

**IDAHO FISH & GAME LEASE FOR  
WATER RIGHT NO. 36-4076  
DATED MAY 28, 2008**

**EXHIBIT 3**

**WATER LEASE  
WATER RIGHT NO. 36-4076**

This Lease Agreement ("Lease") is made and entered into this 28th day of May, 2008, between the IDAHO DEPARTMENT OF FISH AND GAME COMMISSION, whose mailing address is P.O. Box 25, Boise, Idaho 83701 ("LESSOR"); and the NORTH SNAKE GROUND WATER DISTRICT and the MAGIC VALLEY GROUND WATER DISTRICT whose joint mailing address for purposes of this Lease is P.O. Box 1391, Pocatello, Idaho 83204 (hereinafter referred to collectively as "LESSEE").

**RECITALS:**

WHEREAS, LESSOR is the owner of the decreed Water Right No. 36-4076, pursuant to the records of the Idaho Department of Water Resources ("IDWR") in multiple spring discharges near Clear Lakes in the cumulative amount of up to 3.59 cubic feet per second "cfs" of non-consumptive use water with a priority date of January 1, 1893 (hereinafter referred to as the "Water Right" or the "Leased Water"), which Water Right is graphically represented by the following table:

Water Right No.	Source	Quantity	Point of Division	Priority Date
36-4076	Springs	3.59 cfs	SWSWNE Lt 7 SWSENE Lt 8 SESENE Lt 8 SESWNW Lt 5 SESENW Lt 13, Sec. 1, T. 9S R. 14E, Gooding Cty SESENE Lt 5, Sec. 2, T. 9S R. 14E, Gooding Cty SWSWNW Lt 5, Sec. 6, T. 9S R15B, Gooding Cty	01-01-1893

**AGREEMENT:**

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually agree as follows:

1. Lease Property. LESSEE leases from LESSOR, and LESSOR leases to LESSEE, the Leased Water for the purpose of providing mitigation or replacement water to Snake River Farms.

2. Term. The initial term of this Lease shall be for a term of four (4) years, commencing effective as of May 1, 2008. Thereafter, this Lease shall be renewed for two successive terms of three (3) years each provided the parties can reach agreement on the lease amount which shall be subject to renegotiation and unless either party gives notice of intention not to renew the Lease to the other party not less than 180 days notice prior to the end of the

Lease, which may be given at any time prior to the expiration of the original term or any successive term(s). Additionally, LESSEE reserves the right to terminate this Lease upon ninety (90) days written notice to LESSOR in the event the Idaho Department of Water Resources does not approve LESSEE'S Mitigation or Replacement Water Plan to Snake River Farms and allow the use of the Leased Water for such purposes, or, if for any other reason LESSEE is unable to utilize the Leased Water for mitigation or replacement water purposes for Snake River Farms.

3. Rent. LESSEE shall pay to LESSOR rent in the amount of two hundred and fifty dollars (\$250) per month per cfs or pro rata for such portion of each cfs of water actually utilized by LESSEE, with the first monthly rental payment to be due and owing on the first day of the month following the execution of this Lease, and with each monthly payments due thereafter through the term of this Lease determined as provided herein..

4. Use by LESSOR. LESSOR reserves the unrestricted first right to use the Leased Water as allowed by the defined elements of the Water Right. LESSOR will have no responsibility for the operation, maintenance or use of LESSEE'S facilities or any damages related to, or caused by, LESSEE'S use of the Leased Water pursuant to this Lease. LESSOR grants LESSEE access to LESSOR'S property as may be necessary and appropriate to allow LESSEE to fulfill the purpose of this Lease to provide mitigation or replacement water to Snake River Farms.

5. Use by LESSEE. During the term of this Lease, LESSEE may, at LESSEE'S sole cost and risk (including but not limited to those risks identified in paragraph 6 below), divert and utilize the Leased Water non-consumptively (except for minor evaporation) for mitigation purposes to provide replacement water to Snake River Farm's raceway.

- a. LESSEE may design, construct and maintain at its sole risk and expense all pumps, pipes, diversion and delivery facilities and other improvements in order to utilize the Leased Water for mitigation or replacement water purposes to the head of the Snake River Farm raceway. This includes any changes or improvements LESSOR may wish to make to the point(s) of diversion or other elements of the Water Right.
- b. LESSEE shall submit the design of any facilities and improvements to be constructed and operated to LESSOR for approval prior to the commencement of construction.
- c. LESSEE shall comply with any permit requirements and any water right amendment requirements that may be determined necessary by any state agency to accomplish the use of the water contemplated by LESSEE, with LESSEE authorized to procure the same at their sole expense, and providing copies to LESSOR.

6. Available Water. As a condition of this Lease, LESSEE agrees to provide and make available to LESSOR'S wetlands an amount equal to the amount of water provided to Snake River Farms and of acceptable quality. Additionally, LESSEE shall comply with all terms and conditions of LESSOR'S water right.

7. Indemnification. LESSEE shall indemnify, protect, defend and hold LESSOR and its elected and appointed officials, officers, agents and employees, and each of them, free and harmless from any and all liabilities, claims, losses, damages, actions, costs and expenses of every kind (including defense costs and legal fees), which they, or any of them, may suffer or incur by any reason arising by reason of bodily injury, death, personal injury or property damage

resulting from the use or diversion of the Leased Water under this Lease by or from LESSEE, or any agent, employee, guest or invitee of LESSEE.

8. Default and Termination. If LESSEE fails to perform any obligation required of it hereunder, and such default continues for a period of 30 days after written notice thereof has been mailed or delivered to LESSEE by LESSOR, the LESSOR may, at its option, in addition to all other rights provided hereunder or otherwise available to LESSOR by law, immediately curtail and prevent the use and continued use of the Leased Water by LESSEE; and/or terminate this Lease; whereupon all rights accruing to LESSEE hereunder shall cease

9. Notices. All notices required or provided for by this Lease shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the each of the respective parties at the following addresses:

To LESSOR:

Idaho Department of Fish and Game Commission  
P.O. Box 83720  
Boise, Idaho 83720-0098

To LESSEE:

North Snake Ground Water District  
153 E. Main Street  
Jerome, Idaho 83338

Magic Valley Ground Water District  
P.O. Box 430  
Paul, Idaho 83347

With a copy to:

Randall C. Budge  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P.O. Box 1391  
Pocatello, Idaho 83201

10. Warranty of Authority. LESSOR warrants and represents that it is the lawful owner of the Water Right and has all necessary power and authority to enter into this Lease.


11. Assignment and Subletting. LESSEE shall not assign or sublet any portion of the Water accruing to the Water Right, nor any interest in this Lease without LESSOR'S consent which will not be unreasonably withheld.

12. Law. This Lease shall be governed by the laws of the state of Idaho.

LESSOR:

IDAHO DEPARTMENT OF  
FISH AND GAME

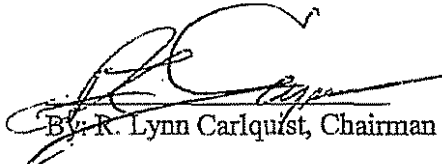
Dated: 5-28-08, 2008

  
By: Cal Groen, Director

LESSEE:


NORTH SNAKE GROUND WATER  
DISTRICT

Dated: 6/3/08, 2008

  
By: R. Lynn Carlquist, Chairman

MAGIC VALLEY GROUND WATER  
DISTRICT

Dated: 6/9, 2008

  
By: Orlo Maughan, Chairman