

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE IDAHO WATER RESOURCE BOARD
FOR
POTENTIAL WATER RESILIENCE PROJECT IN THE MOUNTAIN HOME PLATEAU
REGION

This is a Memorandum of Agreement (“MOA”) between the United States of America, acting by and through the Secretary of the Air Force (“Government”) and the Idaho Water Resource Board (“Board”), each a “Party” and collectively referred to as the “Parties.”

BACKGROUND

- A. Mountain Home Air Force Base (“MHAFB”) is an active-duty Air Force Base, located in Elmore County, Idaho.
- B. The Board is a constitutional agency of the State of Idaho, organized, existing, and operating pursuant to Article XV, Section 7 of the Idaho Constitution and Idaho Code § 42-1732 through § 42-1780. Among its powers and duties, the Board has authority to purchase and hold water rights; construct and operate water projects; and acquire, purchase, lease, or exchange land, rights, water rights or other property related to water projects.
- C. Ground water supplies within Elmore County are limited and are presently inadequate to meet the long-term needs of water users in the county, including MHAFB.
- D. MHAFB is in the Mountain Home Ground Water Management Area (“GWMA”). The 437,000-acre GWMA was designated in response to declining ground water levels in areas of the Mountain Home Plateau.
- E. In 2010, AECOM, a private infrastructure consulting firm, completed a study of the sustainability of the existing MHAFB water supply to determine future available well production. The AECOM study found that the regional aquifer is not sustainable. Water conservation at MHAFB alone will not make up the water budget deficit.
- F. In 2014, the Board purchased senior Snake River water rights from J.R. Simplot Company through a Water Right Purchase and Sale Agreement (“Simplot Water Rights Purchase Agreement”) to help address MHAFB’s declining water supply.

- G. Pursuant to the Department of Defense’s Energy Resilience and Conservation Investment Program (“ERCIP”) the Treatment Plant, as defined in Section 1.3, was authorized by Congress in the National Defense Authorization Act for Fiscal Year 2022 and signed into law (Public Law 117-81) by the President on Dec. 27, 2021. Funding for the Treatment Plant was appropriated by Congress in the "Consolidated Appropriations Act, 2022" and signed into law (Public Law 117-103) by the President on Mar. 15, 2022.

PURPOSE AND SCOPE

- A. On May 14, 2021, the Board; the Idaho Office of the Governor; the Office of the Acting Assistant Secretary of the Air Force for Energy, Installations, and Environment; and MHAFB entered into a Memorandum of Understanding for Potential Water Resilience Project in the Mountain Home Plateau Region, F1AF2E-21133-001 (“MOU”). The MOU outlined how the Parties would cooperate to build a pump station and pipeline from the Snake River to MHAFB and a water treatment facility on MHAFB.
- B. This MOA further defines roles, responsibilities, and processes set forth in the MOU as the Project, as defined below, moves from concept to design and construction.

AGREEMENT

The Parties agree as follows:

1. Definitions

- 1.1 *Project* means the design and construction of a pumping station, pipeline and water treatment plant to deliver treated Snake River water to MHAFB.
- 1.2 *Transmission System* means the pumping station and pipeline from the Snake River to the MHAFB boundary, designed and constructed by the Board.
- 1.3 *Treatment Plant* means the water treatment plant that will be designed and constructed by the U.S. Army Corps of Engineers for MHAFB within the MHAFB installation boundaries.
- 1.4 *Water System* means the completed Transmission System and Treatment Plant working together as one system.

2. Transmission System

- 2.1 The Government has provided the Board with preliminary design parameters relevant to the design of the Transmission System and its interconnection with the Treatment Plant; however, both Parties recognize that during design and construction, it may be necessary to refine or change some of the design parameters. As of the date of this MOA, the design parameters are:
- 2.1.1 The Transmission System will meet the anti-terrorism requirements as set forth in Attachment 1 to the MOA.
- 2.1.2 The Transmission System will have a communications land line to serve as a link between the Treatment Plant and the pump station.
- 2.1.3 The Transmission System will have an electrical supervisory control and data

acquisition (“SCADA”) system that is both compatible and interoperable with the Treatment Plant.

- 2.2 The point of delivery for the Transmission System will be approximately 1/4 mile east of the MHAFB main gate, with the exact point of delivery determined by both Parties' design and construction contractors. If necessary, MHAFB's Civil Engineering Squadron will work with the Board's contractors to temporarily relocate the fence line in the area of the point of delivery so that the Board's construction contractors can access the site.
 - 2.3 The Board will construct the Transmission System to accommodate the full extent of the water rights purchased by the Board, or MHAFB's reasonable projected need, whichever is greater.
 - 2.4 For testing purposes, the Government will be responsible for constructing the facilities needed to transport water from the point of delivery to a disposal, storage or other area for use provided by the Government.
 - 2.5 The Board will convey in fee, as a gift further described in Section 3.2, all rights, title, and interests in and to the Transmission System, to include any associated real property interests, to the Government at no cost to the Government once the Transmission System is constructed and is (i) complete and usable; (ii) fully functional, and ready for operation; and (iii) meets all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.
3. Cooperation Requirements
- 3.1 The Parties agree to meet bi-weekly, or as needed, to coordinate design and construction activities. The Parties have specifically identified a need to ensure the Transmission System and Treatment Plant are compatible and interoperable to include a SCADA system.
 - 3.2 The Government's acceptance of the Transmission System is governed under 10 U.S.C § 2601. Therefore, in order to accept the Transmission System, the Parties will need to comply with all the requirements of 10 U.S.C. § 2601 and all other applicable Federal laws, regulations and policies. Specifically, the Parties will need to meet the requirements of Air Force Instruction 51-506, *Gifts to the Department of the Air Force from Domestic and Foreign Sources*, which the Government has provided to the Board.
 - 3.3 The following cooperation requirements are based on the Parties' desire to avoid the obstacles encountered in previous iterations of this Project, which caused delays and outlays for unrealized benefits.
 - 3.3.1 The Parties are committed to identifying potential legal, funding, and logistic impediments to the Project. As such, both Parties will ensure that legal counsel will review the Project as it progresses. Additionally, both Parties will maintain regular contact with each other's points of contacts to ensure the Project's success and viability.
 - 3.3.2 A list of the points of contact for each major component of the Project moving forward is set forth in Attachment 2 of the MOA.
 - 3.4 Future obligations and expenses of each Party shall be through separate, future

agreements and contracts and not through this MOA. The Parties acknowledge the Government shall at no time be obligated for payment of fees, tariffs, capital recovery charges, etc. associated with construction of the Transmission System; and the Board shall at no time be obligated with charges associated with construction for the Treatment Plant.

4. Water Rights

- 4.1 The Board will continue to own the water rights acquired for the Water System and MHAFB will have use of them through a separate water rights lease or other agreement.
- 4.2 The Government will preserve and exercise the existing groundwater rights at MHAFB and the existing capability to draw from onsite wells.
- 4.3 Under the Simplot Water Rights Purchase Agreement, Simplot had the right to repurchase the water rights if the water rights were not beneficially used on the land owned by the United States of America and reserved for the MHAFB by February 1, 2021, subject to extension. In 2020, after the initial effort to complete the Project was paused due to legal concerns, the Board extended the beneficial use deadline to February 1, 2026.
 - 4.3.1 The water rights are a critical component of the Project and Simplot's repurchase right poses a significant risk to the Government and the Board.
 - 4.3.2 If it appears Project construction timelines will hinder MHAFB's beneficial use of the water rights by February 1, 2026, the Board will work with the Government to ensure the water rights are protected from repurchase. This effort may include but is not limited to providing alternate transport of the water, developing means of beneficial use outside of the Water System, or renegotiating the Simplot Water Rights Purchase Agreement with Simplot.

5. Water Rights Lease or other Agreement

- 5.1 The water rights lease or other agreement will outline the relationship between the Board and the Government once the Transmission System is connected to the Treatment System and contain the following:
 - 5.1.1 Terms for the Board's operation and maintenance of the Transmission System during the period between connecting the Transmission and Treatment Systems and the Board gifting, by conveyance, the Transmission System to MHAFB.
 - 5.1.2 Terms for MHAFB's use of the water rights, including a minimum term of five (5) years with options to renew.
 - 5.1.3 Associated payment terms.

6. Term

This MOA shall take effect when both Parties have signed it. The date of this MOA will be the date the MOA is signed by the last party to sign it and shall continue in effect until July 1, 2026. The MOA may be extended if agreed to by both Parties.

7. General Provisions

- 7.1 In no event shall any official, officer, employee, or agent of the Board, the State of Idaho, or the Government be personally liable for any representation, statement, covenant, warranty, or obligation contained in, or made in connection with, the MOA, express or implied.
- 7.2 This MOA may only be modified by the written agreement of the Parties, duly signed by their authorized representatives. This MOA will be reviewed no less often than at the mid-point of its term and around the anniversary of its effective date in its entirety.
- 7.3 All correspondence to be sent and notices to be given pursuant to this MOA will be addressed,
 - 7.3.1 if to Government, to – 2530 Crystal Drive, 8th Floor, Arlington, VA 22202
 - 7.3.2 if to MHAFB, to – 366CES/CD, 1030 Liberator St. Mountain Home AFB ID 83648
 - 7.3.3 if to IWRB, to – PO Box 83720, Boise, ID 83720-0098
- 7.4 This MOA neither documents nor provides for the exchange of funds or manpower between the Parties, nor does it make any commitment of funds or resources. No provision in this MOA will be interpreted to require obligation or payment of funds.
- 7.5 Any disputes relating to this MOA will, subject to any applicable law, Executive order, directive, or instruction, be resolved by consultation between the Parties.
- 7.6 The Parties acknowledge and agree that each Party will have the right to terminate the negotiation of an agreement for any reason or no reason and that no Party owes a duty to negotiate an agreement. The MOA may be terminated by either Party by giving at least 180 days written notice to the other Party.
- 7.7 This MOA is not transferable except with the written consent of the Parties.
- 7.8 It is expressly understood and agreed that this MOA embodies the entire understanding between the Parties regarding the MOA's subject matter.
- 7.9 Nothing in this MOA provides the Parties with any preference, advantage or otherwise in furtherance or pursuit of any engagement outside the scope of this MOA, nor in any respect limits the options of any Party with respect to the subject matter of this MOA or any other project or undertaking. In order to avoid any appearance of a conflict of interest, the Parties may set limits on the level of assistance or cooperation any Party provides the other.

8. Counterparts

This Agreement may be executed with electronic signatures and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

The Parties have executed this MOA on the date following their respective signature.

ATTACHMENT # 1
SECURITY AND ANTI-TERRORISM REQUIREMENTS

1. Facilities will be designed and constructed in accordance with MILSTD 3007, Unified Facilities Criteria.
2. The Design Basis threat is assumed to be a 15,000 lb vehicle, at 35 mph, carrying 55 pounds of explosive. If this assumption changes, the Transmission System designers will coordinate with MHAFB.
3. The areas around intakes, pumps and other facilities will require security fencing and barriers meeting the requirements of UFC 4-022-02.
4. The underground portion of the pipeline and other underground facilities will not require additional security; however, exposed pipes, manhole covers, and other access points will require locks and access for recurring checks and surveillance.
5. It is assumed that pumping facilities will be enclosed in Concrete Masonry Unit (CMU) enclosures. If this assumption changes, the Transmission System designers will coordinate this with MHAFB.

ATTACHMENT # 2
KEY PROJECT POINTS OF CONTACT

DEPARTMENT OF THE AIR FORCE

Office of the Deputy Assistant Secretary of the Air Force (Environment, Safety, and Infrastructure) (SAF/IEE):

Seema Aziz-Hall; seema.aziz-hall@us.af.mil

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Installations Directorate, Real Property Management Branch (AFCEC/CIT):

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