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JUL 10 2006
DEPARTMENT OF WATER RESOURCES

IDAHO GROUND WATER APPROPRIATORS, INC.

P.O. Box 2624, Boise, ID 83701
Phone: 208.381.0294
Fax: 208.344.8585

Officers:
Tim Deeg, President
2957 Deeg Road
American Falls, ID 83211

Richard Smith, Vice President
P.O. Box 3
Rexburg, ID 83440

Randall C. Budge, Secretary
P.O. Box 1391
Pocatello, ID 83204-1391
Phone: 208.232-6101

Lynn Tominaga
Executive Director,
P.O. Box 2624
Boise, Idaho 83701-2624
Phone: 208.381-0294

GWD Members:
Aberdeen American Falls GWD
Bingham GWD
Bonneville-Jefferson GWD
Madison GWD
Magic Valley GWD
North Snake GWD
South West ID
City Members:
City of American Falls
City of Blackfoot
City of Chubbuck
City of Heyburn
City of Jerome
City of Paul
City of Post Falls
City of Rupert
Business Members:
Busch Agricultural
Jerome Cheese
United Water of Idaho

July 10, 2006

Via Hand Delivery

Mr. Karl J. Dreher
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Provision of 27,006 acre-feet pursuant to June 29, 2006 Order in the Surface Water Coalition's Delivery Call

Dear Karl:

The Idaho Ground Water Appropriators, Inc., on behalf of North Snake, Magic Valley, Madison, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson Ground Water Districts, sends this letter to comply in full with your June 29, 2006 Third Supplemental Order Amending Replacement Water Requirements ("June 29 Order") to provide you with 27,006 acre-feet of water to disperse for the benefit of Twin Falls Canal Company ("TFCC") to compensate it for alleged material injury to its natural flow water rights in 2005.[1] The June 29 Order was issued on an emergency, pre-hearing basis. For several reasons, we disagree that TFCC suffered such injury. We list some of these reasons below to underscore our request that you assure that this water is tendered subject to the outcome of the hearing in this matter. We provide this water "under protest," and will expect it to be reimbursed to IGWA or its member Ground Water Districts to the extent it is shown that TFCC in fact had less than the injury you found.

[1] The June 29 Order specified July 9 as the date to provide this replacement water. Because that day is a Sunday, we are providing this today, the next business day. We believe this comports with Rule 56, IDWR Rules of Procedure, IDAPA 37.01.01.056.

Pursuant to these conditions, this is your authorization to retrieve from the following sources and accounts and deliver or credit to Twin Falls Canal Company a total of 27,006 acre-feet of water. The water should be withdrawn from, or credited based upon, the following accounts and in the order listed. As to each source, I list in parentheses the amounts of actual delivery to TFCC that we assume will occur; however, I recognize the actual amounts may vary according to your accounting. We will expect a written accounting from you as to what these amounts were. IGWA's entitlement to water from each of these sources is supported by a binding lease, and I have attached a copy of each for your information.

1. All natural flow accruing from IGWA's lease of the FMC Corporation ground water right (at least 3,514 acre-feet).[2]

2. All storage water accrued from IGWA's lease of the FMC 5,000 acre-feet of storage in Palisades Reservoir.

3. All storage water IGWA has rented in 2006 from the Water District 01 Rental Pool (5,000 acre-feet to date).

4. Storage water from IGWA's lease with Mitigation, Inc., necessary to supply the balance (IGWA believes there to be approximately 15,000 af still in this account from the 37,000 af originally leased).

5. If the above amounts together are insufficient, you are authorized to use that amount of storage water from IGWA's lease with Aberdeen-Springfield Canal Co., Inc. necessary to bring the total to the 27,006 acre-feet (20,000 acre-feet).

As noted above, IGWA, on behalf of its Ground Water District members, is complying with your June 29 Order under protest and subject to the final outcome of this contested case. We respectfully disagree that TFCC suffered any injury in 2005, and we intend to provide evidence at the upcoming hearing in this matter to demonstrate this. We provide this replacement water with the expectation that, in disbursing it to TFCC, you will take appropriate steps to ensure that, should the amount of replacement be shown to be less than 27,006 acre-feet, IGWA will be reimbursed or otherwise fully compensated for any amount provided that was not required to compensate for actual material injury.

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[2] We calculate this as follows: According to the June 29 Order, the lease results in natural flow reach gains in the near-Blackfoot to Minidoka reach of 6,024 acre-feet each year that are available to TFCC's senior natural flow water right. Assuming TFCC is entitled to divert natural flows from April through October, the lease would make 3,514 acre-feet available for diversion (6,024 x 7/12) to TFCC during the irrigation season, and TFCC would be in a position to divert this ahead of any other right holder in this river reach.

There are several reasons we believe TFCC did not suffer any injury in 2005, none of which appear to have been considered in reaching the conclusions in your June 29 Order. Some of these are:

- TFCC's decree limits its natural flow water right, or at least the right for which it might place a delivery call, to five-eights miner's inches per acre. Both TFCC and the June 29 Order (and previous orders in this case) appear to base calculations of injury on an assumed entitlement of three-quarters inch.

- TFCC's decree also requires the company to implement a rotation of water use among its shareholders, a requirement that will improve efficiency and lessen the need for delivery calls. We believe this is not being done and that, if it were, it would significantly change your material injury calculations.

- We believe TFCC actually irrigates significantly fewer acres than those it has claimed. It is not entitled to seek or obtain curtailment of water rights, or the provision of replacement water, to support diversions to acres that are not irrigated. Like the previous orders, the June 29 Order assumes TFCC needs and is entitled to diversions to satisfy all its claimed acres. The 27,006 acre-feet involved here is about 2.5% of what you have determined to be TFCC's minimum full supply. This would be more than accounted for in even a 5,000-acre discrepancy between the approximately 198,000 acres TFCC claims and the acres actually irrigated. We believe this discrepancy, and more, exists.

- TFCC's actual diversion behavior in 2005 also indicates that it experienced no shortage of natural flow when and as needed. This is because TFCC allowed other natural flow water rights to divert ahead of it during large portions of the irrigation season even though these other rights are junior to TFCC's priorities.

- Your May 2 Order in this matter specifies that replacement water debits and credits accruing to any member of the Surface Water Coalition will be cancelled if the member's storage space fills in any year. Because such fill has occurred in 2005 and 2006, we believe that there can be no basis for carrying a 2005 obligation into 2006.

We look forward to hearing from you on your accounting of the 27,006 acre-feet being provided by this letter. If you have any questions please contact me or IGWA's general counsel listed below.

Very truly yours,

Lynn Tominaga

Lynn Tominaga, Executive Director

Encl: Leases
cc: Attached Service List
Lyle Swank, WD01 Rental Pool Manager
Jeffrey C. Fereday
Michael C. Creamer
Timothy P. Deeg
Dr. Charles M. Brendecke
Randall C. Budge, IGWA General Counsel
IGWA Board of Directors

SERVICE LIST

C. Tom Arkoosh, Esq. Arkoosh Law Offices, Chtd. 301 Main Street P.O Box 32 Gooding, ID 83330	X 	U.S. Mail Facsimile Overnight Mail Hand Delivery E-mail
W. Kent Fletcher, Esq. Fletcher Law Office 1200 Overland Avenue P.O. Box 248 Burley, ID 83318-0248	X 	U.S. Mail Facsimile Overnight Mail Hand Delivery E-mail
Roger D. Ling, Esq. Ling, Robinson & Walker 615 H St. P.O. Box 396 Rupert, ID 83350-0396	X 	U.S. Mail Facsimile Overnight Mail Hand Delivery E-mail
John A. Rosholt, Esq. John K. Simpson, Esq. Travis L. Thompson, Esq. Barker, Rosholt & Simpson, LLP 113 Main Avenue West, Ste. 303 P.O. Box 485 Twin Falls, ID 83301-6167	X 	U.S. Mail Facsimile Overnight Mail Hand Delivery E-mail
Mr. Karl J. Dreher Director Idaho Department of Water Resources 322 East Front Street P.O. Box 83720 Boise, ID 83720-0098	X 	U.S. Mail Facsimile Overnight Mail Hand Delivery E-mail
Phillip J. Rassier, Esq. Candice McHugh, Esq. Idaho Department of Water Resources 322 East Front Street P.O. Box 83720 Boise, ID 83720-0098	X 	U.S. Mail Facsimile Overnight Mail Hand Delivery E-mail

J. Justin May, Esq. May Sudweeks & Browning, LLP 1419 W. Washington P.O. Box 6091 Boise, ID 83707	_X_ U.S. Mail ___ Facsimile ___ Overnight Mail ___ Hand Delivery ___ E-mail
Daniel V. Steenson, Esq. Charles L. Honsinger, Esq. S. Bryce Farris, Esq. Jon C. Gould, Esq. Ringert Clark Chartered P.O. Box 2773 Boise, ID 83702	_X_ U.S. Mail ___ Facsimile ___ Overnight Mail ___ Hand Delivery ___ E-mail
Josephine P. Beeman, Esq. Beeman & Associates PC 409 West Jefferson Boise, ID 83702-6049	_X_ U.S. Mail ___ Facsimile ___ Overnight Mail ___ Hand Delivery ___ E-mail
Sarah A. Klahn, Esq. William A. Hillhouse, Esq. Amy W. Beatie, Esq. White & Jankowski, LLP 511 16th Street, Suite 500 Denver, CO 80202	_X_ U.S. Mail ___ Facsimile ___ Overnight Mail ___ Hand Delivery ___ E-mail
James S. Lochhead, Esq. Adam T. DeVoe, Esq. Brownstein Hyatt & Farber, P.C. 410 17th Street Twenty-Second Floor Denver, CO 80202	_X_ U.S. Mail ___ Facsimile ___ Overnight Mail ___ Hand Delivery ___ E-mail
James C. Tucker, Esq. Idaho Power Company 1221 West Idaho P.O. Box 70 Boise, ID 83707	_X_ U.S. Mail ___ Facsimile ___ Overnight Mail ___ Hand Delivery ___ E-mail

LEASE OF WATER RIGHTS

Lease Agreement made and entered into May 22nd, 2002, between FMC IDAHO, L.L.C., whose address is P.O. Box 4111, Pocatello, Idaho 83202 (hereinafter "Lessor") and AMERICAN FALLS-ABERDEEN AREA GROUND WATER DISTRICT, BINGHAM GROUND WATER DISTRICT, and BONNEVILLE-JEFFERSON GROUND WATER DISTRICT, whose address is in care of Timothy P. Deeg, P.O. Box 70, American Falls, Idaho 83211 (hereinafter "Lessee"):

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain water rights identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

Water Right No.	Priority	Quantity	Purpose
A29-02284	3/02/49	4.5 cfs	Industrial
A29-2301	4/24/51	3.82 cfs*	Industrial
A29-11342	7/24/52	1.10 cfs	Municipal
		9.42 cfs	

(*FMC retaining 0.18 cfs for continuing plant needs.)

Together with 5000 AF of Palisades Storage pursuant to U.S. Department of Interior, Bureau of Reclamation, Contract No. 14-06-100-1836, Palisades Water Users, Inc. - A01-10214.

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing April 15, 2002, and terminating on April 14, 2003. Thereafter, this Lease will be automatically renewed and extended for successive additional one-year terms, unless and until terminated by either party as hereafter provided.

Either party may terminate this Lease at the end of any lease term upon not less than ninety (90) days advance written notice.

3. **Rent.** For the use of the lease property Lessee shall pay to Lessor on or before April 15 of each year rent in the amount of $2.95 per acre foot for ground water and $3.45 per acre foot for Palisades Storage. The rent shall be due upon approval of the lease by IDWR allowing the use of the water by Lessee for mitigation purposes.

3.1 The calculated amount of ground water pursuant to this Lease is 18.68 AF per day or 6,819.87 AF per year based upon the historic year-round use of these rights. This amount is subject to adjustment to the actual amount which IDWR will credit Lessee for mitigation purposes.

3.2 Lessor has retained all of Water Right No. A29-02255E and A29-2255C, plus 0.18 cfs of Water Right No. A29-2301 to meet continuing water needs at Lessor's Pocatello plant for culinary purposes, irrigation of

landscaping, dust control and other industrial purposes calculated by Lessor to be necessary for such purposes.

4. **Non-Use by Lessor.** Lessor covenants that it will not divert or utilize the described water right during the term of this Lease.

5. **Use by Lessee.** During the term of this Lease and during any extension, Lessee shall place to beneficial use each year, all waters approved for use under the water rights and shall comply with all applicable federal, state and local laws and all rules and regulations of any agency, including IDWR applicable to such water rights, together with all state and federal environmental and water quality laws.

6. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owners of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. **Transfer Application.** The parties acknowledge and agree that it will be necessary to submit this Lease and obtain IDWR approval of the use of said water rights by Lessee for mitigation purposes.

7.1 Lessee and Lessor will jointly seek approval of this Lease from IDWR and will cooperate with each other in securing such approval.

7.2 Lessee shall be responsible for all costs associated with accomplishing the approval of this lease and, including but not limited to, paying all applicable Water Bank and other administrative fees owing to IDWR.

7.3 This Lease is conditioned upon IDWR's approval of the use of the water by Lessee for mitigation purposes, and acknowledgment by IDWR that Lessee's use of the water under the Lease and/or placement of the water in the state water bank constitutes beneficial use of the water and will not subject any of the rights to forfeiture. In the event the approval is not obtained, the Lease may be terminated by either party.

8. **Indemnification of Lessor.** Lessee agrees to indemnify and hold harmless Lessor from any and all claims and demands, including legal attorney fees and costs, which may arise directly or indirectly as a result of this lease or the transfer or use of the water rights by Lessee pursuant to this Lease.

9. **Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect to terminate this Lease and recover any damages or pursue any other remedy available under Idaho law by reason of such breach.

10. **Assignment.** This Agreement may not be assigned by Lessee without the express written consent of Lessor.

11. **Attorney Fees.** In the event of any litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

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

LESSOR:

FMC IDAHO, L.L.C.

By Rob J. Hartman
Rob J. Hartman
Vice President
Date: May 22, 2002

LESSEE:

AMERICAN FALLS-ABERDEEN AREA GROUND WATER DISTRICT

By_____
KEVIN MICHAELSON, President
Date:

BINGHAM GROUND WATER DISTRICT

By_____
CRAIG EVANS, President
Date:

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

By_____
WILLIAM TAYLOR, President
Date:

LESSOR:

FMC IDAHO, L.L.C.

By_____
Rob J. Hartman
Vice President
Date:

LESSEE:

AMERICAN FALLS-ABERDEEN AREA GROUND WATER DISTRICT

By Kevin Michaelson
KEVIN MICHAELSON, President
Date: 5-22-02

BINGHAM GROUND WATER DISTRICT

By Craig B Evans
CRAIG EVANS, President
Date: May 22, 2002

BONNEVILLE-JEFFERSON GROUND WATER DISTRICT

By William H Taylor
WILLIAM TAYLOR, President
Date: May 22, 2002

WATER DISTRICT 1 RENTAL POOL WATER LEASE AGREEMENT
FOR
IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA") for and on behalf of American Falls-Aberdeen, Bingham, Bonneville-Jefferson, Madison and Magic Valley and North Snake Ground Water Districts

The Committee of Nine being authorized pursuant to Idaho Code Section 42-1765 to lease stored water which has been provided to the Rental Pool by water users who own space in the various Bureau of Reclamation Upper Snake reservoirs and have excess supplies for the current year, does agree to sell _____ AF of water requested for 2006. This agreement is subject to the adopted Rules and Regulations of the Rental Pool and execution of the same by the party herein named.

Upon receipt of $_____ and the information requested below, the Snake River Watermaster will release to you from storage, at the rate you specify _____ AF of stored water between April 1 and November 1 of 2006.

Description of point of diversion:
Located in _____ 1/4 _____ 1/4, Sec. ____ T ____ R ____;
Other: TO BE DETERMINED
On source: FOR MITIGATION PURPOSES
Pump H.P._____ Lift_____
Headgate _____(canal name if appropriate)

Description of place of use:
Legal description: TO BE DETERMINED - FOR MITIGATION PURPOSES
Total number of acres irrigated: _____

Dated this 7th day of June, 2006

IDAHO GROUND WATER APPROPRIATORS, INC.

Tim Deeg

By: Tim Deeg, President of IGWA
P.O. Box 1391
Pocatello, Idaho 83204-1391

State of Idaho)
ss.
County of Bannock)

On this 7th day of June, 2006, before me the undersigned Notary Public in and for said county and state, personally appeared TIM DEEG, known to me to be the person whose name is subscribed to within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first written.

RANDALL C. BUDGE
NOTARY PUBLIC
STATE OF IDAHO

Randall C. Budge

NOTARY PUBLIC in and for Idaho
Residing at: Pocatello, Idaho
Expires: 10-11-2006

I have accepted the request of Idaho Ground Water Appropriators, Inc. to purchase water from the Rental Pool this _____ day of June, 2006.

_____
Watermaster, Water District No. 1
Agent for Committee of Nine

2005 WATER LEASE AGREEMENT

THIS AGREEMENT, Made and entered into this 6th day of September, 2005, by and between MITIGATION, INC., an Idaho corporation with its principal place of business located at P.O. Box 250, Rexburg, ID 83440, hereinafter called "MI", and Idaho Ground Water Appropriators, Inc., acting for and on behalf of ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT, BINGHAM GROUND WATER DISTRICT, BONNEVILLE-JEFFERSON GROUND WATER DISTRICT, MAGIC VALLEY UNDERGROUND PUMPERS ASSOCIATION, and NORTH SNAKE GROUND WATER DISTRICT, all Idaho ground water districts or providing services as ground water districts with their principal place of businesses located P.O. Box 2624, Boise, ID 83701-2624, hereinafter called "DISTRICTS",

WITNESSETH:

ARTICLE I: PURPOSE OF AGREEMENT

Sec. 1.1: DISTRICTS' Subject to Order Following Calls.

During the year 2005, DISTRICTS were subject to certain orders issued by the Director of the Idaho Department of Water Resources, following water calls made by seven canal companies and irrigation districts located below American Falls Reservoir and acting collectively as "the Surface Water Coalition." (said orders hereinafter referred to as the "Call Orders").

Sec. 1.2: DISTRICTS' Acquisition of Leased Water.

Pursuant to the Call Orders, the DISTRICTS and other entities are required to supply 27,700 af during the 2005 water year acre-feet of replacement water to Surface Water Coalition members who have claimed senior rights. Because the Call Orders specified the DISTRICTS

would need to meet modeled obligations to the Coalition was 101,000 acre-feet, the DISTRICTS leased approximately 76,400 acre-feet of water qualified for the Call Orders (hereinafter "Leased Water") from certain surface storage space holders as well as certain high lift pumpers located below Milner Dam. For the year 2005 the portion of the Leased Water from the high-lift pumpers located below Milner Dam has been successfully exchanged with the Bureau of Reclamation ("BOR") for certain water acquired by BOR in Palisades Reservoir held in space historically known as "power head".

While the DISTRICTS have not yet determined the amount of the Leased Water in 2005 which will be in excess of the amount the director will ultimately require under his Call Orders, the DISTRICTS anticipate they will have excess water available during the 2005 water year.

Sec. 1.3: DISTRICTS' Desire to Utilize Lease Water in 2005. Because the Leased Water must be beneficially used by the DISTRICTS during the 2005 water year, the DISTRICTS desire to enter into an agreement with MI which will allow MI the use of and benefit of the Leased Water during the 2005 water year in exchange for the DISTRICTS' use of certain storage water which may accrue to and be available for MI's uses during the 2006 water year.

Sec. 1.4: MI's Need to Provide Certain Waters pursuant to the Sho-Ban Agreement. MI was formed in 1991 for the express purpose of protecting the natural flow water rights of its members from the effects of advancing the Fort Hall Project water rights priority from 1891 to 1867 in the 1990 Fort Hall Indian Water Rights Agreement with the State of Idaho (hereinafter the "Sho-Ban Mitigation"). MI holds 99,500 acre-feet of space in Palisades and Ririe Reservoirs which, in most years, is sufficient to fully mitigate the effects of the priority change granted to the Sho-Ban tribes. However, because of prolonged drought, the space held by MI has not

refilled and MI has been required to rent stored water from its members to meet its mitigation obligations. MI believes it to be in its best interest to preserve the small amount of water allocated to MI's storage space and finds it to be in the interest of MI's stockholders to acquire sufficient powerhead water from the Districts to meet MI's 2005 Sho-Ban Mitigation obligation. The Watermaster of Water District 01 estimates that the MI obligation will be approximately 38,000 acre-feet in 2005.

Because the directors of MI believe MI will not be able to meet its 2005 Sho-Ban Mitigation obligations from its accrued space, the MI board of directors has authorized the following exchange agreement with the DISTRICTS.

Sec. 1.5: Statement of Purpose.

Therefore, it is the intent of this Agreement that all storage currently held by the DISTRICTS (Leased Water) in reservoirs that are under the jurisdiction of State Water District 1 and in excess of amounts required to meet the Call Orders is hereby assigned and transferred to MI for the 2005 water year. In exchange and in consideration of the above assignment and transfer, MI agrees to assign and transfer the equivalent amount of storage space, measured in acre feet for use by the DISTRICTS in 2006 (subject to the limitations described below).

It is understood and agreed that such determination of amount of 2005 Leased Water utilized by MI shall be made by the Watermaster of Water District 01. The exchange reflected by this agreement shall be accomplished pursuant to the following TERMS OF AGREEMENT.

ARTICLE II: TERMS OF AGREEMENT

Sec. 2.1: Terms and Conditions.

A. DISTRICTS shall determine prior to the end of 2005 the amount of Power

Head storage it has available to assign or sub-lease to MI.

B. Should it be beneficial or necessary, this agreement may be deemed to be a 2005 temporary exchange agreement for purposes of Idaho Code 42-222A drought emergency. If necessary, an application shall be submitted to the Idaho Department of Water Resources Eastern Region for review and approval as a 2005 temporary exchange agreement. It is also understood that this Agreement must comply with the water bank procedures, private lease and any exchange provisions. It is understood by the DISTRICTS that once the Snake River Watermaster computes the amount of the DISTRICTS' available stored water that was not obligated to meet Call Orders in 2005, any such Leased Water up to the amount needed to meet the 2005 Sho-Ban Mitigation shall be available to MI for the express purpose of meeting that obligation.

C. MI, in consideration of the transfer or sub-lease of stored water for credit it actually receives on its' Sho-Ban Mitigation obligations, does hereby covenant and agree that in 2006, it shall lease without charge to the DISTRICTS sufficient space of the total space it holds in Palisades and Ririe reservoirs to provide the amount of stored water transferred to the benefit of MI stockholders from the DISTRICTS in 2005, subject to the following limitations:

(1) Should the total space held by MI not accrue sufficient water to replace the storage provided by the DISTRICTS for MI's use in 2005, then MI will make available to the DISTRICTS in 2006, 11,000 acre-feet or the amount accrued in MI space which ever is greater, minus evaporation and other identified losses.

(2) MI's 18,500 acre-feet of storage space in Palisades fills under a 1939 priority. The 80,000 acre-feet of space held in Ririe Reservoir fills under

a water right priority of 1967. Any calculation of storage for any purpose under this agreement shall only involve the above described storage and not any storage held by individual members of MI.

(3) The obligation of MI to provide stored water to the DISTRICTS in 2006 is first priority, but fully dependent upon and limited to MI's 2005 storage carry over and its 2006 accrual as determined by the Water Master of Water District 01 using the established Water District 1 water accounting processes and procedures.

(4) MI is not in any way restricted from fully utilizing its 2005 MI Storage should the DISTRICTS be unable to provide sufficient water to meet the 2005 Sho-Ban Mitigation obligation of MI. Furthermore, this agreement is fully dependent upon the Watermaster confirming that the water made available to MI by the Districts can be applied to meet the obligations MI has under the 1990 Fort Hall agreement.

(5) It is understood by MI and the DISTRICTS that should MI's 2005 carry over and 2006 accrual (MI Storage) be insufficient to fully replace the amount of storage the DISTRICTS made available to MI in 2005, beyond making all of its space available to the DISTRICTS for their use in 2006 MI has no further obligation to the DISTRICTS in 2006 or in subsequent years.

(6) Should the DISTRICTS fail to fully utilize their assigned portion of MI Storage in 2006, any 2007 carry-over shall revert back to MI.

D. Should it be determined by the Watermaster at the end of the irrigation season for 2005, that the DISTRICTS' Lease Water is not available to assign or sub-lease to MI or should MI be unable to use the Leased Water as credit for its Sho-Ban Mitigation, then MI's obligation to lease water to the DISTRICTS in 2006 shall be voided and this agreement shall be deemed automatically terminated at the end of the 2005 water year with neither party having any further obligation to the other under its terms. Any obligations under this agreement shall begin upon execution of the parties but the full obligation of MI shall be determined based upon the amount of storage actually credited to the benefit of MI against the 2005 Sho-Ban Mitigation obligation by the Watermaster of Water District 01.

E. The parties' obligations under this agreement are for the years set forth in this Agreement only. Neither party shall be obligated to provide any water to the other for any other year or purpose without further negotiation and agreement.

Sec. 2.2: Agreement to Comply with Rental Pool Procedures.

It is understood and agreed that this agreement by and between the parties is fully intended to comply with the present Water District 1 Rental Pool Procedures.

Sec. 2.3: Parties to Cooperate with Intent of Agreement.

All parties hereto understand and agree that they will fully cooperate with the intent of this agreement and execute any and all documents and applications required to fulfill the terms of this agreement.

ARTICLE III: EVENTS OF DEFAULT

The failure of any party hereto to perform any term or condition required hereunder, or under any of the other transactions described hereunder, shall constitute an event of default under

this agreement, provided that the non-defaulting party gives notice in writing to the defaulting party, specifying the matters in which such default has occurred and the default is not cured within the notice time hereinafter set forth. Such notice shall be served upon the defaulting party by depositing the same in any United States Post Office, addressed to the defaulting party, certified mail, postage prepaid, and such notice shall be deemed served on its deposit in the post office as aforesaid. If the defaulting party shall fail to cure each and all of such defaults within thirty (30) days after service of the notice, then the non-defaulting party may treat the same as an event of default, and may use or exercise any of the default remedies provided under the laws of the State of Idaho, including reasonable attorney fees and costs.

All notices to the respective parties shall be sent to the following addresses:

DISTRICTS: C/O Lynn Tominaga, P.O. Box 2624, Boise, ID 83701-2624

MI: C/O Ray W. Rigby, P.O. Box 250, Rexburg, ID 83440

and at such further address as shall be given in writing by the parties hereto.

ARTICLE IV: BINDING EFFECT

This agreement is not only binding upon the parties hereto, but upon their respective successors, heirs, administrators and assigns.

"DISTRICTS"

Idaho Ground Water Appropriators, Inc.,
acting for and on behalf of the DISTRICTS

By: Tim Deeg
Its: President

Attest: Randall Budge
Its: Secretary

"MI"

By: Dale Rockwood
Its: President

Attest: Ted Hanson
Its: Secretary

STATE OF IDAHO,)
ss.
County of Madison.)

On this 6th day of September, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared, **Dale Rockwood** and **Ted Hanson** known to me to be the President and Secretary, respectively of **MITIGATION, INC.**, the corporation that executed the foregoing instrument and acknowledged to me that such Corporation executed the same.

Wendy J. Murphy
Notary Public for Idaho
Residing at: ~~Rexburg~~, Idaho Idaho Falls
My Commission Expires: 6/23/06

STATE OF IDAHO,)
ss.
County of Bannock.)

On this 6th day of September, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared, **Tim Deeg** and **Randall Budge** known to me to be the President and Secretary, respectively, of **IDAHO GROUND WATER APPROPRIATORS, INC.**, the Corporation that executed the foregoing instrument and acknowledged to me that such Corporation executed the same.

Robin Roebuck
Notary Public ~~for~~ Idaho
Residing at: Pocatello, Idaho
My Commission Expires: 8/18/2006

ROBIN ROEBUCK
NOTARY PUBLIC
STATE OF IDAHO

LEASE SUMMARY:
Lease No. 2006-1
Lessor: Aberdeen-Springfield Canal Company
Contract Nos. 14-06-W-24, 14-06-W-24S, 5-07-10-W0557
5-07-10-W0555, 5-07-10-W1080
Quantity: _____CFS_____AF, Acres _____

WATER RIGHTS LEASE AGREEMENT

Lease Agreement made and entered into between the undersigned Lessor, and IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), acting for and on behalf of American Falls-Aberdeen, Bingham, Bonneville, Jefferson, Magic Valley, and North Snake Ground Water Districts, whose address is P.O. Box 1391, Pocatello, Idaho 83204 (hereinafter "Lessee"):

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain storage water rights identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

Storage Water Contract No. (Bureau of Reclamation)	Quantity CFS/AF
14-06-W-24, 14-06-W-24S, 5-07-10-W0557, 5-07-10-W0555, 5-07-10-W1080	20,000 AF

The foregoing water rights will hereafter be referred to as the "leased water".

1.1 Either party may reduce the quantity of leased water to as low as 10,000 AF by providing the other party written notice of the amount of the reduction down to the minimum no later than May 1.

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing February 1, 2006, and terminating on January 31, 2007. Thereafter, this Lease will be automatically renewed and extended for successive additional one (1) year terms, unless and until terminated by either party upon written notice provided on or before February 1.

3. **Rent.** For the use of the leased water rights Lessee shall pay to Lessor rent annually in an amount equal to the per-acre foot District One Rental Pool Lease price in effect each year, plus $1 per AF. The rent shall be paid one-half on May 1 and one-half on November 1.

3.1 Lessee shall pay all Water Bank transfer and administration fees.

4. Non-Use by Lessor. Lessor covenants that it will not divert or utilize the leased water right during the term of this Lease.

5. Use by Lessee. During the term of this Lease, Lessee will not divert or utilize the leased water rights except for mitigation purposes. Lessee will have no responsibility for the operation, maintenance, use or any damages related to or caused by lands idled pursuant to this Lease Agreement.

6. Representations by Lessor. Lessor covenants and represents that it is the true and lawful owner of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. Indemnification of Lessee. Lessor agrees to indemnify and hold harmless Lessee, its officers, agent and employees, from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind for injury to or death of a person, or for loss of or damage to any property resulting from any act or omission of Lessor, its employees, agents or contractors, relating to or arising out of this Lease Agreement.

8. Breach. In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect any or all of the following cumulative remedies:

(a) To terminate this Lease Agreement;
(b) To seek specific performance of this Lease Agreement;
(c) To recover any damages arising out of the breach;
(d) To pursue any and all other remedies under Idaho law by reason of such breach.

9. Assignment. This Agreement may not be assigned by Lessee without the express written consent of Lessor.

10. Choice of Law. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Idaho. Any required mediation and arbitration shall occur in Bannock County Idaho. Jurisdiction and venue for any litigation shall be in the District Court of the State of Idaho in Bannock County.

11. Dispute Resolution. Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

11.1 Mediation. The parties shall designate a single mediator and appear before the mediator and attempt to mediate a settlement of the dispute. In the event the parties cannot agree to a mediator, then each party shall designate a representative and they will appoint a single mediator who shall serve as the mediator for the parties.

11.2 Arbitration. In the event the dispute between the parties cannot be settled as a result of mediation as described in paragraph 13.1 above, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall select a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties. The arbitrator's decision shall be non-appealable.

11.3 Litigation. Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's tor.

12. Attorney Fees. In the event of any arbitration or litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

13. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

DATED this 17 day of May, 2006.

LESSEE:

IDAHO GROUND WATER APPROPRIATORS, INC.

By: _____
Tim Deeg, President

Attest: _____

LESSOR:

ABERDEEN-SPRINGFIELD CANAL COMPANY

By: _____
~~Bob Knudsen, President~~
Steven T. Houser, General Manager

Attest: Amy L. Brown

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12. Attorney Fees. In the event of any arbitration or litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

13. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

DATED this 19th day of MAY, 2006.

LESSEE:

IDAHO GROUND WATER APPROPRIATORS, INC.

By: _____
Tim Deeg, President

Attest: _____

LESSOR:

ABERDEEN-SPRINGFIELD CANAL COMPANY

By: _____
Bob Knudson, President

Attest: _____