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RECEIVED

Feb 26, 2024

DEPARTMENT OF
WATER RESOURCES

Attorneys for Bonneville-Jefferson Ground Water District

STATE OF 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

Docket No. CM-MP-2016-001

**DECLARATION OF SKYLER C. JOHNS
IN SUPPORT OF JOINDER IN SUPPORT
OF IGWA'S MOTION FOR SUMMARY
JUDGMENT AND OBJECTION TO SWC
AND AFAAGWD MOTIONS FOR
SUMMARY JUDGMENT**

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

I, Skyler C. Johns, hereby declare as follows:

1. I am over the age of eighteen, and am competent to testify, and do so from personal knowledge.
2. I am the attorney for the Bonneville-Jefferson Ground Water District and I am familiar with the matters in which I testify herein.

3. Attached as Exhibit A to this declaration is a true and accurate copy of *IGWA's Amended Notice of Mitigation* filed in Docket No. CM-DC-2010-001.

4. Attached as Exhibit B to this declaration is a true and accurate copy of the *Order Revising April 2023 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6)* filed in Docket No. CM-MP-2016-001.

5. Attached as Exhibit C to this Declaration is a true and accurate copy of the *Notice that Questions Regarding the Sufficiency of IGWA's Mitigation Notices are Moot* filed in Docket No. CM-MP-2016-001.

6. Further, your declarant saith not.

DATED: February 26, 2024

/s/ Skyler C. Johns

SKYLER C. JOHNS

CERTIFICATE OF SERVICE

I hereby certify that on this the 26th day of February 2024, I served a true and correct copy of the foregoing Notice of Service of *BJGWD's Expert Report Disclosure* on the following by the method indicated:

/s/ Skyler C. Johns
Attorney for Bonneville-Jefferson

Hon. Roger S. Burdick, Hearing Officer Garrick Baxter, Deputy Attorney General Sarah Tschohl, Paralegal Idaho Department of Water Resources 322 E. Front St. Boise, Idaho 83720-0098	roburd47@gmail.com garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov
John K. Simpson Marten Law LLP P.O. Box 2139 Boise, Idaho 83701-2139 Travis L. Thompson Marten Law LLP 163 Second Ave. W. P.O. Box 63 Twin Falls, Idaho 83303-0063 Abby R. Bitzenburg Marten Law LLP 163 Second Ave. W. P.O. Box 63 Twin Falls, Idaho 83303-0063	jsimpson@martenlaw.com tthompson@martenlaw.com abitzenburg@martenlaw.com
Dylan Anderson DYLAN ANDERSON LAW PO BOX 35 Rexburg, ID 83440	dylan@dylanandersonlaw.com
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318	wkf@pmt.org

<p>Kathleen Marion Carr US DEPT. INTERIOR 960 Broadway Ste 400 Boise, ID 83706</p>	<p>kathleenmarion.carr@sol.doi.gov</p>
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<p>Matt Howard US BUREAU OF RECLAMATION 1150 N Curtis Road Boise, ID 83706-1234</p>	<p>mhoward@usbr.gov</p>
<p>Sarah A Klahn SOMACH SIMMONS & DUNN 2033 11th Street, Ste 5 Boulder, Co 80302</p>	<p>sklahn@somachlaw.com dthompson@somachlaw.com</p>
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<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83 702</p>	<p>cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>
<p>Robert E. Williams WILLIAMS, MESERVY, & LOTHSPREICH, LLP P.O. Box 168 Jerome, ID 83338</p>	<p>rewilliams@wmlattys.com</p>
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<p>Randall D. Fife City Attorney CITY OF IDAHO FALLS P.O. Box 50220 Idaho Falls, ID 83405</p>	<p>rfife@idahofallsidaho.gov</p>
<p>William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318</p>	<p>wparsons@pmt.org</p>
<p>Thomas J. Budge Elisheva M. Patterson RACINE OLSON, PLLP 201 E. Center St. / P.O. Box 1391 Pocatello, Idaho 83204</p>	<p>tj@racineolson.com elisheva@racineolson.com</p>

EXHIBIT A

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Elisheva M. Patterson (ISB#11746)
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Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

STATE OF 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, AMERI-
CAN FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, AND
TWIN FALLS CANAL COMPANY

Docket No. CM-DC-2010-001

**IGWA’s Amended
Notice of Mitigation**

Idaho Ground Water Appropriators, Inc. (“IGWA”), acting on behalf of North Snake Ground Water District, Carey Valley Ground Water District, Magic Valley Ground Water District, Aberdeen-American Falls Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Henry’s Fork Ground Water District, Bonneville-Jefferson Ground Water District, and Bingham Ground Water District (collectively, the “Districts”), through their respective counsel, hereby provides notice that the Districts can mitigate for their proportionate share of the demand shortfall predicted in the *Final Order Regarding April Forecast Supply (Methodology Steps 1-3)* (“*April 2023 As-Applied Order*”) issued April 21, 2023, in this matter.

Background

The *April 2023 As-Applied Order* applies steps 1-3 of the Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover. It predicts that the Surface Water Coalition (“SWC”) will experience an in-season demand shortfall of 75,200 acre-feet in the absence of mitigation by junior-priority groundwater users. The order states: “On or before May 5, 2023, ground water users holding consumptive water

rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan.” (*April 2023 As-Applied Order*, p. 6.) “IGWA’s proportionate share of the predicted DS of 75,200 acre-feet is 63,645 acre-feet.” *Id.* at 5, fn 5.

IGWA has three approved mitigation plans. Its “Storage Water Plan” authorizes its member ground water districts to provide mitigation via the delivery of storage water to the SWC. (Order Approving Mitigation Plan, *In the Matter of the Idaho Ground Water Appropriators, Inc.’s Mitigation Plan in Response to the Surface Water Coalition’s Water Delivery Call*, IDWR Docket No. CM-MP-2009-007, June 3, 2010, p. 10.) Under this plan, “IGWA must provide proof of rental or an option to rent storage water and of a commitment of the storage water to the SWC within the deadlines provided by the Methodology Order and any order of the Director implementing the Methodology Order for a given year.” *Id.*

IGWA’s “Aquifer Enhancement Plan” authorizes its member ground water districts to obtain mitigation credit for reach gains that accrue to the SWC as a result of (a) conversions of farmland from groundwater to surface water irrigation; (b) fallowing of groundwater-irrigated acres through the Conservation Reserve Enhancement Program (CREP), Agricultural Water Enhancement Program (AWEP), or other voluntary program; and (c) groundwater recharge.” (Order Approving Mitigation Plan, *In the Matter of the Idaho Ground Water Appropriators, Inc.’s Mitigation Plan for Conversions, Dry-Ups, and Recharge*, IDWR Docket No. CM-MP-2009-006, May 14, 2010, p. 1.) Under this plan, “[i]f mitigation credit is sought by IGWA, the Director shall determine the appropriate credit, if any, to provide.” *Id.* at 2.

IGWA’s “Settlement Agreement Plan” authorizes its member ground water districts to obtain mitigation protection by complying with a settlement agreement entered into between them and the SWC in 2015. (Final Order Approving Stipulated Mitigation Plan, *In the Matter of IGWA’s Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001, May 2, 2016; Final Order Approving Amendment to Stipulated Mitigation Plan, *In the Matter of IGWA’s Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001, May 9, 2017.) Under this plan, each district is required to conserve its proportionate share of 240,000 acre-feet of groundwater and collectively deliver 50,000 acre-feet of storage annually to the SWC as set forth in the *Amended Final Order Regarding Compliance with Approved Plan* issued April 24, 2023.

On May 5, 2023, IGWA filed a *Notice of Ground Water District Mitigation* stating that some of its member ground water districts would mitigate under IGWA’s Storage Water Plan and others would mitigate under IGWA’s Settlement Agreement Plan, in accordance with their respective proportionate mitigation obligations under each plan. On May 23, 2023, the Director issued an *Order Determining Deficiency in IGWA’s Notice of Secured Water* which ruled that IGWA is not allowed to apportion mitigation obligations under the Storage Water Plan or the Settlement Agreement Plan based on each ground water district’s proportionate share. In effect, the order requires ground water districts to mitigate under one plan only. Based on the May 23 order, IGWA files this amended notice of mitigation.

Notice of Mitigation

IGWA will mitigate under the Storage Water Plan in 2023. The *April 2023 As-Applied Order* states that IGWA's share of the total predicted demand shortfall of 75,200 acre-feet is 63,645 acre-feet. (*April 2023 As-Applied Order*, p. 5, fn 5.) Attached hereto as Appendix A are copies of storage lease contracts secured by IGWA's member ground water districts totaling 77,714 acre-feet.


The *Order Determining Deficiency in IGWA's Notice of Secured Water* orders, for the first time, that the Districts not only provide contracts showing the water they have secured, but that they pay the Water District 1 fees in addition. The Districts object to this because the order approving the Storage Water Plan does not require IGWA to pay the Water District 1 fees before the date that storage water is committed to the SWC. (Order Approving Mitigation Plan, *In the Matter of Idaho Ground Water Appropriators, Inc.'s Mitigation Plan In Response To The Surface Water Coalition's Water Delivery Call*, IDWR Docket No. CM-MP-2009-007, June 3, 2010.) To the contrary, the order allows IGWA to "provide proof of rental or an option to rent storage water," and that "proof of rental or an option to rent storage water shall consist of fully executed and irrevocable contracts with holders of Snake River storage." By the nature of option contracts, fees due to Water District 1 cannot be paid until the option is exercised. It is also significant that IGWA has never failed to pay the Water District 1 fees due under any storage contract for mitigation water delivered to the SWC.

Without waiving IGWA's objection to the prepayment of Water District 1 fees, IGWA's member districts have gone ahead and paid the Water District 1 fees for 2023. IGWA reserves the right to secure storage water in future years and pay Water District 1 fees at the time such storage is transferred to the SWC.

Dated this 1st day of June, 2023.


RACINE OLSON, PLLP

By: _____


Thomas J. Budge
Attorneys for IGWA

OLSEN & TAGGART PLLC

By: _____


Signed for: Skyler C. Johns
Attorneys for Bonneville-Jefferson
Ground Water District

DYLAN ANDERSON LAW

By: _____


Signed for: Dylan Anderson
Attorney for Bingham Ground Water District

APPENDIX A

Storage Leases

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Idaho Irrigation District (lessor) agrees to lease 6,678 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

Alan Melzer 5-1-23 Imeko Irrigation
Lessor Signature Date Title, Canal Company
District

[Signature] 5/5/23 BGWD
Lessee Signature Date Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Snake River Valley Irrigation District (lessor) agrees to lease 5,009 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

Lessor Signature 5-1-23 Date Manager SKUD Title, Canal Company

Lessee Signature 5-1-23 Date BGWD Manager Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

New Sweden Irrigation District (lessor) agrees to lease 5,009 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

Kent Sapp 5-1-23 MANAGER NSID
Lessor Signature Date Title, Canal Company

M. J. [Signature] 5/5/23 BGWD
Lessee Signature Date Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Enterprize Canal Company (lessor) agrees to lease 1,670 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

David K
Lessor Signature

Enterprise Canal Company
Title Canal Company

5/3/23
Date

Lessee Signature

Date

Canal Company or Diversion Name

Mh

5/5/23

BGWD

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Sunnydell Irrigation District (lessor) agrees to lease 334 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

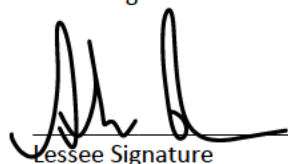


Lessor Signature

Date

V.P. Summydel Canal

Title, Canal Compan



Lessee Signature

5/5/23

Date

BGWD

Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Aberdeen-Springfield Canal Co (lessor) agrees to lease 3,500 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

[Handwritten Signature] 5/5/23
Lessor Signature Date

General Manager
Title, Canal Company

[Handwritten Signature] 5/5/23
Lessee Signature Date

BGWD
Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Blackfoot Irrigation Company (lessor) agrees to lease 500 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

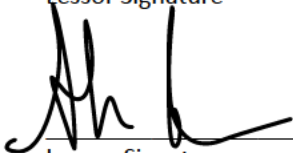


Lessor Signature

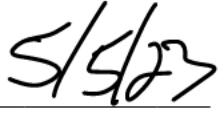
Date



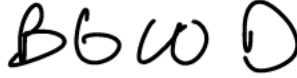
Title, Canal Company



Lessee Signature



Date



Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Corbett Slough Ditch Company (lessor) agrees to lease 750 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Parsons Ditch Company (lessor) agrees to lease 100 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

Lessor Signature

Date

Title, Canal Company

[Handwritten Signature]

5/5/23

BGWD

Lessee Signature

Date

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Peoples Canal & Irrigation Co (lessor) agrees to lease 2,514 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

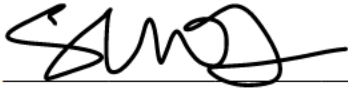
Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

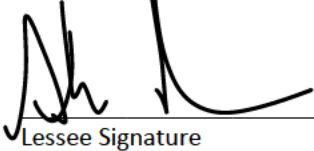


Lessor Signature

Date



Title, Canal Company



Lessee Signature

5/5/23

Date

BGWD

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Riverside Canal Company (lessor) agrees to lease 50 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

76th Le...

Lessor Signature Date Title, Canal Company

ML 5/5/23 BGD

Lessee Signature Date Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

The United Canal Company _____ (lessor) agrees to lease 400 acre-feet of storage to Bingham Ground Water District _____ (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

[Handwritten Signature]

Lessor Signature

Date

[Handwritten Signature]

Title, Canal Company

[Handwritten Signature]

Lessee Signature

5/5/23

Date

B G W D

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Watson Canal Company (lessor) agrees to lease 50 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

_____ Lessor Signature	_____ Date	_____ Title, Canal Company
<i>Alc</i>	<i>5/5/23</i>	<i>BGWD</i>
_____ Lessee Signature	_____ Date	_____ Canal Company or Diversion Name

=====
(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Wearyrick Ditch Company (lessor) agrees to lease 150 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: TBD
Place of Use description: TBD
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

[Handwritten Signature]

Lessor Signature

Date

Manager

Title, Canal Company

[Handwritten Signature]

Lessee Signature

5/5/23

Date

BBWD

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____

STORAGE WATER LEASE

This Storage Water Lease ("Lease") is entered into between Enterprize Canal Co., whose mailing address is PO BOX 583, Ririe, ID 83443, ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

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. BONNEVILLE JEFFERSON GROUND WATER 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 BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

LEASE

1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before May 1, of 2023, and the final installment on or before November 1, of 2023.
4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT 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 BONNEVILLE JEFFERSON GROUND WATER DISTRICT 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.

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

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water 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 Bonneville Jefferson Ground Water 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 Bonneville Jefferson Ground Water 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 into 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 to pursue remedies for breach of contract in district court.

8. Assignment. This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water 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 Bonneville 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 Bonneville 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 9.3 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: Enterprize Canal Co.
 PO BOX 583
 Ririe, ID 83443

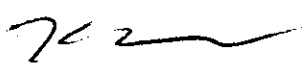
Lessee: Bonneville Jefferson Ground Water District
 PO Box 51121
 Idaho Falls, ID 83405

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

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

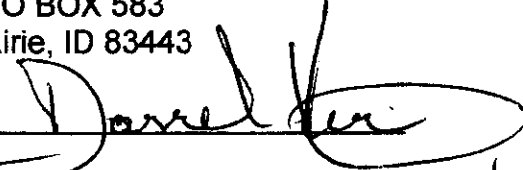
LESSEE:

Bonneville Jefferson Ground Water District
PO Box 51121
Idaho Falls, ID 83405

 4-21-23
By: Kirt Schwieder Date
Title: Treasurer

LESSOR:

Enterprize Canal Co.
PO BOX 583
Ririe, ID 83443

 4/20/23
By: Darrel Kerr Date
Title: Chairman

STORAGE WATER LEASE

This Storage Water Lease ("Lease") is entered into between Idaho Irrigation District, whose address is 496 E 14th St, Idaho Falls, ID 83404, Idaho Falls, Idaho 83402 ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

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. BONNEVILLE JEFFERSON GROUND WATER 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 BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

LEASE

1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before ~~May 1~~ ^{JULY 15}, of 2023, and the final installment on or before November 1, of 2023.
4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT 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 BONNEVILLE JEFFERSON GROUND WATER DISTRICT 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.

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

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water 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 Bonneville Jefferson Ground Water 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 Bonneville Jefferson Ground Water 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 into 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 to pursue remedies for breach of contract in district court.

8. **Assignment.** This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water 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

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

LESSEE:

Bonneville Jefferson Ground Water District
PO Box 51121
Idaho Falls, ID 83405



4-21-23

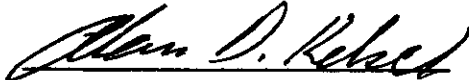
By: Kirt Schwieder

Title: Treasurer

Date

LESSOR:

Idaho Irrigation District
496 E 14th St.
Idaho Falls, ID 83404



4-18-2023

By: Alan Keisch

Date

Title: Chairman – Idaho Irrigation District

STORAGE WATER LEASE

This Storage Water Lease ("Lease") is entered into between Snake River Valley Irrigation District, whose address is 816 N. 700 E., with a mailing address at PO BOX 70, Basalt, ID 83218, ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

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. BONNEVILLE JEFFERSON GROUND WATER 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 BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

LEASE

- 1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
- 2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
- 3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before May 1, of 2023, and the final installment on or before November 1, of 2023.
- 4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT 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 BONNEVILLE JEFFERSON GROUND WATER DISTRICT 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.

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

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water 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 Bonneville Jefferson Ground Water 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 Bonneville Jefferson Ground Water 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 into 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 to pursue remedies for breach of contract in district court.

8. Assignment. This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water 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 Bonneville 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 Bonneville 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 9.3 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: Snake River Valley
Irrigation District
816 N. 700 E.
PO Box 70
Basalt, ID 83218

Lessee. Bonneville Jefferson Ground Water District:
PO Box 51121
Idaho Falls, ID 83405

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

successors, and assigns of the parties.

LESSEE:

Bonneville Jefferson Ground Water District
PO Box 51121
Idaho Falls, ID 83405



4-21-23

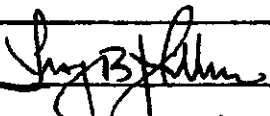
By: Kirt Schwieder

Title: Treasurer

Date

LESSOR:

Snake River Valley
Irrigation District
816 N. 700 E.
PO Box 70
Basalt, ID 83218

By: 

Title: President

4-20-23

Date

STORAGE WATER LEASE

This Storage Water Lease ("Lease") is entered into between Idaho Irrigation District, whose address is 496 E 14th St, Idaho Falls, ID 83404, Idaho Falls, Idaho 83402 ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

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. BONNEVILLE JEFFERSON GROUND WATER 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 BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

LEASE

1. Storage Water Lease. Lessor hereby leases to Bonneville Jefferson Ground Water District 2500 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of [REDACTED] per acre-foot ([REDACTED] total).
2. Term. The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
3. Payment of Rent. Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before July 1, of 2023, and the final installment on or before November 1, of 2023.
4. Administrative Fees. BONNEVILLE JEFFERSON GROUND WATER DISTRICT 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 BONNEVILLE JEFFERSON GROUND WATER DISTRICT 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.

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

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water 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 Bonneville Jefferson Ground Water 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 Bonneville Jefferson Ground Water 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 into 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 to pursue remedies for breach of contract in district court.

8. **Assignment.** This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water 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 Bonneville 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 Bonneville 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 9.3 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: Idaho Irrigation District
496 E 14th St
Idaho Falls, ID 83404

Lessee: Bonneville Jefferson Ground Water
District:
PO Box 51121
Idaho Falls, ID 83405

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

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

LESSEE:

Bonneville Jefferson Ground Water District
PO Box 51121
Idaho Falls, ID 83405

Kirt Schwieder

By: **Kirt Schwieder** Date
Title: **Treasurer**

LESSOR:

Idaho Irrigation District
496 E 14th St.
Idaho Falls, ID 83404

Alan Kelsch

By: **Alan Kelsch** Date
Title: **Chairman – Idaho Irrigation District**

WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT

Idaho Irrigation District _____ (lessor) agrees to lease 2500 acre-feet of storage to Bonneville Jefferson Ground Water District _____ (lessee) for the 2023 irrigation season at a price of \$ 325,000.00 according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River
Canal or Pump Name and location: To be determined
Place of Use description: To be determined
Water Right Appurtenant to Lands: To be determined

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30th. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

Alan Kelsch

Alan Kelsch (May 9, 2023 07:25 MDT)

Lessor Signature

Date

Title, Canal Company

KWS

Lessee Signature

Date

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: _____

Watermaster Signature: _____










2023.05 Idaho Irrigation WaterLease 2500 AF

Final Audit Report

2023-05-09

Created:	2023-05-08
By:	Brad Buttars (brad@bjgwdistrict.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAP7PyKRz1fh-VptwGFvO5n297fMbHBDzB

"2023.05 Idaho Irrigation WaterLease 2500 AF" History

-  Document created by Brad Buttars (brad@bjgwdistrict.com)
2023-05-08 - 8:57:13 PM GMT
-  Document emailed to Kirt Schwieder (idahosod@gmail.com) for signature
2023-05-08 - 8:57:56 PM GMT
-  Email viewed by Kirt Schwieder (idahosod@gmail.com)
2023-05-09 - 3:22:22 AM GMT
-  Document e-signed by Kirt Schwieder (idahosod@gmail.com)
Signature Date: 2023-05-09 - 3:23:05 AM GMT - Time Source: server
-  Document emailed to alankelsch@icloud.com for signature
2023-05-09 - 3:23:06 AM GMT
-  Email viewed by alankelsch@icloud.com
2023-05-09 - 1:21:27 PM GMT
-  Signer alankelsch@icloud.com entered name at signing as Alan Kelsch
2023-05-09 - 1:25:10 PM GMT
-  Document e-signed by Alan Kelsch (alankelsch@icloud.com)
Signature Date: 2023-05-09 - 1:25:12 PM GMT - Time Source: server
-  Agreement completed.
2023-05-09 - 1:25:12 PM GMT



Adobe Acrobat Sign

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	\$ [REDACTED]
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.

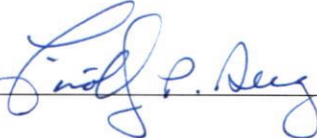
This Lease Agreement shall be signed in triplicate and shall be effective when signed by both the Tribes and IGWA.

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

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 \$2.30 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 1st 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 26 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

January 5, 2023

ONE-YEAR TRIBAL WATER LEASE AGREEMENT

This One-Year Tribal Water Lease Agreement ("Lease Agreement") is entered into between the SHOSHONE-BANNOCK TRIBES of the Fort Hall Reservation ("Tribes"), acting through the Tribal Lease Pool Committee in the operation of the Tribal Water Supply Bank and the Fort Hall Business Council, and the following three groundwater districts: North Snake Ground Water District, Magic Valley Ground Water District, and American Falls-Aberdeen Ground Water District (collectively, "Districts"). The Tribes and Districts may be referred to herein collectively as the "parties" and individually as a "party." This Lease Agreement shall be effective on the date executed by both parties.

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. These water rights and associated volumes of storage 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. The Districts are members of the Idaho Ground Water Appropriators, Inc. ("IGWA") which has entered into an agreement with the Surface Water Coalition to resolve disputes related to the impacts of groundwater use on surface water rights. The Districts desire to lease storage water from the Tribes based on the terms herein for use in meeting aspects of that agreement.

AGREEMENT

Now, therefore, and in consideration of the covenants and obligations set forth herein, and for other good and valuable consideration, the Tribes and Districts agree as follows:

1. **Leased Water.** The Tribes will provide to the Districts, and the Districts will rent from the Tribes, a volume of 10,000 acre-feet (the "Lease Volume"), subject to the following terms and conditions:
 - 1.1 The Lease Volume will be supplied from the Tribal Water Supply Bank. Water available for the Lease 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.
 - 1.2 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 to be administered as Tribal storage allocation in American Falls Reservoir. The Tribes, in their sole discretion, may elect to use the Reserve Supply to fulfill Lease Volume commitment defined in Section 1 above. The Reserve Supply will be provided through the Tribal Water Supply Bank.

January 5, 2023

2. **Water Delivery and Administration.** Delivery of the Lease Volume shall occur when the Lease 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 Districts shall cooperatively work together to ensure the delivery of the Lease Volume to the Districts and the appropriate administration of such water.
 - 2.1 The quantity of water to be leased under this Lease Agreement under Paragraph 1 will be reviewed by the Tribal Rental Pool Committee as required by the Shoshone-Bannock Tribal Water Supply Bank Rules.
 - 2.2 Any carriage or other losses of Lease Volume that may occur downstream from American Falls Reservoir or Palisades Reservoir shall be the responsibility of the Districts.
 - 2.3 The scheduling of releases of the Lease Volume shall be in the sole discretion of the Districts; provided however, that the Districts will notify and cooperate with the Tribes and the U.S. Bureau of Reclamation (Reclamation) to implement any storage release request. The Tribes and Districts will cooperate with Reclamation and Water District 1 in measuring and accounting for the Lease Volume at the outflow of American Falls Reservoir and/or Palisades Reservoir.
 - 2.4 The Lease Volume shall only be available for use by the Districts 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 to in writing by the Tribes.
3. **Term.** The term of this Lease Agreement shall be for one (1) year commencing April 1, 2023, and terminating on October 31, 2023.
4. **Agreement Contingencies.** This Lease Agreement, and all obligations hereunder, are expressly contingent upon:
 - 4.1 Payment by the Districts pursuant to Section 5 below;
 - 4.2 Delivery of the Lease Volume by the Tribes to the Districts prior to October 31, 2023, subject to the provisions of Paragraphs 5-7 below.
5. **Payment.** The "Lease Payment" shall be [REDACTED]. The Districts shall be obligated to make the Lease Payment whether or not the Districts take delivery of any amount of the Lease Volume by October 31, 2023. Provided, however, that if the Tribes are unable to make available for delivery the full Lease Volume, the Districts shall pay [REDACTED] per acre foot of water the Tribes make available for delivery.
6. **Payment Schedule.** The Lease Payment shall be payable by the Districts as follows:
 - 6.1 50% of the Lease Payment is due by July 15, 2023;
 - 6.2 The balance of the Lease Payment is due by November 1, 2023;
 - 6.3 All payments are payable by wire transfer to the Tribes within five (5) business days of due date stated above.

January 5, 2023

7. **Termination.** Either the Tribes or the Districts may terminate this Lease Agreement in accordance with the provisions below:

7.1 The Tribes or Districts may terminate this Lease Agreement:

- (a) For any uncured violation or breach of the terms of this Lease Agreement; or
- (b) 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.

7.2 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.

7.3 Termination may be subject to the Conflict Resolution provisions of Section 10 if the party against whom termination is sought disagrees with the basis of the termination.

7.4 In the event of any such termination, there shall be an accounting of the Lease Payment paid by the Districts and the Lease Water delivered by the Tribes as of the termination date. The Districts shall pay for all Lease Water delivered. If the Districts have submitted payment for Lease Water that remains undelivered by the termination date, the Tribes shall refund the portion of the Lease Payment received for 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.**

8.1 **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.

8.2 **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, 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.

8.3 **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 sent by mail shall 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. Notices sent by email shall be deemed delivered when the intended recipient acknowledges receipt via reply email. Either party may change its address for notices by sending written notice to the other party in accordance herewith. Notices shall be addressed as follows:

January 5, 2023

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 Resources Director
Shoshone-Bannock Tribes Water Resources Department
P.O. Box 306
Fort Hall, Idaho 83203
Phone: (208) 239-4580

With a Copy to:

T.J. Budge
Racine Olson
201 E. Center Street
Pocatello, ID 83204
(208) 232-6101
tj@racineolson.com

- 9. 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.
- 10. 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 Districts agree as follows:
- (a) The parties will initially engage in good faith negotiation in an attempt to resolve the conflict cooperatively.
 - (b) If the conflict is not resolved to the satisfaction of either party through good faith negotiation, the parties agree to submit such dispute to non-binding mediation in an effort to resolve the same.
 - (c) If formal legal proceedings are commenced in connection with this Lease Agreement, the parties agree that the Shoshone-Bannock Tribal Court shall be the sole, proper, and exclusive forum and venue for such proceedings.

January 5, 2023

- (d) 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.
11. **Attorneys' Fees.** In any action concerning the interpretation or enforcement of this Lease Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees and costs incurred, including any costs and attorneys' fees incurred in appellate proceedings.
 12. **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.
 13. **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 subject matter hereof.
 14. **Severability.** If any provision of this Lease Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Lease Agreement, and such other provisions shall continue in full force and effect, unless Sections 1, 5 or 6 are held to be invalid or unenforceable.
 15. **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.
 16. **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.
 17. **Contract Interpretation.** The parties have participated jointly in the negotiation and drafting of this Lease Agreement. If 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.
 18. **No Third-Party Beneficiary.** This Lease Agreement is exclusively for the benefit of and governs only the parties hereto. The Tribes and Districts are the only parties to this Lease Agreement 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.
 19. **Indemnification.** The Districts indemnify the Tribes and its officers, subsidiaries, agents, and employees (the "Indemnitees") and the Districts 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 the Districts' use of the water leased pursuant to this Lease Agreement.
 20. **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.

January 5, 2023


This Lease Agreement shall be effective when signed by both the Tribes and the Districts.

SHOSHONE-BANNOCK TRIBES:

Date: _____ By: _____

Chairman
Fort Hall Business Council

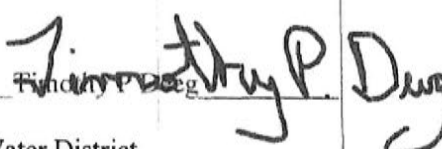
GROUNDWATER DISTRICTS:

Date: 1/17/23 By: 

Lynn Carlquist, Chairman, North Snake Ground Water District

Date: _____ By: _____

Dean Stevenson, Chairman, Magic Valley Ground Water District

Date: 1-17-2023 By: 

Tim Deeg, Chairman, American Falls-Aberdeen Ground Water District

January 5, 2023

This Lease Agreement shall be effective when signed by both the Tribes and the Districts.

SHOSHONE-BANNOCK TRIBES:

Date: 5/4/23 By: Nathan Small

Chairman
Fort Hall Business Council

GROUNDWATER DISTRICTS:

Date: _____ By: _____

Lynn Carlquist, Chairman, North Snake Ground Water District

Date: 1.14.2023 By: Dean Stevenson

Dean Stevenson, Chairman, Magic Valley Ground Water District

Date: _____ By: _____

Tim Deeg, Chairman, American Falls-Aberdeen Ground Water District

RESOLUTION

WHEREAS, the Fort Hall Business Council has the ultimate responsibility for budget approvals and overseeing the administration of all Tribal funding as well as those funds awarded to the Shoshone-Bannock Tribes through contracts, grants and cooperative agreements, regardless of the source; and

WHEREAS, the Tribal Water Bank was established for the benefit of the Shoshone-Bannock Tribes, pursuant to the "1990 Fort Hall Indian Water Rights Agreement", that utilizes the Tribes' contract storage rights in the American Falls and Palisades Reservoirs; and

WHEREAS, in 2015 the Tribes negotiated a Settlement Agreement for 25,276 acre-feet of storage water with the Committee of Nine for impacts that the Water District 01 Common Rental Pool had to the Tribes' storage supplies, of which 15,276 acre-feet is available and 10,000 acre-feet can be used annually; and

WHEREAS, three water districts: North Snake Ground Water District, Magic Valley Ground Water District and the American Falls-Aberdeen Ground Water District (Districts) have applied to rent 10,000 acre-feet of storage water for one-year from the Tribal Water Bank; and

WHEREAS, the Tribes have an adequate supply for 2023 to provide an additional 10,000 acre-feet of storage water; and

WHEREAS, the Tribal Water Resources Department (TWRD) is recommending that the Tribes' enter into a one-year Tribal lease agreement with the Districts for 10,000-acre feet; now

THEREFORE, BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES, that the Tribal Water Resources Department is hereby approved to enter into one-year Tribal lease agreement with the North Snake Ground Water District, Magic Valley Ground Water District and the American Falls-Aberdeen Ground Water District for a 10,000 acre-feet at a rate of [REDACTED] dollars per acre-feet; and

BE IT FURTHER RESOLVED, that monies derived from this one-year Tribal lease agreement will be utilized to assist with costs associated with monitoring programs, water projects and TWRD costs towards the implementation and administration of the "1990 Fort Hall Indian Water Rights Agreement"; and

BE IT FURTHER RESOLVED, that the Tribal Chairman or official designee is authorized to sign the one-year Tribal lease agreement between the Tribes and the water districts: North Snake Ground Water District, Magic Valley Ground Water District, and the American Falls-Aberdeen Ground Water District; and

BE IT FURTHER RESOLVED, that the Interim TWRD Director is authorized to sign a letter to Water District 01 and Committee of Nine stating that the Tribes are electing to use 10,000 acre-feet of Settlement Water for 2023, if necessary.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat., 984), as amended, and in the Shoshone-Bannock Tribes Constitution and Bylaws of the Fort Hall Reservation, as amended, including, but not limited to the authority found in the Constitution, Article VI.

Dated this 31st day of January 2023


Nathan Small, Chairman
Fort Hall Business Council

S E A L

CERTIFICATION

I HEREBY CERTIFY, that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 5 in favor, 1 absent (DKT) and 1 not voting (NS) on the date this bears.


Claudia J. Washakie, Tribal Secretary
Fort Hall Business Council

CTRT-2023-0076

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:


Thomas J. Budge

Director Gary Spackman Garrick Baxter Sarah Tschohl Idaho Department of Water Resources 322 E Front St. Boise, ID 83720-0098	gary.spackman@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov
Dylan Anderson DYLAN ANDERSON LAW PO Box 35 Rexburg, Idaho 83440	dylan@dylanandersonlaw.com
Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC 1449 E 17th St, Ste A PO Box 3005 Idaho Falls, ID 83403	sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com
John K. Simpson Travis L. Thompson MARTEN LAW P. O. Box 63 Twin Falls, ID 83303-0063	tthompson@martenlaw.com jsimpson@martenlaw.com jnielsen@martenlaw.com
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318	wkf@pmt.org
Kathleen Marion Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706	kathleenmarion.carr@sol.doi.gov

<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202</p>	<p>david.gehlert@usdoj.gov</p>
<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234</p>	<p>mhoward@usbr.gov</p>
<p>Sarah A Klahn Somach Simmons & Dunn 2033 11th Street, Ste 5 Boulder, Co 80302</p>	<p>sklahn@somachlaw.com dthompson@somachlaw.com</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205</p>	<p>rdiehl@pocatello.us</p>
<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83 702</p>	<p>cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>
<p>Robert E. Williams WILLIAMS, MESERVY, & LOTH SPEICH, LLP P.O. Box 168 Jerome, ID 83338</p>	<p>rewilliams@wmlattys.com</p>
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405</p>	<p>rharris@holdenlegal.com</p>
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405</p>	<p>rfife@idahofallsidaho.gov</p>
<p>Corey Skinner IDWR-Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033</p>	<p>corey.skinner@idwr.idaho.gov</p>

<p>Tony Olenichak IDWR-Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402</p>	<p>Tony.Olenichak@idwr.idaho.gov</p>
<p><i>COURTESY COPY TO:</i> William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318</p>	<p>wparsons@pmt.org</p>

EXHIBIT B

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

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

Docket No. CM-DC-2010-001

**ORDER REVISING APRIL 2023
FORECAST SUPPLY AND
AMENDING CURTAILMENT
ORDER**

(METHODOLOGY STEPS 5 & 6)

The Director of the Idaho Department of Water Resources (“Department”) finds, concludes, and orders as follows:

FINDINGS OF FACT

A. Background

1. On July 19, 2023, the Director issued the *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”). The Methodology Order established nine steps for determining material injury to members of the Surface Water Coalition (“SWC”). This order applies Steps 5 and 6 to the 2023 irrigation season.

2. On November 30, 2022, the Director issued the *Final Order Establishing 2022 Reasonable Carryover – Methodology Step 9* (“November Carryover Order”) establishing a reasonable carryover shortfall of 49,309 AF. The Director ordered junior ground water users holding consumptive ground water rights within the Eastern Snake Plain Aquifer (“ESPA”) area of common ground water supply with priority dates junior to May 31, 1989, to mitigate for their proportionate share of the reasonable carryover shortfall or be curtailed. *November Carryover Order* at 6.

3. On April 21, 2023, the Director issued his *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1 – 3)* (“April Forecast Supply Order”). The April Forecast Supply Order predicted a demand shortfall to the SWC of 75,200 acre-feet for the 2023 irrigation season. *April Forecast Supply Order* at 3. At that time, the only member of the SWC predicted to experience material injury during the 2023 irrigation season was the Twin Falls Canal Company (“TFCC”). The Director ordered that, by May 5, 2023, ground water users with consumptive water rights “junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted [demand shortfall] of 75,200 acre-feet in accordance with an approved mitigation plan” *Id.* at 5. The Director also ordered that, if

a junior ground water user cannot establish they can mitigate for their proportionate share of the predicted demand shortfall in accordance with an approved mitigation plan, “the Director will issue an order curtailing the junior-priority ground water user.” *Id.* However, on May 1, 2023, the Director sent notice to affected water users that a hearing on the April Forecast Supply Order would be held June 6–10, 2023, and the Director would wait until after the hearing to decide whether to issue a curtailment order.

4. Step 5 of the Methodology Order addresses the final injury determination to reasonable carryover for members of the SWC. “If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall.” *Methodology Order* at 43. On July 13, 2023, the Water District 01 published its 2023 Preliminary Storage Report (“Storage Report”).¹ The Storage Report stated that TFCC had 1,088 acre-feet of last to fill (i.e., LTF) that did not fill. TFCC has 1,088 acre-feet of LTF space due to its lease of 1,088 acre-feet to the Supplemental Pool in 2020. Because the LTF storage space did not fill due to a lease by TFCC, TFCC’s unfilled LTF space is not considered a reasonable carryover shortfall.

5. Step 6 states:

Approximately halfway through the irrigation season . . . the Director will, for each member of the SWC: (1) recalculate RISD [Reasonable In-Season Demand]; (2) issue a revised FS [Forecast Supply]; and (3) estimate the Time of Need date.

Id. (footnote omitted).

B. April–June Climate

6. The April 2023 Joint Forecast prepared by the United States Army Corps of Engineers and the United States Bureau of Reclamation (“BOR”) predicted 3,700,000 acre-feet of natural flow at the Heise gage for the period of April through July 2023. *April Forecast Supply Order* at 2. The Joint Forecast “is generally as accurate a forecast as is possible using current data gathering and forecasting techniques.” *Methodology Order* at 19 (citation omitted).

7. Spring precipitation (April–June) was variable. According to Natural Resource Conservation Service SNOTEL sites, the Upper Snake received 96%, 64%, and 179% of average precipitation in April, May, and June, respectively. The National Weather Service’s Twin Falls weather station reported 20%, 132%, 79% of normal precipitation in April, May, and June, respectively. Temperatures reported by the Twin Falls weather station were -1.6 degrees below normal for April, 4.1 degrees above normal for May, and -0.6 degrees below normal for June.²

¹ The 2023 Preliminary Storage Report can be viewed on-line at the following link: <https://www.waterdistrict1.com/media/5piix3cc/2023-prelim-storage-report.pdf>.

² Precipitation and temperature data obtained from the NOAA National Weather Service Preliminary Monthly Climate Data for the Twin Falls 3SE weather station (Twin Falls Airport).

C. Reasonable In-Season Demand

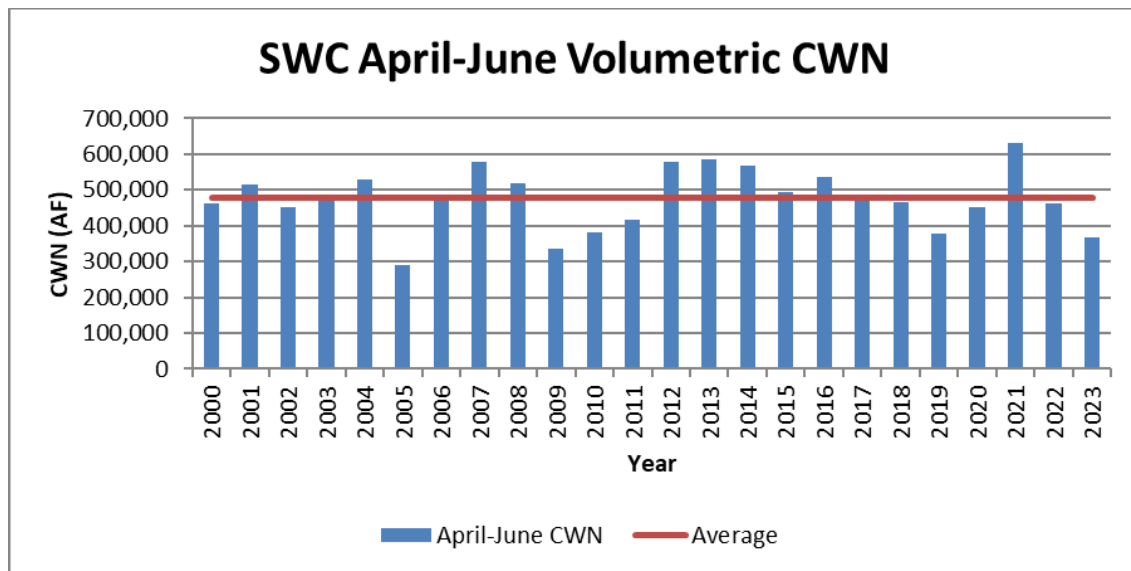
8. RISD “is the projected annual diversion volume for each SWC entity during the year of evaluation that is attributable to the projected beneficial use of growing crops within the service area of the entity.” *Methodology Order* at 13. In April, the demand from the 2018 BLY defines the RISD. *Id.* at 17. During the irrigation season, the RISD for the completed portion of the irrigation season is recalculated by dividing the actual crop water need (“CWN”) for each entity by the project efficiency for that entity. *Id.* at 17, 43. For the remainder of the irrigation season, the RISD is the demand defined by the July–October 2018 BLY. *Id.* RISD is calculated on a monthly time step.

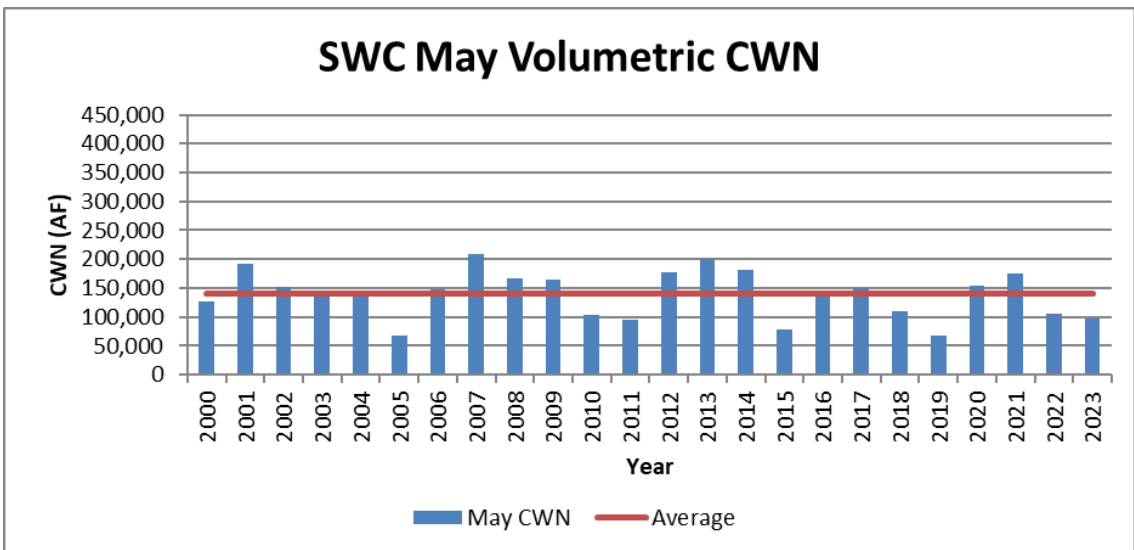
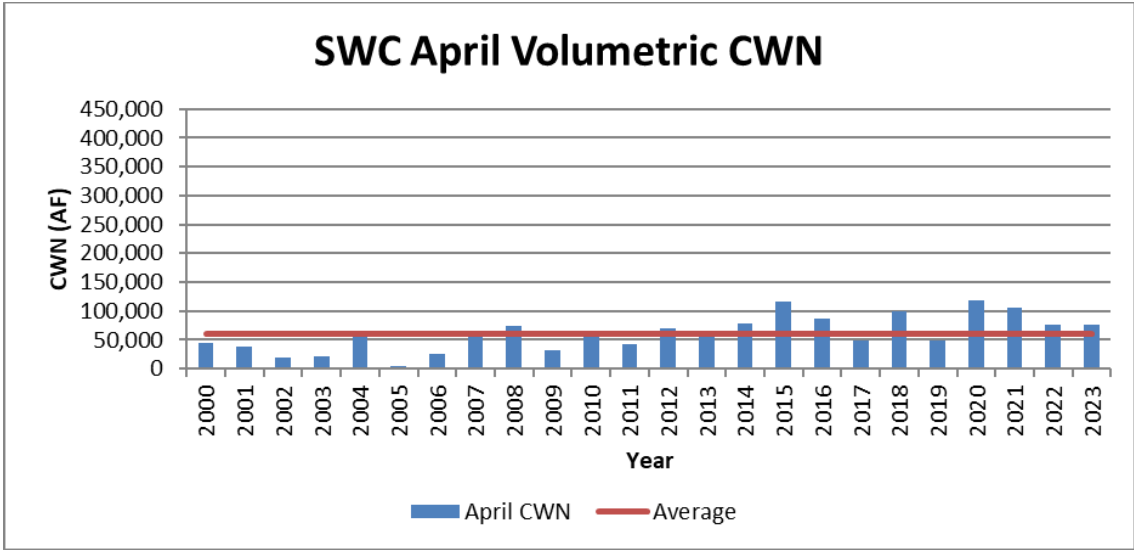
i. Crop Water Need

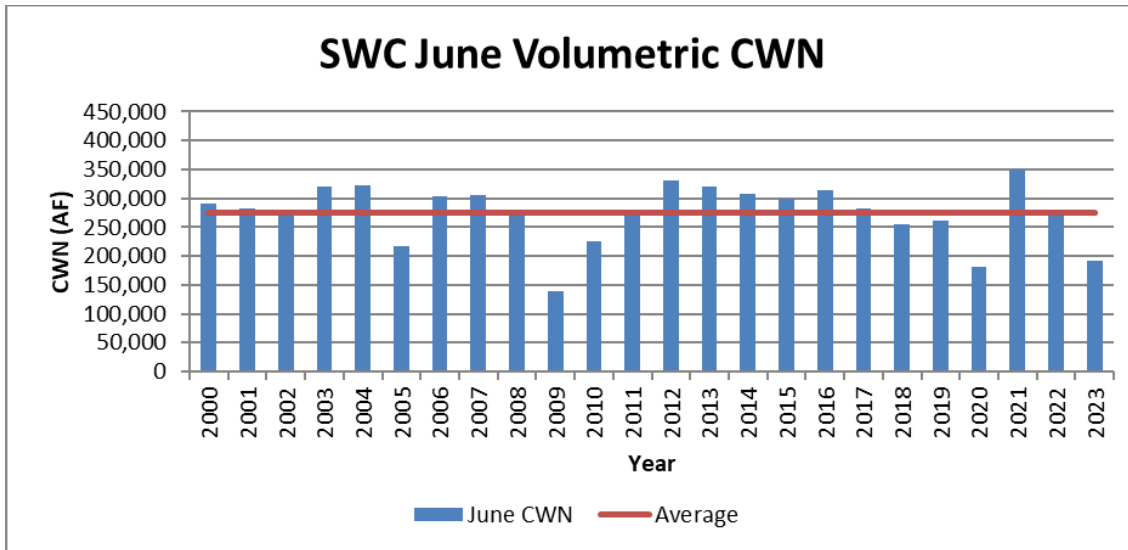
9. “CWN is the volume of irrigation water required for crop growth within a SWC entity boundary, such that crop growth is not limited by water availability.” *Methodology Order* at 15. CWN is the difference between the fully realized consumptive use associated with crop growth, or [evapotranspiration], and effective precipitation . . .” *Id.*

10. CWN is an input variable for calculating RISD for the completed portion of the irrigation season. *Id.* at 17. Actual RISD for the completed portion of the irrigation season is combined with monthly predicted baseline demands for the remaining months of the irrigation season to calculate a season-total RISD volume. *Id.* at 17-18. In-season demand shortfall is then calculated as the difference between the adjusted FS and the RISD. *Id.* at 23.

11. As calculated from the beginning of the irrigation season (April 1), the SWC’s volumetric CWN for the current water year through the month of June is 367,222 acre-feet. This volume is 73% of the April 1–June 30 ten-year average CWN (2013–2022) and 79% of the April 1–June 30 CWN for the 2018 BLY. The following graphs summarize monthly volumetric CWN values:







ii. Extension of BLY

12. The RISD for the remaining portion of the irrigation season (July–October) is the July–October demand for 2018 BLY. The numeric values are shown in the table in Finding of Fact 13 below.

iii. Calculation of RISD

13. As calculated from the beginning of the irrigation season (April 1), the SWC’s volumetric RISD for 2023 through the month of June is 991,737 acre-feet. This volume is 72% of the April 1–June 30 ten-year average RISD (2013–2022) and 70% of the April–June demand for the 2018 BLY. The recalculated RISD at this point of the 2023 irrigation season by entity is:

	April–June CWN (AF)	E_p (April - June)	April–June RISD (AF)	July–October Demand for 2018 BLY (AF)	Recalculated RISD (AF)
A&B	8,872	0.46-1.05	15,093	38,528	53,622
AFRD2	41,551	0.22-0.40	129,884	274,485	404,369
BID	31,241	0.31-0.49	78,538	145,546	224,085
Milner	8,578	0.38-0.87	15,353	36,432	51,786
Minidoka	58,753	0.35-0.55	131,152	196,968	328,121
NSCC	86,283	0.23-0.41	278,976	594,099	873,075
TFCC	131,944	0.29-0.51	342,740	653,473	996,214

D. Forecast Supply

14. When determined during the irrigation season, the FS is the sum of the actual natural flow supply from April through June, the predicted natural flow supply from July through

October, and the actual storage allocations. *Methodology Order* at 43. Actual natural flow diversions for the completed portion of the irrigation season are extracted from the Department’s water rights accounting program. The natural flow diversions for the remainder of the irrigation season are estimated by regression analysis. *Id.* at 20–21, 43. Storage allocations are determined by Water District 01 after the Day of Allocation. *Id.* at 43.

i. Sum of Actual Natural Flow Diverted

15. Actual natural flow diverted in April through June for each SWC member is shown in the table contained in Finding of Fact 25 below, within the “Summary of Forecast Supply” section.

ii. Regression Models to Predict Natural Flow (July–October)

16. Natural flow diversions were predicted for the remainder of the irrigation season by regression analysis. The Methodology Order established the following variables as predictor variables in the regression models: natural flow in the Snake River near Heise as reported by the BOR, snow water equivalent (“SWE”) data at Two Ocean Plateau SNOTEL site, Spring Creek discharge, and groundwater levels near American Falls Reservoir. *Methodology Order* at 20–21. Unique regression models with unique predictor variable groups are established in the Methodology Order for each SWC member.

17. Either June 15 or July 1 SWE values for the Two Ocean Plateau SNOTEL site are used as input variables in each of the regression models developed in the Methodology Order. Two Ocean Plateau SWE data was selected as a predictor variable in the Methodology Order based upon step-wise statistical analysis carried out in the development of each regression model. The Two Ocean Plateau SWE data is an optimum predictor variable for several reasons including: its elevation (the site is located above 9,000 ft and typically still has snow late in the runoff season (June 15 and July 1); its location (the site is in the headwaters of the Snake River above Jackson Reservoir); and its period of record, which is sufficiently long enough to support model development.

18. On July 1, 2023 the Two Ocean Plateau SNOTEL station reported 0.0 inches of SWE. When the snow water equivalent is zero on July 1, the predicted natural flow supplies for the period July 1–October 31 for A&B, AFRD2, and Milner are zero acre-feet. *Methodology Order* at 20.

19. The input variables used to predict the July–October natural flow volumes for BID, Minidoka, and NSCC in 2023 include: (1) 4.1 inches of the SWE reported by the Two Ocean Plateau SNOTEL site on June 15, 2023; (2) 2,935,356 acre-feet of natural flow runoff at the Snake River near Heise (April–June) as reported by the BOR; and (3) 27.61 feet depth to water at well 5S31E27ABA1 as measured by the Department on March 23, 2023.

20. The input variables used to predict the July–October natural flow volumes for TFCC in 2023 include: (1) 4.1 inches of the SWE reported by the Two Ocean Plateau SNOTEL site on June 15, (2) 2,935,356 acre-feet of natural flow runoff at the Snake River near Heise

(April–June) as reported by the BOR, and (3) 76,428 acre-feet total discharge at Spring Creek (January–May) as measured and reported by the United States Geologic Survey for its *Spring Creek at Sheepskin Rd Nr Fort Hall ID* Gage (Gage No. 13075983).

iii. Storage Allocations

21. The preliminary storage allocations identified by Water District 01 in the Storage Report for each of the SWC members are reported in the table in Finding of Fact 23 below.

iv. Adjustments to Total Supply

22. The natural flow and storage water supplies were both adjusted as shown in the table in Finding of Fact 23 below. Adjustments to natural flow include wheeled water to Southwest Irrigation District through BID and Milner, 3,714 acre-feet and 3,011 acre-feet, respectively. The only adjustments to the stored water supply in the table below were for the Minidoka Credit. Water supplied to or from the rental pool was not included in the adjustments.

v. Summary of Forecast Supply

23. The following table contains the individual components of the FS for each of the SWC members:

	Natural Flow Diverted 4/1 to 6/30 (AF)	Predicted Natural Flow Diversions 7/1 to 10/31 (AF)	Natural Flow Adjustment (AF)	Preliminary Storage Allocation (AF)	Minidoka Credit Adjustment (AF)	FS (AF)
A&B	15,545	0	0	132,888	0	148,436
AFRD2	148,717	0	0	382,422	1,000	532,147
BID	105,323	10,972	(3,714)	220,083	5,130	337,799
Milner	19,449	0	(3,011)	86,922	0	103,362
Minidoka	137,692	15,529	0	336,711	8,370	498,310
NSCC	395,563	83,732	0	834,545	(7,750)	1,306,091
TFCC	426,135	418,779	0	237,918	(6,750)	1,076,089

E. Revised Shortfall Projection

24. In-season demand shortfall (“IDS”) is calculated as the difference between RISD and the FS.

25. Based on the above, and as summarized in the table below, the Director predicts no mid-season IDS to the SWC.

	FS (AF)	RISD (AF)	Shortfall (AF)
A&B	148,436	53,622	0
AFRD2	532,147	404,369	0
BID	337,799	224,085	0
Milner	103,362	51,786	0
Minidoka	498,310	328,121	0
NSCC	1,306,091	873,075	0
TFCC	1,076,089	996,214	0
	Total		0

F. Time of Need

26. Step 5 of the Methodology Order requires that the Director estimate the Time of Need if there is water owed to SWC members that is in addition to the reasonable carryover shortfall volume. *Methodology Order* at 43. As stated in Finding of Fact 4, there is no reasonable carryover shortfall. Execution of Step 6 demonstrates there is no mid-season IDS to the SWC for 2023. With no additional water owed to SWC members, there is no need to establish a Time of Need as described in Step 6.

CONCLUSIONS OF LAW

1. Idaho Code § 42-602 authorizes the Director to supervise water distribution within water districts:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

2. Idaho Code § 42-607 states that the watermaster, under the direction of the Director, shall regulate diversions “when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply”

3. Step 5 of the Methodology Order requires that the Director estimate the Time of Need if there is water owed to the SWC members that is in addition to the reasonable carryover shortfall volume. *Methodology Order* at 43. No member of the SWC is owed reasonable

carryover in 2023 for a reasonable carryover shortfall determined in 2022. Execution of Step 6 of the Methodology Order demonstrates there is no mid-season IDS to the SWC for 2023. With no additional water owed to SWC members, there is no need to establish a Time of Need as described in Step 6.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that there is no mid-season in-season demand shortfall to the SWC members.

Dated this 19th day of July 2023.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson MARTEN LAW LLP P.O. Box 2139 Boise, ID 83701-2139 jsimpson@martenlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Travis L. Thompson MARTEN LAW LLP P.O. Box 63 Twin Falls, ID 83303-0063 tthompson@martenlaw.com jnielsen@martenlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Thomas J. Budge Elisheva M. Patterson RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 tj@racineolson.com elisheva@racineolson.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Sarah A Klahn Maximilian C. Bricker Somach Simmons & Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 sklahn@somachlaw.com mbricker@somachlaw.com dthompson@somachlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>

<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205 rdiehl@pocatello.us</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert E. Williams WILLIAMS, MESERVY, & LOTHSPREICH, LLP P.O. Box 168 Jerome, ID 83338 rewilliams@wmlattys.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 rfife@idahofallsidaho.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC P.O. Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Dylan Anderson Dylan Anderson Law PLLC P.O. Box 35 Rexburg, Idaho 83440 dylan@dylanandersonlaw.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Tony Olenichak IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 Tony.Olenichak@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> Email

<p>Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 corey.skinner@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> Email</p>
<p>COURTESY COPY TO: William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318 wparsons@pmt.org</p>	<p><input checked="" type="checkbox"/> Email</p>



Sarah Tschöhl
Paralegal

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

EXHIBIT C

**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 No. CM-DC-2010-001

**NOTICE THAT QUESTIONS
CONCERNING THE
SUFFICIENCY OF IGWA’S
MITIGATION NOTICES ARE
MOOT**

BACKGROUND

On April 21, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”). Step 3 of the Methodology Order states that by May 1, or within fourteen days from issuance of a final order predicting a shortfall, “junior ground water users with approved mitigation plans for delivery of water must secure, to the satisfaction of the Director, a volume of water equal to their proportionate share” of any predicted shortfall. *Methodology Order* at 40.

On April 21, 2023, the Director also issued his *Final Order Regarding April 2023 Forecast Supply* (“April 2023 As-Applied Order”), wherein the Director predicted the Twin Falls Canal Company (“TFCC”) would suffer a 75,200 acre-feet shortfall. *April 2023 As-Applied Order* at 3. To ensure TFCC was protected, the Director ordered that on or before May 5, 2023:

[G]round water users holding consumptive water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted [demand shortfall] of 75,200 acre-feet in accordance with an approved mitigation plan. If a junior ground water user cannot establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted [demand shortfall] of 75,200 acre-feet in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user.

April 2023 As-Applied Order at 6.

On May 5, 2023, the Idaho Ground Water Appropriators, Inc. (“IGWA”), acting on behalf of certain water districts¹ (collectively the “Districts”), filed a *Notice of Ground Water District Mitigation* (“Mitigation Notice”).

IGWA’s *Mitigation Notice* explained that “IGWA has three approved mitigation plans.” *Mitigation Notice* at 2. IGWA asserted its first plan (the “2009 Storage Water Mitigation Plan”) authorized the Districts to mitigate by delivering storage water to the Surface Water Coalition (“SWC”). *Id.* IGWA contends its second plan (the “Aquifer Enhancement Plan”) authorized the Districts to “obtain mitigation credit” for various activities, e.g., fallowing acres irrigated by groundwater. *Id.* IGWA asserted its third plan (known as the “2015 Settlement Agreement Mitigation Plan”) authorized the Districts to “obtain mitigation protection by complying with a 2015 settlement agreement between the Districts and the SWC. *Id.*

IGWA then advised that certain districts intended to mitigate under the 2009 Storage Water Mitigation Plan, while other districts intended to mitigate under the 2015 Settlement Agreement Mitigation Plan. *Id.* at 2–3.

On May 23, 2023, the Director issued an *Order Determining Deficiency in IGWA’s Notice of Secure Water* (“Deficiency Order”). Of import here, the Director concluded IGWA’s *Mitigation Notice* was deficient as it was improper for some Districts to mitigate under the 2009 Storage Water Mitigation Plan while others mitigated under the 2015 Settlement Agreement Mitigation Plan. *Deficiency Order* ¶¶ 2, 7, 9, 20, 21. The Director also determined IGWA’s *Mitigation Notice* was deficient given IGWA’s failure to tender fees to Water District 01 along with proof of legally enforceable contracts as required under the 2009 Storage Water Mitigation Plan. *Deficiency Order* ¶¶ 8, 9.

On June 1, 2023, IGWA submitted *IGWA’s Amended Notice of Mitigation* (“Amended Mitigation Notice”), advising that IGWA would mitigate under the 2009 Storage Water Mitigation Plan. *Amended Mitigation Notice* at 3. IGWA also attached “copies of storage lease contracts secured by IGWA’s member ground water districts totaling 77,714 acre-feet.” *Id.*; see also *Amended Mitigation Notice* app. A. IGWA also objected to the Director’s requiring IGWA to pay Water District 01’s fees, but advised it had paid the fees notwithstanding its objection. *Amended Mitigation Notice* at 3.

On June 5, 2023, the SWC submitted *Surface Water Coalition’s Response to IGWA’s Amended Notice of Mitigation* (“SWC’s Response”). The SWC argues IGWA’s *Amended Mitigation Notice* is unclear whether IGWA members are agreeing to mitigate only for their proportionate shares, or instead for all ground water users as mandated under the 2009 Storage Water Mitigation Plan. *SWC’s Response* at 2. The SWC further argues that IGWA’s *Amended Mitigation Notice* fails to “address all of IGWA’s storage water mitigation obligations for 2023”, which include additional requirements beyond those articulated in the 2009 Storage Water Plan. *Id.* at 2–3.

¹ IGWA’s submitted the Notice of Mitigation on behalf of: North Snake Ground Water District, Carey Valley Ground Water District, Magic Valley Ground Water District, Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry’s Fork Ground Water District. *Mitigation Notice* at 1.

On June 6, 2023, IGWA submitted a *Petition for Reconsideration of Order Determining Deficiency in IGWA's Notice of Secured Water* ("Petition for Reconsideration"), wherein IGWA requested that the Director "withdraw the new requirement that Water District 1 fees be paid before the Director will accept signed storage water lease or option contracts as proof of IGWA's ability to provide storage water as mitigation." *Petition for Reconsideration* at 1.

Also on June 6, 2023, IGWA submitted its *Reply to SWC's Response to IGWA's Amended Notice of Mitigation* ("IGWA's Reply"). In its reply, IGWA argued it was not required to mitigate for all ground water users under the 2009 Mitigation Plan, and further argued it was in compliance with all its mitigation obligations. *IGWA's Reply* at 2.

On June 12, 2023, the SWC submitted *Surface Water Coalition's Response to IGWA's Reply* ("SWC's Response to IGWA's Reply"). The SWC reiterated that "[i]f IGWA is relying on the [2009 Mitigation Plan] to mitigate, it must mitigate for all ground water users, not just its members" *SWC Response to IGWA's Reply* at 2. The SWC emphasized that "IGWA cannot ignore the comprehensive terms of the Settlement Agreement Plan and mitigate only with the [2009] Storage Water Mitigation Plan to satisfy its 2023 obligation." *Id.* at 5. The SWC also reiterated that IGWA must supply an additional 30,000 acre-feet in 2023 as a remedy for IGWA's breach in 2021. *Id.* 2–3.

On July 19, 2023, the Director issued the Department's *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, as well as an *Order Revising April 2023 Forecast Supply (Methodology Steps 5 & 6)* ("July 2023 As-Applied Order"). Of import here, in the *July 2023 As-Applied Order* the Director concluded that members of the SWC will not suffer a demand shortfall in 2023. *July 2023 As-Applied Order* at 9.


ANALYSIS

A matter "is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome." *Goodson v. Nez Perce Cnty. Bd. of Cnty. Comm'rs*, 133 Idaho 851, 853, 993 P.2d 614, 616 (2000). As noted above, the Director recently issued the July 2023 As-Applied Order, which found that no SWC members would suffer a demand shortfall in 2023. Because there is no demand shortfall, ground water users are no longer required to mitigate. Since ground water users are no longer required to mitigate, questions regarding the sufficiency of IGWA's *Mitigation Notice* or *Amended Mitigation Notice* no longer present a justiciable controversy and are therefore moot.

NOTICE

Having concluded that questions concerning the sufficiency of IGWA's mitigation notices are moot, the Director provides notice that the Department will not issue orders responding to *IGWA's Petition for Reconsideration of Order Determining Deficiency in IGWA's Notice of Secured Water* or *IGWA's Amended Notice of Mitigation*.

Dated this 20th day of July 2023.



GARY SPACKMAN
Director

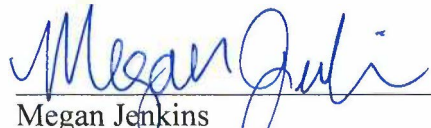
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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