Project.
- C. The Contractor shall leave the Project in good operating condition, normal wear and tear excepted.
- D. The Contractor shall maintain insurance in accordance with the terms of this Contract until thirty days after the date the Contractor vacates the Project; provided, however, the Contractor shall not terminate or cancel any such insurance without providing forty-five days advance notice of such termination or cancellation to the Board.

- E. The Contractor shall without additional compensation, deliver to the Board all books, records, accounts, manuals, and Operating Procedures developed or maintained by the Contractor pursuant to this Contract. The Contractor shall provide the Board, without additional compensation, the non-exclusive right to continue to use any and all Contractor-owned software, hardware, patents, and any proprietary information of Contractor that the Board deems necessary to operate the Project. Furthermore, the Board shall have the right to take possession, without additional compensation to the Contractor, of all of the equipment and supplies located at the Project for the purposes of operating the Project provided such are those acquired in accordance with Section 3.B.i.
- F. The Contractor shall at the Board's request and at the Board's expense, on a time and materials basis:
  - i. assist the Board in preparing an inventory of all material, equipment, spare parts, and supplies in use or in storage at the Project;
  - ii. assign to the Board all subcontracts and other contractual agreements as may be designated by the Board; and
  - iii. remove from the Project all such equipment and supplies as the Board may request.

#### 9. Termination for Convenience

- A. The Board may terminate for its convenience this Contract in whole or in part. In such event, the Board shall serve a written Notice of Termination for Convenience on the Contractor by deposit in the United States mail, as certified, return receipt requested with proper postage affixed. Notice of Termination for Convenience shall be deemed served upon its receipt.
- B. The Contractor shall not incur after the date of service of the Notice of Termination for Convenience any non-cancellable obligations, except as authorized in the written Notice of Termination for Convenience.
- C. If a termination for the convenience of the Board is effected, an equitable adjustment in the payments authorized in this Contract shall be made. Such adjustments shall provide for payment to the Contractor for services rendered prior to the effective date of termination of the Contract, for all non-cancellable obligations incurred prior to receipt of a Notice of Termination for Convenience and for reasonable demobilization charges.
- D. Within twenty days of receipt of a Notice of Termination for Convenience, the Contractor shall submit a summary detailing all completed work on service required by this Contract.
- E. In addition, the Board shall have the right to terminate this Contract upon thirty days' written notice without further liability if (a) the Board sells, transfers, conveys or otherwise disposes of the Project or (b) the Power Agreement is terminated.
- F. Contractor shall have the right to terminate this Contract without cause upon one hundred eighty days' written notice to the Board with no further liability other than compliance with Section 8, General Termination Provisions. Upon termination of this Contract by the

Contractor under this section, the Contractor will be paid for services actually performed prior to the effective date of termination and reasonable demobilization charges.

#### 10. Termination for Default

- A. In addition to any termination of this Contract in accordance with Section 9, Termination for Convenience, either party may terminate this Contract in whole or in part because of the failure of the other party to fulfill its obligations. Prior to Terminating the Contract for Default, the terminating party must provide notice and a period to cure. A Termination for Default shall be sent by deposit in the United States mail as certified, return receipt requested. The effective date of termination for default shall be the date of receipt of the Notice of Termination for Default.
- B. Upon receipt of Notice of Termination for Default from the Board, the Contractor shall immediately discontinue all services affected. Oral notice of termination by the Board is effective when given, but in such a case, the Board shall confirm with written Notice of Termination for Default by deposit in the United States mail as certified, return receipt requested. The effective date of termination for default if no oral notice is given shall be the date of receipt of Notice of Termination for Default.
- C. If a termination for default is effected, the Board has the right to withhold payment for services provided that relate to the Contractor's default.
- D. Within twenty days of receipt of a Notice of Termination for Default, the Contractor shall submit a summary detailing all completed work required by this Contract and deliver or otherwise make available to the Board all data, reports, estimates, summaries and such other information and materials as may have been accumulated by Contractor in performing this Contract, whether completed or in process.
- E. The rights and remedies of the Board provided in this Contract are in addition to any other rights and remedies provided by law or under this Contract. Either party may declare a default by written notice, without the opportunity to cure, if the other party repeatedly and materially breaches the terms of this Contract.
- F. In the event of default, before either party may bring an action in any court, involving the interpretation and effect of the Contract, such party must first seek in good faith to resolve the dispute pursuant to Section 11, Dispute Resolution. If default occurs and is not resolved under Section 11, the injured party may elect to terminate this Contract and proceed with any equitable or legal remedies available under Idaho law. Unless the Board decides to suspend payments after notice to the Contractor, the Contractor shall continue to diligently perform all responsibilities under this Contract pending final resolution of the dispute.

#### 11. Dispute Resolution

The Board and Contractor want this Contract to operate between them fairly and reasonably. If during the term of this Contract a dispute arises between the Board and Contractor, or a question of interpretation arises, then the Board and Contractor shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution. Unless otherwise agreed in

writing or except as provided herein, each party shall continue to perform its obligations under this Contract pending resolution of disputes.

#### 12. Force Majeure and Suspension

- A. The term "Force Majeure" shall mean acts, events, or occurrences beyond the reasonable control of the Contractor or the Board which delay or otherwise prevent the Contractor or the Board from timely performing their respective obligations under this Contract (other than an obligation to pay money), including without limitation, fires; floods; epidemics; lightning; earthquakes; quarantine; blockade; governmental acts, orders or injunctions; war; insurrection or civil strife; strikes or labor disputes, provided however that strikes by any laborer employed by the Contractor at the Project, or lockouts or other labor disputes at the Project will not constitute Force Majeure events; sabotage; unusual delays in transportation; explosion; and any other similar events, but only events that are beyond the reasonable control of the Contractor or despite its prudent and diligent efforts to prevent, avoid, delay or mitigate such acts, events, or occurrences. Such acts, events, or occurrences shall not include those that are the result of willful or negligent actions or inactions of either party.
- B. Neither party shall be considered in default in the performance of its obligations under this Contract to the extent that the performance of any such obligation is prevented or delayed by any Force Majeure; provided however, that
  - i. the suspension of performance is of no greater scope and of no longer duration than is necessarily caused by the Force Majeure and required by any remedial measures,
  - ii. no obligations of either party that arose before the occurrence of such causes are excused as the result of the occurrence,
  - iii. each party uses its reasonable efforts to remedy its inability to perform, and
  - iv. except to the extent otherwise provided in this Section 9, no obligation of the Contractor is excused to the extent such obligation can be performed or carried out by a person engaged by the Contractor.
  - C. The party claiming Force Majeure shall give written notice to the other party of any Force Majeure within five (5) days' after the party claiming the Force Majeure has knowledge of such event. In the event the Contractor gives such notice, the notice shall specify the length of interruption of performance of obligations expected to be incurred by the Contractor by reason of such event and shall substantiate the same to the reasonable satisfaction of the Board. The party claiming Force Majeure shall provide the other party with periodic supplemental notices during the period that the Force Majeure continues. Such supplemental notices shall keep the other party informed of any change, development, progress or other relevant information concerning the Force Majeure event.
- D. The party claiming Force Majeure shall use diligent and prudent efforts to avoid and minimize the efforts of such Force Majeure, but the Contractor shall not be required to subcontract the services or to work additional hours for which premium time is payable

- or to schedule additional work shifts, if additional hours or additional shifts would not have been required prior to the occurrence of such Force Majeure.
- E. The Board by written notice may require the Contractor to suspend all or a portion of the Contractor's Services for a specified period of time. In the event the Contractor's Services are suspended by the Board or by an event of Force Majeure, the Contractor shall be relieved of any obligations under this Contract; to the extent those obligations are affected by such suspension. During the period of any suspension or event of Force Majeure, the Contractor shall minimize expenditures to control costs and activities of the Contractor during the suspension or event of Force Majeure. Contractor shall be paid by Board for such minimized costs during a suspension or event of Force Majeure.
- F. In addition to any other rights granted in this Contract, if at any time the Contractor fails to perform any obligation under this Contract which is not excused due to Force Majeure, the Board, without waiving any other rights or remedies it may have under this Contract or under applicable law, without notice to the Contractor, may perform or cause to be performed (including without limitation, by engagement of one or more third parties) any such obligation not performed by the Contractor. In such an event the Contractor shall permit any third party to perform such obligation and shall not interfere with the performance thereof. Such performance shall reduce any amount payable to the Contractor under Section 3; to the extent such reduction is reasonable.

#### 13. Indemnification

- A. Contractor shall indemnify, defend, and save harmless the Board, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits to the extent caused by, arising out of, or in connection with Contractor's negligent acts or omissions under this Contract, or Contractor's failure to comply with any state or federal statute, law, regulation, or rule.
- B. Upon receipt of the Board's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the Board, to begin fulfilling its obligation to indemnify, defend, and save harmless the Board. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in part to any act or omission of the Board under this Contract. However, if it is determined by a final judgment that the Board's negligent act or omission is the sole proximate cause of a suit or claim, the Board shall not be entitled to indemnification from Contractor with respect to such suit or claim, and the Board may reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to Section 13.C.
- C. Any legal defense provided by Contractor to the Board under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the Board is necessary. Any attorney appointed to represent the Board must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code §§ 67-1401(13) and 67-1409(1).

#### 14. Limitation of Liability

#### A. Environmental Liability

- Contractor shall not be responsible for claims directly or indirectly related to
  hazardous materials present at the Project before the date of this Agreement, except to
  the extent Contractor acted with respect to such Board-identified materials in a
  grossly negligent manner.
- ii. Board shall not be responsible for claims directly related to hazardous materials at the Project arising out of the grossly negligent or intentional acts of Contractor. This provision of the Agreement shall not be construed to require Contractor to take corrective action with respect to any hazardous materials at the Project before the date of this Agreement.
- iii. If action is required at the Project to comply with any applicable environmental laws during the term of this Agreement, Board (with Contractor's assistance) shall be responsible for the costs of compliance. Costs for such compliance action shall only be incurred by Contractor only with Board's prior written consent, unless a governmental authority requires Contractor to incur such costs and expenses prior to obtaining such written consent.
- B. Notwithstanding any provision in this Contract to the contrary, Contractor and Board each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Contract.
- C. In no event shall any official, officer, employee, or agent of the Board and the State of Idaho be personally liable for any representation, statement, covenant, warranty, or obligation contained in, or made in connection with, this Contract, express or implied.
- D. Contractor's overall cumulative liability for damages to the Board arising under or in relation to this Contract will in no event exceed an amount equal to one hundred percent (100%) of the applicable Contract Price; provided, however, such limitation of liability shall not apply to: (a) Contractor's indemnity obligations herein with respect to claims by third-parties; and (b) occurrences against which Contractor is required to insure in accordance with this Contract, except to the extent the loss from such occurrences exceeds the applicable limits for such occurrences set forth herein. These limitations of liabilities for damages shall apply to the maximum extent permitted by law and regardless whether such liabilities for damages arise out of breach of contract or warranty, tort, including negligence, strict or statutory liability, or any other cause of action and shall apply to Contractor, its officers, employees, and subcontractors.
- E. In no event shall either Party (or Contractor's subcontractors) be liable for special, incidental, consequential or exemplary damages, including without limitation, loss of anticipated, unearned revenues and profits and for business interruption, loss-of-use and lost productivity, arising out of or relating to this Contract, as well as any such damages due to either Party's termination.

#### 15. Taxes

The Contractor, with respect to its employees and those of its subcontractors, if any, shall pay, indemnify and hold the Board and the State of Idaho harmless from the payment of all taxes and contributions imposed by federal and state laws, including social security taxes, with respect to said employees and their remunerations, including all interest and penalties payable under said laws as the result of noncompliance therewith.

#### 16. Workers Compensation Insurance

Unless the Contractor is exempt under the provisions of Idaho Code § 72-212, the Contractor warrants that it has purchased worker's compensation insurance for Contractor and all employees engaged in the performance of this Contract and shall provide the Board with a Certificate of Insurance to verify the same within 15 days of the execution of this Contract. The Contractor shall notify the Contract Manager within five days of any change in the status of its worker's compensation insurance.

#### 17. Insurance

- A. Contractor shall obtain and maintain insurance at its own expense for the duration of the Contract with insurance companies properly licensed to do business in Idaho. The Contractor shall provide certificates of insurance or certified endorsements as applicable for the insurance required. Contractor shall provide a copy of the carrier's notice of cancellation or material changes within two days of the Contractor receiving notice from the carrier. All insurance, except for Workers Compensation and Professional Liability/Errors and Omissions, shall name the Board and the State of Idaho as Additional Insured.
- B. Contractor shall maintain insurance in amounts not less than the following:
  - i. Commercial General Liability on an occurrence basis to include premises and operations, personal and advertising injury, products and completed operations, liability assumed under an insured contract, and independent contractors. The limits of liability shall not be less than: \$1,000,000 each occurrence bodily injury and property damage; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate; \$2,000,000 products/completed operations aggregate. Coverage shall include additional insured status and a waiver of subrogation in favor of the State, its officers, directors, employees, agents, and volunteers.
  - ii. Automobile Liability including owned, non-owned, leased, and hired liability with a limit of not less than \$1,000,000 each accident and \$1,000,000 aggregate.
    - iii. Professional liability insurance covering any damages caused by an error, omission, or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000 or the equivalent. Annual aggregate limit shall not be less than \$1,000,000.

#### 18. Payment Bond

The Board waives the Payment Bond required by the Public Contracts Bond Act (Idaho Code §§54-1925 et. seq.) provided Contractor continues to comply with Section 5.D.vi.

#### 19. Relationship of the Parties

- A. The parties intend to create by the terms of this Contract, an independent contractor relationship between the Board and the Contractor.
- B. The parties do not intend to create by the terms of this Contract the relationship of employer and employee. Contractor's status under this Contract shall be that of an independent contractor and not that of an agent or employee of the State. Contractor shall be responsible for paying all employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker's compensation, and unemployment insurance premiums, health and life insurance premiums, pension contributions, and similar items. Contractor shall indemnify the Board and the State and hold them harmless from any and all claims for taxes (including but not limited to social security taxes), penalties, attorneys' fees, and costs that may be made or assessed against the State arising out of Contractor's failure to pay such taxes, fees or contributions.

#### 20. Assignment of Benefits and Delegation of Duties

- A. The Contractor shall not delegate any duties under this Contract or assign any benefits, including any moneys due or to become due hereunder, without the prior written consent of the Board.
- B. In the event a delegation of duties or an assignment of benefits is approved by the Board, the Contractor shall remain responsible and agrees to bind every such delegate or assignee to comply with the terms and conditions of this Contract.

#### 21. Waiver, Modification, or Amendment

No waiver, modification, or amendment of this Contract or of any covenants, conditions, or limitations herein contained shall be valid unless in writing and executed by both parties. The parties further agree that the provisions of this section may not be waived, modified, or amended except as herein set forth.

#### 22. Public Records

Pursuant to Idaho Code § 74-101, et seq., information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate each portion as "exempt" on each page of such documents and shall indicate the basis for such exemption. The Board will not accept the marking of an entire document as exempt. In addition, the Board will not accept a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend the Board against all liability, claims, damages, losses, expenses, actions, attorneys' fees, and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the Board shall constitute a complete waiver of any and all claims for damages caused by any such release.

#### 23. Rights in Data

A. The Contractor agrees that all data, plans, drawings, specifications, reports, operating manuals, notes, and other written documents produced in the performance of this

Contract or in contemplation thereof, are owned by and are for the exclusive use of the Board and are subject to the rights of the Board set forth in this section. The Board shall have the right to reproduce, publish, and use all such documents or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so.

B. The Board agrees to identify the Contractor or designate appropriate authorship on all materials reproduced and published that are a direct product of the work performed under this Contract.

#### 24. Retention of Records and Access to Facilities, Premises, and Records

- A. The Contractor shall establish and maintain project budget accounts and records for work and services required by this Contract in accordance with generally accepted accounting principles and practices. Records shall be retained by the Contractor throughout the term of this Contract and for a period of three years following final settlement.
- B. At all reasonable times during the term of this Contract and for a period of three years following final settlement, the Board, State of Idaho, and their authorized representatives shall have access at the Contractor's offices and to its records related to the Services performed under this Contract for the purposes of inspection, audit, and copying by the Board, State of Idaho, and their authorized representatives.
- C. Financial records related to lump sum or fixed price portions of the services are subject to audit to the extent they are represented in the Contract. Financial records related to cost plus or time and material portions of the services will be limited to the quantity of billable man-hours and direct costs and the proper pricing extension using the billable rates and mark-ups provided in Attachment B. The composition of the billable rates and mark-ups provided in Attachment B are not subject to audit.

#### 25. Illegal Aliens

Contractor warrants it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and, that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach of this Contract and shall be cause for termination.

#### 26. Required Certifications

- A. <u>Boycott of Israel</u>. Pursuant to Idaho Code § 67-2346, if payments under the Contract exceed \$100,000 and Contractor employs ten or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code § 67-2346 shall have the meaning defined therein.
- B. Ownership or Operation by China. Pursuant to Idaho Code § 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China. The terms in this section defined in Idaho Code § 67-2359 shall have the meaning defined therein.

- C. <u>Boycotting Certain Sectors</u>. Pursuant to Idaho Code § 67-2347A, if payments under the Contract exceed \$100,000 and Contractor employs ten or more full-time employees, Contractor certifies that it is not currently engaged in, and will not for the duration of this Contract, engage in a boycott of any individual or company because the individual or company:
  - Engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or
  - Engages in or supports the manufacture, distribution, sale, or use of firearms, as defined in Idaho Code § 18-3302(2)(d).

The terms in this section defined in Idaho Code § 67-2347A shall have the meaning defined therein.

#### 27. Entire Agreement

This Contract sets forth all the covenants, provisions, agreements, conditions, and understandings between the parties, and there are no covenants, provisions, agreements, conditions or understandings, oral or written, between them other than are herein set forth.

#### 28. Severability

If any part of this Contract is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision.

#### 29. Survival

All covenants, conditions, indemnifications, and other elements in this Contract that might involve performance subsequent to any termination or expiration of this Contract or that cannot be reasonably ascertained or fully performed until after termination or expiration of this Contract shall survive. Survival of such terms shall not extend in violation of Article VII, Section 11 of the Idaho Constitution and Idaho Code §§ 59-1015 through 59-1017.

#### 30. No Waiver

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract be construed as or deemed to be a waiver of any subsequent breach or default.

#### 31. Effect of Section Headings

The section headings appearing in this Contract are not to be construed as interpretations of the text but are inserted for convenience and reference only.

#### 32. Sovereign Immunity

Nothing contained in this Contract shall be considered a waiver of the State's sovereign immunity, which immunity is expressly reserved.

#### 33. Governing Law

This Contract shall be governed as to validity, construction, and performance by the laws of the State of Idaho and the parties consent to the jurisdiction of the Idaho state courts. The venue of any action brought by any parties to this Contract shall be in a State of Idaho District Court.

#### 34. Notices

All notices shall be in writing and sent certified mail, postage prepaid, return receipt requested to:

Idaho Water Resource Board Attn: Purchasing Agent PO Box 83720 Boise, ID 83720-0098 OAC Professional Corporation 2971 E Starview Drive Boise, ID 83712

#### 35. No Third-Party Rights

Except in accordance with the terms of any assignment of this Contract made in accordance with Section 20, Assignment of Benefits and Delegation of Duties, this Contract shall not create in favor of, nor give any third party, any claim or right of action against the Board or the Contractor, its subcontractors, or their respective affiliates.

#### 36. Counterparts

This Contract may be executed with electronic signatures and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document..

 The parties have executed this Contract on the date following their respective signatures.

State of Idaho **Idaho Water Resource Board** 322 E Front Street PO Box 83720 Boise, ID 83720-0098

**OAC Professional Corporation** 2971 E Starview Drive Boise, ID 83712

Brian Patton Executive Manager	Randall Broesch President	
Date	Date	

#### **Attachment A – Scope of Services**

#### **Definitions**

All definitions and references in apply to this Scope of Services.

#### **Project Management & Administration**

- A. Project Coordinator will participate in team coordination meetings with the Contract Manager as requested by Contract Manager. (Contractor Time: 2 man hours per month)
- B. Billing and progress reporting will be prepared and submitted by Project Coordinator on a monthly basis.
- C. Project Coordinator will prepare and regularly maintain a schedule laying out the project activities in the coming year (Time: 2 man hours per quarter)
- D. Project Coordinator will manage the Scope of Services and Budget to meet the project deliverables.
- E. The Board is responsible for providing and paying for the following utilities and project costs:
  - a. Liquid Propane for the Generator
  - b. Bureau of Risk Management-Insurance for the Project
  - c. FERC Annual Payment-Annual cost associated with permit
  - d. Ziply Communications-2 phone services for the project
  - e. Internet service for the Project
  - f. Clearwater Power-Provides power to the Project
  - g. Tyco Fire & Security-Provides security services to the Project
  - h. Software Upgrades and Membership/Subscriptions for Project componentry

**Deliverables:** Monthly Invoicing, quarterly updated schedules

#### **Operations**

- A. **Operations Support to Board:** Contractor is responsible for managing all the processes, people, tools, and assets that are required for the Project to fully perform as it is supposed to, and maintain the effectiveness or efficiency of the project. Operations support will also include the day-to-day operations of the Project. It does not include capital improvements.
  - i. Project Coordination
    - 1. Project Coordinator will co-operate the Project with Clearwater Fish Hatchery (CFH) as it relates to controlling flow to the fish hatcheries. Project Coordinator shall regularly communicate and collaborate with the manager of the Clearwater Fish Hatchery (CFH) to understand and coordinate operations/maintenance activities associated with the Project.
    - 2. Project Coordinator shall coordinate operations and maintenance activities such as scheduled shut downs, unscheduled shutdowns, response to alarms, and restarting of the Project with Clearwater Power Company (CPC) and the CFH as necessary.
    - 3. In the event the Corps of Engineers ("COE"), Bonneville Power Association (BPA), CPC, or Idaho Department of Fish and Game ("IDFG") proposes any changes to the operation of the Project, the Project Coordinator shall provide technical advice and written recommendations to the Contract Manager concerning the proposed change.

CON01539 – Attachment A Page 1 | 7

- 4. Project Coordinator shall keep the Contract Manager aware of all activities as needed on the Project.
- 5. Project Coordinator shall manage Contractor's sub-contractors and associated sub-contracts.
- 6. Project Coordinator shall coordinate with Contract Manager to have a kickoff meeting with the CFH, COE, and the US Fish & Wildlife Hatchery Staff. The purpose of the meeting is to introduce the parties to each other, discuss authorities, and identify critical operations between the parties and how to work on the Project.

#### ii. Annual Valve Exercise

Contractor shall have the Project Coordinator or other qualified representative present for the annual valve exercise conducted by the U.S. Army Corps.

**Deliverables**: Monthly memos to Contract Manager; Correspondence via phone, email, fax, or mailed correspondence.

#### iii. Access to Project

The Contract Manager and Project Coordinator shall provide access to the CFH consistent with the terms in the Hatchery MOU in Attachment E.

#### iv. Training

- Contractor may select, train, and supervise qualified employees, and subcontractors
  in the operation and maintenance of the Project. The Contractor may delegate duties
  to such employees and agents, but no such delegation shall relieve the Contractor of
  its obligation to perform such duties, and the delegations of duties is subject to
  approval of the Contract Manager.
- 2. Contractor shall collaborate with CFH personnel, and Contract Manager to learn and identify any training protocols for the Project, such as addressing how to respond in an emergency shutdown of the Project. Any training protocols identified will conform to 29 CFR 1910.269; Occupational Safety and Health Standards Electrical Power Generation, Transmission and Distribution.
- 3. The Contractor shall provide annual training to entities needing access to the Project. The purpose of the training will be to inform the entities of the operational procedures to follow in the event of a scheduled or unscheduled outage or disruption in service.
- 4. If training is required due to staff turnover at the entities needing access to the Project, the training shall be considered additional services beyond the scheduled annual refresher course.

#### v. Compliance Requirements

1. Good Utility Practice. The Contractor agrees to service the Project in accordance with Good Utility Practices. The term "Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices,

CON01539 – Attachment A Page 2 | 7

- reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts.
- 2. Contractor is responsible for operating and maintaining the Project, and performing all duties in this Contract, in compliance with the applicable laws, rules, regulations, and orders of any court or other governmental authority, including standards of the United States Environmental Protection Agency, the Occupational Safety and Health Administration, the United States Federal Energy Regulatory Commission, the Corps of Engineers, The Bureau of Land Management, the Idaho Public Utilities Commission, the Idaho Division of Building Safety, and any and all other local, state, or federal regulatory agencies having jurisdiction over the Project. The Contractor shall not permit the Project to be used or operated in material violation of any law, rule, regulation or order.
- 3. A copy of the Project Safety Manual will be kept in the Power House at all times. The Contactor is responsible for keeping the Project Safety Manual current with applicable safety standards and updated on an annual basis.

**Deliverable:** Project Safety Manual (90 days after the Contract Date).

- 4. The Contractor shall provide its experience and presence, as directed by the Contract Manager, so the Board can achieve compliance with the following documents, agencies, and standards:
  - a. Wheeling Agreement in Attachment D.
  - b. FERC license 10819-002.
  - c. Tour of the facilities for State of Idaho Department of Administration Risk Management.
  - d. Meet with State of Idaho Safety and Machinery Regulatory.
  - e. Power Agreement in Attachment C.
- vi. Operations Transition: Contractor will be responsible for assisting the Contract Manager with transitioning between operators at the beginning and ending of the contract term. Activities may include an on-site transition meeting, telephone conferences to schedule/plan meetings, and associated coordination to assist the Contract Manager.

#### B. Control of Flow for the Project Operations

- i. Flow control for the facility is managed and operated by the CFH. The Contractor is not authorized to adjust flow rates coming to and leaving the Project unless CFH has been contacted and CFH has authorized the change.
- ii. In the event maintenance activities require flows to be diverted from the turbines to the ported sleeve valves/distribution box and vice versa, the Contractor is responsible for maintaining continuous flows through the facility while maintenance activities are occurring. The CFH Manager will be notified at least 2 hours in advance of the flows being diverted.

CON01539 – Attachment A Page 3 | 7

#### C. Project Kickoff Meeting & Project Familiarity

The purpose of this task is to have a walk-through of the facility with the Operator's team, the Contract Manager, and the IDFG. The meeting will be during the IDFG's annual valve exercise, and will allow the operator to observe the operational activities of the IDFG and to become familiar with the facility.

#### Maintenance

- A. **Project Maintenance:** Consists of a controlled program of periodic inspection, adjustment, cleaning, lubrication, selective parts replacement of components, and minor repair, as well as performance testing and analysis intended to maximize the reliability, performance, and lifecycle of the system equipment. The Contractor shall service the project to keep spaces, structures and infrastructure in proper operating condition in a routine, scheduled, or anticipated fashion to prevent failure and degradation. The Board will reimburse the Contractor for all materials needed to maintain the overall facility for the Contract Term. Materials may include, but are not limited to, lubricating oil, gaskets, tools to clean the facility, software updates/upgrades, paint for the facility, and light bulbs.
  - i. Normal and Routine Maintenance & Minor Repairs Cyclical, low cost planned work tasks funded in the Contract Year Low cost aging conditions such as rusting, chipped paint, chipped stucco, concrete crack repairs, pavement cracks, and oxidized surfaces that could lead to more costly repairs, replacements, and maintenance activities will be accomplished with this task. Normal/routine maintenance excludes activities that expand the capacity of an asset, or otherwise upgrade the asset to serve needs greater than, or different from those originally intended. Tasks under this item include:
    - 1. maintenance of the building above the distribution box and the assets located within it except for the <u>ported sleeve valves for the primary and secondary supply lines into</u> the distribution box
    - 2. Cleaning air intake vents
    - 3. custodial services and cleaning
    - 4. pest control, snow removal, grounds care, landscaping, environmental operations
    - 5. trash and recycling removal from the project
    - 6. prepare daily field reports documenting the work occurred with each visit to the Project, and fill out the ledger located in the Project to document activities documented with each visit
    - 7. Contractor shall conduct routine bi-weekly maintenance inspections of the Project's facilities, including all component parts of the flow control valves and turbines and fill out the maintenance checklist for the Project.

**Deliverable:** Daily Field Reports, Maintenance Checklist

ii. Planned or Programmed Maintenance — regularly occurring maintenance tasks whose cycle exceeds one year. Examples of planned or programmed maintenance are transducer replacement/calibration, cable replacement, replacing switches, replacing equipment with equivalent parts, painting, flood coating of roofs, overlays and seal coating of roads and parking lots, pigging of constricted utility lines, and similar functions. The Project

CON01539 – Attachment A Page 4 | 7

- Coordinator shall work with the Contract Manager to develop an Operations Repair and Replacement Plan which will summarize the services for the various types of maintenance and repair levels and when they should occur.
- iii. Preventive Maintenance/Testing —schedule based maintenance tasks that are typically governed by equipment's time spent in service. It may also include replacing or maintaining essential equipment for continuous operation, or equipment that has high value or long lead times for ordering. The Contractor shall consult the Contract Manager when preventive maintenance may be advisable for various equipment and parts throughout the facility. Both parties will collaborate to schedule the preventive maintenance in the Operations Repair and Replacement Plan.
- iv. Predictive Maintenance/Testing/Inspection —routine scheduled activities occurring more than one year between testing or inspections to anticipate failure using specific tests and equipment, such as vibration analysis, thermographs, x-ray, or acoustic systems to aid in determining future maintenance needs. The Contractor shall collaborate with the Contract Manager to prepare predictive maintenance procedures for the Project.
- v. Programmed Major Maintenance —those maintenance tasks whose cycle for occurrence exceeds one year and require an interruption in generating power or are major repairs/cleaning of critical equipment associated with generating power. Examples of programmed major maintenance are generator cleaning, turbine inspections, transformer repairs, and electrical equipment upgrades.
- vi. Project Coordinator and Contract Manager shall schedule an annual meeting to review the Operations Repair and Replacement plan to set annual budgets and schedule maintenance activities in the plan.

**Deliverable:** Annually Updated Operations Repair and Replacement Plan

- vii. Unscheduled/Unplanned Maintenance Requests from the Contract Manager occurring in the current budget cycle for unscheduled system or equipment failures or repairs that are perceived to be functioning improperly. Activities may range from unplanned maintenance of a nuisance nature requiring low levels of skill for correction, non-emergency tasks involving a moderate to major repair or correction requiring skilled labor, emergency unscheduled work that requires immediate action to restore power production, remove problems that could interrupt activities, or to protect life and property.
- B. **Project Repairs** Contractor shall perform the necessary work to return equipment to service after a failure, or to restore its operation and efficiency.
  - i. Project repairs consist of restoration of a component in such condition that it may be effectively used for its designated purposes by overhaul, reprocessing, or replacement of constituent parts or materials that have deteriorated by action of the elements or usage and have not been corrected through maintenance.
  - ii. Routine Repairs Actions taken to restore a system or piece of equipment to its original capacity, efficiency, or capability. Routine repairs are not intended to increase the capacity of the item involved.

#### C. Project Emergencies

i. Maintenance — Unscheduled work that requires immediate action to restore power production, remove problems that could interrupt activities, or to protect life and property in the Contract Year.

CON01539 – Attachment A Page 5 | 7

- ii. Repairs —unscheduled repairs when a system or component has failed or is perceived to be working improperly. If the problem has created a hazard or involves an essential service, emergency maintenance may be necessary. Conversely, if the problem is not critical, unscheduled/unplanned maintenance and repairs are applicable.
- iii. The Contractor shall make reasonable efforts to respond to notifications, from the Project's autodialer or CFH staff, of emergency conditions and take appropriate action within one (1) to three (3) hours of being notified of the emergency condition.
- D. **Software Updates & Upgrades** will be in the Board's name, and the Contractor shall advise Contract Manager when routine updates to the software are necessary over the contract duration. The Project Coordinator shall notify the Contract Manager of necessary software upgrades or changes and seek authorization of funds to purchase the necessary software upgrades under Additional Services.

#### E. Documentation, Record Keeping, & Reporting

- i. Document and report daily logs for all outages or failures and corrective actions taken.
- ii. Contractor shall generate a SCADA report three times per day documenting and recording the discrete alarms, primary unit details, secondary unit details, and plant details.
- iii. Contractor shall submit a monthly Operation Report to the Contract Manager for the Project which will include all status reports, inspection reports, trip reports, alarm reports, maintenance and repair records, correspondence relative to the Project, no later than ten (10) days after end of the month.
- iv. Contractor shall submit meeting minutes from annual trainings or on-site transition meetings and additional trainings no later than 10 days after the month in which it was conducted.
- v. Contractor shall prepare, maintain, and distribute to CFH, CPC, U.S. Army Corps, and Contract Manager an updated emergency contact list once per year or in the event a contact person in the list is changed or contact information has changed.
- vi. Contractor shall prepare and update an Emergency Action Plan (EAP) as required by FERC.
- vii. Contractor shall prepare and maintain a Health and Safety Manual.
- viii. Contactor shall provide a project correspondence file for each quarter.

#### **Additional Services**

Additional Services will be issued through a work order request authorized and negotiated by the Contract Manager and Contractor. When the scope of these services becomes certain, the Contract Manager and Project Coordinator will begin negotiating the costs to perform the scope of services.

CON01539 – Attachment A Page 6 | 7

#### **Reference Data**

- FERC License P-10819
- Guidance for Good Utility Practices
- USFWS MOA
- USACE MOA
- USACE Design Drawings for Pipeline and Distribution Box
- IWRB Small Hydro Project Design Drawings
- 2017 Emergency Action Plan
- CH2MHIll Report for increased flows to CFH



CON01539 – Attachment A

## **MEMO**

To: Idaho Water Resource Board

From: Justin Ferguson

Date: October 28<sup>th</sup>, 2025

**Subject:** Surface Water Coalition Monitoring Support Grant Awards

**REQUESTED ACTION:** Consider Awarding Funds to the SWC Monitoring Grant Applications Received

#### **Background**

In May 2025, the Idaho Water Resource Board (IWRB) passed resolution 24-2025 adopting criteria to award grant funding for Surface Water Coalition (SWC) Monitoring Support Grants. The program expanded upon the Telemetry & Monitoring Grants funding through an award to the IWRB from the Bureau of Reclamation's Investing in America—Inflation Reduction Act. The application deadline for the SWC Monitoring Support Grant program was set as the last Friday in September; 9 applications were received for a total of \$912,807.

Projects considered under this program must promote water conservation efforts throughout the Eastern Snake Plain Aquifer Area of Common Groundwater (ESPA)

#### **Key Elements of the Criteria**

<u>Eligible Projects</u>: Projects considered under this program include purchase and/or installation of monitoring equipment, measurement devices, software development, and other supportive infrastructure for ground & surface water diversions

<u>Eligible Entities:</u> Irrigation Districts, Irrigation Boards of Control, Canal Companies, Drainage Districts, Groundwater Districts, Ditch Companies, Lateral Ditch Users Associations, Reservoir Districts, Municipal Irrigation Districts (formed per Title 42, chapter 18, Idaho Code), Municipalities, Counties, and Water Districts

<u>Eligible Geographic Area:</u> Projects are limited to diversions within the Eastern Snake River Plain Common Groundwater Boundary

Grant Award Limit: 50% cost share up to \$250,000 per application

#### Staff Recommendation

Staff have evaluated the applications according to the criteria adopted by the IWRB. Staff recommend that the IWRB approve the grant awards as specified in Attachment A to this resolution.

#### Attachments:

Attachment A – SWC Monitoring & Support Grant Program Applications Received

**Attachment A:** Proposed Funding Awards; Surface Water Coalition Monitoring & Support Grant Applications

2025 SWC Measuring & Monitoring Grant Applications							
Entity	Project	<b>Funds Proposed</b>	<b>Total Project Costs</b>	<b>Cost Share Percent</b>			
American Falls Reservoir District No. 2	Modernization Project - Phase 1	\$32,525.00	\$65,050.00	50%			
Bingham Ground Water District	Telemetry-Based Flow Meter Monitoring System	\$145,590.00	\$1,079,620.00	23%			
Bingham Ground Water District	Monitoring Wells & Ethos Telemetry Installation	\$143,875.00	\$287,750.00	50%			
Bonneville-Jefferson Ground Water District	Flowmeter Install	\$186,027.00	\$372,054.00	50%			
Enterprize Canal	Remote Pump Control	\$4,100.00	\$8,200.00	50%			
MVGWD, NSGWD, & SWID	Software Development	\$34,250.00	\$68,500.00	50%			
Raft River GWD	Flowmeter Install	\$59,508.16	\$119,016.00	50%			
SWID, BID, & MID	Acoustic Doppler Current Profiler Purchase	\$12,030.00	\$24,060.00	50%			
Bingham Ground Water District	Flow Meters & Ethos Integration	\$0.00	\$1,159,319.00	0%			
	Total New Funding Proposed	\$528,960.00	\$3,183,569.00				

## **MEMO**

To: Idaho Water Resource Board

From: Justin Ferguson

Date: October 28<sup>th</sup>, 2025

**Subject:** Telemetry & Monitoring Grant Awards

**REQUESTED ACTION:** Consider Replacing Reclamation Funding With IWRB Funds For Grants Awarded

#### **Background**

On November 22, 2024 the Idaho Water Resource Board (IWRB) passed resolution 57-2024 adopting criteria to award grant funding for Telemetry & Monitoring equipment. The application deadline for the program was March 28th 2025; 11 applications were received and evaluated by Staff for consideration by the IWRB.

Funding for the program was awarded to the IWRB from the Bureau of Reclamation through the Investing in America – Inflation Reduction Act. The federal funding is intended to provide real-time information on both surface water and groundwater diversions, enabling more effective and efficient management of limited water supplies during periods of drought.

#### **Current Status & Staff Recommendation**

Staff have been actively working with Reclamation to make the funding available however, due to changes in federal priorities and processes, the funds will not be available this federal fiscal year. Additionally, Staff at Reclamation are not able to comment on the availability of the funds next fiscal year as they continue to work through process and priority changes.

Staff for the IWRB have worked with the Sponsors and their projects to keep them aware of the current state of the funding through Reclamation and how the changes have impacted their timelines. As there is certainty now that the funding is no longer available this year and without assurance it would be next year, many of the Projects are working to find new and/or additional sources of funding.

To help these Sponsors complete their projects, Staff would recommend changing the funding source for the previously awarded grants from the Reclamation funds awarded to the IWRB to funds held by the IWRB from the Water Management Account. Staff will also work with applicants who have re-applied for funding to consolidate the applications into a single award.

#### **Attachments:**

Attachment A - Previous Telemetry & Monitoring Grant Program Awards

**Attachment A:** Previously Awarded Funding; Telemetry & Monitoring Grant Applications

Telemetry & Monitoring Applications (3/2025)							
Project	Funds Requ	ested	То	tal Project Costs		<b>Grant Award</b>	
Bingham GWD - Existing Well Telemetry Project	\$	30,362.50	\$	60,725.00*	\$	30,362.50	
Bingham GWD - Ethos-developed Telemetry System Deployment	\$	250,000.00	\$	1,079,620.00*	\$	250,000.00	
Fremont-Madison HFGWD - Groundwater Level & Recharge							
Telemetry	\$	6,610.73	\$	13,221.46	\$	6,610.73	
Minidoka Irrigation District - Moveable Flume Purchase	\$	22,534.00	\$	45,068.09	\$	22,534.00	
Milner Dam Inc Dam Piezometer & Observation Well							
Improvement	\$	9,394.80	\$	18,789.60	\$	9,394.80	
Magic Valley GWD - BID Soft Conversion Monitoring System							
Development	\$	40,450.00	\$	80,900.00	\$	40,450.00	
South West Irr. District - BID Soft Conversion Monitoring System							
Development	\$	63,790.00	\$	127,580.00	\$	63,790.00	
South West Irr. District - Milner Irr. District Flowmeter & Telemetry							
Equipment	\$	43,900.00	\$	87,800.00	\$	43,900.00	
South West Irr. District - Twin Falls Canal Co. Pump Station							
Telemetry Equipment	\$	18,748.40	\$	42,496.80	\$	18,748.40	
South West Irr. District - West Cassia Irr. LLC Telemetry Equipment							
Replacement	\$	54,426.00	\$	120,852.00	\$	54,426.00	
Twin Falls Canal Co 2025 Rubicon SlipMeter TAP 59 & TAP 3.5							
Project	\$	26,288.00	\$	52,576.00	\$	26,288.00	
Total Funding Previously Awarded						\$566,504.43	

<sup>\*</sup>Sponsor also applied under IWRB Funded Monitoring & Support Program

#### **BEFORE THE IDAHO WATER RESOURCE BOARD**

## IN THE MATTER OF SURFACE WATER COALITION MONITORING SUPPORT GRANT PROGRAM

#### **RESOLUTION TO AWARD FUNDING**

1 2	WHEREAS, the Idaho Water Resource Board (IWRB) has undertaken various projects and programs to address the Eastern Snake River Plain Aquifer(ESPA); and
3	to address the Eastern Shake River Flam Aquiler (ESFA), and
4	WHEREAS, the 2024 Stipulated Mitigation Plan between the Surface Water Coalition and ESPA
5	Groundwater Districts contains increased requirements regarding the measurement and monitoring of
6	diversions throughout the ESPA; and
7	
8	WHEREAS, in May 2025, the IWRB passed Resolution 24-2025 adopting criteria and opening the
9	initial application period for the IWRB Surface Water Coalition Monitoring Support Grants; and
10	
11	WHEREAS, the application window was open until the last Friday of September with a tota
12	program budget of \$1 million dollars; and
13	
14	WHEREAS, Staff received a total of 9 applications for a total of \$972,316.16; and
15	
16	WHEREAS, the applications were presented to the Finance Committee on October 28 <sup>th,</sup> 2025; and
17	
18	WHEREAS, applications were approved under the IWRB Telemetry & Monitoring grants using funds
19	awarded to the IWRB from the Bureau of Reclamation (Reclamation); and
20	
21	WHEREAS, funds from Reclamation have not been received to date and will not be available this
22	federal fiscal year; and
23	
24	WHEREAS, the IWRB will use funds from the Water Management Account to fund the projects
25	approved under the IWRB Telemetry & Monitoring grants to be offset by the funding from Reclamation
26	when the money becomes available.
27	
28	NOW THEREFORE BE IT RESOLVED that funding be approved for the projects listed on Attachments
29	A & B for the amounts listed in the table.
30	
31	

32	BE IT FURTHER RESOLVED that funding for the Raft River application will be contingent upon the
33	issuance of an order to include the Raft River Basin into the Snake River Plain Aquifer Area of Common
34	Groundwater.
35	
36	BE IT FURTHER RESOLVED that no funds will be awarded for the purchase of flowmeters under
37	this program.
38	
39	BE IT FURTHER RESOLVED that the IWRB authorizes its Chairman or designee to execute the
40	contracts for the purpose of this resolution.
	DATED this 31 <sup>st</sup> of October, 2025.
	JEFF RAYBOULD, Chairman
	Idaho Water Resource Board
	ATTEST
	DEAN STEVENSON. Secretary

**Attachment A: -** Grant Applications Received For The Surface Water Coalition Monitoring & Support Grant Program

2025 SWC Measuring & Monitoring Grant Applications							
Entity	Project	Funds Requested	Total Project Costs	Cost Share Percent			
American Falls Reservoir District No. 2	Modernization Project - Phase 1	\$32,525.00	\$65,050.00	50%			
Bingham Ground Water District	Telemetry-Based Flow Meter Monitoring System	\$145,590.00	\$1,079,620.00	13%			
Bingham Ground Water District	Monitoring Wells & Ethos Telemetry Installation	\$143,875.00	\$287,750.00	50%			
Bonneville-Jefferson Ground Water District	Flowmeter Install	\$97,082.00	\$372,054.00	26%			
Enterprize Canal	Remote Pump Control	\$4,100.00	\$8,200.00	50%			
MVGWD, NSGWD, & SWID	Software Development	\$34,250.00	\$68,500.00	50%			
Raft River GWD	Flowmeter Install	\$59,508.00	\$119,016.00	50%			
SWID, BID, & MID	Acoustic Doppler Current Profiler Purchase	\$12,030.00	\$24,060.00	50%			
Bingham Ground Water District	Flow Meters & Ethos Integration	\$0.00	\$1,159,319.00	0%			
	Total New Funding Requested	\$528,960.00	\$3,183,569.00				

Attachment B: - Applications Funded Under IWRB Resolution 15-2025 Using Reclamation Funding

Telemetry & Monitoring Applications Previously Awarded						
Entity	Project	Funds Awarded		Total Project Costs		Cost Share
Bingham GWD	Existing Well Telemetry Project	\$	30,362.50	\$	60,725.00*	50%
Bingham GWD	Ethos-developed Telemetry System Deployment	\$	250,000.00	\$	1,079,620.00 *	23%
Fremont-Madison HFGWD	Groundwater Level & Recharge Telemetry	\$	6,610.73	\$	13,221.46	50%
Minidoka Irrigation District	Moveable Flume Purchase	\$	22,534.00	\$	45,068.09	50%
Milner Dam Inc.	Dam Piezometer & Observation Well Improvement	\$	9,394.80	\$	18,789.60	50%
Magic Valley GWD	BID Soft Conversion Monitoring System Development	\$	40,450.00	\$	80,900.00	50%
South West Irr. District	BID Soft Conversion Monitoring System Development	\$	63,790.00	\$	127,580.00	50%
South West Irr. District	Milner Irr. District Flowmeter & Telemetry Equipment	\$	43,900.00	\$	87,800.00	50%
South West Irr. District	Twin Falls Canal Co. Pump Station Telemetry Equipment	\$	18,748.40	\$	42,496.80	44%
South West Irr. District	West Cassia Irr. LLC Telemetry Equipment Replacement	\$	54,426.00	\$	120,852.00	45%
Twin Falls Canal Co.	2025 Rubicon SlipMeter TAP 59 & TAP 3.5 Project	\$	26,288.00	\$	52,576.00	50%
Total Funding Prior Funding Awarded		\$	566,504.43			
Total New Funding Requested		\$	528,960.00			
Less Consolidated Applications		(\$	280,362.50)			
Total Attachment A & B Combined Funds Requested			815,101.93			

<sup>\*</sup>Consolidated with new application under IWRB program funding

# Memorandum

To: Idaho Water Resource Board

From: Neeley Miller, Planning & Projects Bureau

Date: October 29, 2025

Re: Flood Management Grant – Supplemental Round of Funding

**Action: Consider funding resolution** 

# **Background**

House Bill 248 passed and approved by the Idaho Legislature in 2025 transferred \$1,000,000 from the General Fund to the Water Management Fund for a Flood Management Grant Program administered by the Idaho Water Resources Board (IWRB) to be used for the purpose of flood-damaged stream channel repair, stream channel improvement, flood risk reduction, or flood prevention projects.

On March 21, 2025, the IWRB adopted on-going criteria for the award of Flood Management Grants, which includes an annual deadline of the first Friday of June. Staff received a total of eight (8) applications. The applications were evaluated, scored, and ranked according to the criteria. On July 25, 2025, the IWRB approved funding for eight (8) Flood Management Grants in the amount of \$460,646, leaving \$539,354 remaining from the 2025 appropriation.

# FY 2026 Flood Management Grant – Supplemental Round of Funding

On October 28, 2025, the IWRB's Finance Committee recommended a supplemental round of funding to utilize remaining funds from the 2025 appropriation. Staff propose to open a supplemental funding round on October 31, 2025, and to have applications due by January 2, 2026. Staff propose a budget of approximately \$539,000 for this supplemental round.

#### Attachment(s):

Resolution to approve supplemental round of funding



# **BEFORE THE IDAHO WATER RESOURCE BOARD**

# IN THE MATTER OF FLOOD MANAGEMENT GRANTS

# RESOLUTION TO APPROVE A SUPPLEMENTAL ROUND OF FUNDING

1 2	WHEREAS, House Bill 248 passed and a transferred \$1,000,000 from the General Fund t	pproved by the Idaho Legislature in 2025 o the Water Management Fund for a Flood
3	Management Grant Program administered by the	
4	used for the purpose of flood-damaged stream of	·
5	flood risk reduction, or flood prevention projects;	and
6		
7		/RB to prioritize projects on a competitive
8	statewide basis; and	
9		
10		opted on-going criteria for the award of Flood
11	Management Grants, and	
12		
13		lood Management Grant applications were
14 15	awarded funds totaling \$460,646 leaving \$539,354	remaining from the 2025 appropriation; and
16	WHEREAS, on October 28, 2025, the IWRB's Finan	ce Committee recommended a sunnlemental
17	funding round of Flood Management Grants; and	de dominiere recommended à supplemental
18		
19	NOW, THEREFORE BE IT RESOLVED that the	IWRB approves a supplemental funding round
20	of Flood Management Grants that opens October	
21		
	DATED 31st day of October 2025.	
		Jeff Raybould, Chairman
		Idaho Water Resource Board
	ATTEST	
	Dean Stevenson, Secretary	-
	Resolution No	Page 1
	Resolution 110.	i age i

# Memorandum

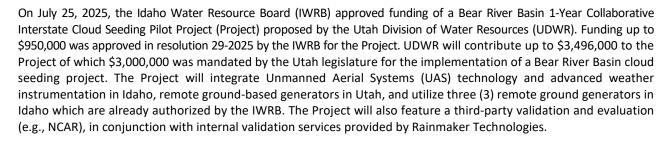
To: Idaho Water Resource Board

From: Nick Banish, IDWR Cloud Seeding Program Manager

Date: October 31, 2025

Re: Cloud Seeding Program | State of Utah Authorization Request

**ACTION:** Consideration of Approval of the State of Utah's Request for Authorization to Conduct Cloud Seeding Operations



Per the Authorization Criteria (May 2022) "A program that receives funding or is otherwise sponsored in whole or in part by the IWRB (IWRB Sponsored Program) is not required to submit a Request for Authorization. However, IWRB Sponsored Programs must comply with the Terms of Authorization referenced in Part II". Although the UDWR is not required to submit a request for authorization, UDWR has submitted a request to ensure the Project meets authorization requirements. The UDWR requests authorization to conduct precipitation enhancement via cloud seeding in southern Idaho as part of the Bear River Basin Project, with the season beginning November 1 and ending April 30. The request for authorization was submitted by Jonathan Jennings, Meteorologist, State of Utah Division of Water Resources on August 26<sup>th</sup>, 2025. Staff recommend approving the UDWR's request for authorization.

#### **Project Details:**

- Project Applicant: Utah Division of Water Resources
- Geographical Area of Operations: Bear River Basin (Figure 1)
- Seeding Agent: Silver Iodide (AgI)
- Method of Seeding: Unmanned Aerial Systems (UAS) in Idaho and Remote Ground-Based Generators in Utah (3 located in SE Idaho)
  - o UAS (Drones): 32 Rainmaker Technology Corporation V2 Drone (3 grams/minute)
  - Remote Ground Based Generators: Three (3) Remote Ground Based Generators (24 grams/hour)
- Planned Season of Operations: November 1 to April 30
- Operational Experience: UDWR has conducted winter cloud seeding operations since the 1950s utilizing both
  ground based and aerial methodologies with the more recent incorporation of UAS methodologies. Areas of
  operations include the Book Cliffs, Cache Valley, East Shore, High Uinta's, Northern Utah, Six Creeks, Western
  Uinta's, and Southern and Central Utah. Operational reports and seasonal operational hours can be found on
  UDWR's cloud seeding website (Cloud Seeding Utah Division of Water Resources).
- Weather Instrumentation: 10 K-band Radars with specialized weather instrumentation and 1 X-band radar
- Number of Meteorologists Supporting Operations: Three (3), which possess over 13 years of experience operating and managing both wintertime and summertime cloud seeding programs across multiple states





Figure 1. Project Operational Area

# **Utah Operations Plan**





# **0.0 Table of Contents**

0.0 Table of Contents	2
1.0 Project Description & Objectives	
1.1 Executive Overview	3
1.2 Drone Operations Overview	3
1.3 Ground Generator Overview	3
2.0 Airspace Evaluation	4
2.1 107 Waiver Approvals	4
Figure 1. Overview of FAA Waiver Areas	4
2.1 Site Suitability Survey	5
2.2 National Airspace System (NAS) Reporting	5
3.0 Proposed Flight Plan	
3.1 General Timeline and Flight Profile	
4.0 Equipment Overview	
4.1 sUAS - Elijah	6
Figure 2. Elijah Details and Photos	6
4.2 Ground Generators	7
5.0 Operations	8
5.2 Drone Seeding Operations Criteria	
5.2 Ground Generator Seeding Operations Criteria	8
5.2 Target Areas	
5.3 Suspension Criteria	9



# 1.0 Project Description & Objectives

# 1.1 Executive Overview

Rainmaker Technology Corporation and North American Weather Consultants will be conducting precipitation enhancement operations via the use of aerial unmanned systems, ground generators, and validation sensors. Drone flights and ground generator operations are conducted on a daily basis depending on forecasted atmospheric conditions in compliance of Title 14 of Code of Federal Regulations, Part 107, Small Unmanned Aircraft Systems (sUAS).

# 1.2 Drone Operations Overview

Drone operations involve a command center, field research scientists, and drone operator crews. A quadcopter sUAS is the primary aircraft used, delivering seeding materials at altitudes determined by the command center meteorologist team. Sensors are employed during seeding operations to verify and analyze the effectiveness of each flight.

All sUAS flights utilize Rainmaker's proprietary software 'Prophet' for mission planning and forecasting, and 'Seraph' for fleet management and sUAS command and control (C2). In emergencies, Seraph autonomously commands immediate sUAS maneuvers, adhering to FAA guidelines.

## 1.3 Ground Generator Overview

Ground generator operations are supported by a remote ground generator trailer, field technicians, and operational meteorologists. The remote ground generator trailer contains solar panels for power, a battery bank, solution and purge tanks, a control system, a burn head, and a cellular or satellite antenna.

Operational meteorologists will use Prophet by Rainmaker to control, monitor, and report ground generator use. Meteorologists will use Prophet's integrated forecasting tools as well as other tools to monitor weather and predict optimal seeding conditions.



# 2.0 Airspace Evaluation

# 2.1 107 Waiver Approvals

All Rainmaker unmanned flights will be conducted under FAA Part 107 rules and regulations. Rainmaker has obtained two FAA operational waivers to allow beyond-visual-line-of-sight (BVLOS) and high altitude flights in the areas shown in Figure 1.

In accordance with the FAA and Salt Lake City Center, sUAS operations are permitted for three separate areas denoted in Figure 1 in yellow boxes. All sUAs operations shall remain within these areas with a maximum altitude of 15,000' MSL.



Figure 1. Overview of FAA Waiver Areas



# 2.1 Site Suitability Survey

Prior to all operations, drone land/launch sites will be assessed and published internally to Rainmaker operators and to the FAA. A Site Survey Checklist is used to properly assess each site with a bias for safety to ground personnel, operations, and users of the National Airspace System.

# 2.2 National Airspace System (NAS) Reporting

The Rainmaker Operations department will regularly communicate with the FAA, providing pre-mission schedules and 72/24-hour updates on launch locations and times.

# 3.0 Proposed Flight Plan

# 3.1 General Timeline and Flight Profile

Flight operations will begin with the flight planning process three hours before the scheduled launch. During this briefing, flight crews will receive a weather briefing, discuss operational logistics, and review operational risk management (ORM) and crew resource management (CRM) checklists.

Flight crews are expected to arrive at their assigned launch site two hours prior to launch. This allows sufficient time to set up the sUAS and necessary ground equipment. An additional hour is allocated for preflight procedures, accounting for the possibility of the targeted storm arriving faster than forecasted.

Upon receiving clearance from the Command Center (CC) at launch time, the flight crew will launch the sUAS and commence flight operations. Prior to launch, proper communication will be established with Salt Lake City Center to ensure FAA Air Traffic Control (ATC) is appropriately monitoring Rainmaker flight operations. Following launch, the sUAS will perform a vertical climb to the target altitude, dispense seeding agents for approximately 30 minutes, and then land over the original launch spot. There is no intention for horizontal displacement exceeding 0.25 miles.

After a safe landing, the crew will pack up all equipment and return to base.



# **4.0 Equipment Overview**

# 4.1 sUAS - Elijah

Figure 2. Elijah Details and Photos

sUAS type	Multi-rotor quadcopter
Battery	Lithium-ion battery
Maximum flight time	60 minutes
Maximum speed	35 mph
Maximum altitude	15,000 feet MSL
Dimensions (LxWxH, inches)	32" x 32" x 6.5"
Total aircraft weight (payload included)	50 lbs
Anti-collision lighting	2 strobe, flashing





The Rainmaker Elijah quadcopter is a high-altitude, weather-resistant unmanned platform with a maximum gross takeoff weight of 50 lbs. It features a proprietary anti-icing system, enabling it to carry various payloads, including seeding delivery systems and weather sensing probes.



The ground control station (GCS), named Seraph, offers autonomous features that enhance the Remote Pilot in Command's situational awareness. This allows for efficient direction of flight operations while ensuring maximum deconfliction with other aircraft. Seraph gathers data from multiple sources—the drone, ground, and satellite communication links—providing redundancy for high levels of safety and mission efficiency.

# 4.2 Ground Generators

Operation Method	Remote
Power	Solar
Agl Dispersion Rate	~24 g/hr
Operating Platform	Prophet
Hours before refill	~140 hours
Dimensions (LxWxH, inches)	8'x10'x15' (WxLxH)'"



Each remote ground seeding site is equipped with a propane tank which fuels a small flame, into which the silver iodide seeding solution is sprayed and ignited. The combustion product contains very large numbers of microscopic silver iodide particles, which serve as the ice nuclei. The silver iodide seeding solution is composed of acetone, silver iodide, sodium iodide and paradichlorobenzene. This solution has been shown to produce more effective seeding particles at warmer temperatures (i.e. about -5 to -10° C) and to produce these crystals more quickly than



silver iodide and sodium iodide (Finnegan, 1999). Each generator will consume approximately 0.375 gallons per hour with an output of 24 g AgI per hour.

Remote ground generators are placed on mountains or upwind of mountains in order to allow orographic lift to carry ice nuclei into cloud layers. An operational meteorologist will monitor storm conditions and operate generators during favorable conditions using the Prophet software. Prophet allows meteorologists to operate remote ground generators from anywhere in the world.

# 5.0 Operations

# 5.2 Drone Seeding Operations Criteria

- Temperature at the 700 mb level (approximately 10,000 feet) is expected to be warmer than -15°C (5°F).
- Cloud top temperatures of the precipitating layer are > -25° C.

# 5.2 Ground Generator Seeding Operations Criteria

- Cloud bases are near or below the mountain barrier crest.
- Low-level wind directions and speeds that would favor the movement of the silver iodide particles from their release points into the intended target area.
- No low-level atmospheric inversions or stable layers that would restrict the vertical movement of the silver iodide particles from the surface to at least the -5°c (23°F) level or colder.
- Temperature at mountain barrier crest height expected to be -5°c (23°F) or colder.
- Temperature at the 700 mb level (approximately 10,000 feet) expected to be warmer than -15°C (5°F).
- Cloud top temperatures of the precipitating layer are > -25° C.

# **5.2 Target Areas**

- Bear River
- Northern Utah
- East Shore
- Western Uintas
- High Uintas
- Central Utah
- Southern Utah



# 5.3 Suspension Criteria

Certain situations require temporary or longer-term suspension of precipitation enhancement activities, with reference to well-considered criteria for consideration of possible suspensions, to minimize either an actual or apparent contribution of seeding to a potentially hazardous situation. The ability to forecast (anticipate) and judiciously avoid hazardous conditions is very important in limiting any potential liability associated with weather modification and to maintain a positive public image.

There are three primary hazardous situations around which suspension criteria have been developed. These are:

- Excess snowpack accumulation
- Rain-induced winter flooding
- Severe weather

## **Excess Snowpack Accumulation**

Snowpack begins to accumulate in the mountainous areas of Utah in November and continues through April. The heaviest average accumulations normally occur from January through March. Excessive snowpack water content becomes a potential hazard during the resultant snowmelt. The Natural Resources Conservation Service (NRCS) maintains a network of high elevation snowpack measurement sites in the State of Utah, known as the SNOTEL network. SNOTEL automated observations are now readily available, updated as often as hourly. The following set of criteria, based upon observations from these SNOTEL site observations, has been developed as a guide for potential suspension of operations for most Utah programs. Other seeded areas may not have such specific SWE criteria, or may have other criteria defined by state agencies or program sponsors.



Project & Basin	Critical Streamflow Volume (Acil) & USGS Streamgage	SNOTEL Station	SWE Value Corresponding to the Critical Flow						Ranking of SNOTEL		
			Jan 1 (in.)	Jan 1 (%)	Feb 1 (in.)	Feb 1 (in %)	March 1 (in.)	March I (in %)	April 1 (in.)	April I (in %)	Stations
. Northern Utah	185,208	Franklin Basin, Idaho	19.50	190.84	27.14	165.31	34.35	154.71	41.56	153.60	1
Logan at Logan	USGS 10109000	Tony Grove	28.73	205.94	39.44	175.56	48.06	160.38	56.34	156.56	2
		Bug Lake	17,08	218.82	21.91	190,34	26.72	165.25	31.65	162,70	3
		Average	21.80	205.20	29.50	173,70	36.40	160.10	43.20	157.60	
Weber near Oakley	176,179	Chalk Creek #1	10.09	173.13	14.73	153.66	28,77	149.85	34.15	143.41	1
	USGS 10128500	Trial Lake	20.15	207.44	26.33	180.55	33.55	173.27	38.54	162.28	2
		Smith Morehouse	10.06	186.34	13.69	137.60	17.36	146.32	21.17	160.26	3
		Hayden Fork	12.19	194.16	16.69	172.11	20.71	158.56	21.79	164.64	4
		Average	13.10	190.30	17.90	166.00	25.10	157.10	28.90	157.70	
Dunn Creek near	5,733	George Creek	17,84	187.75	18.32	143.81	28.93	163.43	34,61	153.77	1
the Park Valley	USGS 10172952	Howell Carryon, Idaho	28.71	279.96	38	223.24	44,59	205.98	50.46	191.65	2
		Average	23.30	233.90	28.20	183.60	36.80	184.70	42.60	172.70	
. Western & High Untah	166,861	Lily Lake	11.38	202.70	16.40	194.06	17.69	147,37	28.93	139.19	1
Bear River near Utah -	USGS 10011500	Trial Lake	20.07	206.54	26.56	182.26	33.68	173.94	38.49	162.05	2
Hyoming state line		Havden Fork	12.41	197.65	17.06	175.83	21.03	160.98	20.90	146.02	3
,,		Average	14.60		20.00	184.10	24.10	160.80	29.40	149.10	
Duchesne near Tabiona	140,976	Strawberry Divide	6.92	239.23	10.87	199.25	26.77	178.78	29.75	179.05	1
	USGS 09277500	Daniels strawberry	16.07	248.12	21.50	202.44	27.82	190.54	20.90	192.75	2
		Smith Morehouse	10.61	196.64	14.95	172.41	18.82	158.83	22.22	168.26	3
		Rock Creek	8.76	230.02	12.31	219.65	15.88	205.68	16.41	209.06	4
		Average	10.60	228.50	14.90	198.50	22.30	183.50	24.60	187.30	
Provo near woodland	183,845	Trial Lake	22.98	236.53	27,78	190.63	35.23	181,59	31.44	132.39	1
	USGS 09277500	Beaver Divide	10.29		14.11	179.49			20.18	200.3	2
		Average	16.70	223.50	20.90	185.10	26.30	176.20	25.80	166.40	
. Central & Southern	120,473	Castle Valley	12.23	244.05	16.96	203.04	22.22	187.68	26.30	180.00	1
Serier neur Hatch	USGS 10174500	Hawis Flat	9.71	299.76	15.25	273.50	24.16	222.99	21.15	209.77	2
		Famsworth Lake	17.25	218.10	20.96	185.95	27.05	192.24		167.03	3
		Average	12.80	227.77	2000	220.90	21122	197,70		185.60	
Coal Creek near	38,533	Midway Valley	20.89		29.12	194.04		176.99		167.97	1
Cedar City	USGS 10242000	Webster Flat	13.57			197.95	24.30	184.64		181.12	2
cessor city	Codo mistano	Average	17.20			196.00	30.10		33.60	174.60	-
South Willow near	5,426	Rocky Basin-settlemnt	19.09			174.14		171.39		167.51	1
Orantiville	USOS 10172800	Mining Fork	16.31			177.04	27.81	171.79	32.19	168.74	1
C-B-III-IIII		Average	17,70			175.60	30.00	171.60	36.10	168.10	_
Virgin River at Virgin	151.286	Kalab	23.11		29.06	220.78		197.43		196.21	1
regional arregio	USGS 09406000	Hamis Flat	9.71		15.69	304.18		300.00	20.11	370.00	2
	C303 1740000	Midway Valley	24.76		34.56	238.40	41.44	244.44		211.06	3
		Long Flat	9.38		13.54	286.16		296.18		187.00	4
		Average	16.70			262.40	29.70			241.10	,
lanta Clare above Baker	11,620	Gardner Peak	13.00		16.82	172.15	21.70	167.36		163.95	1
lasarvoir	USUS 09409100	Average	13.00			172.19	21.70				
Auto Para							21.70		-		
	Utah	State Average (%)		230		197		183		178	
		Standard Deviation		42		38		35		42	
		Upper 95%		248		213		199		196	
		Lower 95%		212		180		168		160	

Snowpack-related suspension considerations will be assessed on a geographical division or sub-division basis. The NRCS has divided the State of Utah into 13 such divisions as follows: Bear River, Weber-Ogden Rivers, Provo River-Utah Lake-Jordan River, Tooele Valley-Vernon Creek, Green River, Duchesne River, Price-San Rafael, Dirty Devil, Southeastern Utah, Sevier River, Beaver River, Escalante River, and Virgin River. Since SNOTEL observations are available on a daily basis, suspensions (and cancellation of suspensions) can be made on a daily basis using linear interpolation of the first of month criteria. There are a number of SNOTEL stations in the various basins of central and southern Utah on which these criteria are based. These include Castle Valley, Harris Flat, and Farnsworth Lake in the Sevier Basin; Midway Valley, Kolob, Harris Flat, Webster Flat, and Long Flat in southwestern Utah; and Rocky Basin Settlement and Mining Fork in eastern Tooele County.



Streamflow forecasts, reservoir storage levels, soil moisture content and amounts of precipitation in prior seasons are other factors which need to be considered when the potential for suspending seeding operations due to excess snowpack water content exists.

#### **Rain-induced Winter Floods**

The potential for wintertime flooding from rainfall on low elevation snowpack is fairly high in some (especially the more southern) target areas during the late winter/early spring period. Every precaution must be taken to ensure accurate forecasting and timely suspension of operations during these potential flood-producing situations. The objective of suspension under these conditions is to eliminate both the real and/or perceived impact of weather modification when any increase in precipitation has the potential of creating a flood hazard.

#### **Severe Weather**

During periods of hazardous weather associated with both winter orographic and convective precipitation systems it is sometimes necessary or advisable for the National Weather Service (NWS) to issue special weather bulletins advising the public of the weather phenomena and the attendant hazards. Each phenomenon is described in terms of criteria used by the NWS in issuing special weather bulletins. Those which may be relevant in the conduct of winter precipitation enhancement programs include the following:

**Winter Storm Warning** - This is issued by the NWS when it expects heavy snow warning criteria to be met, along with strong winds/wind chill or freezing precipitation.

**Flash Flood Warning -** This is issued by the NWS when flash flooding is imminent or in progress. In the Intermountain West, these warnings are generally issued relative to, but are not limited to, fall or spring convective systems.

**Severe Thunderstorm Warning –** This is issued by the NWS when thunderstorms producing winds of 58 mph or higher and/or 1" or larger hail.

Seeding operations may be suspended whenever the NWS issues a weather warning for or adjacent to any target area. Since the objective of the precipitation enhancement program is to increase winter snowfall in the mountainous areas of the state, operations will typically not be suspended when Winter Storm Warnings are issued, unless there are special considerations (e.g., a heavy storm that impacts Christmas Eve travel).

Flash Flood and Severe Thunderstorm Warnings are usually issued when intense convective activity causing heavy rainfall/strong winds/hail is expected or is occurring. Although the probability of this situation occurring during our core operational seeding periods is low, the potential does exist, especially over southern sections of the state during late March and April. The type of storm that may cause problems is one that has the potential of producing 1-2 inches



(or greater) of rainfall in approximately a 24-hour period, combined with high freezing levels (e.g., > 8,000 feet MSL). Seeding operations will be suspended for the duration of the warning period in the affected areas.

Rainmaker's project meteorologists have the authority to temporarily suspend localized seeding operations due to development of hazardous severe weather conditions even if the NWS has not issued a warning. This would be a rare event, but it is important for the operator to have this latitude.

# **BEFORE THE IDAHO WATER RESOURCE BOARD**

IN THE MATTER OF CLOUD SEEDING IN THE

Resolution No. \_\_\_\_\_

RESOLUTION FOR AUTHORIZATION OF STATE

Page 1

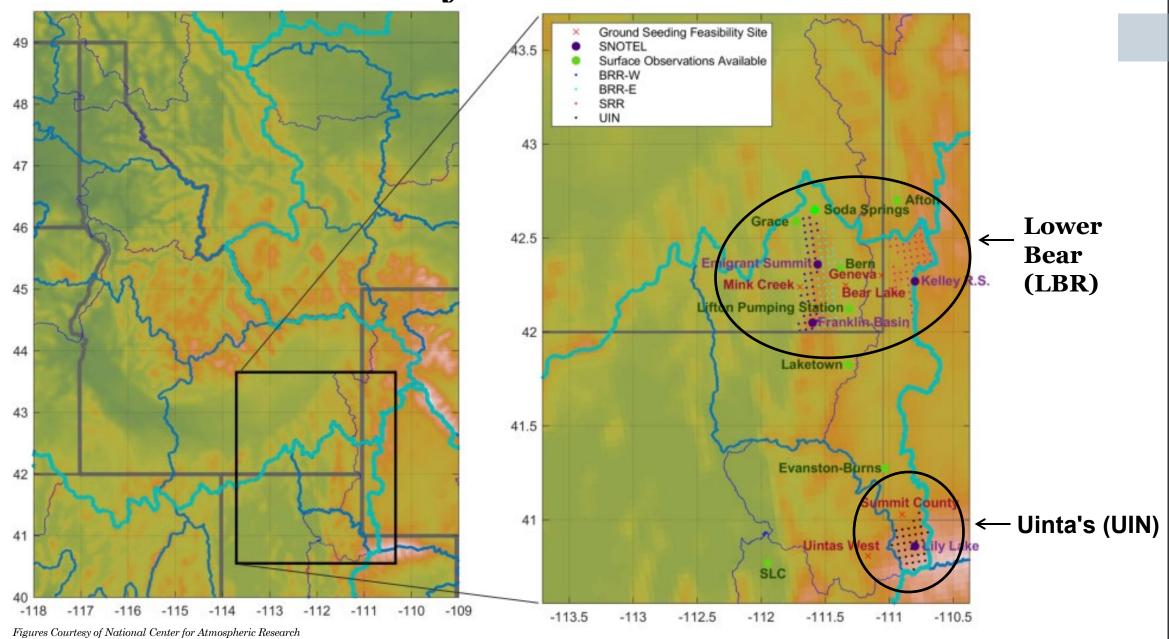
	STATE OF IDAHO	OF UTAH'S NORTHERN UTAH/BEAR RIVER BASIN PROGRAM
1 2 3 4 5	cloud seeding has provided a unique an supplies for the State of Idaho, and desi	ed and approved by the 2021 legislature, recognized that dinnovative opportunity to support sustainable wate gnated the Idaho Water Resource Board (IWRB) as the loud seeding programs within the State; and
6 7 8 9	•	hat augmenting water supplies through cloud seeding is IWRB with the authority to authorize cloud seeding
10 11 12 13 14	2022 of the Bear River Basin conducted b	ard (IWRB) completed a feasibility and design study in y the National Center for Atmospheric Research (NCAR) ollaborative interstate cloud seeding pilot project in the
15 16 17 18	-	oved a total of \$3,000,000 to advance a cloud seeding als to replenish the Great Salt Lake and enhance water Utah; and
19 20 21 22 23	year collaborative interstate cloud seed	Vater Resources has proposed to the State of Idaho a 1-ding pilot project in the Bear River Basin which wil AS) technology, advanced weather instrumentation, and angside internal validation services; and
24 25 26 27		ting water supplies, the IWRB is collaborating with the bud seeding pilot project in the Bear River Basin for the gh April 30.
28 29		nat, the IWRB hereby approves the State of Utah's for Authorization to Conduct Cloud Seeding Operations
	DATED this 31 <sup>st</sup> day of October, 2025	
		Jeff Raybould, Chairman Idaho Water Resource Board

Dean Stevenson, Secretary





# Bear River Basin Project Area





# Bear River Basin (BRB) Project

- Utah Division of Water Resources (UDWR) proposed a Bear River Basin 1-Yr Collaborative Interstate Pilot Project
- Utah legislature mandated Utah contribute \$3M to the BRB Project
- IWRB approved \$950K in resolution for the BRB Project on July 25<sup>th</sup>, 2025
  - \$450k: Support operational costs
  - \$500K: Third party evaluation (NCAR)
- UDWR is requesting authorization to conduct operations in the BRB in Idaho



# Bear River Basin Project

- **Applicant:** Utah Division of Water Resources
- **Operational Area:** Bear River Basin
- **Operational Period:** November 1 to April 30
- **Seeding Agent:** Silver Iodide (AgI)
- **Method of Seeding:** Unmanned Aerial Systems (UAS) and Remote Ground-Based Generators
  - 32 UAS's (Drones)
  - Remote Based Ground Generators (3 Already Authorized in Idaho)
- Weather Instrumentation (Forecasting and Validation)
  - 10 K-band Radars and Wx Instrumentation
  - 1 X-Band Radar
- 3<sup>rd</sup> Party Evaluation from NCAR







Photo's Courtesy of Rainmaker Technology Corporation





# Questions?

Cloud Seeding Program

cloudseedingprogram@idwr.idaho.gov

+1.208.287.4852

https://idwr.idaho.gov/iwrb/programs/cloud-seeding-program/

# Memorandum

To: Idaho Water Resource Board

From: Nick Banish, IDWR Cloud Seeding Program Manager

Date: October 31, 2025

Re: Cloud Seeding Program | HCRCD Funding Request

ACTION: Consideration of Approval of funding request – HCRCD 2025-2026 operations

The High-Country Resource Conservation & Development (HCRCD) cloud seeding program in the Upper Snake River Basin is making a request to the Idaho Water Resource Board (IWRB) for funding support for its manual ground program cloud seeding operations for the winter 2025-2026 season.

#### **Background**

The HCRCD program is operated by Let it Snow, Inc, and operates 25 manual ground generators in the Upper Snake basin. Idaho Power Company (IPC) provides forecasting support for the HCRCD program. The HCRCD program began its initial operation in the late 1990s and has been continually operational since 2001. Prior to the 2024-2025 season, the program was funded 100% by local stakeholders. The IWRB received a funding support request and awarded \$60,000 to HCRCD to fund operations for the 2024-2025 season. This award comprised 29% of HCRCD's 2024-2025 Cloud Seeding budget and was mainly used to cover the costs of silver iodide, ammonium iodide and acetone.

Additional funding for the HCRCD cloud seeding program comes from a variety of stakeholder groups, including several cities, counties, conservation and recreation groups, Water District 1 and the Idaho Ground Water Appropriators.

Per conversation with representatives from HCRCD, funding is proposed to cover the increasing costs of the materials named above and highlighted in the included table.

A copy of the HCRCD's request for \$60,000 (roughly 24% of the proposed 2025-2026) in funding support is attached for the IWRB's consideration.

2025-2026 HCRCD Cloud Seeding Budget

Expenses	Proposed
Postage	200.00
Steering Committee Meeting Expenses	250.00
Silver Iodide	103,836.25
Ammonium Iodide	4,350.67
Acetone	17,996.67
Propane	6,644.27
Freight (Chemical/Propane)	650.00
Rental Equipment	56,100.00
Tank Rent	472.00
Repairs and Maintenance	2,925.00
Payroll Wages, Taxes, Workman's Comp	35,073.14
Labor to run Generators	26,756.25
Mileage	14,175.00
Hours Outside Labor	1,650.00
Miscellaneous	1,450.00
Annual Report to Donators	250.00
High Country RC&D Fundraising/Tech Assist.	2,500.00
Clark County Administration	1,250.00
High Country RC&D Adm. Fee	13,603.96
TOTALS	\$ 290,133.21

#### Attachments:

HCRCD Request for Support Letter for 2025-2026 Season





"From Dreams to Reality: helping communities improve quality of life one project at a time."

# HIGH COUNTRY RESOURCE

# CONSERVATION and DEVELOPMENT AREA, INC

Serving Bonneville, Jefferson, Madison, Fremont, Clark, Butte, Lemhi, Custer, Teton ID, and Teton WY Counties

October 9, 2025

Idaho Department of Water Resources Nick Banish, Cloud Seeding Program Manager 322 East Front Street P.O. Box 83720 Boise, Idaho 83720-0098

Dear Nick,

On behalf of the High Country RC&D and Upper Snake River Cloud Seeding Steering Committee, thank you for supporting our Cloud Seeding program in 2024-2025. IDWR support helped us purchase additional materials to allow us to operate through the full cloud seeding season.

The Steering Committee just set their budget for the 2025-2026 season. Costs for operating materials and expenses continue to increase each year. While we expect strong support from our 50 sponsors, we are requesting \$60,000 in support from IDWR to be able to operate for the full season.

I will be including our proposed 2025-2026 season budget to the email forwarding this letter. If you have any questions, please contact me at (208) 624-3381 or Tammy Egbert, High Country, at (208) 624-3200.

Thank you,

Aaron Dalling

Chairman

Upper Snake River Cloud Seeding Steering Committee

# **BEFORE THE IDAHO WATER RESOURCE BOARD**

	IN THE MATTER OF CLOUD SEEDING IN THE STATE OF IDAHO	RESOLUTION TO APPROVE FUNDS FOR THE HCRCD 2025-2026 CLOUD SEEDING PROGRAM
1 2 3 4	opportunity to support sustainable water supplies	es that cloud seeding provides a unique and innovative for the State of Idaho, and identifies the Idaho Water or authorization of cloud seeding programs within the
5 6 7 8 9	for cloud seeding programs in basins where the IW	rovides the IWRB the authority to expend state funds RB finds that existing water supplies are not sufficient reation, or fish and wildlife uses dependent on those
11 12 13 14 15	operated a manual ground cloud seeding program	Conservation Development (HCRCD) has continuously in the Upper Snake River Basin since the 1990's and years to the point where funding donations to the nd
16 17 18	WHEREAS, the HCRCD has requested fund 2025-2026 cloud seeding operations; and	ing support of \$60,000 from the IWRB to support its
19 20 21 22		pted the Secondary Aquifer Fund for Fiscal Year 2026 ne Cloud Seeding Program Operations & Maintenance
23 24 25 26		e IWRB authorizes expenditures not to exceed \$60,000 s, and Implementation Fund for O&M costs to support 26 season.
27 28 29 30		authorizes its chairman or designee, Brian Patton, necessary agreements or contracts to complete the
	DATED this 31 <sup>st</sup> day of October, 2025.	
		Jeff Raybould, Chairman Idaho Water Resource Board

Page 1

Resolution No. \_\_\_\_\_

Dean Stevenson, Secretary



## **BEFORE THE IDAHO WATER RESOURCE BOARD**

IN THE MATTER OF THE MANAGED RECHARGE AGREEMENT NOT TO DIVERT

38

**RESOLUTION** 

WHEREAS, Policy 1I of the 2-12 Idaho State Water Plan provides that "aquifer recharge should be
promoted and encouraged, consistent with state law"; and
WHEREAS, the Eastern Snake Plain Aquifer (ESPA) is hydraulically connected to the Snake River
and discharges to the Snake River via tributary springs, which supply surface water for multiple beneficial uses, including aquaculture, hydropower, and the irrigation of nearly one million acres; and
uses, including addaediture, flydropower, and the irrigation of flearly one million deres, and
WHEREAS, Policy 4D of the 2012 Idaho State Water Plan provides that "[t]he Eastern Snake Plain
Aquifer and the Snake River below Milner Dam should be conjunctively managed to provide a sustainable
water supply for all existing and future beneficial uses within and downstream of the ESPA"; and
WHEREAS, Policy 4E provides that "[d]evelopment of new aquifer storage is in the public
interest"; and
WILEDEAS. The Board holds water rights 01 7142 and 01 10500 ("Water Bights") among others
WHEREAS, The Board holds water rights 01-7142, and 01-10609 ("Water Rights"), among others, for the purpose of recharging the ESPA, and
to the purpose of recharging the ESFA, and
WHEREAS, a 2009 Eastern Snake Plain Aquifer Comprehensive Aquifer Management Plan ("ESPA
CAMP") goal is to "[s]ustain the economic viability and social and environmental health of the Eastern
Snake Plain by adaptively managing a balance between water use and supplies"; and
WHEREAS, the ESPA CAMP established a long-term goal of 600,000 acre-feet average annual
change to the ESPA aquifer budget by 2030; and
WHEREAS, the ESPA CAMP established a long-term hydrologic target for managed aquifer
recharge of 150,000 to 250,000 acre-feet on an average annual basis; and
WHEREAS, Phase I of the ESPA CAMP established a 100,000 acre-feet average annual managed
hydrologic target; and
Try at ologic target, and
WHEREAS, a 2009 Memorandum of Agreement between the Board and the Company provides
that "[i]f the Board proposes to increase the 100,000 acre-feet average annual ESPA CAMP Phase I target
for managed aquifer recharge by more than 75,000 acre-feet prior to January 1,2019, the Board must
obtain legislative approval for such increase"; and
WHEREAS, in 2016, the Sixty-third Idaho Legislature, through Senate Concurrent Resolution 138
recognized the need for managed recharge of the Eastern Snake Plain Aquifer and established a managed

Resolution No. Page 1

recharge goal of 250,000 acre-feet on an average annual basis across the ESPA to consistent with the ESPA

20	CAMP reads and
39 40	CAMP goals; and
41	WHEREAS, after SCR 138, the parties agreed to discuss how the managed recharge goal could be
42	achieved while addressing in-river flow needs, including hydropower; and
43	, <u>, , , , , , , , , , , , , , , , , , </u>
44	WHEREAS, stabilizing and enhancing the ESPA water level is still in the public interest because it
45	will lead to a sustainable water supply for consumptive and nonconsumptive uses, satisfy existing water
46	rights, and minimize harm to Idaho's economy arising from water supply shortages; and
47	
48	WHEREAS, pursuant to Senate Concurrent Resolution 10 adopted by the legislature in 2025, the
49	Board recognizes the opportunity to increase the established managed recharge goal to 350,000 acre-feet
50	while maintaining a balance between ESPA aquifer storage and sustainability, and the increasing value of
51	hydropower to Idaho's economy, consistent with ESPA CAMP objectives; and
52 53	WHEREAS, cooperative agreements between the Board and the Company would provide both
54	parties the ability to address resource management and planning objectives related to managed aquifer
55	recharge and hydropower; and
56	
57	WHEREAS, to recognize the interests of water users relying upon the ESPA, the Company entered
58	into a separate Milner Bypass Agreement with the Idaho Ground Water Appropriators, Inc. dated March
59	13, 2025.
60	
61	NOW, THEREFORE BE IT RESOLVED that, the IWRB authorizes its Chairman to execute the
62	Managed Recharge Agreement Not to Divert included as Attachment A to this resolution, which specifies
63	certain conditions under which the IWRB would not divert all of the water available to it under water
64	rights 01-7054 and 01-10609.
	DATED this 31st day of October 2025.
	DATED this 31st day of October 2025.
	Jeff Raybould, Chairman
	Idaho Water Resource Board
	ATTEST
	Dean Stevenson, Secretary
	,,,,,

# **Managed Recharge Agreement Not to Divert**

This Managed Recharge Agreement Not to Divert ("Agreement") is entered into by and between the Idaho Water Resource Board (the "Board") and Idaho Power Company (the "Company") as a part of the Board's continued implementation of the IWRB's managed aquifer recharge actions on the Eastern Snake Plain Aquifer ("ESPA"). The Board and the Company may be referred to herein individually as a "party" and collectively as the "parties."

#### **Background Recitals**

WHEREAS, Policy 1I of the 2012 Idaho State Water Plan provides that "aquifer recharge should be promoted and encouraged, consistent with state law"; and

WHEREAS, the ESPA is hydraulically connected to the Snake River and discharges to the Snake River via tributary springs, which supply surface water for multiple beneficial uses, including aquaculture, hydropower, and the irrigation of nearly one million acres; and

WHEREAS, Policy 4D of the 2012 Idaho State Water Plan provides that "[t]he Eastern Snake Plain Aquifer and the Snake River below Milner Dam should be conjunctively managed to provide a sustainable water supply for all existing and future beneficial uses within and downstream of the ESPA"; and

WHEREAS, Policy 4E provides that "[d]evelopment of new . . . aquifer storage is in the public interest"; and

WHEREAS, The Board holds water rights 01-7142, and 01-10609 ("Water Rights"), among others, for the purpose of recharging the ESPA.

WHEREAS, a 2009 Eastern Snake Plain Aquifer Comprehensive Aquifer Management Plan ("ESPA CAMP") goal is to "[s]ustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies"; and

WHEREAS, the ESPA CAMP established a long-term goal of 600,000 acre-feet average annual change to the ESPA aquifer budget by 2030; and

WHEREAS, the ESPA CAMP established a long-term hydrologic target for managed aquifer recharge of 150,000 to 250,000 acre-feet on an average annual basis; and

WHEREAS, Phase I of the ESPA CAMP established a 100,000 acre-feet average annual managed hydrologic target; and

WHEREAS, a 2009 Memorandum of Agreement between the Board and the Company provides that "[i]f the Board proposes to increase the 100,000 acre-feet average annual ESPA CAMP Phase I target for managed aquifer recharge by more than 75,000 acre-feet prior to January 1,2019, the Board must obtain legislative approval for such increase"; and

WHEREAS, in 2016, the Sixty-third Idaho Legislature, through SCR 138 recognized the need for managed recharge of the Eastern Snake Plain Aquifer and established a managed recharge goal of 250,000 acre-feet on an average annual basis across the ESPA to consistent with the ESPA CAMP

goals; and

WHEREAS, after SCR 138, the parties agreed to discuss how the managed recharge goal could be achieved while addressing in-river flow needs, including hydropower; and

WHEREAS, stabilizing and enhancing the ESPA water level is still in the public interest because it will lead to a sustainable water supply for consumptive and nonconsumptive uses, satisfy existing water rights, and minimize harm to Idaho's economy arising from water supply shortages; and

WHEREAS, the Board recognizes the opportunity to increase the established managed recharge goal to 350,000 acre-feet while maintaining a balance between ESPA aquifer storage and sustainability, and the increasing value of hydropower to Idaho's economy, consistent with ESPA CAMP objectives; and

WHEREAS, cooperative agreements between the Board and the Company would provide both parties the ability to address resource management and planning objectives related to managed aquifer recharge and hydropower.

WHEREAS, to recognize the interests of water users relying upon the ESPA, the Company entered into a separate Milner Bypass Agreement with the Idaho Ground Water Appropriators, Inc. dated March 13, 2025.

## Agreement

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

- 1. Effective Date and Term of the Agreement. The terms of this Agreement shall be implemented beginning in the managed recharge season commencing on November 1, 2025, and shall be effective on the date signed by the last signatory hereto ("Effective Date"). The Agreement shall continue for a term of five (5) years from the effective date. This Agreement shall automatically renew for successive five-year terms unless either party provides written notice of termination to the other party at least 30 days prior to the end of the current term.
- 2. Board's Recharge Average. Senate Concurrent Resolution 110 directed the IWRB to establish a state-funded ESPA managed recharge goal of 350,000 acre-feet on an average annual basis ("Board's Recharge Average"). The Board's Recharge Average shall be measured based upon the volume (acre-feet) diverted under the recharge water rights owned by the Board. The Board's Recharge Average will be based on a 15-year rolling average on an annual basis beginning with water year 2016. "Annual basis" will be based on the water year October 1—September 30.
- 3. Support for Increase in Board's Recharge Average: The Board and Company agree to support increasing the Board's Recharge Average goal from 250,000 acre-feet to 350,000 acre-feet per year.
- **4. Milner Flow Distribution.** The Board agrees not to divert a portion of the "Water Available" for IWRB managed recharge below Minidoka Dam under water rights 1-7142 and 1-10609. "Water Available" under water rights 01-7142 and 01-10609 will be determined by Water District 01. The portion of the "Water Available" that shall not be diverted is as follows:
  - a. The Board may divert 100 percent (%) of the Water Available when:
    - i. The Board's Recharge Average is 250,000 acre-feet or less, or

- If the Idaho Department of Water Resources adopts a groundwater management plan or issues any other order requiring groundwater users to conserve more groundwater than is required under the 2024 Stipulated Mitigation Plan approved in IDWR Docket No. CM-MP-2024-003);
- b. When the Board's Recharge Average exceeds 250,000 acre-feet but is less than 350,000 acre-feet, then for the period December 1–February 15, the Board shall only divert 50 percent (%) of the Water Available, or 200 cfs (whichever is greater);
- c. When the Board's Recharge Average is 350,000 acre-or more, then for the period December 1–March 1, the Board shall only divert 40 percent (%) of the Water Available or 200 cfs (whichever is greater);
- d. When the Board's Recharge Average exceeds 355,000 acre-feet for three (3) consecutive years then for the period November 1–April 1, the Board shall only divert 40 percent (%) of the Water Available or 200 cfs (whichever is greater).
- 5. Support of Agreement Not to Divert. It is the mutual desire of the parties to ensure that each party realizes the benefits of this Agreement. The Board's directive from the legislature is to expand and achieve an ESPA managed recharge goal of 350,000 acre-feet on an average annual basis. While supporting the legislature's directive, the Company expects benefit through the implementation of this Agreement is to realize increased hydropower generation during its winter peak operations. If either party believes they are not getting the benefits of this Agreement, or the intent of this Agreement is being frustrated, the parties agree to meet and confer to discuss whether modifications to the Agreement should be made.
- 6. Cloud Seeding. Idaho Power agrees to continue the Upper Snake collaborative cloud seeding program during the term of this Agreement, so long as the cloud seeding program is authorized and funded.
- 7. **Modification or Termination.** This Agreement may be modified or terminated upon written consent by both parties during the term of this Agreement. Any negotiation, amendments, or extension of this Agreement shall comply with the Idaho Open Meeting Law, Idaho Code §§ 74-201 through 74-208.
- **8. Dispute Resolution.** Any material dispute between the parties concerning this Agreement will be resolved in accordance with the following provisions:
  - a. **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 prior to either party taking legal action. The written notice shall include a general statement of the claims and positions of the aggrieved party. Notwithstanding the foregoing, however, either Party may seek provisional legal remedies if in such Party's judgement such action is necessary to avoid irreparable damage or preserve the status quo.
  - b. **Litigation.** Litigation regarding this Agreement is allowed between the parties only for the purpose of enforcing this Agreement.
- 9. Attorney's Fees. In the event that legal action arises between the parties relating to this Agreement, the prevailing Party shall be entitled to recover attorney's fees and costs incurred in prosecution or defense of the legal action (including without limitation any fees on appeal).

**10. Governing Law, Jurisdiction, and Venue.** This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho notwithstanding its choice of law provisions. Exclusive venue shall be in Ada County, Idaho.

#### 11. Miscellaneous.

- a. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and the successors and assigns of the parties.
- b. **Entire Agreement.** This Agreement sets forth all understandings between the parties with respect to subject matter hereof. There are no other understandings, covenants, promises, plans, conditions, either oral or written, between the parties other than those contained herein. The parties expressly reserve all rights not settled by this Agreement.
- c. **Amendment.** This Agreement may be amended only by a written instrument signed by both parties.
- d. **Effect of Headings.** Headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of the text.
- e. **Notices.** Notices required or permitted to be given to any party under this Agreement shall be in writing and shall be effective (a) when personally delivered, (b) certified mail, return receipt requested, with postage prepaid, or (d) upon delivery by a nationally recognized express courier for delivery within two business days, with delivery charges prepaid. Notices shall be sent to the following addresses:

Idaho Power Company 1221 W. Idaho St. Boise, ID USA 83702 Attn: Water Resources and Policy

Simultaneously to: 1221 W. Idaho St. Boise, ID USA 83702 Attn: Legal Department

Idaho Water Resource Board 322 E. Front St. Boise, ID USA 83702 Attention:

- f. **No Third-Party Obligations or Beneficiaries.** The obligations and benefits of this Agreement apply only to the parties. No persons or entities shall be deemed to be third-party beneficiaries of this Agreement.
- g. **Construction.** Each party participated in the negotiation and drafting of this Agreement; therefore, this Agreement shall not be construed more strongly in favor of or against any party regardless of who was more responsible for its preparation and shall be construed simply according to its fair meaning.
- h. **Waiver.** No term or provision hereof shall be deemed waived, and no performance shall be excused hereunder unless prior waiver or consent shall be given in writing signed by the

- party against whom it is sought to be enforced. Any waiver of any default by either party shall not constitute a waiver of the same or different default on a separate occasion.
- i. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision is adjudged to be invalid, the remaining provisions in this Agreement shall remain in force.
- j. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be considered an original, and which together, shall constitute one and the same instrument.
- k. **Digital Signatures.** Digital and scanned signatures to this Agreement shall be valid and effective to bind the party so signing.

Idano water Resource Board	
By:	Date:
Idaho Power Company	
By:	Date:

# **MEMO**

To: Idaho Water Resource Board

**From:** Meghan Carter, Justin Ferguson

**Date:** October 31, 2025

**Subject:** Mountain Home AFB Water Resilience Project – Accomplishment of Water

Rights Beneficial Use

**REQUESTED ACTION:** Consider Providing Simplot A Letter Regarding Beneficial Use For Water Rights 2-10506,

2-10300A, & 2-10300B

In 2014, the Idaho Water Resource Board (IWRB) purchased Snake River water rights from the J.R. Simplot Company (Simplot) for the Mountain Home Water Resilience Project, with an option for Simplot to reacquire the water rights if they are not put to beneficial use prior to an agreed-upon date. The following attachments and resolution provide authority to provide Simplot with the attachments and notification of the accomplishment of beneficial use.

#### **Attachments:**

Staff Memo – Beneficial Use & System Testing Letter – RSCI – Project Milestone Achieved – Water Transfer & Beneficial Use Confirmation

Draft Letter – Notice of Beneficial Use

Draft Resolution – Mountain Home Air Force Base Water Resilience Project
Accomplishment of Beneficial Use

### **BEFORE THE IDAHO WATER RESOURCE BOARD**

IN THE MATTER OF THE MOUNTAIN HOME AIR FORCE BASE WATER RESILIENCE PROJECT

RESOLUTION TO ISSUE WRITTEN NOTICE OF ACCOMPLISHMENT OF BENEFICIAL USE UNDER THE WATER RIGHTS PURCHASE AND SALE AGREEMENT BETWEEN THE IDAHO WATER RESOURCE BOARD AND THE J.R. SIMPLOT COMPANY

WHEREAS, the Idaho Water Resource Board ("Board") is a constitutional agency of the State of Idaho and is 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

1 2

WHEREAS, the State of Idaho recognizes the economic value of the Mountain Home Air Force Base to the local and state economy and supports the United States Military (Military) in achieving its national security functions; therefore, the State of Idaho has been coordinating with the Military to develop a long-term sustainable water supply to support the Mountain Home Air Force Base and its mission; and

WHEREAS, on July 25, 2014, the Board purchased senior Snake River water rights (Snake River Water Rights) from the J.R. Simplot Company (Simplot) for the purpose of obtaining a water supply for the Mountain Home Air Force Base; and

WHEREAS, the Purchase Agreement granted Simplot an option to re-acquire the Water Rights from the Board ("Option") if the Board failed to divert the water under the Water Rights for the benefit of the Base and put the Water Rights to beneficial use on the land owned by the United States of America and reserved for the Base on or before January 1, 2021 ("Beneficial Use Deadline"); and

WHEREAS, the Agreement authorized the Board to extend the Beneficial Use Deadline to February 1, 2026, by providing Simplot with written notice of extension; and

WHEREAS, notice was issued to Simplot to extend the Beneficial Use Deadline following the approval of Board Resolution 15-2020, dated September 17<sup>th</sup> 2020; and

WHEREAS, the Board completed construction of an intake and pumpstation from CJ Strike Reservoir and pipeline to deliver water to a water treatment plant on Mountain Home Air Force Base; and

WHEREAS, On May 22, 2025, Board staff confirmed in a memo that Snake River water was pumped from the Board's CJ Strike Pump Station and used for leak testing of two tanks located on Mountain Home Air Force Base property (Attachment A); and

Resolution No.

2	1
J	4

39

40 41 42

43 44

47

45

46

48 49 50

WHEREAS, RSCI, contractor for the United States, provided the United States with a letter, dated May 26, 2025, affirming water was received from the CJ Strike Pump House to the West Raw Water Tank at the Mountain Home Air Force Base and was used for construction activities, including pipeline backfill and dust control, on the Mountain Home Air Force Base property (Attachment B); and

WHEREAS, the use for construction activities fits the definition of Beneficial Use in the Department of Water Resources Water Appropriation Rules, IDAPA 37.03.08; and

WHEREAS, the accomplishment of Beneficial Use, using the Snake River Water Rights, at the Mountain Home Air Force Base Installation by the IWRB, removes the opportunity for Simplot to reacquire the water rights under the Option.

NOW THEREFORE BE IT RESOLVED that the Idaho Water Resource Board hereby authorizes its Chairman or designee to issue written notice to Simplot of the Accomplishment of Beneficial Use prior to the end of the Option Period, and as such, the Option can no longer be exercised to re-acquire the water rights.

DATED this 31<sup>st</sup> day of October 2025.

JEFF RAYBOULD, Chairman	
Idaho Water Resource Board	

ATTEST	
	DEAN STEVENSON, Secretary

# Memorandum

To: Memorandum for Record

From: Mike Morrison

Date: May 22, 2025

Re: Mountain Home Air Force Base Water Resilience Project: Initial

System Testing



# **REQUIRED ACTION: None**

On Wednesday, May 21 2025, Mr. Justin Ferguson and I observed pumping operations at the Board's Pump Station on CJ Strike Reservoir. We also observed one water tank being filled and tested at the Mountain Home AFB Water Treatment Plant site. The Water Treatment Plant site is located within the Mountain Home AFB boundaries.

At the pump station, I observed the pumps operating at manifold pressures between 290 and 312 psig. Flow rates varied from 2,400 to more than 2,600 gpm (5.4 to 5.8 CFS). These values are well within predicted parameters for the pump station.

At Mountain Home AFB, I was unable to observe flow inside the tank, but rough calculations based on external observations indicated that the tank was filling at a rate of about 18 inches per hour. This is consistent with the 2,400 - 2,600 gpm flow observed at the pump station.

The Air Force's contractor, RSCI, was engaged in sealing a very small leak that had developed between the base of the water tank and the concrete pad on which it is mounted.



MT 36115 OR 68403 NV 0032585 ID RCE-1006 ID 12164-U-1-3 WA RECORSO33QK NV 67472 & 74179

May 26, 2025 Serial No. H-0015

Seattle District, Corps of Engineers Mountain Home Project Office 1030 Liberator St. Bld 1300 Mountain Home AFB, ID 83648-5264

Attention: Timothy Wood, PE

Reference: Contract No. W912DW24C0005

Water Treatment Plan & Pump Station, Mountain Home AFB

Subject: Project Milestone Achieved – Water Transfer and Beneficial Use Confirmed

Dear Mr. Wood,

This letter serves as formal notification of a significant milestone recently achieved on the project. On May 21, 2025, the IMCO/Stantec project team successfully transferred water from the CJ Strike Pump House into the West Raw Water Tank.

This activity marks the successful completion of a key contract requirement outlined in *Specification 01 10 13, Paragraph 1.6*, which prioritizes the construction and commissioning of at least one raw water tank to:

- 1. Demonstrate beneficial use of the raw water supply facilities,
- 2. Enable commissioning of the intake, pump station, and supply pipeline, and
- 3. Meet the project's water rights obligations.

Per the specification, the contractor was required to construct one raw water tank and have it ready to receive water at the agreed demarcation point with the IDWR pipeline project by May 31, 2025. Achieving this milestone supports coordination with Government representatives, mitigates operational impacts, and initiates testing and commissioning using permanent infrastructure.

# Following the successful transfer:

- 1. May 22, 2025 Our team completed a leak test of the West Raw Water Tank using the transferred water.
- 2. May 27, 2025 The same water was used for construction activities, including pipeline backfill and dust control.

Thank you for the continued support from you and your team in reaching this important project milestone.

If you have any questions or need further clarification, please don't hesitate to reach out at <a href="mailto:tannerjared@rscigroup.com">tannerjared@rscigroup.com</a> or (208) 472-0161.

Best regards,

Tanner Jared, PE

Tanner Jewiel

Project Manager

Cc: Gregg Thompson (Jacobs), Chris Hill (USACE)

July X, 2025

J.R. Simplot Company c/o Vic Conrad PO Box 27 Boise, ID 83707

RE: Water Right Purchase and Sale Agreement – Notice of Beneficial Use

Dear Mr. Conrad:

The J.R. Simplot Company (Simplot) and the Idaho Water Resource Board (Board) executed a Water Right Purchase and Sale Agreement on July 25, 2014 (Agreement). The Agreement addressed the conditions of the Board purchasing senior Snake River water rights from Simplot. In Section 3, Simplot was given the option to re-acquire the water rights if the Board failed to put the water rights to beneficial use "on the land owned by the United States of America and reserved for the Mountain Home Air Force Base" by January 1, 2021 (Beneficial Use Deadline). The Agreement further authorized the Board to extend the beneficial use deadline to February 1, 2026, by providing Simplot written notice. The Board took the extension through a letter dated December 22, 2020.

The water rights have been used for a beneficial purpose on the Mountain Home Air Force Base. This assertion is supported by a memo written by Mike Morrison, Board staff, and a letter from the Air Force's contractor describing the activities conducted in May 2025. Those two documents are enclosed with this letter.

Because the water rights have been beneficially used "on the land owned by the United States of America and reserved for the Mountain Home Air Force Base," Simplot's option to repurchase the water rights is terminated.

Sincerely,

Jeff Raybould, Chairman Idaho Water Resource Board

# **MEMO**

To: Idaho Water Resource Board

From: Meghan Carter, Justin Ferguson

**Date:** October 31, 2025

**Subject:** Mountain Home AFB Water Resilience Project – Property Assignment &

Water Transmission System Ownership Conveyance Agreement

REQUESTED ACTION: Consider The Assignment Of Property & Water Transmission System to the USAF

The Idaho Water Resource Board (IWRB) has constructed a Water Transmission System at C.J Strike Reservoir to ensure water security for the Mountain Home Air Force Base. As construction of the project has been completed, the following resolution provides authority to assign property under a right-of-way through the Department of Lands, as well as the execution of the Water Resiliency Project Operating Agreement with the USAF.

# **Attachments**:

MHAFB Water Resiliency Project Operating Agreement
Draft Resolution – Authority to Assign Property & Execute Water Transmission
System Gift Package

# WATER TRANSMISSION SYSTEM OWNERSHIP CONVEYANCE AGREEMENT (MOUNTAIN HOME AIR FORCE BASE WATER RESILIENCY PROJECT)

between

IDAHO WATER RESOURCE BOARD, an agency of the State of Idaho

and

THE UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE AIR FORCE

Dated [insert date], 2025

This WATER TRANSMISSION SYSTEM OWNERSHIP CONVEYANCE AGREEMENT (MOUNTAIN HOME AIR FORCE BASE WATER RESILIENCY PROJECT) (this "Agreement") is entered into as of [insert date], 2025 (the "Effective Date"), by and between the IDAHO WATER RESOURCE BOARD, an agency of the State of Idaho ("Board"), and THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Air Force ("Government"). The Board and Government sometimes are referred to herein individually as a "Party" and jointly as the "Parties".

### RECITALS

- R-1 Mountain Home Air Force Base ("MHAFB") is an active-duty Air Force Base, located in Elmore County, Idaho.
- R-2 The Board is a constitutional agency of the State of Idaho, organized, existing, and operating pursuant to Article XV, Section 7 of the Idaho Constitution and Idaho Code § 42-1732 through § 42-1780. Among its powers and duties, the Board has authority to purchase and hold water rights; construct and operate water projects; and acquire, purchase, lease, or exchange land, rights, water rights or other property related to water projects.
- R-3 Ground water supplies within Elmore County are limited and are presently inadequate to meet the long-term needs of water users in the county, including MHAFB.
- R-4 The Board (a) has acquired senior priority Snake River water rights to supply MHAFB with surface water; and (b) has designed and constructed a pump and pipeline water transmission system to bring Snake River water to MHAFB, as depicted on **Exhibit A** to this Agreement (the "Water Transmission System").
- R-5 The Government is building storage tanks and a water treatment plant on MHAFB to hold and treat the Snake River water transported to MHAFB through the Water Transmission System.
- R-6 By proffer letter dated May 19, 2023, the Board voluntarily offered to give the Government without consideration the Water Transmission System, as authorized by HB 769 passed by the 2022 Idaho Legislature (the "Water Transmission System Gift").
- R-7 By letter dated August 8, 2025, the Government conditionally accepted the Water Transmission System Gift from the Board with the understanding that the conveyance to the Government of ownership of such property cannot occur until all prerequisites for Government gift acceptance more particularly described in Section 12 of this Agreement are satisfied (the "Gift Acceptance Requirements").
- R-8 The Water Transmission System has been commissioned by the [insert name of Idaho agency], and all Gift Acceptance Requirements are expected to be satisfied by calendar year-end.

R-9 This Agreement states the terms and conditions the Board and Government have agreed to for conveyance to the Government of ownership of the Water Transmission System.

## **AGREEMENTS**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## DEFINITIONS, AGREEMENT TERM AND REPRESENTATIONS AND WARRANTIES

- 1. **Definitions**. Capitalized terms used in this Agreement shall have the meanings set forth below:
  - 1.1 "Access Agreement[s]" means the agreements identified on Exhibit B.
  - **1.2** "Agreement" has the meaning given in the preamble to this Agreement.
  - 1.3 "Agreement Term" has the meaning given in Section 2 of this Agreement.
- 1.4 "Assignment of Construction Warranties and Guaranties" means the Assignment of Construction Warranties and Guaranties in the form of Exhibit C to be executed by the Board which assigns to the Government all Construction Warranties and Guaranties.
  - 1.5 "Board" has the meaning given in the preamble to this Agreement.
- 1.6 "Construction Warranties and Guaranties" means the assignable construction warranties and guaranties for the Water Transmission System identified on Exhibit D.
  - 1.7 "Effective Date" has the meaning given in the preamble to this Agreement.
- 1.8 "Gift Acceptance Requirements" has the meaning given in Recital R-7 of this Agreement.
  - **1.9** "Government" has the meaning given in the preamble to this Agreement.
- 1.10 "Government Parties" means the Government and its employees, contractors and subcontractors.
  - 1.11 "MHAFB" has the meaning given in Recital R-1 of this Agreement.
- **1.12** "Quitclaim Deed" means a quitclaim deed in the form of Exhibit E to be executed by the Board and accepted by the Government.

- 1.13 "Party" and "Parties" have the meanings given in the preamble to this Agreement.
- **1.14** "**Person**" means any firm, joint venture, limited liability company, association, trust, partnership, corporation, public body or other legal entity.
  - 1.15 "Survey" has the meaning given in Section 7 of this Agreement.
- 1.16 "Transfer and Acceptance of DOD Real Property (Form 1354)" in the form of Exhibit F to be executed by the Board and Government.
- 1.17 "Water Transmission System" has the meaning given in Recital R-4 of this Agreement.
- **1.18** "Water Transmission System Gift" has the meaning given in Recital R-6 of this Agreement.
- 1.19 "Water Transmission System Gift Conveyance Date" means a date mutually agreed to by the Parties.
- **2. Agreement Term**. This Agreement shall commence on the Effective Date and[, subject to Section ,] end on the Water Transmission System Gift Conveyance Date ("**Agreement Term**").

## 3. Board Representations and Warranties.

- **3.1** The Board represents and warrants:
- **3.1.1** the Board has full power and authority to execute this Agreement and to perform and carry out the transactions provided for in this Agreement.
- **3.1.2** this Agreement has been duly authorized, executed and delivered by the Board and constitutes the legal, valid and binding obligation of the Board, enforceable against the Board in accordance with its terms, and

# 4. Government Representations and Warranties.

- **4.1** The Government represents and warrants:
- **4.1.1** the Government has full power and authority to execute this Agreement and to perform and carry out the transactions provided for in this Agreement, and
- **4.1.2** this Agreement has been duly authorized, executed and delivered by the Government and constitutes the legal, valid and binding obligation of the Government, enforceable against the Government in accordance with its terms.

### CONVEYANCE OF OWNERSHIP OF WATER TRANSMISSION SYSTEM

- **5. Gift Acceptance Requirements.** Prior to the Water Transmission System Gift Conveyance Date, the following Government requirements relating to acceptance of ownership of the Water Transmission System Gift by the Government must be satisfied:
  - 5.1 . Receipt by the Government of the Access Agreements.
- **5.2** A statement prepared by MHAFB justifying acceptance by the Government of the Water Transmission System Gift and disclosing how refusal of the Water Transmission System Gift would impact the MHAFB mission.
- **5.3** Approval of the Water Transmission System Gift by the MHAFB Facilities Board, review by the MHAFB Legal Office of the Water Transmission System Gift and endorsement of the Water Transmission Gift by the Air Combat Command in the United States Air Force.
- 5.4 Receipt by the Government of a complete general description of the Water Transmission System in a form satisfactory to the Government.
- **5.5** A schedule of the services, utilities and associated costs relating to the Water Transmission System that will be the responsibility of the Government.
- **5.6** [A centerline survey with metes and bounds for the Water Transmission System prepared by an Idaho licensed surveyor.]
  - **5.7** AF Form 813, Request for Environmental Impact Analysis.
  - 5.8 An Environmental Baseline Survey for the Water Transmission System Gift.
- **5.9** Confirmation of compliance with Unified Facilities Criteria (UFC) 4-010.01, *DOD Antiterrorism Standards for Buildings*.
- 5.10 Completion of the title sufficiency review required by IAW DOD DOJ Title Standards.
- **6. Conveyance of Water Transmission System Gift.** On the Water Transmission System Gift Transfer Date, the following shall occur:
  - **6.1** The Board shall deliver to the Government:
    - **6.1.1** Quitclaim Deed executed by the Board;
- **6.1.2** Assignment of Construction Warranties and Guaranties executed by the Board;
- **6.1.3** Transfer and Acceptance of DOD Real Property (Form 1354) executed by the Board;

Commented [CS1]: 5.2 is complete.

Commented [CS2]: 5.3 is complete.

Commented [CS3]: 5.4 is complete.

Commented [CS4]: 5.5 is complete.

Commented [CS5]: 5.6 is an open item.

When the DAF has a projected delivery date for the survey. We will share that information with the Board.

This requirement will come out if the Board accepts the obligation stated in Section 7.

Commented [CS6]: 5.7 is complete.

Commented [CS7]: 5.8 is complete.

Commented [CS8]: 5.9 is complete.

Commented [CS9]: 5.10 is an open item.

The projected date for satisfaction of this requirement is mid November.

- **6.1.4** The notice to J.R. Simplot Company by the Board of its assignment to the Government of the Water Conveyance Pipeline Easement dated to be effective May 21, 2024; and
- **6.1.5** The notice to the Mountain Home Highway District by the Board of its assignment to the Government of the License Agreement to Use Public Road Right-of-Way effective as of June 5, 2024, as amended.
  - **6.2** The Government shall deliver to the Board:
    - **6.2.1** Quitclaim Deed accepted by the Government; and
- **6.2.2** Transfer and Acceptance of DOD Real Property (Form 1354) executed by the Government.
- 7. **[Water Transmission System Encroachments.** The Government has contracted with an Idaho licensed surveyor for preparation of a centerline survey with metes and bounds of the Water Transmission System ("Survey"). If the Water Transmission System Gift Conveyance Date occurs before the Government receives the Survey, and the Survey shows that any portion of the Water Transmission System is located on land outside the access boundaries stated in an Access Agreement, then the Board shall obtain for the benefit of the Government the access rights required to operate the Water Transmission System on such land.]
- **8. Failure to Satisfy the Gift Acceptance Requirements.** Unless otherwise agreed in writing by the Parties, if the Gift Acceptance Requirements are not satisfied by [*insert date*], 2026, then each Party shall have the right to terminate this Agreement with notice delivered to the other Party pursuant to Section 20.

# MISCELLANEOUS PROVISIONS

- 9. Anti-Deficiency Act. Nothing in this Agreement will be interpreted to require obligations or payments by the Government in violation of the Anti-Deficiency Act, as amended, 31 U.S.C. §1341, and nothing in this Agreement is intended to bind the Government to commit, obligate, appropriate or spend funds in violation of the Anti-Deficiency Act and other laws respecting federal funding.
- 10. Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 11. Assignment. Neither Party may assign any interest or obligation owing under this Agreement without the prior written consent of the other Party.
- **12. Defaults and Remedies.** Each Party may seek any legal or equitable relief available to such Party for a default by the other Party under this Agreement.
- 13. Governing Laws. This Agreement shall be governed by and construed under the laws of the State of Idaho, except as otherwise required by federal law.

Commented [CS10]: While the DAF expectation is that all Gift Acceptance Requirements will be satisfied by calendar year end, stating a mutually agreed date after which either Party may unilaterally terminate this Agreement eliminates uncertainty if the unforeseen were to happen.

- **14. Section Headings.** The captions and paragraph titles used in this Agreement are for reference only and will not be used in the interpretation of this Agreement.
- 15. Severability. If any provision of this Agreement is determined to be illegal, void, or unenforceable, such determination will not affect any other provisions of this Agreement, and all such other provisions will remain in full force and effect.
- **16. Officials Not to Benefit**. No Member of, or Delegate to, the Congress, or Resident Commissioner, will be admitted to any part or share of this Agreement or to any benefit that may arise therefrom, but this provision will not be construed to extend to this Agreement if made with a corporation for its general benefit.
- 17. Covenant Against Contingent Fees. The Board warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees and bona fide commercial agencies retained by the Board for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to revoke this Agreement without liability or in its discretion to require the Board to pay the full amount of such commission, percentage, brokerage, or contingency fee to the Government.
- 18. Incorporation of Prior Agreements. This Agreement contains the entire agreement and understanding of the Government and the Board with respect to the subject matter hereof, and no prior written or oral agreement, understanding, or communication pertaining to any such matter, including without limitation the Memorandum of Agreement executed by the Parties in September, 2022, shall be effective for any purposes. No provision of this Agreement may be changed except by written agreement signed by the Parties.
- **19. Amendments.** This Agreement may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each Party.
- 20. Notices. Any notice, demand, order, direction, determination, consent or approval, request, or other communication with respect to this Agreement, shall be in writing and shall not be effective unless given or served by personal delivery to the Party to whom such communication is directed, or by mailing the same to such Party by certified Government mail, or by delivering the same through a nationally recognized and reputable overnight delivery service. Such delivery or mailing shall be to the appropriate delivery or mailing address specified below, or at such other address or addresses as the Government and the Board, may from time to time designate by notice given hereunder. Delivery shall be effective on the date of receipt (or refusal of delivery, if applicable) confirmed by the records of the mailing or delivery service.

If to the Board: Idaho Water Resources Board
Attn: Chairman

322 East Front Street P.O. Box 83720

Boise, Idaho 83720-0098

If to the Government: Department of the Air Force

Deputy Assistant Secretary of the Air Force

(Installations)

1665 Air Force Pentagon Washington, D.C. 20330-1665

(Only Notices of Government Default)

With copies to: AFCEC/CIT

Address:

2261 Hughes Avenue, Suite 155 JBSA Lackland, TX 78236-9853

Delivery Address:

3515 S. Gen. McMullen, Door 1 San Antonio, TX 78226-1858

and

Office of the Staff Judge Advocate 366 Gunfighter Ave., Ste. 2184 Mountain Home AFB, ID 83648

- 21. Counterpart Originals. This Agreement may be digitally executed in one or more counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- **22. Amendment of Third-Party Documents**. The Board will not amend or modify any of the documents it has executed with third parties and upon which this Agreement is dependent if such amendment or modification would materially and adversely affect the interests of the Government as set forth in this Agreement.
- 23. Exhibits. The following six exhibits are made a part of this Agreement:

**Exhibit A** Depiction of the Water Transmission System

**Exhibit B** List of Access Agreements

**Exhibit C** Assignment of Construction Warranties and Guaranties

**Exhibit D** List of Construction Warranties and Guaranties

Exhibit E Quitclaim Deed

**Exhibit F** Transfer and Acceptance of DOD Real Property (Form 1354)

[Remainder of page intentionally left blank; signature pages follow]

**Commented [CS11]:** Who is responsible for Exhibit A?

**Commented [CS12]:** The Board is responsible for providing the list Construction Warranties and Guaranties.

**Commented [CS13]:** The DAF will prepare the list of Access Agreements.

BOARD SIGNATURE PAGE TO WATER TRANSMISSION SYSTEM OWNERSHIP CONVEYANCE AGREEMENT (MOUNTAIN HOME AIR FORCE BASE WATER RESILIENCY PROJECT)

**IN WITNESS WHEREOF**, the IDAHO WATER RESOURCE BOARD has executed this Agreement, effective as of the Effective Date.

**IDAHO WATER RESOURCE BOARD**, an agency of the State of Idaho

GOVERNMENT SIGNATURE PAGE TO WATER TRANSMISSION SYSTEM OWNERSHIP CONVEYANCE AGREEMENT (MOUNTAIN HOME AIR FORCE BASE WATER RESILIENCY PROJECT)

**IN WITNESS WHEREOF**, THE UNITED STATES OF AMERICA has executed this Agreement, effective as of the Effective Date.

THE UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE AIR FORCE

Ву	
	ROBERT E. MORIARTY, P.E., SES
	Deputy Assistant Secretary of the Air Force
	(Installations)

By:

NANCY J. BALKUS, SES, P.E.

Deputy Assistant Secretary of the Air Force
(Environment, Safety, and Infrastructure)

# EXHIBIT A DEPICTION OF THE WATER TRANSMISSION SYSTEM

# EXHIBIT B ACCESS AGREEMENTS



# EXHIBIT C ASSIGNMENT OF CONSTRUCTION WARRANTIES AND GUARANTIES



### ASSIGNMENT OF CONSTRUCTION WARRANTIES AND GUARANTEES

THIS ASSIGNMENT OF CONSTRUCTION WARRANTIES AND GUARANTEES ("Agreement") is made as of \_\_\_\_\_\_\_\_, 202\_ (the "Water Transmission System Gift Transfer Date"), between the IDAHO WATER RESOURCE BOARD, an agency of the State of Idaho ("Assignor"), and THE UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE AIR FORCE ("Assignee").

Assignee has this day acquired from Assignor a gift of a pump and pipeline water transmission system to bring Snake River water to Mountain Home Air Force Base (the "Water Transmission System") located on land in Elmore County, Idaho more particularly described on Exhibit A ("Land") and depicted on Exhibit B (the "Water Transmission System Gift").

As part of the Water Transmission System Gift, the Assignor hereby assigns, transfers and sets over unto Assignee, without representation or warranty of any kind, express or implied, and Assignee hereby accepts from Assignor, all of Assignor's right, title and interest in and to all assignable construction warranties and guarantees with respect to the Water Transmission System, including the warranties and guarantees relating to any personal property that was conveyed to Assignee by Assignor as part of the Water Transmission System Gift. Such assignable construction warranties and guarantees include the warranties and guarantees identified on **Exhibit C**.

This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

[signatures on following pages]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be executed as of the Water Transmission System Gift Transfer Date.

# **ASSIGNOR:**

**IDAHO WATER RESOURCE BOARD**, an agency of the State of Idaho

By:

Jeff Raybould
Chairman

# **ASSIGNEE:**

THE UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE AIR FORCE

By:

ROBERT E. MORIARTY, P.E., SES
Deputy Assistant Secretary of the Air Force (Installations)

# Exhibit A DESCRIPTION OF THE LAND

# Exhibit B WATER TRANSMISSION SYSTEM DEPICTION

Exhibit C

Water Transmission System Ownership Conveyance Agreement (9.23.25 Draft)

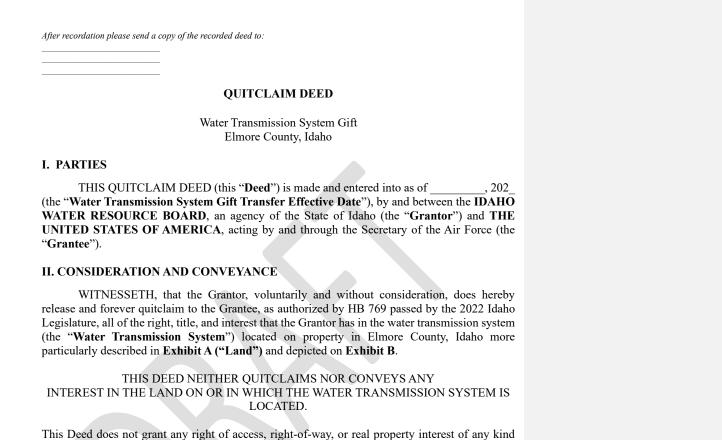
# Exhibit C WARRANTIES AND GUARANTIES

# EXHIBIT D CONSTRUCTION WARRANTIES AND GUARANTIES



# EXHIBIT E QUITCLAIM DEED





III. CONDITION

The Grantee accepts the Water Transmission System an "AS IS" and "WHERE IS" condition without representation, warranty, or guarantee as to quality, quantity, character, condition, size or kind or that the same is in a condition or fit to be used for the purpose for which intended[ other than any warranties that are subject to the Assignment of Warranties and Guarantees of even date herewith executed by the Grantor and Grantee].

whatsoever over, across, or to the real property underlying, overlying, or surrounding the Water Transmission System. Any right of access to the Land by the Grantee shall be contained in separate

### [IV. EXCISE TAXES

This is a conveyance by The State of Idaho and is therefore exempt from deed excise tax stamps.]

Commented [CS14]: The bracketed exception will be deleted if the Water Transmission System Gift Transfer Effective Date is date beyond the date on which the warranties expire.

Commented [CS15]: Does Idaho have excise tax stamps?

documents executed by or on behalf of the fee owners of the Land.

IN WITNESS WHEREOF, the Grantor has executed this Deed as of the Water Transmission System Gift Transfer Effective Date.

# "GRANTOR"

**IDAHO WATER RESOURCE BOARD**, an agency of the State of Idaho

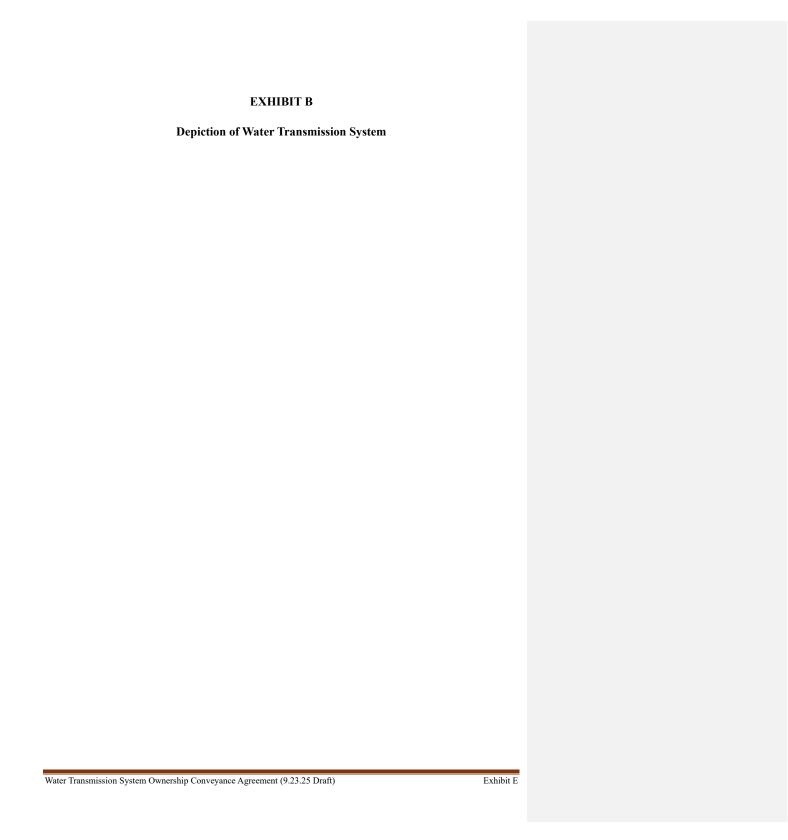
	514	or realic	
	В	y: Jeff Raybould Chairman	
STATE OF IDAHO	)		
COUNTY OF	)		
		dged before me this day of o Water Resource Board.	, 202_,
		WITNESS my hand and official seal.	
		Notary Public for the State of Idaho	
		My Commission Expires:	

GRANT	EE AC	CEPTA	NC	E:
Grantaa	harahy	necente	tha	11/

Grantee hereby accepts the Water Transmission System subject to the conditions stated in this Deed as of the Water Transmission System Gift Transfer Effective Date.

		"GRANTEE"  THE UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE AIR FORCE
		Ву:
		ROBERT E. MORIARTY, P.E., SES Deputy Assistant Secretary of the Air Force (Installations)
COMMONWEALTH OF VIRGINIA	. )	
	)	
COUNTY OF ARLINGTON	)	
The foregoing instrument was acknow by Robert E. Moriarty, P.E., SES, Dep	vledg outy A	ed before me this day of, 202_, Assistant Secretary of the Air Force (Installations).  WITNESS my hand and official seal.
		Notary Public for the State of
My Commission Expires:		_

# EXHIBIT A **Legal Description of Land** Water Transmission System Ownership Conveyance Agreement (9.23.25 Draft) Exhibit E



# EXHIBIT F TRANSFER AND ACCEPTANCE OF DOD REAL PROPERTY (FORM 1354)



### **BEFORE THE IDAHO WATER RESOURCE BOARD**

IN THE MATTER OF THE MOUNTAIN HOME AIR FORCE BASE SUSTAINABLE WATER SUPPLY PROJECT

1

2

3

4 5

6

7

8

9

10 11

12

13

14

15

16 17

18 19

20

21 22

23

2425

26

2728

29

30

3132

33

34

3536

RESOLUTION TO PROVIDE AUTHORITY TO ASSIGN PROPERTY AND EXECUTE THE OWNERSHIP CONVEYANCE AGREEMENT

WHEREAS, Mountain Home Air Force Base (MHAFB), an active-duty United States Air Force (USAF) base, derives its municipal water supplies exclusively from groundwater pumped from the Mountain Home Plateau aquifer in Elmore County; and WHEREAS, the Idaho Water Resource Board (IWRB) is a constitutional agency of the State of Idaho, organized, existing, and operating pursuant to Article XV, Section 7 of the Idaho Constitution and Idaho Code § 42-1732 through § 42-1780, which has authority to construct and operate water projects and to acquire, purchase, lease, or exchange land, rights, water rights, or other property related to water projects; and WHEREAS, the State of Idaho recognizes the economic value of the Base to the local and state economy and supports the United States military in achieving its national security functions, therefore, the State of Idaho has been coordinating with the USAF to develop a long-term sustainable water supply to support the Base and its mission; and WHEREAS, on July 25, 2014, the Board purchased senior Snake River water rights for the purpose of obtaining a water supply for the MHAFB; and WHEREAS, the IWRB designed and constructed a pump and pipeline water transmission system to bring Snake River water to the MHAFB; and WHEREAS, the 2022 Idaho Legislature passed House Bill No. 769 which authorizes the IWRB to transfer ownership of the water transmission system to the USAF at no cost; and WHEREAS, the USAF is building a water treatment plant on the grounds of the MHAFB, to receive untreated Snake River water via the water transmission system; and WHEREAS, the Idaho Water Resource Board and United States Air Force negotiated a mutually beneficial Water Use Agreement, dated January 1, 2025, setting forth the terms for MHAFB's use of the senior Snake River water rights; and WHEREAS, the IWRB has secured right-of-way easements from the Idaho Department of

Transportation, Bureau of Land Management, and other Regulatory Agencies that define the water

WHEREAS, the easements and rights of way secured by the IWRB are intended to be conveyed

transmission system's pipeline alignment; and

37 38	with the ownership of the water transmission system to the USAF; and		
39 40 41 42	WHEREAS, the USAF has prepared a Water Transmission System Ownership Conveyand Agreement, which will convey ownership of the water transmission system and the easements and right of way; and		
43 44 45 46	NOW THEREFORE BE IT RESOLVED the IWRB authorizes the Chairman to execute the assignme of any and all remaining easements and right-of-way documents to the United States Air Force for the Mountain Home Air Force Base Water Sustainability Project.		
FURTHER BE IT RESOLVED the IWRB authorizes the Chairman to execute the Water Tra System Ownership Conveyance Agreement, to convey ownership of the pump house, pipelir accompanying appurtenances to the United States Air Force.			
	DATED this 31st day of October, 2025.		
	JEFF RAYBOULD, Chairman Idaho Water Resource Board		
	ATTEST DEAN STEVENSON, Secretary		
	DEAN STEVENSON, Secretary		