

RECEIVED

JAN 14 2014

DEPARTMENT OF
WATER RESOURCES

Randall C. Budge (ISB # 1949)
Thomas J. Budge (ISB #7465)
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
PO Box 1391
Pocatello, ID 83204-1391
Telephone: (208) 232-6101
Facsimile: (208) 232-6109

ATTORNEYS FOR IDAHO GROUND WATER
APPROPRIATORS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, AND TWIN FALLS
CANAL COMPANY

Docket No.: CM-DC-2010-001

**IGWA'S AMENDED NOTICE OF
STORAGE WATER SUPPLY
RE 2013 METHODOLOGY ORDER
(STEP 10)**

COMES NOW the Idaho Ground Water Appropriators, Inc., acting for and on behalf of its members ("IGWA"), through counsel and in response to the Director's December 16, 2013 *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 10)* ("2013 Step 10 Order") and January 10, 2014 *Order Determining Deficiency in IGWA's Notice of Secured Water; Curtailing Ground Water Rights Junior to July 1, 1985* ("2014 Order"), submits this Amended Notice of Storage Water Supply re 2013 Methodology Order (Step 10) ("Amended Notice of Storage Water Supply") for the purpose of amending and supplementing *IGWA's Notice of Storage Water Supply Re 2010 Methodology Order (Step 10)* dated December 31, 2013 ("Notice of Storage Water Supply").

This Amended Notice of Storage Water Supply is intended to amend and supplement IGWA's Notice of Storage Water Supply dated December 31, 2013, and to further respond and comply with the Director's Order as follows:

1. As stated previously and recognized by the Director's January 10, 2014 Order Determining Deficiency, Finding of Fact No. 9, IGWA has 10,879 AF of storage water remaining from its 2013 Leases and available to meet the Step 10 reasonable carryover shortfall for 2013. This consists of 6,500 AF from the State of Wyoming in Palisades Reservoir and 4,379 AF from the City of Pocatello in Palisades Reservoir.

2. Attached hereto are true and correct copies of the following documents evidencing IGWA's 2013 storage water supply of 6,500 AF from the State of Wyoming:

- (1) Option Agreement for Lease of Storage Water dated August 25, 2011.
- (2) Amendment 1 to Option Agreement for Purchase of Storage Water dated July 28, 2013.
- (3) Letter dated July 29, 2013, from Wyoming Water Development Commission Director Harry C. LaBonde, Jr., P.E., confirming Wyoming's lease of 6500 AF.
- (4) IGWA letter dated November 17, 2013, with attached check confirming payment in full to the State of Wyoming for the 6,500 AF leased.

The Agreement between the State of Wyoming and IGWA is for the period September 1, 2011, through December 31, 2021. The Agreement clearly provides IGWA with the right to transfer the water leased from the State of Wyoming's account. Specifically the Option Agreement states in paragraph 2.A: "The State of Wyoming shall be responsible to provide the above-specified amount of storage water to IGWA during any irrigation year in which the Agreement is in effect. . ." Additionally the Agreement provides in paragraph 3.A as follows:

"A. Delivery of Leased Storage Water. Upon request of IGWA, the Leased Storage Amount shall be transferred from the State of Wyoming storage account (1) to other storage accounts, (2) to the Idaho State Water Supply Bank or (3) to the Idaho Water District 01 Rental Pool, as required by IGWA for recharge, mitigation, or irrigation purposes. Said transfer shall constitute delivery of the Leased Storage Amount to IGWA . . ."

3. Attached as Exhibit B is a true and correct copy of the Water Rights Lease Agreement between IGWA and the City of Pocatello dated August 15, 2013, reflecting the lease of 10,000 AF from Palisades Reservoir of which 4,379 AF were unassigned at the end of the irrigation season, together with IGWA's letter dated October 1, 2013 evidencing full payment of the rent. The term of the Pocatello Lease is for one year commencing April 1, 2013 and terminating March 31, 2014. (Lease par. 2) IGWA is entitled to use the water leased from the City of Pocatello at any time during the period commencing April 1, 2013 and terminating March 31, 2014.

4. On January 6, 2014, IGWA requested that the Water District 1 Committee of Nine – Rental Pool Subcommittee (“Committee”) grant an extension of the December 1, 2013 deadline under Rule 4.3.106 to permit IGWA to assign unused Lease Storage Water to AFRD2 and/or Twin Falls Canal Company (“TFCC”) to comply with the Director’s *December 16, 2013 Step 10 Order*. This request for extension was placed on the agenda and considered at the Committee’s January 10, 2014 meeting at the Pocatello Airport. The Committee approved IGWA’s request, granted the exception and authorized the assignment of IGWA’s 10,879 AF of storage water from the State of Wyoming and the City of Pocatello as described above as follows:

1,341 AF to TFCC
9,538 AF to AFRD2
10,879 AF

The minutes of the Committee meeting are not yet available, but can be confirmed with Water Master Lyle Swank or Committee Secretary Sale Swenson. The assignment to TFCC fully satisfies the Director’s *December 16, 2013 Step 10 Methodology Order* and substantially satisfies the obligation to AFRD2, except for a shortfall of 1,045 AF.

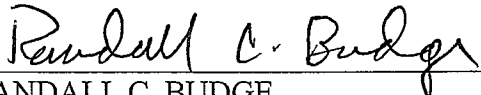
5. Subsequent to IGWA’s Notice of Storage Water dated December 31, 2013, IGWA received information that the additional 1,045 AF of storage water verbally committed by Fremont-Madison Irrigation District would instead be supplied by North Fork Reservoir Company. Attached as Exhibit “C” and incorporated by reference is the Letter Agreement between IGWA and North Fork Reservoir District providing IGWA with an additional 1,045 AF of storage water. This confirms IGWA’s additional storage water commitment to fully comply with the Director’s *December 16, 2013 Step 10 Methodology Order* to meet the carryover obligation.

6. As requested by the Committee of Nine – Rental Pool Committee at its January 10, 2014 meeting, IGWA brings to the Director’s attention timing problems which arose by reason of the late issuance of the Director’s *December 16, 2013 Step 10 Methodology Order* after Water District One’s December 1 deadline to designate a point of diversion and place of use for storage water under Rental Pool Rule 4.3.106. For the most part, IGWA’s storage water leases provide for the delivery of water any time during a one-year period from April 1 to March 31 of the following year. Water District One Rental Pool Rule 4.1.106 provides a

December 1 deadline for IGWA to assign leased storage water each year, while IGWA's one-year lease terms provide that water can be delivered during the calendar year of the irrigation season of the lease, or during the following calendar year up to March 31. IGWA first learned that it would have a carryover storage obligation on November 27, 2013 when the Director issued the Step 10 Order. However, until the Director issued the Step 10 Order on December 16, 2013, it did not know the total amount of the Step 10 carryover storage obligation nor how the amount was to be split between TFCC and AFRD2. This caused various problems and necessitated that IGWA go before the Rental Pool Committee and get an exception to the rule to permit assignment after the December 1 deadline. Because this became an issue of contention before the Rental Pool Committee, its chairman Albert Lockwood and other Committee members strongly recommended the timing problem be addressed by IGWA and resolved between the Director and Water District One. The timing problem could be resolved if the Director's Step 10 Order were issued well in advance of the December 1 deadline; or, by amending the Rental Pool Rates to move back the December 1 deadline. If this cannot be accomplished, IGWA respectfully requests that the Director address and resolve the problem or establish an appropriate process to do so.

RESPECTFULLY SUBMITTED this 14 day of January, 2014.

RACINE OLSON NYE BUDGE & BAILEY



RANDALL C. BUDGE
Attorneys for the Ground Water Users

CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of January, 2014, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated:

<p>Gary Spackman, Director - Original c/o Deborah Gibson Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 Fax: 208-287-6700 Deborah.gibson@idwr.idaho.gov garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
<p>W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318-0248 wkf@pmt.org</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
<p>John A. Rosholt Travis L. Thompson Paul L. Arrington Barker, Rosholt & Simpson 195 River Vista Pl., Suite 204 Twin Falls, ID 83301-3029 jar@idahowaters.com flt@idahowaters.com pla@idahowaters.com</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
<p>Kathleen Marion Carr U.S. Department of the Interior 960 Broadway, Ste 400 Boise, Idaho 83706 kathleenmarion.carr@sol.joi.gov</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Dept of Justice 999 18th St. South Terrace, Suite 370</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email

Denver, CO 80202 david.gehlert@usdoj.gov	
Matt J. Howard U.S. Bureau of Reclamation Pacific Northwest Region 1150 N. Curtis Road Boise, ID 83706-1234 mhoward@pn.usbr.gov	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Sarah H. Klahn Mitra Pemberton White & Jankowski 511 16 th Street, Ste 500 Denver, CO 80202 sarahk@white-jankowski.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Michael C. Creamer Jeffrey C. Fereday Givens Pursley P.O. Box 2720 Boise, Idaho 83701-2720 mcc@givenspursley.com jcf@givenspursley.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, Idaho 83205 dtranmer@pocatello.us	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
William A. Parsons Parsons Smith & Stone PO Box 910 Burley, ID 83318 wparsons@pmt.org	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email



 Randall C. Budge

EXHIBIT “A”

SUMMARY:
No. 2011-1
Wyoming State of Wyoming
Quantity: 5000 AF
UBOR Contract No.1-07-10-W0823
Palisades Reservoir

OPTION AGREEMENT FOR LEASE OF STORAGE WATER

This Option Agreement for Lease of Storage Water ("Agreement") is made and entered into between the STATE OF WYOMING, acting through the WYOMING WATER DEVELOPMENT OFFICE, whose address is 6920 Yellowtail Road, Cheyenne, WY 82002, and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), whose address is P.O. Box 1391, Pocatello, Idaho 83204, acting for and on behalf of its members.

RECITALS

1. The State of Wyoming contracted with the United States to acquire 33,000 acre-feet of reservoir storage space reserved for obligations related to provisions of the Snake River compact between the States of Wyoming and Idaho concerning use of the waters of the Snake River (Contract No. 1-07-10-W0823, signed October 31, 1990).
2. Pursuant to 1991 Wyoming Session Laws page 80, chapter 18, section 2, the State of Wyoming reserved the water allocated to the 33,000 acre-feet owned under the contract with the United States for the following purposes in the following priority:
 - A. Meeting the requirements of the Snake River Compact;
 - B. Supplementing flows in the Snake River below Jackson Lake or maintaining water levels in Jackson Lake for the benefit of the fisheries; and
 - C. Selling water on a short term basis to Wyoming water users and the Idaho water bank.
3. The water storage account in Palisades Reservoir as described in the contract entered into between the State of Wyoming and the United States is administered by the director of the Wyoming Water Development Office with the advice of the Wyoming Game and Fish Department and approval of the Wyoming State Engineer (1991 Wyoming Session Laws p. 80, ch. 18, sec. 2(c)).

4. IGWA has the responsibility of mitigating impacts its members have upon other water users in Idaho as determined by the Director of the Idaho Department of Water Resources ("Department"). The amount of mitigation owed by IGWA varies from year-to-year as determined by the Department.
5. IGWA, from time to time, has inadequate water available to meet its mitigation requirement, and desires to remedy such inadequacies, in part, by leasing 5,000 acre-feet from the State of Wyoming when the water is available.
6. The Idaho Water District 01 Administrative fee for 2011 is "a fee of eighty cents (\$0.80) per acre-foot assessed on all storage rented or leased through the Rental Pool, disbursed to the District at the end of the irrigation season" (2010 Idaho Water District 01 Rental Pool Procedures, Rule 2.1 on p. 3).
7. The Idaho Water Resource Board Surcharge for 2011 is "a surcharge equal to ten percent (10%) of the Rental Price or Lease Price assessed on all storage rented or leased through the Rental Pool, disbursed to the Board at the end of the irrigation season" (2010 Idaho Water District 01 Rental Pool Procedures, Rule 2.9 on p. 3).

AGREEMENT

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Term of Agreement.** The term of this Agreement shall be for a period commencing September 1, 2011, and terminating on December 31, 2021. This Agreement may be extended by mutual agreement of the parties, reduced to writing and signed by all parties.
2. **Option to Lease Storage Water.** The State of Wyoming hereby grants to IGWA an option to annually lease and use up to a maximum of five thousand (5,000) acre-feet of storage water (the "Option") allocated and available to the State of Wyoming as a space holder in the Upper Snake Reservoir System based upon the State of Wyoming's Storage Water Contract with the United States Bureau of Reclamation. The Option is described as follows:
 - A. **Maximum Quantity Subject to Option.** Five thousand (5,000) acre-feet shall be the maximum amount of storage water made available by the State of Wyoming to IGWA in a single year. The State of Wyoming shall be responsible for providing the above-specified amount of storage water to IGWA during any irrigation year in which this Agreement is in effect, the Option is available pursuant to paragraph 2.B. and IGWA provides the State of Wyoming with timely notice under paragraph 2.C.

B. **Availability of Option.** IGWA may not exercise the Option in a year to the extent there is insufficient water in the State of Wyoming's storage account after the previous water year's final accounting by Idaho Water District 01 ("WD01"). The availability of the Option shall be as follows:

- (i) If the State of Wyoming's storage account contains 25,000 acre-feet or more according to WD01's final accounting for the previous water year, then the Option may be exercised by IGWA.
- (ii) If the State of Wyoming's storage account contains between 15,000 and 24,999 acre-feet according to WD01's final accounting for the previous water year, then the parties will mutually decide by April 15 if the option may be exercised for a specific quantity of water.
- (iii) If the State of Wyoming's storage account contains less than 14,999 acre-feet according to WD01's final accounting for the previous water year, then the Option shall not be exercised by IGWA.

C. **Exercise of Option.** IGWA will notify in writing (1) the State of Wyoming, by way of the Wyoming State Engineer's Office pursuant to paragraph 6.G.i., and (2) the Watermaster for Idaho Water District 01 IGWA's intent to exercise the Option and lease storage water no later than May 1.

3. **Leased Storage Amount.** The "Leased Storage Amount" shall be the amount of water actually transferred during an irrigation year from the State of Wyoming's storage account for use by IGWA as determined by the Watermaster of Idaho Water District 01.

A. **Delivery of Leased Storage Amount.** Upon request of IGWA, the Leased Storage Amount shall be transferred from the State of Wyoming's storage account (1) to other storage accounts, (2) to the Idaho State Water Supply Bank, or (3) to the Idaho Water District 01 Rental Pool, as required by IGWA for recharge, mitigation, or irrigation purposes. Said transfer shall constitute delivery of the Leased Storage Amount to IGWA. The Leased Storage Amount shall be measured and accounted for at Palisades Reservoir. IGWA shall assume any loss of any nature whatsoever occurring to the Leased Storage Amount after the transfer is effectuated. The State of Wyoming makes no warranty with respect to the quality of the Leased Storage Amount transferred to serve IGWA, it being understood that this is raw, untreated water as it occurs in Palisades Reservoir.

B. **Use of Leased Storage Amount**

- (i) This Agreement does not create any right for IGWA to lease storage water for use below Milner Dam.
 - (ii) The Leased Storage Amount, once delivered to IGWA under this Agreement, may then be delivered by IGWA to any of its members or to any other person or entity for the authorized beneficial uses of recharge, mitigation or irrigation purposes. Any delivery of storage water by IGWA or beneficial use of the delivered water shall not constitute a waiver of IGWA's responsibilities for any payments or fees under this Agreement.
 - C. **Non-Use of Leased Storage Amount.** In the event IGWA is unable to fully utilize any of the Leased Storage Amount for beneficial purposes during a year, IGWA reserves the right to assign the unused amount back to the State of Wyoming's storage water account on or before November 15.
4. **Payments.** IGWA shall pay the following amounts:
- A. **Option Payment.** On or before February 15 of each year during the term of this Agreement, IGWA shall pay to the State of Wyoming an "Option Payment" for the option to lease storage water in the amount of ten thousand dollars (\$10,000).
 - B. **Lease Payment.** On or before November 15 of each year during the term of this Agreement, IGWA shall pay to the State of Wyoming a "Lease Payment" calculated as follows: [(the Lease Storage Amount for that year, less any amount assigned back to the State of Wyoming under paragraph 3.C. above) multiplied by (the per acre-foot Idaho Water District 01 Rental Pool purchase price in effect for that year)] minus (the amount of the Option Payment that IGWA actually paid to the State of Wyoming that year). If this calculation leads to a negative number in a given year, the Lease Payment shall be zero dollars (\$0.00). In no event, shall the total of the Option Payment and the Lease Payment be less than ten thousand dollars (\$10,000) annually.
 - C. **Administrative Fees.** IGWA shall be responsible to pay all administrative fees in effect each year in anyway relating to storage water IGWA receives from the State of Wyoming under this Agreement, including, but not limited to: Idaho Water District 01 Rental Pool Administrative fees and Idaho Water Resource Board surcharges. Administrative fees shall be paid to the issuer of the fee on or before the due date specified by the fee issuer.

D. **Replacement Water Fees and Impact Payments.** IGWA shall be responsible for paying any Idaho Water District 01 replacement water fees or impact payments in any way arising out of this Agreement. If the State of Wyoming is held responsible for paying replacement water fees or impact payments, IGWA shall indemnify and hold Wyoming harmless for such fees.

5. **Special Provisions.**

A. **No Assignment.** Neither party shall assign or otherwise transfer any rights or delegate any of the duties under this Agreement to any third party.

B. **Time is of the Essence.** Time is of the essence in all provisions of this Agreement.

6. **General Provisions.**

A. **Applicable Law/Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Ninth Judicial District, Teton County, Jackson, Wyoming.

B. **Compliance with Laws.** IGWA agrees that it will comply fully with all laws, orders, standards, or regulations under federal, state and local jurisdictions now or hereafter in force as may be applicable to the Leased Storage Amount or the facilities at which the Leased Storage Amount may be stored or used.

C. **Entirety of Agreement.** This Agreement, consisting of eight (8) pages, contains the entire agreement between the parties and supersedes all prior negotiations, representations, purchases, or other contracts, either written or oral. This Agreement cannot be changed except by a written instrument subsequently executed by the parties.

D. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to: acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance

to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that this provision shall not in any way counteract the provisions in paragraph 6.I. herein regarding the State of Wyoming's sovereign immunity.

- E. **Indemnification.** IGWA shall release, indemnify, and hold harmless the State of Wyoming, the Wyoming Water Development Commission, the Wyoming State Engineer, and their officers, agents, employees, successors, and assignees from any cause of action, claims or demands arising out of IGWA's performance under this Agreement.
- F. **Non-Waiver.** The failure of the State of Wyoming to insist on a strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that the State of Wyoming may have regarding that specific term or condition.
- G. **Notice.** All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, and return receipt requested, or by facsimile, e-mail, or in person, to the party to be notified at the addresses set forth in paragraphs 6.G.(i) through 6.G.(iii) herein.

Every notice, if mailed, shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Notice sent by facsimile or e-mail shall be deemed to have been given at the time sent. Nothing contained herein shall be construed to preclude personal service of any notice.

All notices by mail shall be delivered to the addresses listed below. In the event that any of the addresses listed below change, the party whose address has changed shall immediately notify the other party in writing.

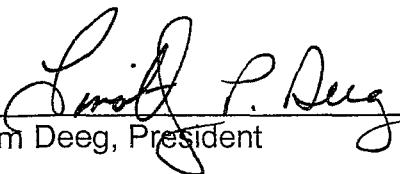
- (i) For the purposes of notification under the terms of this Agreement other than to receive payments, the State of Wyoming's business address is the Wyoming State Engineer's Office, 122 West 25th Street, 4th Floor East, Cheyenne, WY 82002.
- (ii) For the limited purposes of receiving payments under the terms of this Agreement, the State of Wyoming's business address is the Wyoming Water Development Office, 6920 Yellowtail Road, Cheyenne, Wyoming 82002.

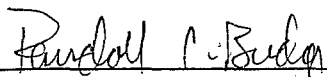
- (iii) For the purposes of notification under the terms of this Agreement, IGWA's business address is P.O. Box 1391, Pocatello, Idaho 83204.
 - H. **Remedies for Breach.** If either party breaches this Agreement and such defaults are not cured within thirty (30) days after receipt of written notice thereof, either party, at its option, may elect any or all of the following cumulative remedies:
 - (i) To terminate this Agreement.
 - (ii) To seek specific performance of this Agreement.
 - (iii) To pursue any and all other remedies under law.
 - I. **Sovereign Immunity.** The State of Wyoming and its agencies do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.
 - J. **Termination.** Either party may terminate this Agreement without cause at the end of any calendar year by giving not less than six (6) months advance written notice.
 - K. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement.
7. **Effective Date.** This Agreement is not valid and shall not become effective until it is signed by an authorized representative of the State of Wyoming and an authorized representative of IGWA, and has been approved by the Wyoming State Engineer and an authorized representative of A&I Procurement, and approved as to form by the Office of the Wyoming Attorney General. The effective date of this Agreement shall be the last date of signature, and the lease shall commence on the last date of signature or on the date specified in the Term of Agreement provision, whichever is later.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

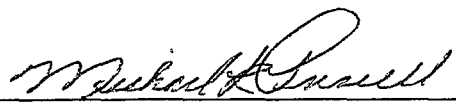
8. **Signatures.** The parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agree to the terms and conditions of this Agreement.

IDAHO GROUND WATER APPROPRIATORS, INC. (Lessee)

By:  8-17-11
Tim Deeg, President Date

Attest:  8-12-11
Randall C. Budge, Secretary Date


STATE OF WYOMING (Lessor)

 8/25/11
Michael K. Purcell, Director Date
Wyoming Water Development Office

WYOMING STATE ENGINEER'S APPROVAL

 8/23/11
Patrick T. Tyrrell, Wyoming State Engineer Date

WYOMING ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

 # 77680 8-4-11
S. Jane Caton, Senior Assistant Attorney General Date

AMENDMENT ONE TO OPTION AGREEMENT FOR PURCHASE OF STORAGE WATER

This Amendment One to Option Agreement for Lease of Storage Water ("Amendment") is made and entered into between the STATE OF WYOMING, acting through the WYOMING WATER DEVELOPMENT OFFICE, whose address is 6920 Yellowtail Road, Cheyenne, WY 82002, and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), an Idaho corporation, whose address is 201 E. Center, P.O. Box 1391, Pocatello, Idaho 83204, acting through and on behalf of its members.

RECITAL

1. **Purpose of Amendment.** This Amendment shall constitute the first amendment to the Option Agreement for Purchase of Storage Water ("Agreement") between the parties, which was duly executed on August 25, 2011. The purpose of this Amendment is to expand the original Option to allow IGWA to purchase an additional 5,000 acre-feet from the State of Wyoming when water is available.

AGREEMENT

1. **Term of the Amendment.** This Amendment shall commence immediately upon the last required signature being affixed hereto, and shall remain in full force and effect through the term of the Agreement.
2. **Specific Changes.** Section 2, "Option to Lease Storage Water", of the Agreement shall be replaced with the following:
 2. **Option to Lease Storage Water.** The State of Wyoming hereby grants to IGWA an option to annually lease and use up to a maximum of ten thousand (10,000) acre-feet of storage water (the "Option") allocated and available to the State of Wyoming as a space holder in the Upper Snake Reservoir System based upon the State of Wyoming's Storage Water Contract with the United States Bureau of Reclamation. The Option is described as follows:
 - A. **Maximum Quantity Subject to Option.** Ten thousand (10,000) acre-feet shall be the maximum amount of storage water made available by the State of Wyoming to IGWA in a single year. The State of Wyoming shall be responsible for providing the above-

- B. specified amount of storage water to IGWA during any irrigation year in which this agreement is in effect, when the Option is available pursuant to paragraph 2.B. and IGWA provides the State of Wyoming with timely notice under paragraph 2.C.
- C. **Availability of Option.** IGWA may not exercise the Option in a year to the extent there is insufficient water in the State of Wyoming's storage account after the previous water year's final accounting by Idaho Water District 01 ("WD01"). The availability of the Option for the first five thousand (5,000) acre feet shall be as follows:
- i. If the State of Wyoming's storage account contains 25,000 acre-feet or more according to WD01's final accounting for the previous water year, then the Option may be exercised by IGWA.
 - ii. If the State of Wyoming's storage account contains between 15,000 and 24,999 acre-feet according to WD01's final accounting for the previous water year, then the parties will mutually decide by April 15 if the Option may be exercised for a specific quantity of water.
 - iii. If the State of Wyoming's storage account contains less than 14,999 acre-feet according to WD01's final accounting for the previous water year, then the Option shall not be exercised by IGWA.

The availability of the Option for up to an additional five thousand 5,000 acre feet shall be as follows:

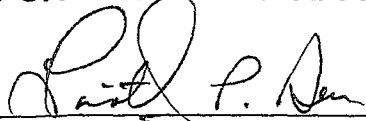
- i. If the State of Wyoming's storage account contains more than 20,000 acre-feet after the Option for the first 5,000 acre-feet is exercised, and upon written request by IGWA, the Wyoming Water Development Office, with the advice of the Wyoming Game and Fish Department and the approval of the Wyoming State Engineer, may authorize up to an additional 5,000 acre feet to be exercised by IGWA.

3. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the Agreement between the parties, including but not limited to sovereign immunity, shall remain unchanged and in full force and effect.

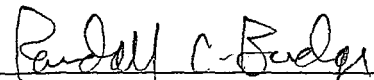
THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

4. **Signatures.** The parties to this Amendment, through their duly authorized representatives, have executed this Amendment, known as Amendment One to Option Agreement for Lease of Storage Water, on the dates set out below, and certify that they have read, understood, and agree to the terms and conditions of this Amendment.

IDAHO GROUND WATER APPROPRIATORS, INC. (Lessee)

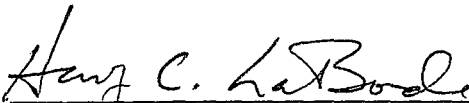
By: 
Tim Deeg, President

7/24/13
Date

Attest: 
Randall C. Budge, Secretary

7/24/13
Date

STATE OF WYOMING (Lessor)


Harry C. LaBonde, Director
Wyoming Water Development Office

7-22-13
Date

WYOMING STATE ENGINEER'S APPROVAL


Patrick T. Tyrrell, Wyoming State Engineer

7/28/13
Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

 #103237
S. Jane Caton, Senior Assistant Attorney General

7-19-13
Date



WYOMING WATER DEVELOPMENT COMMISSION

6920 Yellowtail Road, Cheyenne, WY 82002

Phone: (307) 777-7626

Fax: (307) 777-6819

<http://wwdc.state.wy.us>

Matthew H. Mead

Governor

Commissioners

Nick Bettas

Karen Budd-Falen

Floyd Canfield

Mitchel Cortenoir

Sheridan Little

William Resor

Margo Sabec

Jeanette Sekan

Rodney Wagner

Todd Werbelow

Harry C. LaBonde, Jr., P.E.

Director

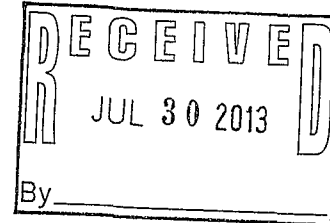
July 29, 2013

Mr. Randy Budge

Racine Olson Nye Budge & Bailey

PO Box 1391

Pocatello, ID 83204-1391



Subject: IGWA/Wyoming Agreement for Palisades Reservoir

Dear Randy,

Find enclosed three (3) copies of the proposed Amendment One to the above referenced agreement. Wyoming has fully executed the amendment and once IGWA has executed all copies, please return two copies to me.

As we have discussed, the amendment leaves in place the process whereby Wyoming may lease up to 5000 AF of water from the Wyoming account in Palisades Reservoir to the IGWA. Additionally, the amendment allows Wyoming to lease a second block of water (0-5000 AF) to the IGWA when the Wyoming Account balance exceeds 20,000 AF after the initial 5000 AF lease.

For Water Year 2013, Wyoming has leased 5000 AF of water to the IGWA under the original agreement. With the execution of the amendment, Wyoming will lease an additional 1,500 AF of water to the IGWA in Water Year 2013.

If you should have any questions, please feel free to contact me at 307-777-7626

Respectfully,

A handwritten signature in cursive script that reads "Harry C. LaBonde Jr.".

Harry C. LaBonde Jr., P.E.

Director

x.c. Pat Tyrrell – Wyoming State Engineer

IDAHO GROUND WATER APPROPRIATORS, INC.

P.O. Box 1391
Pocatello, Idaho 83201

Officers:

Tim Deeg, President
American Falls, Idaho 83211
208-226-2562

Craig Evans, Vice President
1523 W. 300 N.
Blackfoot, Idaho 83211
208-680-3527

Randall C. Budge, Gen. Counsel/ Secretary
P. O. Box 1391
Pocatello, Idaho 83204-1391
208-232-6101

Lynn Tominaga, Executive Director
IGWA
P.O. Box 2624
Boise, Idaho 83701
208-381-0294

Members:

American Falls-Aberdeen GW District
Bingham GW District
Bonneville-Jefferson GW District
Jefferson-Clark GW District
Madison GW District
Magic Valley GW District
North Snake GW District
Southwest Irrigation District
Busch Agricultural Resources, Inc.
Jerome Cheese
United Water, Inc.
City of American Falls
City of Blackfoot
City of Chubbuck
City of Heyburn
City of Jerome
City of Paul
City of Post Falls
City of Rupert

November 7, 2013

Wyoming State Engineer's Office
Attn: Sue Lowry
122 W. 25th St, 4th Floor
Cheyenne, WY 82002
(For notification purposes)

Wyoming Water Development Office
Attn: Harry LaBonde, Director
6920 Yellowtail Road
Cheyenne, WY 82002
(For receiving payments)

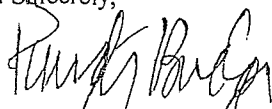
Re: IGWA Lease Payment

Dear Sue and Harry:

Enclosed please find IGWA's check in the amount of \$84,250 for the balance owed under the Lease of storage water for 2013 which is due November 15. This is for 6500 AF at the \$14.50 rental pool rate. This reflects a credit for the \$10,000 option payment previously remitted.

IGWA extends its appreciation and thanks to the State of Wyoming for the storage water lease which has helped enable the Ground Water Users to meet all of their mitigation obligations this year. If you have any questions, please do not hesitate to contact me.

Sincerely,


RANDALL C. BUDGE
RCB:tr



IDAHO GROUND WATER APPROPRIATORS, INC.

C/O RANDALL C. BUDGE, SECRETARY

PO BOX 1391

POCATELLO, ID 83204-1391

(208) 232-6101

U.S. BANK NATIONAL ASSOCIATION

1-800-872-2657

92-372/1231

1424

11/6/2013

© 2005 INTUIT INC. # 872 1-800-433-8810

PAY TO THE ORDER OF WYOMING WATER DEVELOPMENT COMMISSION

\$ **84,250.00

Eighty-Four Thousand Two Hundred Fifty and 00/100*****

DOLLARS

WYOMING WATER DEVELOPMENT COMMISSIO
6920 YELLOWTAIL ROAD
CHEYENNE, WY 82002

Randall C. Budge
David P. Aug

MEMO

⑈001424⑈ ⑆123103729⑆ 153301567209⑈

IDAHO GROUND WATER APPROPRIATORS, INC.

WYOMING WATER DEVELOPMENT COMMISSION
2013 LEASES

11/6/2013

1424

84,250.00

US BANK REGULAR

84,250.00

EXHIBIT “B”

LEASE SUMMARY:
Lease No. 1-2013
Lessor: City of Pocatello, Idaho
Water Right Nos.
Quantity: 10,000AF

WATER RIGHTS LEASE AGREEMENT

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

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

Storage Water Right No.	Priority	Quantity CFS/AF
Palisades Storage Contract No. 14-06-100-1825	July 28, 1939	10,000AF

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

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing April 1, 2013, and terminating on March 31, 2014. Thereafter, this Lease will be automatically renewed and extended for successive additional one (1) year terms, unless and until terminated by either party upon written notice provided on or before April 1.

3. **Rent.** For the use of the leased water rights Lessee shall pay to Lessor rent annually in the amount of \$25.00 per acre-foot. The rent shall be paid on or before September 30th, 2013.

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

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

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

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

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

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

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

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

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

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

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

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


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

DATED this 15th day of August 2013.

LESSEE:

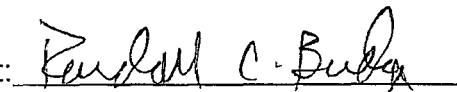
IDAHO GROUND WATER
APPROPRIATORS, INC.

By:



Tim Deeg, President

Attest:



Randall C. Budge, Secretary

LESSOR:

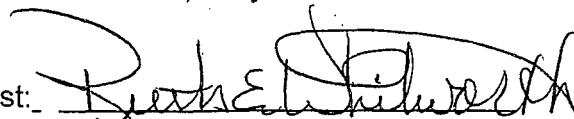
CITY OF POCA TELLO, IDAHO

By:



Brian Blad, Mayor

Attest:



Ruth E. Whitworth, City Clerk

IDAHO GROUND WATER APPROPRIATORS, INC.

P.O. Box 1391
Pocatello, Idaho 83201

Officers:

Tim Deeg, President
American Falls, Idaho 83211
208-226-2562

Craig Evans, Vice President
1523 W. 300 N.
Blackfoot, Idaho 83211
208-680-3527

Randall C. Budge, Gen. Counsel/ Secretary
P. O. Box 1391
Pocatello, Idaho 83204-1391
208-232-6101

Lynn Tominaga, Executive Director
IGWA
P.O. Box 2624
Boise, Idaho 83701
208-381-0294

Members:

American Falls-Aberdeen GW District
Bingham GW District
Bonneville-Jefferson GW District
Jefferson-Clark GW District
Madison GW District
Magic Valley GW District
North Snake GW District
Southwest Irrigation District
Busch Agricultural Resources, Inc.
Jerome Cheese
United Water, Inc.
City of American Falls
City of Blackfoot
City of Chubbuck
City of Heyburn
City of Jerome
City of Paul
City of Post Falls
City of Rupert

October 1, 2013

Mayor Brian Blad
Dean Tranmer, City Attorney
City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83205

Re: *IGWA – Pocatello Water Right Lease Agreement dated August 15, 2013*

Dear Mayor Blad and Dean:

Enclosed please find IGWA's check in the amount of \$250,000 as payment in full of the storage water lease rent, being 10,000 AF at \$25 per AF. This storage water was critically important in meeting the Ground Water Users' mitigation obligations and sustaining the eastern Idaho agricultural economy.

Sincerely,



RANDALL C. BUDGE

RCB:tr

Cc: IGWA Board of Directors



IDAHO GROUND WATER APPROPRIATORS, INC.

C/O RANDALL C. BUDGE, SECRETARY

PO BOX 1391

POCATELLO, ID 83204-1391

(208) 232-6101

U.S. BANK NATIONAL ASSOCIATION

1-800-872-2657

92-372/1231

1418

9/30/2013

© 2005 INTUIT INC. # 872 1-800-485-8810

PAY TO THE ORDER OF CITY OF POCATELLO

\$ **250,000.00

Two Hundred Fifty Thousand and 00/100*****

DOLLARS

CITY OF POCATELLO
PO BOX 4169
POCATELLO, ID 83205

Randall C. Budge
Justin P. Berg

MEMO

⑈001418⑈ ⑆123103729⑆ 153301567209⑈

IDAHO GROUND WATER APPROPRIATORS, INC.

CITY OF POCATELLO

2013 LEASES

9/30/2013

1418

250,000.00

US BANK REGULAR

250,000.00

EXHIBIT “C”

IDAHO GROUND WATER APPROPRIATORS, INC.

P.O. Box 1391
Pocatello, Idaho 83201

Officers:

Tim Deeg, President
American Falls, Idaho 83211
208-226-2562

Craig Evans, Vice President
1523 W. 300 N.
Blackfoot, Idaho 83211
208-680-3527

Randall C. Budge, Gen. Counsel/ Secretary
P. O. Box 1391
Pocatello, Idaho 83204-1391
208-232-6101

Lynn Tominaga, Executive Director
IGWA
P.O. Box 2624
Boise, Idaho 83701
208-381-0294

Members:

American Falls-Aberdeen GW District
Bingham GW District
Bonneville-Jefferson GW District
Jefferson-Clark GW District
Madison GW District
Magic Valley GW District
North Snake GW District
Southwest Irrigation District
Busch Agricultural Resources, Inc.
Jerome Cheese
United Water, Inc.
City of American Falls
City of Blackfoot
City of Chubbuck
City of Heyburn
City of Jerome
City of Paul
City of Post Falls
City of Rupert

January 10, 2014

North Fork Reservoir Company
c/o Jerry Rigby
P.O. Box 250
Rexburg, Idaho 83440-0250
jrigby@rex-law.com

Re: **LETTER AGREEMENT**
North Fork Reservoir Company – IGWA Storage Water Lease

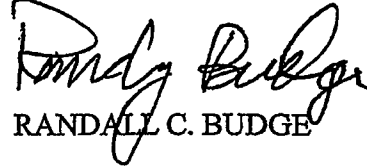
Dear Jerry:

This letter will confirm that North Fork Reservoir Company, has agreed to make available up to a maximum of 1,045 AF of storage water to IGWA for assignment by IGWA to AFRD2 and/or Twin Falls Canal Company as may be necessary to comply with the Director's December 16, 2013 Step 10 Methodology Order. IGWA may make this assignment in its discretion to comply with the Order by notifying Water District 1 Water Master Lyle Swank to make the assignment and providing North Fork Reservoir Company notice thereof.

Within thirty days of the date the assignment is made, IGWA will pay to North Fork Reservoir Company \$20 per AF on the water assigned up to the maximum of 1,045 AF, and will also pay all administrative fees thereon to Water District 1.

Please indicate your approval of this Letter Agreement by the signature below and promptly return it to me. I will then serve the copies per the service list.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Cc: IGWA Board

Tim Deeg, President


Lynn Tominaga, Executive Director

Lyle Swank, Water Master

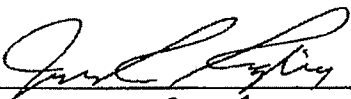
Service List/Docket No. CM-DC-2010-001

APPROVED AND ACCEPTED:

North Fork Reservoir Company

By: 
Name: Michael Rasmussen
Title: Pres. North Fork Reservoir Co.

ATTEST:

By: 
Name: JERRY R. RIGBY
Title: SEC.