

Randall C. Budge (ISB# 1949)
Thomas J. Budge (ISB# 7465)
RACINE OLSON NYE BUDGE & BAILEY, CHARTERED
201 E. Center St. / P.O. Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
(208) 232-6109 – fax
rcb@racinelaw.net
tjb@racinelaw.net
Attorneys for IGWA

RECEIVED

APR 30 2015

DEPARTMENT OF
WATER RESOURCES

IDAHO DEPARTMENT OF WATER RESOURCES

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

IN THE MATTER OF IGWA'S MITIGATION PLAN IN RESPONSE TO THE SURFACE WATER COALITION'S DELIVERY CALL

Docket No. CM-DC-2010-001
Docket No. CM-MP-2009-007

IGWA's Notice of Secured Storage Water In Response to April 2015 As-Applied Order (Methodology Steps 1-3)

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of its members, through counsel, submits this notice of secured storage water in response to the Director's *Final Order Regarding April 2015 Forecast Supply (Methodology Steps 1-3)* issued April 16, 2015 ("2015 April As-Applied Order"). The 2015 April As-Applied Order predicts a total demand shortfall of 89,000 acre-feet to the Surface Water Coalition (SWC) for 2015 pursuant to Conclusions of Law Nos. 5 and 6 which state:

5. The April predicted demand shortfall of 89,000 acre-feet is the volume of mitigation water junior water right

holders must actually secure for delivery or deliver by other activities, as confirmed by ESPAM 2.1 model simulations. There was no carryover shortfall in the fall of 2014, junior ground water users did not secure any mitigation water for a carryover shortfall, and there is no adjustment to the mitigation obligation.

6. Junior ground water users will be required to establish, to the satisfaction of the Director, their ability to secure a volume of storage water or to conduct other approved mitigation activities that will deliver 89,000 acre-feet of water to the injured members of the SWC at the time of need. If junior ground water users fail or refuse to submit this information by April 30, 2015, the Director will issue an order curtailing junior ground water users.¹

The predicted shortfall of 89,000 acre-feet is allocated 15,200 acre-feet to AFRD2 and 73,700 acre-feet to TFCC.

A petition for reconsideration, and to stay or vacate, the *2015 April As-Applied Order* is filed herewith. This petition, if granted, is expected reduce the predicted shortfall to the SWC. A petition for clarification of the *2015 April As-Applied Order* as also filed herewith for the purpose of determining IGWA's share of mitigation owed to the SWC by junior groundwater users. This notice of secured water is intended to apply toward the mitigation obligation of IGWA's members after the petitions for reconsideration and clarification are decided.

IGWA's current leased storage water supply to meet the 2015 predicted demand shortfall to AFRD2 and TFCC is summarized as follows:

5,000 acre-feet	Snake River Valley Irrigation District
10,000 acre-feet	New Sweden Irrigation District
10,000 acre-feet	Idaho Irrigation District
<u>10,000 acre-feet</u>	State of Wyoming
35,000 acre-feet	Total

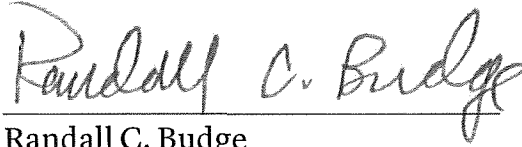
Copies of these signed Storage Water Leases are attached.

IGWA has verbal commitments from other storage water spaceholders of their intent to collectively lease additional storage water of approximately 20,000 acre-feet of water to IGWA, but signed leases will not be provided until after the date of storage allocation when the lessors' supplies and the rental prices are known. As IGWA secures additional storage water this notice will be supplemented accordingly.

¹ *2015 April As-Applied Order* at 5.

RESPECTFULLY SUBMITTED this 30th day of April, 2015.

RACINE OLSON NYE BUDGE & BAILEY,
CHARTERED

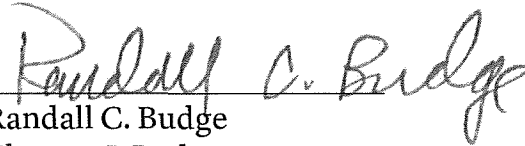
A handwritten signature in cursive script that reads "Randall C. Budge". The signature is written in black ink and is positioned above a horizontal line.

Randall C. Budge
Thomas J. Budge

Attorneys for IGWA

CERTIFICATE OF SERVICE

I certify that on this 30th day of April, 2015, a true and correct copy of the foregoing was served on the following persons in the manner indicated:



 Randall C. Budge
 Thomas J. Budge

Director Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Deborah.gibson@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Deputy Attorneys General Garrick L. Baxter Emmi L. Blades Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 Fax: 208-287-6700 garrick.baxter@idwr.idaho.gov emmi.blades@idwr.idaho.gov kimi.white@idwr.idaho.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
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 tlt@idahowaters.com jks@idahowaters.com pla@idahowaters.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
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@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

<p>Sarah Klahn Mitra Pemberton WHITE JANKOWSKI, LLP 511 16th St., Suite 500 Denver, Colorado 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com</p>	<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>
<p>Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us</p>	<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>
<p>Michael C. Creamer Jeffrey C. Fereday GIVENS PURSLEY LLP PO Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.com</p>	<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>
<p>William A. Parsons PARSONS, SMITH & STONE, LLP PO Box 910 Burley, ID 83318 wparsons@pmt.org</p>	<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>
<p>Lyle Swank IDWR—Eastern Region 900 N. Skyline Drive Idaho Falls, ID 83402-6105 lyle.swank@idwr.idaho.gov</p>	<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>
<p>Allen Merritt Cindy Yenter IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>	<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>

<p>Kathleen Marion Carr US Dept. Interior 960 Broadway Ste 400 Boise, Idaho 83706 kathleenmarion.carr@sol.doi.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 Div. U.S. Department of Justice 999 18th St, South Terrace, Ste 370 Denver, CO 80202 david.gehlert@usdoj.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>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, Id 83706-1234 mhoward@pn.usbr.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

STORAGE WATER LEASE

This Storage Water Lease ("Agreement") is entered into between IDAHO IRRIGATION DISTRICT, whose address is c/o Alan Kelsch, Chairman, 7466 So. 15th West, Idaho Falls, Idaho, 83402 ("Lessor"), and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), acting for and on behalf of its member Ground Water Districts, whose address is P.O. Box 1391, Pocatello, Idaho 83204 ("IGWA"). This Agreement replaces and supersedes all previous storage water lease agreements between the parties.

RECITALS

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
- B. IGWA desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
- C. The amount of storage water IGWA needs for mitigation and related purposes may vary from year to year and also may change during the irrigation season.
- D. Lessor desires to lease storage water to IGWA, and IGWA desires to lease storage water from Lessor, pursuant to the terms of this Agreement.

AGREEMENT

1. **Storage Water Lease.** Lessor hereby leases to IGWA 10,000 acre-feet of storage water for 2015 only, at the price of \$22.50 per acre-foot, which IGWA is required to pay rent for whether or not IGWA uses the water.
2. **Term.** The initial term of this Agreement shall be for a period of one (1) year, commencing January 1, 2015, and ending December 31, 2015.
3. **Payment of Rent.** IGWA will pay all Lease payments to Lessor in two installments, with the first one-half (1/2) paid on or before July 15th and the second one-half (1/2) paid on or before November 15th of each year.
4. **Administrative Fees.** IGWA will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board to complete the assignment of storage water leased from Lessor to IGWA.
5. **Use of Leased Water.**

6.1 The assignment, delivery, and use of leased storage water will be

determined by IGWA and is subject to the final accounting for the year by the Watermaster of Water District 1 and any applicable Water District 1 Rental Pool Rules.

6.2 This Agreement does not include any right to use storage water below Milner Dam.

6.3 The storage water available to IGWA under this Agreement may be assigned and delivered by IGWA to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

6.4 Any storage water not used or assigned by IGWA by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

6.5 Lessor understands that any storage water leased may be subject to a last-to-fill water right priority in the irrigation year following the lease pursuant to the Water District 1 Rental Pool Rules.

6. Representations by Lessor. Lessor covenants and represents that:

7.1 It will provide to IGWA all storage water leased under this Agreement.

7.2 It is the true and lawful owner of the Storage Water and that nothing restricts or precludes Lessor from entering into this Agreement.

7. Breach. If either party defaults in the performance of its obligations under this Agreement, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect any or all of the following cumulative remedies:

(a) Terminate this Agreement;

(b) Seek specific performance of this Agreement;

8. Assignment. This Agreement may not be assigned by IGWA without the express written consent of Lessor, but the storage water leased by IGWA under this Agreement may be assigned or otherwise made available to any other person or entity.

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

10.1 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.

10.2 Mediation. If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation by a mediator designated by mutual agreement of the parties. The mediation will be held in Bannock County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

10.3 Litigation. Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement agreement entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

10.4 Governing Law, Jurisdiction, and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction, and agree that Bannock County is the proper venue.

10.5 Exclusive Procedures. The procedures specified in this section 11 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 11.1 and 11.2 are pending.

10. Notices. All notices given pursuant to this Agreement must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing for certified mail and regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:

Landlord: Idaho Irrigation District
c/o Alan Kelsch, Chairman
7466 South 15th West
Idaho Falls ID 83402
Phone: _____

IGWA: c/o Randall C. Budge, Secretary/General Counsel
IGWA
P.O. Box 1391
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109
Email: rcb@racinelaw.net

Copy to: Lynn Tominaga, Executive Director
IGWA
P.O. Box 2624
Boise, Idaho 83701-2624
Phone: 208-381-0294
Fax: 208-381-5272
Email: lynn_tominaga@hotmail.com

Either party may change its designated address by providing written notice of such change to the other party.

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

DATED this 23rd day of April, 2015.

LESSEE:
IDAHO GROUND WATER
APPROPRIATORS, INC.

By: Tim Deeg by RW
Tim Deeg, President

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

LESSOR:
IDAHO IRRIGATION DISTRICT
Address: c/o Alan Kelsch, Chairman
7466 South 15th West
Idaho Falls ID 83402

By: Alan D. Kelsch

Title: Chairman

STORAGE WATER LEASE

This Storage Water Lease ("Agreement") is entered into between SNAKE RIVER VALLEY IRRIGATION DISTRICT, whose address is ~~c/o Charles S. Nielson, President, 221 So. Emerson, Shreley, Idaho 83274~~ ("Lessor"), and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), acting for and on behalf of its member Ground Water Districts, whose address is P.O. Box 1391, Pocatello, Idaho 83204 ("IGWA"). This Agreement replaces and supersedes all previous storage water lease agreements between the parties.

RECITALS

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
- B. IGWA desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
- C. The amount of storage water IGWA needs for mitigation and related purposes may vary from year to year and also may change during the irrigation season.
- D. Lessor desires to lease storage water to IGWA, and IGWA desires to lease storage water from Lessor, pursuant to the terms of this Agreement.

AGREEMENT

1. **Storage Water Lease.** Lessor hereby leases to IGWA 5,000 acre-feet of storage water for 2015 only, at the price of \$22.50 per acre-foot, which IGWA is required to pay rent for whether or not IGWA uses the water.
2. **Term.** The initial term of this Agreement shall be for a period of one (1) year, commencing January 1, 2015, and ending December 31, 2015.
3. **Payment of Rent.** IGWA will pay all Lease payments to Lessor in two installments, with the first one-half (1/2) paid on or before July 15th and the second one-half (1/2) paid on or before November 15th of each year.
4. **Administrative Fees.** IGWA will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board to complete the assignment of storage water leased from Lessor to IGWA.
5. **Use of Leased Water.**

10.1 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.

10.2 Mediation. If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation by a mediator designated by mutual agreement of the parties. The mediation will be held in Bannock County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

10.3 Litigation. Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement agreement entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

10.4 Governing Law, Jurisdiction, and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction, and agree that Bannock County is the proper venue.

10.5 Exclusive Procedures. The procedures specified in this section 11 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 11.1 and 11.2 are pending.

10. Notices. All notices given pursuant to this Agreement must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing for certified mail and regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

6.1 The assignment, delivery, and use of leased storage water will be determined by IGWA and is subject to the final accounting for the year by the Watermaster of Water District 1 and any applicable Water District 1 Rental Pool Rules.

6.2 This Agreement does not include any right to use storage water below Milner Dam.

6.3 The storage water available to IGWA under this Agreement may be assigned and delivered by IGWA to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

6.4 Any storage water not used or assigned by IGWA by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

6.5 Lessor understands that any storage water leased may be subject to a last-to-fill water right priority in the irrigation year following the lease pursuant to the Water District 1 Rental Pool Rules.

6. **Representations by Lessor.** Lessor covenants and represents that:

7.1 It will provide to IGWA all storage water leased under this Agreement.

7.2 It is the true and lawful owner of the Storage Water and that nothing restricts or precludes Lessor from entering into this Agreement.

7. **Breach.** If either party defaults in the performance of its obligations under this Agreement, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect any or all of the following cumulative remedies:

(a) Terminate this Agreement;

(b) Seek specific performance of this Agreement;

8. **Assignment.** This Agreement may not be assigned by IGWA without the express written consent of Lessor, but the storage water leased by IGWA under this Agreement may be assigned or otherwise made available to any other person or entity.

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

ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:

Landlord: Snake River Valley Irrigation District
c/o Larry Jacobsen, President
816 N. 700 E.
P.O. Box 7D
Basalt, Idaho 83218
Phone: 208-347-3420

IGWA: c/o Randall C. Budge, Secretary/General Counsel
IGWA
P.O. Box 1391
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109
Email: rcb@racinelaw.net

Copy to: Lynn Tominaga, Executive Director
IGWA
P.O. Box 2624
Boise, Idaho 83701-2624
Phone: 208-381-0294
Fax: 208-381-5272
Email: lynn_tominaga@hotmail.com

Either party may change its designated address by providing written notice of such change to the other party.

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

DATED this 22 day of April, 2015.

LESSEE:
IDAHO GROUND WATER
APPROPRIATORS, INC.

By: Tim Deeg by RCB
Tim Deeg, President

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

LESSOR:
SNAKE RIVER VALLEY
IRRIGATION DISTRICT
Address: 816 N. 700 E.
P.O. Box 7D
Basalt, Idaho 83218

By: Larry Jacobsen
Title: CHAIRMAN

STORAGE WATER LEASE

This Storage Water Lease ("Agreement") is entered into between NEW SWEDEN IRRIGATION COMPANY, whose address is c/o Louis Thiel, Chairman, 2350 West 1700 South, Idaho Falls, Idaho 83402 ("Lessor"), and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), acting for and on behalf of its member Ground Water Districts, whose address is P.O. Box 1391, Pocatello, Idaho 83204 ("IGWA"). This Agreement replaces and supersedes all previous storage water lease agreements between the parties.

RECITALS

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
- B. IGWA desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
- C. The amount of storage water IGWA needs for mitigation and related purposes may vary from year to year and also may change during the irrigation season.
- D. Lessor desires to lease storage water to IGWA, and IGWA desires to lease storage water from Lessor, pursuant to the terms of this Agreement.

AGREEMENT

1. **Storage Water Lease.** Lessor hereby leases to IGWA 10,000 acre-feet of storage water for 2015 only, at the price of \$22.50 per acre-foot, which IGWA is required to pay rent for whether or not IGWA uses the water.
2. **Term.** The term of this Agreement shall be for a period of one (1) year, commencing January 1, 2015, and ending December 31, 2015.
3. **Payment of Rent.** IGWA will pay all Lease payments to Lessor in two installments, with the first one-half (1/2) paid on or before July 15th and the second one-half (1/2) paid on or before November 15th of each year.
4. **Administrative Fees.** IGWA will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board to complete the assignment of storage water leased from Lessor to IGWA.
5. **Use of Leased Water.**

6.1 The assignment, delivery, and use of leased storage water will be determined by IGWA and is subject to the final accounting for the year by the Watermaster of Water District 1 and any applicable Water District 1 Rental Pool Rules.

6.2 This Agreement does not include any right to use storage water below Milner Dam.

6.3 The storage water available to IGWA under this Agreement may be assigned and delivered by IGWA to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

6.4 Any storage water not used or assigned by IGWA by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

6.5 Lessor understands that any storage water leased may be subject to a last-to-fill water right priority in the irrigation year following the lease pursuant to the Water District 1 Rental Pool Rules.

6. **Representations by Lessor.** Lessor covenants and represents that:

7.1 It will provide to IGWA all storage water leased under this Agreement.

7.2 It is the true and lawful owner of the Storage Water and that nothing restricts or precludes Lessor from entering into this Agreement.

7. **Breach.** If either party defaults in the performance of its obligations under this Agreement, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect any or all of the following cumulative remedies:

(a) Terminate this Agreement;

(b) Seek specific performance of this Agreement;

8. **Assignment.** This Agreement may not be assigned by IGWA without the express written consent of Lessor, but the storage water leased by IGWA under this Agreement may be assigned or otherwise made available to any other person or entity.

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

10.1 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.

10.2 Mediation. If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation by a mediator designated by mutual agreement of the parties. The mediation will be held in Bannock County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

10.3 Litigation. Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement agreement entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

10.4 Governing Law, Jurisdiction, and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction, and agree that Bannock County is the proper venue.

10.5 Exclusive Procedures. The procedures specified in this section 11 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 11.1 and 11.2 are pending.

10. Notices. All notices given pursuant to this Agreement must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing for certified mail and regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:

Landlord: New Sweden Irrigation Company
Louis Thiel, Chairman
2350 West 1700 So.
Idaho Falls, Idaho 83402
Phone: _____

IGWA: c/o Randall C. Budge, Secretary/General Counsel
IGWA
P.O. Box 1391
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109
Email: rcb@racinelaw.net

Copy to: Lynn Tominaga, Executive Director
IGWA
P.O. Box 2624
Boise, Idaho 83701-2624
Phone: 208-381-0294
Fax: 208-381-5272
Email: lynn_tominaga@hotmail.com

Either party may change its designated address by providing written notice of such change to the other party.

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

DATED this 20th day of April, 2015.

LESSEE:

IDAHO GROUND WATER
APPROPRIATORS, INC.

By: Tim Deeg by RCB
Tim Deeg, President

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

LESSOR:

NEW SWEDEN
IRRIGATION COMPANY
Address: 2350 West 1700 So.
Idaho Falls, ID 83402

By: Louis Thiel

Title: Board Chairman

Randy Budge

From: harry labonde <harry.labonde@wyo.gov>
Sent: Thursday, April 30, 2015 2:11 PM
To: Randy Budge; Lyle Swank
Cc: Pat Tyrrell; Mark Fowden
Subject: Palisades Reservoir

Lyle and Randy,

Seeing that the WY account in Palisades Reservoir exceeds 30,000AF, Wyoming plans to commit the following amounts of water to IGWA for 2015:

- 5000 AF as described in the original IGWA/WY agreement
- An additional 5000 AF as allowed by the amended IGWA/WY agreement for a total of 10000 AF

If you should have any questions, please feel free to contact me. Harry

--

harry.labonde@wyo.gov

Harry LaBonde

Director

Wyoming Water Development Office

307-777-7626

E-Mail to and from me, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

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.

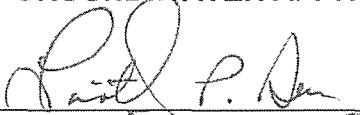
The availability of the Option for up to an additional five thousand 5,000 acre feet shall be as follows:

- 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:  7/24/13
Tim Deeg, President Date

Attest:  7/24/13
Randall C. Budge, Secretary Date


STATE OF WYOMING (Lessor)

 7-22-13
Harry C. LaBonde, Director Date
Wyoming Water Development Office

WYOMING STATE ENGINEER'S APPROVAL

 7/28/13
Patrick T. Tyrrell, Wyoming State Engineer Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

 #103237 7-19-13
S. Jane Caton, Senior Assistant Attorney General Date