

AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, _____, by and between the NORTH SIDE CANAL COMPANY (“NSCC”), a non-profit corporation organized pursuant to the laws of the State of Idaho, and the water users of WATER DISTRICT NO. 37 (“District”), acting through the water district advisory committee.

RECITALS

WHEREAS, NSCC is a water user within Water District No. 37 by reason of its decreed water right nos. 37-507 (irrigation), 37-4240 (stock water), and 37-4241 (stockwater); and

WHEREAS, NSCC also holds decreed water rights to the Snake River, which are distributed and subject to administration within Water District No. 1; and

WHEREAS, NSCC conveys a significant amount of water pursuant to its Snake River water rights though NSCC’s X Canal, where such water is then ultimately conveyed through the Big Wood and Malad Rivers and rediverted at NSCC’s Y and Z canals; and

WHEREAS, NSCC pays Water District No. 1 an assessment for this Snake River water that is diverted through points of diversion on the Snake River at Milner Dam; and

WHEREAS, the District had at times charged NSCC a flat fee for the conveyance of such water through the Big Wood and Malad Rivers, and then changed to an assessment based upon the total quantity of water diverted, regardless of water source where the water originated; and

WHEREAS, NSCC has essentially been assessed “twice” for the same Snake River water by separate water districts; and

WHEREAS, in 2021 the Idaho Legislature amended Idaho Code § 42-612 to allow a water district to charge a fee instead of an assessment where water is diverted within one water district and that water is then conveyed through and rediverted from a different natural waterway in a second water district; and

WHEREAS, pursuant to the amended statute the water district is allowed to charge a fee “sufficient to pay the costs and expenses for watermaster services for data collection, water measurement, conveyance of water, and record keeping directly attributable to the conveyance of the water that is rediverted”; and

WHEREAS, the District and NSCC have been exploring options to implement the amended statute as it pertains to NSCC’s re-diversion of Snake River water within the District; and

WHEREAS, the Parties wish to delineate their agreement to writing;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein

contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

COVENANTS

1. **NSCC's Basin 37 Water Rights.** This Agreement does not affect the District's assessment and distribution of water to NSCC's water right nos. 37-507, 37-4240, and 37-4241. The District will continue to distribute water and assess these water rights similar to other similarly situated decreed and licensed irrigation and stockwater water rights that are diverted from a public water source located within Basin 37. NSCC will continue to have all rights and responsibilities, including voting privileges, associated with the diversion of water under these water rights within the District.

2. **NSCC's Basin 01 (Snake River) Water Rights.** The District acknowledges NSCC's right to convey Snake River water, which is distributed and diverted pursuant to water rights administered by Water District No. 1, through the Big Wood and Malad Rivers to points where it is re-diverted by NSCC at the X and Y Canals. Pursuant to I.C. § 42-612(4), the District agrees to charge NSCC a fee, rather than an assessment, for this Snake River water, pursuant to the schedule and method identified in paragraphs 3 and 4 below.

3. **Phased-out Assessment for NSCC's Basin 01 (Snake River) Water Rights.** In order to accommodate the change from an assessment to a fee for Snake River water rediverted by NSCC, the Parties agree to phase-out the current assessment method over a five (5) year period. For purposes of the five-year rolling average used by the District for NSCC's Snake River re-diversion, the District will set that quantity at 0 cfs for 2021, 2022, 2023, 2024, and 2025. The intent is that at the conclusion of the five-year rolling average, the District will only assess NSCC for water diverted and used pursuant to its Basin 37 water rights (37-507, 37-4240, and 37-4241). NSCC acknowledges that its voting privileges within the District will decrease each year and eventually completely phased-out for the Snake River water associated with this assessment over this five-year period.

4. **Fee for NSCC's Basin 01 (Snake River) Rights.** The District may charge NSCC a fee sufficient to pay the costs and expenses for watermaster services for data collection, water measurement, conveyance of water, record keeping, and other district costs directly attributable to the conveyance of the water that is rediverted by NSCC. Presently, the District does not intend to expend any resources to administer the delivery of NSCC's Snake River water, and the effects of the phasing out of the Snake River charges (as referred to in #3 above) are not yet reflected in other users' assessments, therefore, no fee will be charged for 2022. If additional resources are required in the future to administer the delivery of the NSCC Snake River water, the District reserves the right to re-evaluate whether a fee is necessary on an annual basis.

5. **Term.** The term of this Agreement is perpetual.

6. **Implementation of Agreement.** The Parties agree to take any and all actions necessary to ensure this Agreement is implemented to the satisfaction of the Parties, including compliance with any requirements by the Idaho Department of Water Resources (IDWR).

7. **Representations.** The Parties have the full legal right, power and authority to enter into and perform this Agreement.

8. **Attorneys' Fees.** In any suit, action or appeal therefrom, to enforce this Agreement attorneys' fees may be awarded as allowed by Idaho law.

9. **Duty of Good Faith.** Each of the Parties to this Agreement agrees to perform and execute this Agreement in accordance with the highest standards of good faith, honesty in fact, and fair dealing. Accordingly, the Parties agree to cooperate fully and execute any and all supplemental documents and take any and all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement. In the event of a dispute between the Parties as to the proper interpretation or implementation of this Agreement, the Parties agree to meet and endeavor to resolve such dispute amicably and equitably prior to pursuing any legal remedies.

10. **No Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto. This Agreement may only be enforced by the parties hereto and their successors and assigns.

11. **Authority.** If either party is a corporation, limited liability company, partnership or other entity, each individual executing this Agreement on behalf of said entity, represents and warrants that this Agreement has been reviewed and approved by the appropriate board, committee or membership of said entity, as required by the constituent documents of said entity, and that s/he is duly authorized to execute and deliver this Agreement on behalf of said entity, and that this Agreement is binding upon said entity in accordance with these terms.

12. **Entire Agreement.** This is the entire agreement of the Parties with respect to matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by the Parties.

13. **Counterparts.** This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

14. **Idaho Law.** This agreement shall be governed by the laws of the State of Idaho.

15. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

16. **Captions to Paragraphs.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

17. **Binding Contract.** This Agreement shall be binding upon and inure to the benefit of the heirs, personal representative, administrators, successors, and assigns of the Parties hereto.

18. Effective Date. The Effective Date of this Agreement shall be the date on which the Parties executed this Agreement, if executed on the same day, or the later date, if executed on different days.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

DATED this _____ day of _____, 2022.

NORTH SIDE CANAL COMPANY

Mike Elliott – Chairman

Attest:

Alan Hansten, Secretary

DATED this _____ day of _____, 2022.

WATER DISTRICT NO. 37

Pat McMahon, Chairman (Advisory Board)