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May 2, 2024

Director Mathew Weaver  
Idaho Department of Water Resources  
322 E Front St.  
Boise, ID 83720-0098

**Sent via email**  
**[Mathew.Weaver@idwr.idaho.gov](mailto:Mathew.Weaver@idwr.idaho.gov)**

Dear Director Weaver,

As you are acutely aware, due to the updated ESPAM 2.2 modeled impacts, each of the Ground Water Districts are now shown to have different impacts than originally anticipated and shared by the various ground water districts, whether the impacts are determined by the Steady-State methodology or the Transient-State methodology. Therefore, for 2024, because each Ground Water District should only be obligated to mitigate that portion of the impacts to Twin Falls Canal Company as determined by the current Methodology Order, Henrys Fork Ground Water District and Madison Ground Water District (HF&MGWD) are responsible to mitigate their portion of the demand shortfall of the Methodology Order. Furthermore, because the legislature has now broadened the area of impact beyond the original espa ground water area, HF&MGWD should once again not be obligated to provide mitigation water beyond their own impacts.

It is further HF&MGWD's understanding that they are able to mitigate pursuant to the findings of fact and conclusions of law set forth in that certain June 3, 2010 order approving the IGWA 2009 Aquifer Enhancement Plan which states that "rental of storage water and delivery of storage water and use of water pursuant to the mitigation plan is in compliance with Idaho law." Furthermore, the 2010 Order provides that the amount of storage water "shall be determined as set forth in the Methodology Order."

Finally, and most importantly the 2010 Order recognizes that providing storage water to SWC under the plan "will provide replacement water at the time and place required by the senior-priority water right." Why this is so important in this 2024 irrigation season is that according to the Transient-State modeling for 2024, and due to their location in the aquifer, HF&MGWD's pumping in 2024 is predicted to have NO impact to the Twin Falls Canal Company's water right.

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Therefore, due to this year's availability of storage water, providing any storage water for any even steady-state impacts caused by HF&MGWD directly to Twin Falls Canal Company will both provide replacement water supplies to the senior-priority water right and also maximize the beneficial use of water and promote conservation of water resources as concluded in the 2010 Order.

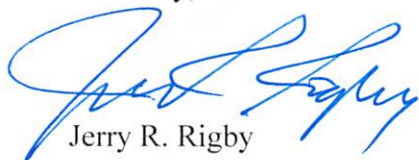
HF&MGWD's position is that they should only be required to provide mitigation which equals their individually modeled depletions as calculated following the current Methodology Order. They should not be required to provide mitigation in excess of those modeled depletions which are actually caused by other Ground Water Districts and other ground water pumpers. Because HF&MGWD's understanding is that not all of the various GWDs within IGWA may be willing to participate in providing the mitigation water under the present Methodology order, HF&MGWD believe it is necessary to send this letter setting forth their offer and authorization to provide the following share of the 2009 Mitigation Plan. In fact, this offer provides not only HF&MGWD's share of a steady-state allocation of their demand shortfall of 98 acre feet of storage water as determined by IGWA's hydrologists and which has been filed this day with IDWR, HF&MGWD's offer is to continue to provide its historical 1,500 acre feet of storage water directly to Twin Falls Canal Company and also provide recharge of at least 3,000 acre feet within the Fremont Madison Irrigation District area.

It is also important to note that the Director has previously approved A&B Irrigation District's mitigation plan which methodology is virtually identical to that methodology being used by HF&MGWD in determining their shortfall, and it would be improper to allow A&B to mitigate for its proportionate share of the demand shortfall with storage while not allowing HF&MGWD to mitigate for their proportionate share with storage.

HF&MGWD are also attaching hereto, their signed contract for the storage necessary to comply with this offer as required by the 2010 Order.

HF&MGWD believes that it is important to let you know of their position even though IGWA as a group may not presently be in a position to make an offer as a group, HF&MGWD's offer also complies with the 2015 Agreement Allocation that has been demanded to be adhered to by the Surface Water Coalition. HF&MGWD believe that continued discussions and negotiations with all parties under the GWMP is important to determine the long term resolutions of these important issues and therefore, HF&MGWD are willing to make the above offer this year only in order to more than account for its actual depletions to SWC.

Sincerely,



Jerry R. Rigby

JRR/md

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## STORAGE WATER LEASE

This Storage Water Lease ("Agreement") is entered into between North Fork Reservoir Company, ("Lessor"), and Henry's Fork Groundwater District (the "District").

### 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. THE DISTRICT 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. Lessor desires to lease storage water to the DISTRICT, and the DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

### LEASE

**1. Storage Water Lease.** Lessor hereby leases to the DISTRICT storage water for 2021-2025 only, at which the DISTRICT is required to pay rent as follows:

1,500 acre-feet at \$20.00 per acre-foot. IGWA will pay \$1.30 acre-foot Water District 01 administrative fee and \$2.00 State Water Supply Bank Fee for a total payment of ~~\$2~~3.30 per acre-foot.

**2. Term.** The initial term of this Lease shall commence March 13, 2021, and end November 30, 2025.

**3. Payment of Rent.** The DISTRICT will pay the rent to Lessor in one installment, on or before 15 day October, of each year.

**4. Administrative Fees.** IGWA will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board.

### 5. Use of Leased Water.

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

5.2 This Lease does not include any right to use storage water below Milner Dam.

5.3 The storage water available to the DISTRICT under this Lease may be assigned and delivered by the DISTRICT 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.

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

5.5 Lessor understands that any storage water leased may be subject to the Water District 1 Rental Pool Rules.

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

6.1 It will provide to the DISTRICT all storage water leased under this Lease.

6.2 It is the true and lawful owner of the storage water and that nothing restricts or precludes Lessor from entering this Lease.

**7. Breach.** If either party defaults in the performance of its obligations under this Lease, 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 Lease.

(b) Seek specific performance of this Lease;

**8. Assignment.** This Lease may not be assigned by the DISTRICT without the express written consent of Lessor, but the storage water leased by the DISTRICT under this Lease 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.

9.1 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.

9.2 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 Lease of the parties. The mediation will be held in Fremont County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

9.3 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 Lease 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.

9.4 Governing Law, Jurisdiction, and Venue. This Lease 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 Fremont County is the proper venue.

9.5 Exclusive Procedures. The procedures specified in this section 9 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 9.1 and 9.2 are pending.

**10. Notices.** All notices given pursuant to this Lease 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:**

Lessor: North Fork Reservoir Company  
Michael Rasmussen, President  
Address: PO Box 250  
Rexburg, Idaho 83201

DISTRICT: Henry's Fork Groundwater District  
Aaron Dalling, Secretary  
Address: PO BOX 15 St. Anthony, Idaho 83445  
Phone: 208-403-8474  
Email: aaron.fmid@myidahomail.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 Aug 2022.

DATED this 26 day of Aug, 2022.

**LESSEE:**  
Henry's Fork Groundwater District

**LESSOR:**  
North Fork Reservoir Company  
PO Box 250  
Rexburg, ID 83440

By:   
Aaron Dalling-Secretary

By:   
Michael Rasmussen-President