

May 29, 2024

DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE 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 Nos. CM-DC-2010-001

**NOTICE OF COMPLIANCE; REQUEST FOR
CLARIFICATION**

North Snake Ground Water District and Magic Valley Ground Water District (“MV,” “NS,” or the “Districts”), through undersigned counsel submit this *Notice of Compliance; Request for Clarification* in response to the Director’s *Amended Order Determining Deficiency in Notices of Secured Water* (May 28, 2024) (“Amended Order”), his *Order Denying IGWA’s Second Petition for Reconsideration; Order Determining Deficiency in IGWA’s May 17, 2024 Notice of Storage Water Leases* (May 28, 2024) (“Lease Order”), and in further follow-up to the Districts’ *Joint Notice of Compliance—Magic Valley Ground Water District & North Snake Ground Water District’s 2024 Irrigation Season Mitigation Commitments* (May 2, 2024) (“Joint Notice”).

I. BACKGROUND

On May 10, 2024, the Director issued his *Order Determining Deficiency in Notices of Secured Water* (“Order”) in response to several notices of proposed mitigation filed by individual IGWA member groundwater districts. In response to the Order, IGWA filed its *Conditional Notice of Mitigation Compliance; Petition for Reconsideration; and Request for Expedited Decision* (May 14, 2024) (“Mitigation Notice”) and a *Notice of Storage Water Leases* (May 17, 2024) (“Lease Notice”) on behalf of eight of its member groundwater districts (excluding AFA).

On May 28, 2024, the Director issued his Amended Order and his Lease Order determining, among other things, ongoing deficiency in the pending mitigation proposals of IGWA member districts, except American Falls-Aberdeen Ground Water District (“AFA”) who, apparently, has received safe harbor under the 2016 IGWA Mitigation Plan on a proportionate share basis. Amended Order, p. 12 (“American Falls-Aberdeen Ground Water District has demonstrated that it is operating in accordance with an approved mitigation plan.”); *see also, Order Granting Upper Valley Districts Limited Intervention and AFA’s Motion for Reconsideration* pp. 5-6 (authorizing AFA to proceed under the 2016 IGWA Mitigation Plan on a proportionate share-basis—albeit without prescribing what those shares are in terms of the overarching 50,000 AF storage water delivery obligation).

The Director’s Lease Order provides the remaining districts (IGWA members other than AFA) until today at 5pm (MT) to establish “to the satisfaction of the Director, that they can mitigate in accordance with an approved mitigation plan.” Lease Order, p. 8. The Lease Order further provides the opportunity (if not the ultimatum) for the remaining districts to seek shelter under the 2016 IGWA Mitigation Plan if it is “their intention to do so.” *Id.* Short of compliance

with an approved mitigation plan, the Director is poised to issue curtailment notices on or shortly after May 30, 2024. *Id.*

II. ARGUMENT

A. **The Districts’ Joint Notice-Based Proposal Under the 2009 Storage Water Plan Remains Viable and the Districts Remain Willing to Mitigate on That Basis**

So far as the Districts can tell, the Director found deficiency in IGWA’s May 17, 2024 *Notice of Storage Water Leases* (“Notice”) not because the 2009 Storage Water Mitigation Plan (Docket CM-MP-2009-007) is fatally defunct, but because IGWA’s Notice contained a fatal flaw—a poison pill “condition” that the Director found a non-starter: that storage water under the leases was only available to mitigate for the member district’s proportionate share of the April 2024-predicted IDS of 74,100 AF, not the entire 74,100 AF. In other words, IGWA’s Notice contained a threshold bookend that its member districts owed no more than 66,102 AF in aggregate as calculated and presented in the *Declaration of Sophia Sigstedt* (May 2, 2024) (“Declaration”), and the Director roundly disagreed with that threshold premise. *See* Declaration, ¶12, and Table 2; *see also*, Lease Order, p. 7 (“ . . . IGWA conditioned the Director’s acceptance of the leases upon the Director also accepting IGWA’s argument that, under the *2009 Storage Water Mitigation Plan* IGWA is not required to mitigate for all ground water users.”).

Because IGWA’s Notice started at an aggregate share-based amount of 66,102 AF, rather than the full 74,100 AF April 2024-predicted IDS, the Director determined that the attached storage water leases were not ripe for consideration because of the unacceptable condition-precedent presented. Lease Order, pp. 7-8 (“Because the Director concludes above that IGWA’s *2009 Storage Water Mitigation Plan* requires IGWA to mitigate [74,100 AF] for all junior ground water users, the leases are not available for the Director to consider. Because the Director cannot consider

the leases, *IGWA's Notice* is deficient . . .”). This begs the question: What would the outcome have been had IGWA come forward with shares of the full 74,100 AF IDS, as opposed to shares of the lesser 66,102 AF quantity presented in the Declaration?

MV and NS respectfully submit that the answer already lies in a combination of their Joint Notice, and the Director’s Amended Order—at least insofar as applied to the Districts. This is because the Districts offered a proportionate share of the full 74,100 AF April 2024-predicted IDS from the beginning; that offer remains, and that offer is not contingent upon the IGWA condition- precedent the Director found unpalatable and inconsistent with his prior rulings.

As confirmed in his Amended Order, the Director reiterated and re-acknowledged without revision the Districts’ willingness to “collectively provide 15,590 acre-feet of storage water to the SWC pursuant to the *2009 Storage Water Mitigation Plan*.” Amended Order, p. 7.¹ As of May 10, 2024, and again yesterday (May 28), the Director cited two flaws in the Districts’ proposal: (a) lack of production of contracts or other documents demonstrating access to the 15,590 AF of storage water pledged; and (b) failure to demonstrate WD01 rental pool approval and payment of applicable rental pool fees. Amended Order, p. 7 (“Unfortunately, Magic Valley and North Snake did not include contracts, leases, options, or similar documentation to establish that they had secured the water necessary to meet the obligation. Furthermore, the Department records do not

¹ The District’s aggregate proportionate share of the 74,100 April 2024-predicted IDS is described in their Joint Notice, and further highlighted in Table 2 of the Sigstedt Declaration. When scaled up from the 89.2% “share” in the Declaration, the Districts’ respective shares of the 100% (full 74,100 AF) are MV: 16.1% and NS: 4.9%.

As noted in their prior Joint Notice, the Districts’ steady-state-based commitments shall not be construed as an admission or concession that steady-state application of ESPAM 2.2 is appropriate. Joint Notice p. 3. But, for purposes of the 2024 irrigation season, the Districts are willing to pledge the collective, steady-state-based 15,590 AF modeled in recognition of the lingering effects of legacy pumping.

show that Magic Valley and North Snake sought or received approval from Water District 01 . . . or [paid] the required fees.”)² The Districts were then allowed additional time in which to “resolve these issues.” *Id.*

On May 17, 2024, the Districts joined in IGWA’s Notice given their concern over the implications of the application of Idaho Code Section 42-5224 and the use of MV and NS-pledged storage water to mitigate for ground water users outside of the Districts. The Director rejected those statutory concerns for the reasons contained in his Lease Order. Lease Order, pp. 4-6.

With that statutory issue addressed by the Director, the Districts return to the proposal they submitted from the beginning in their May 2, 2024 Joint Notice—their collective provision of 15,590 AF of storage water for mitigation of their proportionate share of the full 74,100 April 2024-predicted IDS. But at this time, the Districts remedy the Director’s prior-stated deficiency “issues” by: (a) attaching hereto a copy of the October 27, 2020 *Multi-Year Tribal Lease Agreement* (“2020 Tribal Agreement”) executed between the Shoshone-Bannock Tribes of the Fort Hall Reservation and IGWA, together with a letter agreement from Southwest Irrigation District providing MV access to, and use of, Southwest’s portion of the 2020 Tribal Agreement (“SWID Letter Agreement”); and (b) confirmation that delivery and use of storage water for mitigation purposes under the 2020 Tribal Agreement is immune from WD01 rental pool procedures and fees. *See, e.g.*, IGWA Notice, p. 2 (explaining that all applicable WD01 fees were paid where pertinent, and that no fees are owed under the 2020 Tribal Agreement).

² “[T]he obligation” referenced and reiterated by the Director in his Amended Order could be nothing other than the 15,590 AF storage water pledge referenced in the same paragraph of the order. There was no other volume or quantity of water otherwise pledged and under consideration that could become a District-proposed “obligation” to substantiate by the contracts, leases, etc. sought by the Director.

The 2020 Tribal Agreement provides annual access to no less than 25,000 acre-feet of tribal storage water for the benefit of IGWA members MV, NS, Southwest Irrigation District, AFA, and Carey Valley Ground Water District between April 1, 2021 and October 31, 2025. AFA's share of the contract is 8,705 AF. *See* IGWA Notice, p. 2; *see also*, *Declaration of Timothy P. Deeg in Support of AFA's Motion for Reconsideration of Order Determining Deficiency in Notices of Secured Water* (May 17, 2024) ("Deeg Dec."), ¶¶ 6 and 8, and SWID Letter Agreement (attached hereto). For purposes of MV and NS, they have the collective entitlement to 14,410 AF under the 2020 Tribal Agreement (MV: 8,000 AF; NS: 6,410), and with Southwest Irrigation District's agreement, the remaining 1,180 AF deficit (15,590 AF pledged minus 14,410 AF available without Southwest commitment) is more than covered by Southwest's 1,712 AF commitment in favor of MV. *See* IGWA Notice, p. 2; *see also*, Deeg Dec., ¶¶ 6 and 8, and SWID Letter Agreement (attached hereto).

In sum, and as described and discussed herein, the Districts have the binding entitlement to (contractual access to) 16,122 AF of storage water free and clear of WD01 rental pool process and fees; 15,590 AF of which is readily deliverable to the SWC—"the obligation" attributable to the Districts as identified in the Director's Amended Order, for which they "unfortunately" did not previously provide the documentation the Director desired on May 2. Unless the Director determines and explains otherwise, "these [prior] issues" have been resolved. And, the Districts' proposal is based on the full 74,100 April 2024-predicted IDS, not the lesser 66,102 AF quantity previously "conditioned" in the May 17, 2024 IGWA Notice.

B. Proportionate Sharing of the Applicable Mitigation Obligation is Consistent With Applicable Law and Ample IDWR Precedent

As discussed in the District's *Response to American Falls-Aberdeen Ground Water District's Motion for Reconsideration* (May 24, 2024) (pp. 3-4), an individualized, share-based

outcome is consistent with applicable law. *See, e.g.*, IDAPA 37.03.11.010.14 (determining material injury water right to water right, owner to owner); 37.03.11.020.02 (engrafting all elements of Idaho’s prior appropriation doctrine including, therefore, the share-based concepts espoused by Judge Wildman in *Cities of Bliss, et al.*, below); 37.03.11.020.04 (authorizing delivery calls against “the holder of a junior-priority water right” where exercise of “the junior-priority water right causes material injury”); *see also*, *Cities of Bliss, et al. v Spackman*, Minidoka County Case No. CV-2015-172, *Memorandum Decision & Order* (Sept. 8, 2015), pp. 7-8 (“[A] stipulated plan cannot transfer or impose upon any non-stipulating junior any portion of the total mitigation obligation attributable to the stipulating junior’s diversion.”); p. 10 (emphasis added) (Under IDAPA 37.03.11.010.15, the focus of mitigation is individual—a plan designed to offset injury actually caused by the junior’s (“his”) water use. Consequently, **“an offending junior is only responsible for mitigating that portion of the senior’s material injury attributable to his offending diversion. If successful, the mitigating junior has satisfied his legal obligation to the senior and may avoid curtailment as a matter of law.”**); and I.C. § 42-5224(11) (groundwater districts are authorized to develop and implement mitigation plans to mitigate material injury to seniors “caused by ground water use within the district”).

Ample, prior Department **and** SWC precedent agrees. *See, e.g.*, *Final Order Approving Mitigation Plan* (Dec. 16, 2015) (CM-MP-2015-003; A&B Irrigation District—commitment to mitigate proportionate share of impacts via storage water delivery), *Falls Irrigation District Letter to WD 01 Watermaster* (Apr. 30, 2024) (CM-DC-2010-001) (same), and *A&B Irrigation District Letter to the Director* (May 1, 2024) (CM-DC-2010-001) (same). Now the parties and IDWR can add AFA’s 2024 mitigation proposal to the list—a proportionate share-based proposal advanced under the 2016 IGWA Mitigation Plan endorsed by the SWC and approved by the Director. *See*

and compare AFA's Motion for Reconsideration of Order Determining Deficiency in Notices of Secured Water (May 17, 2024); Surface Water Coalition's Response to American Falls-Aberdeen Ground Water District's Motion for Reconsideration (May 17, 2024); and Order Granting Upper Valley Districts Limited Intervention and AFA's Motion for Reconsideration pp. 5-6 (granting AFA safe harbor under the 2016 Mitigation Plan despite AFA's commitment to perform no more than its purported proportionate shares of the mitigation obligations contained therein in the absence of any prior commitments of any other districts to participate/share in the same).

C. In the Alternative, The Districts Seek Clarification of the Director's Amended Order and Lease Order

As discussed above, the Director did not reject the Districts' 15,590 AF storage water proposal contained in their Joint Notice. Instead, he cited and reiterated two simple, curable flaws: (a) production of pertinent, firm storage water contractual entitlements; and (b) procurement of any applicable WD01 rental pool approvals with corresponding payment of any applicable rental pool fees. Amended Order, p. 7.

Issue (b) does not apply to the 2020 Tribal Agreement, and the Districts are not late on any payments obligated under the contract because those payments, by the contract's plain terms, are not due until July 1, 2024 (first half payment) and November 1 (second half payment). Issue (a) has been cured by the attachment of the 2020 Tribal Agreement and the SWID Letter Agreement. Likewise, the Districts' mitigation proposal under the 2009 Storage Water Plan does not contain the poison-pill condition-precedent the Director found in the May 17, 2024 IGWA Notice preventing him from reaching and considering the storage water leases then before him.

Should the Director ultimately reject the Districts' share-based storage water mitigation proposals contained herein, the Districts request an explanation supporting the rejection. They do so because such a rejection seemingly flies in the face of the legal principles and precedent

previously cited and remaining unrebutted in Section II.B, above, and those discussed at length in Section III (pp. 4-7) of the Districts' Joint Notice (incorporated by this reference herein).

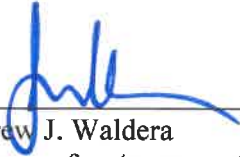
The Districts are not proposing anything revolutionary or unfair. To the contrary, they are committed to doing *more* than their fair share in 2024 (recall that transient model runs result in a MV obligation of only 25 AF of the predicted 74,100 IDS, and a NS obligation of less than 1 AF (0.1 AF) of the predicted 74,100 IDS).

III. CONCLUSION

The Districts respectfully request that the Director afford them safe harbor under the 2009 Storage Water Mitigation Plan (Docket CM-MP-2009-007) for the reasons and authorities submitted herein. If the Director believes that the 2009 Plan is unavailable to the Districts for some reason, or unavailable to the Districts on a proportionate share basis, the Districts seek clarification and explanation of the reasons therefor. Barring that, the Districts believe that they have cured the flaws in their Joint Notice-based 15,590 AF storage water delivery mitigation proposal as the Director stated them and as the Districts understand them. There is no fatal condition-precedent here. The Districts end where they began on May 2, 2024—offering up their proportionate shares of the full (74,100 AF) April 2024-predicted IDS under the 2009 Plan.

DATED this 29th of May, 2024.

SAWTOOTH LAW OFFICES, PLLC

By  _____
Andrew J. Waldera
Attorneys for *Attorneys for*
Magic Valley Ground Water District and
North Snake Ground Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2024, I caused a true and correct copy of the foregoing **NOTICE OF COMPLIANCE; REQUEST FOR CLARIFICATION** to be served by the method indicated below, and addressed to the following:

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<p>COURTESY COPY TO: Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 Corey.skinner@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email / CM/ECF</p>

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Andrew J. Waldera

MULTI-YEAR TRIBAL WATER LEASE AGREEMENT

This WATER LEASE (“**Lease Agreement**”) is made and entered into by and between the SHOSHONE-BANNOCK TRIBES of the Fort Hall Reservation (“Tribes”), acting through the Tribal Rental Pool Committee in the operation of the Tribal Water Supply Bank and the Fort Hall Business Council, and the IDAHO GROUND WATER APPROPRIATORS, INC. , a non-profit corporation, acting for and on behalf of North Snake Ground Water District, Magic Valley Ground Water District, Southwest Irrigation District, American Falls – Aberdeen Ground Water District and Carey Valley Ground Water District, (collectively “IGWA”) and is effective on the date executed by both parties hereto.

RECITALS

A. Pursuant to *The 1990 Fort Hall Indian Water Rights Agreement*, the Tribes are entitled to federal storage contract rights, held in trust for the Tribes by the United States, in an amount of 2.8059% of the storage space in American Falls Reservoir and 6.9917% of the storage space in Palisades Reservoir. These contract storage rights are equivalent to full capacity volumes of 46,931 acre-feet in American Falls Reservoir and 83,900 acre-feet in Palisades Reservoir, and those water rights and the associated volumes of water are referred to herein as the “**Tribal Water Supply Bank.**” Due to sedimentation, the maximum annual volumes accrued to each of the contract storage rights are less than the stated capacity volumes.

B. The Shoshone-Bannock Tribes have adopted the Shoshone-Bannock Tribal Water Supply Bank Rules, which have been duly approved by the Idaho Water Resources Board, for the purposes of leasing storage water held by the Tribes in American Falls Reservoir for delivery and use in the Snake River Basin anywhere within Idaho, and for leasing storage water held by the Tribes in Palisades Reservoir for delivery and use in the Snake River Basin above Milner Dam.

C. IGWA is a non-profit corporation which was established to represent its membership, which is currently comprised of eight groundwater districts, two irrigation districts, and numerous other municipal, commercial, and industrial groundwater users in Idaho. IGWA has entered into an agreement with the Surface Water Coalition to resolve disputes related to the impacts of groundwater use on surface water rights. IGWA desires to lease storage water from the Tribes based on the terms herein for use as mitigation flow in the Snake River and for use in meeting other aspects of the agreement.

Now, therefore, and in consideration of the covenants, obligations, and other valuable consideration referred to herein, the Tribes and IGWA agree as follows:

1. Quantity of Leased Water. The water that is the subject of this Lease Agreement is referred to herein as the “**Rental Volume**”. The quantity of Rental Volume shall be defined under the terms below.
 - a. Each year of the Lease Agreement, the Tribes will commit to provide and IGWA will commit to rent from the Tribes a volume of up to 25,000 acre-feet, subject to the terms and conditions provided below.

- b. The Rental Volume will be supplied from the Tribal Water Supply Bank, which is comprised of the Tribes' federal contract storage rights in American Falls and Palisades Reservoirs, as defined in the *1990 Fort Hall Indian Water Rights Agreement* and decreed in the Snake River Basin Adjudication. Subject to Section 1.f below, the Tribal Water Supply Bank water that will be available for the Rental Volume excludes all other water rights and water assets of the Tribes, and such water rights and assets are not a part of this Lease Agreement.
- c. The Tribes and IGWA agree that the Tribes' obligation to deliver water under this Lease Agreement is contingent on the availability of water from the Tribal Water Supply Bank for rental. Each year, the Tribes will declare the quantity of water in the Tribal Water Supply Bank available as Rental Volume to IGWA within 5 business days of the Water District 1 publication date of storage allocation.
- d. The quantity of water in the Tribal Water Supply Bank available as Rental Volume will be calculated by the Tribes as the Tribal Water Supply Bank storage allocation remaining after satisfaction of: (1) the estimated Michaud Unit irrigation demands, (2) an additional volume of storage water, not to exceed 5,000 acre-feet, to mitigate uncertainty, and (3) other lease contracts, separate from this Lease Agreement, entered into by the Tribes for use of the Tribal Water Supply Bank that carry a higher annual lease price as described in Section 1.e below. The quantity of available water may also be limited by court orders or other regulatory enforcement of applicable laws and regulations applicable to the Tribal Water Supply Bank water.
- e. Nothing in this Lease Agreement shall operate to prevent the Tribes from leasing additional water from the Tribal Water Supply Bank to another party or parties. The total annual water supplies available to satisfy lease contracts from the Tribal Water Supply Bank will be determined as stated in Section 1.d above and allocated to each lease contract, which is active on the publication date of storage allocation, as follows: (1) the lease contract with the highest lease price (\$/acre-foot) will be satisfied in full up to its annual contract volume, (2) the lease contract with the second-highest lease price will next be satisfied in full up to its annual contract volume, and (3) additional lease contracts will be satisfied in a similar fashion with priority for supply given to lease contracts based on lease prices. The allocation of annual supplies to active lease contracts does not apply to Carryover Volume and Additional Volume described below.
- f. The Tribes hold a "**Reserve Supply**" equal to 25,276 acre-feet that was secured under a 2015 settlement agreement. The Tribes may request delivery of the Reserve Supply each year up to an annual volume of 10,000 acre-feet and the Reserve Supply is administered as Tribal storage allocation in American Falls Reservoir. Each year of this Lease Agreement, the Tribes, in their sole discretion, may elect to use the Reserve Supply to fulfill Rental Volume commitments defined in Section 1.a above. The Reserve Supply will be provided through the Tribal Water Supply Bank.

- g. Subject to reservoir space being available in the Tribal Water Supply Bank and approval by the Tribes, IGWA may elect to hold and carryover a portion of the Rental Volume in storage and not take delivery of that carryover water in the same year that it was declared available by the Tribes. This volume of water is referred to herein as “**Carryover Volume**”. The Carryover Volume shall be accounted for as an independent volume of water within the Tribal Water Supply Bank, such that the annual Rental Volume calculation and other Tribal uses of its federal contract storage rights identified in Section 1.d shall not be drawn from the Carryover Volume. The Carryover Volume shall be annually reduced based on a pro-rata portion of the annual evaporative losses applied to the Tribal Water Supply Bank. The total Carryover Volume accumulated in previous years shall not exceed 10,000 acre-feet.
 - h. The Carryover Volume shall be reset to zero when the Tribal Water Supply Bank refills, indicated by a combined allocation of at least 128,000 acre-feet to the Tribes’ federal contract storage rights in American Falls and Palisades Reservoirs. No repayment or reimbursement shall be due to IGWA for lost Carryover Volume due to a reset. The Carryover Volume shall reset to zero at the end of this Lease Agreement term, unless otherwise agreed to in a separate writing by the Parties.
 - i. IGWA will have the option to lease additional water from the Tribal Water Supply Bank, in excess of 25,000 acre-feet, if it is made available for rental by the Tribes. This volume of water is referred to herein as “**Additional Volume**”. It is understood and acknowledged by IGWA and the Tribes that Additional Volume rentals may impact the availability of water as Rental Volume in future years. IGWA shall communicate to the Tribes an interest in leasing Additional Volume by April 1 of the year in which the Additional Volume is requested. The Tribes’ approval of Additional Volume leases shall be at the sole discretion of the Tribes and shall not be subject to the calculations defined in Section 1.d.
2. Water Delivery and Administration. Delivery of the Rental Volume shall occur when the Rental Volume has been released from either Palisades or American Falls Reservoir, and appropriately deducted from the Tribes’ storage account in these reservoirs. The Tribes and IGWA shall cooperatively work together to ensure the delivery of the Rental Volume to IGWA and the appropriate administration of such water.
- a. The quantity of water to be leased under this Lease Agreement under Paragraph 1 has been reviewed by the Tribal Rental Pool Committee as required by the Shoshone-Bannock Tribal Water Supply Bank Rules.
 - b. Any carriage or other losses of Rental Volume that may occur downstream from American Falls Reservoir or Palisades Reservoir, as the source of water, shall be the responsibility of IGWA.
 - c. The scheduling of releases of the Rental Volume shall be in the sole discretion of IGWA, provided however, that IGWA will notify and cooperate with the Tribes and the U.S. Bureau of Reclamation (Reclamation) to implement any storage release request. The

Tribes and IGWA will cooperate with Reclamation and Water District 1 in measuring and accounting for the Rental Volume at the outflow of American Falls Reservoir and/or Palisades Reservoir.

- d. The Rental Volume, Carryover Volume, and Additional Volume leases shall only be available for use by IGWA or assignment to the Surface Water Coalition to satisfy IGWA’s obligations, and shall not otherwise be available for re-marketing or assignment to a third party, unless such re-marketing or assignment is agreed upon in writing by the Tribes.
3. Term. The term of this Lease Agreement shall be for five (5) years commencing on April 1, 2021 and terminating on October 31, 2025.
- a. After the initial term, the Lease Agreement will be automatically renewed on an annual basis, unless a termination letter is sent by the Tribes or IGWA six (6) months prior to the desired termination date of the Lease Agreement.
4. Agreement Contingencies. This Lease Agreement, and obligations hereunder, are expressly contingent upon:
- a. Acquiring all approvals that may be required for the rental, release, delivery, and use of the Rental Volume by IGWA;
 - b. Payment by IGWA pursuant to Paragraph 5 below;
 - c. Delivery of the Rental Volume by the Tribes to IGWA prior to October 31 of each year during the term of this agreement, subject to the provisions of Paragraphs 5-7 below.
5. Payment. The “**Annual Lease Payment**” shall be calculated as the Rental Volume declared and made available for lease by the Tribes multiplied by the Lease Price. The Lease Price during the 5-year term shall be calculated as follows:

<u>Year</u>	<u>Lease Price Adjustment</u> <u>(\$/acre-foot)</u>	<u>Lease Price</u> <u>(\$/acre-foot)</u>
2021	\$0	\$40.00
2022	Maximum of \$1 per acre-foot or % change in Consumer Price Index for All Urban Consumer (CPI) from January 1, 2021 to December 31, 2021 multiplied by the 2021 Lease Price, rounded to the nearest dollar.	2021 Lease Price + 2022 Adjustment
2023	Maximum of \$1 per acre-foot or % change in CPI from 1/1/2022 to 12/31/2022 multiplied by the 2022 Lease Price, rounded to the nearest dollar	2022 Lease Price + 2023 Adjustment
2024	Maximum of \$1 per acre-foot or % change in CPI from 1/1/2023 to 12/31/2023 multiplied by the 2023 Lease Price, rounded to the nearest dollar	2023 Lease Price + 2024 Adjustment
2025	Maximum of \$1 per acre-foot or % change in CPI from 1/1/2024 to 12/31/2024 multiplied by the 2024 Lease Price, rounded to the nearest dollar	2024 Lease Price + 2025 Adjustment

- a. If the full Rental Volume is not available in any particular year, IGWA shall pay the dollar per acre-foot Lease Price stated above for that year for the Rental Volume available.
 - b. IGWA shall be obligated to make the Annual Lease Payment each year whether or not IGWA takes delivery of any amount of the Rental Volume by October 31 of each year.
 - c. IGWA shall make payments for the Carryover Volume in the year that the water is first declared available as Rental Volume by the Tribes, and shall not make a second payment for the water in subsequent years when it is delivered for use.
 - d. The annual lease price adjustment shown in the table above shall be applied in each subsequent year that the Lease Agreement is renewed under Section 3.a after the initial 5-year term.
 - e. Payments for Additional Volume leases shall be based on the lease price stated above for the year in which the Additional Volume lease takes place, and such payments shall represent an addition to the Annual Lease Payment due to the Tribes.
6. Payment Schedule. The lease payments shall be payable by IGWA as follows:
- a. 50% of the total Annual Lease Payment is due by July 1 of each year of the Lease Agreement;
 - b. The balance of the total Annual Lease Payment is due by November 1 of each year of the Lease Agreement;
 - c. Payments for Additional Volume leases shall follow the payment schedule defined above for the Rental Volume leases.
 - d. All payments are payable by wire transfer to the Tribes within five (5) business days of due date stated above.
7. Termination. Either the Tribes or IGWA may terminate this Lease Agreement in accordance with the provisions below:
- a. Either the Tribes or IGWA may terminate this Lease Agreement:
 - i. For any violation or breach of the terms of this Lease Agreement; or
 - ii. If any of the terms and conditions of any approval of the lease arrangement, or other applicable state or federal law, rule, or regulation, or the administration of the leased water, are inconsistent with the terms of this Lease Agreement.
 - b. Termination shall be effective within 30 days of provision of written notice to the other party detailing the basis for such termination. The party against whom such termination

is asserted shall have 30 days to cure the violation or breach that is the basis for the termination.

- c. Termination may be subject to the Conflict Resolution provisions of Section 8.e, if the party against whom termination is sought disagrees with the basis of the termination.
- d. In the event of any such termination, there shall be an accounting of lease payments paid by IGWA and leased water delivered by the Tribes as of the termination date. IGWA shall pay for all leased water delivered. In the event IGWA has submitted payment for leased water that remains undelivered by the termination date, the Tribes shall refund any lease payments received for leased water that remains undelivered, and the Tribes will not be obligated to provide such water unless the parties otherwise agree in writing.

8. Miscellaneous Provisions.

- a. Amendments. No amendment or modification of this Lease Agreement or its provisions shall be effective unless documented in writing and approved and executed by all parties with the same formality as this Lease Agreement.
- b. Force Majeure. Delays or inability to perform any of the requirements of this Lease Agreement within the term or time limits prescribed herein shall be excused to the extent that performance is rendered impossible by any event beyond the control of either party including but not limited to drought, governmental acts or orders or restrictions, existing legal obligations, failure of suppliers, war, terrorism or any other reason where failure to perform is beyond the reasonable control of and is not caused by the conduct of the non-performing party. A force majeure event shall not include financial inability to complete performance of an obligation.
- c. Notices. All notices and other communications under this Lease Agreement shall be in writing. Notices shall be deemed as duly received on the date of service, if served personally on the party to whom notice is to be given. Notices shall also be deemed as duly received five (5) days from the date said notice is mailed to the party to whom notice is to be given, either by first class mail, registered or certified, postage prepaid or by express delivery with handling prepaid, and properly addressed as follows:

If to the Shoshone-Bannock Tribes:

Chairman, Fort Hall Business Council
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203

With a Copy to:

Tribal Water Engineer
Shoshone-Bannock Tribes Water Resources Department
P.O. Box 306

Fort Hall, Idaho 83203
Phone: (208) 239-4580

If to IGWA:

President
Idaho Ground Water Appropriators, Inc.
%Racine Olson, PLLC
Pocatello, ID 83204

With a Copy to:


Randall Budge, T.J. Budge, Counsel
Racine Olsen, PLLC
P.O. Box 1391
Pocatello, ID 83204
Phone: (208) 232-6101

- d. Compliance with Laws and Usage. The Parties, at their own expense, will comply with all federal, state, and tribal laws, ordinances, rules, and regulations applicable to this Lease Agreement and the business conducted pursuant thereto.
- e. Conflict Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to the Lease Agreement or the breach thereof, the Tribes and IGWA agree as follows:
 - i. The Tribes and IGWA agree to initially submit such dispute to non-binding mediation in an effort to resolve the same.
 - ii. In the event that formal legal proceedings are commenced in connection with this Agreement, the parties agree that the Shoshone-Bannock Tribal Court shall be the sole, proper and exclusive forum and venue for such proceedings.
 - iii. The laws and regulations of the Shoshone-Bannock Tribes shall govern the interpretation of this Lease Agreement and/or any formal legal proceedings commenced regarding this Lease Agreement.
- f. Attorneys' Fees. In any action concerning the terms or enforcement of this Lease Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees, including any costs and attorneys' fees incurred in appellate proceedings.
- g. Binding Effect. All of the covenants, conditions, and provisions of this Lease Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- h. Entire Agreement. This Lease Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or oral or written agreements between the parties respecting the within subject matter.

- i. Severability. If any provision of this Lease Agreement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Lease Agreement, but such other provisions shall continue in full force and effect.
- j. Headings. The headings of paragraphs and sections in this Lease Agreement are inserted only as a matter of convenience and for reference purposes, and they do not define, limit, or describe the scope of this Lease Agreement or the intent of any of the provisions thereof.
- k. Sovereign Immunity. Neither the execution of this Lease Agreement, nor any provision contained herein shall be interpreted to act as a waiver of the Shoshone-Bannock Tribes' sovereign immunity. The Shoshone-Bannock Tribes hereby specifically reserves and retains its sovereign immunity and any rights appurtenant thereto. The Shoshone-Bannock Tribes' sovereign immunity from suit may only be waived by resolution of the Fort Hall Business Council.
- l. Contract Interpretation. The parties have participated jointly in the negotiation and drafting of this Lease Agreement. In the event an ambiguity or question of intent or interpretation arises, this Lease Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease Agreement.
- m. No Third Party Beneficiary. This Lease Agreement is exclusively for the benefit of and governs only the parties hereto. The Tribes and IGWA are the only parties to this Compact and are the only parties entitled to enforce the terms of this Lease Agreement. Nothing in this Lease Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.
- n. Indemnification. IGWA indemnifies the Tribes and its officers, subsidiaries, agents, and employees (the "Indemnitees") and IGWA shall hold the Indemnitees harmless for any damages, claims, demands, personal injury, illness, death, property damage, or other loss resulting in any manner in connection with IGWA's use of the water leased pursuant to this Lease Agreement.
- o. No Waiver. Forbearance in enforcing any right or remedy under this Lease Agreement shall not be deemed a waiver nor shall it be the basis for an inference that any party hereto has waived any provision hereof or that a party has waived any right hereunder.

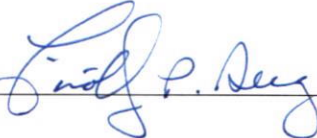
This Lease Agreement shall be signed in triplicate and shall be effective when signed by both the Tribes and IGWA.

SHOSHONE-BANNOCK TRIBES:

Date: 10-6-20 By: 

Devon Boyer, Chairman
Fort Hall Business Council

IDAHO GROUND WATER APPROPRIATORS, INC.

Date: 10-27-2020 By: 

Tim Deeg, President

SOUTHWEST IRRIGATION DISTRICT

Box 668
Burley, ID 83318
(208) 878-8382

Directors: Randy Brown (208) 308-7711

Craig Searle (208) 312-1595

Don Pickett (208) 300-3327

May 29, 2024

Mr. Andy Waldera,

Southwest Irrigation District (SWID) entered into the "Multi-Year Tribal Water Lease Agreement" signed by Tim Deeg of Idaho Groundwater Appropriators on behalf of American Falls – Aberdeen Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, Southwest Irrigation District, and Carey Valley Ground Water District on September 27, 2020. The 25,000 acre-ft was divided between the districts as follows:

District	Acre-ft Share
American Falls - Aberdeen GWD	8,705
Carey GWD	173
Magic Valley GWD	8,000
North Snake GWD	6,410
Southwest ID	1,712
Total:	25,000

In order to aid Magic Valley Ground Water District in their mitigation obligations for 2024, SWID has made available to Magic Valley GWD their 1,712 acre-ft share of this lease.

Yours very truly,



Randy Brown
Chairman - Southwest Irrigation District