

LAWRENCE G. WASDEN
ATTORNEY GENERAL
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

PHILLIP J. RASSIER (ISB#1750)
CHRIS M. BROMLEY (ISB#6530)
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700

Attorneys for Respondents

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

NORTH SNAKE GROUND WATER)	
DISTRICT and MAGIC VALLEY)	Case No. CV 2009-0000431
GROUND WATER DISTRICT)	
)	
Petitioner,)	
)	THIRD AFFIDAVIT OF
vs.)	PHILLIP J. RASSIER
)	
GARY SPACKMAN, in his capacity as)	
Interim Director of the Idaho Department)	
of Water Resources; and the IDAHO)	
DEPARTMENT OF WATER RESOURCES,)	
)	
Respondents.)	
)	
vs.)	
)	
CLEAR SPRINGS FOODS, INC.,)	
)	
IN THE MATTER OF DISTRIBUTION OF)	
WATER TO WATER RIGHTS NOS.)	
36-0413A, 36-04013B, AND 36-07148.)	
)	
(Clear Springs Delivery Call))	
)	
)	
_____)	

STATE OF IDAHO)
) ss
COUNTY OF ADA)

PHILLIP J. RASSIER, being first duly sworn upon his oath, deposes and states that:

1. I am a Deputy Attorney General and one of the attorneys of record for the respondents Gary Spackman, Interim Director, and the Idaho Department of Water Resources in the above-caption case.

2. The following is based upon my personal knowledge.

3. Attached hereto as **Exhibit A** is a true and correct copy of a memorandum, dated February 17, 2009, from Tim Luke, IDWR Water Distribution Section Manager to Gary Spackman, Interim Director of the Idaho Department of Water Resources. The memorandum approved by Interim Director Spackman on February 18, 2009, provides a revised summary of the shortfall calculations for the reach gain benefits to the Buhl to Thousand Springs reach resulting from mitigation activities implemented by the North Snake and Magic Valley Ground Water Districts (“Ground Water Districts”) during 2009 in response to the Snake River Farm delivery call (“Revised Calculations Memo”).

4. The *Revised Calculations Memo* is filed pursuant to the Court’s *Order on Conditional Stay of August 7, 2009, Amended Order of Curtailment*, entered February 4, 2009, for the purpose of providing revised shortfall calculations for the Ground Water Districts’ Second Plan of Action for 2009 following the completion of late season recharge, and to provide the Department’s reasoning for crediting or excluding specific mitigation activities. The *Revised Calculations Memo* replaces the *Calculations Memo* submitted to the Court by IDWR on January

12, 2009, and identifies two corrections to the January 6, 2010 Allan Wylie 2009 Conversion Post Audit Memo attached to the *Calculations Memo*.

5. Attached to the eight-page *Revised Calculations Memo* are documents included in Attachment "A" relating to recharge water provided by the Idaho Dairymen's Association; Attachment "B" related to 2009 Applications to purchase water from the Water District 1 Rental Pool; and Attachment "C" related to the delivery of stored water to Faulkner/Sawtooth Sheep Co.

Dated this 13th day of February, 2010.

Phillip J. Rassier
Phillip J. Rassier
Deputy Attorney General

SUBSCRIBED AND SWORN to before me this 13th day of February, 2010.



Deborah J. Gibson
Notary Public for Idaho
Residing at: Farma, Idaho
Commission Expires: 8/10/2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the state of Idaho, employed by the Attorney General of the state of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 18th day of February, 2010.

Document Served: **SECOND AFFIDAVIT OF PHILLIP J. RASSIER**

Deputy Clerk Gooding County District Court 624 Main St P.O. Box 27 Gooding, ID 83330	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Judge Eric Wildman (courtesy copy) SRBA District Court 253 3rd Ave. N P.O. Box 2707 Twin Falls, Idaho 83303-2707 Facsimile: (208) 736-2121	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Randy C. Budge Candice M. McHugh RACINE OLSON NYE BUDGE BAILEY P.O. Box 1391 Pocatello, ID 83201 rcb@racinelaw.net cmm@racinelaw.net	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP P.O. Box 2139 Boise, ID 83701-2139 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

<p>Michael Creamer GIVENS PURSLEY P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com</p>	<table><tr><td><input checked="" type="checkbox"/></td><td>U.S. Mail, postage prepaid</td></tr><tr><td><input type="checkbox"/></td><td>Hand Delivery</td></tr><tr><td><input type="checkbox"/></td><td>Overnight Mail</td></tr><tr><td><input type="checkbox"/></td><td>Facsimile</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Email</td></tr></table>	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid	<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>	Overnight Mail	<input type="checkbox"/>	Facsimile	<input checked="" type="checkbox"/>	Email
<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid										
<input type="checkbox"/>	Hand Delivery										
<input type="checkbox"/>	Overnight Mail										
<input type="checkbox"/>	Facsimile										
<input checked="" type="checkbox"/>	Email										

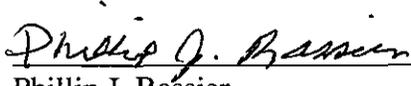

Phillip J. Rassier

Exhibit A

Memorandum

To: Gary Spackman, Interim IDWR Director *Boya S 2/18/2010*
From: Tim Luke, Water Distribution Section Manager *TL*
CC: Phil Rassier, Chris Bromley, Jeff Peppersack, Allan Wylie, Cindy Yenter, Sean Vincent
Date: February 17, 2010
Re: Revisions to IDWR January 11, 2010 Memorandum: Determination of Shortfall Calculations Requested by the District Court in the Snake River Farm Delivery Call Regarding Ground Water Districts' 2009 Second Plan of Action

Pursuant to the District Court's Status Conference held on January 28, 2010, the Idaho Department of Water Resources (IDWR or Department) hereby submits revisions to its memo dated January 11, 2010 documenting shortfall calculations for the Ground Water Districts' (Districts) 2009 Second Plan of Action made in response to the Snake River Farm Delivery call. The Court requested that IDWR address the following items and issues:

- Show any corrections or updates to IDWR's January 11, 2010 memo as described during the status conference by IDWR legal counsel, Mr. Phillip Rassier, Deputy Attorney General.
- Explain the rationale for excluding recharge credit to the Districts for any storage water delivered for 2009 post-season recharge that was paid for and contributed by the Idaho Dairymen's Association (IDA).
- Verify whether delivery of stored water to John Faulkner/Sawtooth Sheep Co. for separate mitigation requirement of a ground water permit owned by the Idaho State Land Department and operated by Faulkner/Sawtooth Sheep Co. was part of the 27,500 acre-feet (AF) of IGWA storage water delivered to the Northside Canal Company (NSCC).
- Explain the excess delivery water credit/calculation identified under the column titled "2009 Excess Credit AF" in Tables 1 and 2 of the Allan Wylie 2009 Conversion Post Audit Memo Dated January 6, 2010.
- Evaluate any potential "impacts of ground water pumping that occurred in 2009 on acres that the Ground Water Districts previously represented would be converted to a surface water supply, ... and whether or not it effects the estimates of the benefits of late season recharge that were evaluated by IDWR."¹

IDWR individually addresses these items in this revised memorandum. In addition, IDWR addresses a question raised by Clear Springs Foods, Inc. (CSF) regarding IDWR's evaluation of recharge deliveries targeted to the area on the rim above the Snake River Farm facility and potential recharge spills back to the Snake River.

¹ Clear Springs Foods, Inc. Response to IDWR's Mitigation Audit/Ground Water Districts Conversion Acres Report, January 27, 2010, p. 10.

Corrections to IDWR’s Memorandum dated January 11, 2010

1. The table in the IDWR/Tim Luke memo summarizing model results of benefits to the Buhl to Thousand Springs reach from 2009 mitigation activities has been updated as follows:

Existing Conversions*	New Conversions*	CREP	Recharge	Total Provided	Total Required	Shortfall
3.19	2.38	0.48	2.12	8.17	12.23	4.06

*Includes credit for transmission loss and excess head gate deliveries

The recharge benefit was reduced from 3.00 cubic feet per second (cfs) to 2.12 cfs as a result of removing 3,687 AF of recharge water that was contributed by IDA. In addition, 977 AF were removed from the recharge delivery total that IDWR previously calculated for the Districts because IDWR has determined that 977 AF of the Districts’ total 2009 leased storage water was subleased to Sawtooth Sheep for separate mitigation required by a new ground water permit.

The current projected shortfall of 4.06 cfs to the reach equates to a shortage of 0.28 cfs directly to CSF’s Snake River Farm facility. This shortfall to CSF is higher than the 0.17 cfs shortfall projected in the Department’s Amended Curtailment Order of August 7, 2009. On August 24, 2009, Judge Melanson stayed the Department’s Amended Curtailment order “contingent upon the Districts providing security in their ‘Second Plan of Action.’”

2. Table 1 of the Allan Wylie memo dated January 6, 2010 is updated as follows:

WMIS pod	NAME	Acres	Max Allowed AF	2009 GW Diversion AF	2009 Final SW Delivery AF 11/04/09	2009 Conversion Credit AF	2009 Excess Credit AF
100468	Box Canyon	124	496	29	607.6	492.7	114.9
100472	Box Canyon	139	556	19	607.6	492.7	114.9
100473	Box Canyon	139	556	82	607.6	492.7	114.9
100537	Box Canyon	148	592	31	549.8	545.7	4.1
100539	Box Canyon	148	592	41	549.8	545.7	4.1
100540	Box Canyon	148	592	67	549.8	545.7	4.1
100826	Van Dyk	74	296		0	0	0
	total af/y		3,680		3,472.2	3,115.2	357

The correct total 2009 Excess Credit is 357 AF. The prior memo incorrectly listed the 2009 total as 369.5 AF due to a typographical error.

3. The column heading titled “Maximum Allowed AF” in Table 2 of the same Allan Wylie memo referenced above should be titled “2009 Projected AF”. This column represents the total amount of storage water that IDWR projected would be delivered in 2009 to the conversion projects listed in Table 2. The values in this column were not used in any 2009 post audit calculations or model runs and was provided in Table 2 of Dr. Wylie’s memo for informational purposes only.

Exclusion of IDA Recharge Water

IDWR agrees with CSF's position that the 3,687 AF of recharge water provided by IDA was done pursuant to a separate agreement between IDA, CSF and others. CSF correctly notes that IDWR signed a *Stipulation and Agreement Regarding Certain Dairy Ground Water Use* with IDA and CSF on January 11, 2008. The Agreement provides for the delivery of leased storage water by IDA to the NSCC system for mitigation. As noted in CSF's response, "the Hearing Officer recommended approval of the Agreement by order issued on February 29, 2008. The Director adopted the Hearing Officer's recommendation and approved the Agreement in his *Final Order* issued on July 11, 2008" (see CSF Response, p. 6, item 3).

IDWR has verified through 2009 Water District 01 records that IDA leased 3,687 AF of storage water that was made available for late season recharge (see Attachment A). This 3,687 AF of leased water is separate from any water leased by IGWA that was used for late season recharge or in-season conversion projects during 2009. Although the 2009 post-season IDA recharge contribution results in a benefit to the spring reach, IDWR agrees with CSF that this portion of the recharge benefit should not be credited towards the total 12.23 cfs spring reach mitigation requirement agreed upon by CSF and the Districts as documented by Department orders (see *Order Granting Partial Stay of Ground Water Districts' Replacement Water Plan for 2009*, May 15, 2009; and *Order Approving Ground Water Districts Replacement Water Plan for 2009*, March 26, 2009).

Delivery of Stored Water to Faulkner/Sawtooth Sheep Co.

IDWR has verified through 2009 Water District 01 records that the Districts' leased 27,500 AF of storage water in 2009. Attachment B of this memo is a summary of 2009 Water District 01 Rental Pool applications prepared by Water District 01 staff. The summary shows a number of private leases between the Idaho Ground Water Appropriators (IGWA) and canal companies or irrigation districts that total 27,500 AF. IGWA represents the Ground Water Districts and secured the private leases on behalf of the Ground Water Districts during 2009. The leased water was secured and delivered to the NSCC for conversion projects and late season recharge.

IDWR has also verified through documents on record at both Water District 01 and Water District 130 that up to 1,000 AF of the Districts' 27,500 AF leased storage water was subleased to Sawtooth Sheep, Inc., for mitigation required under a new ground water permit (see *Water Rights Sublease Agreement* dated March 30, 2009, Attachment C). The Sawtooth Sheep mitigation use is separate from any of the Districts' 2009 mitigation use and requirements established by the 2009 IDWR orders and as agreed upon by the Districts and CSF. Any portion of the Districts' 27,500 AF leased storage water that was subleased to and used by Sawtooth Sheep should be subtracted from the Districts' storage water balance that was available for late season recharge.

NSCC 2009 delivery records show that a total of 751.6 AF were delivered to the Sawtooth Sheep lateral and head gate (Lateral X-01, hg 3) for mitigation of the new ground water permit. The 30% conveyance loss charged to this head gate delivery equates to 225.5 AF, for a total delivery of 977.1 AF to the NSCC canal heading at Milner.

Adjustment to Amount of Recharge Water Delivered by the Districts

IDWR has verified through Water District 01 delivery records that a total of 20,206 AF of water was delivered to NSCC for late season recharge. The recharge occurred from October 22 through November 30, 2009. This total recharge amount includes the IDA stored water lease (3,687 AF), a portion of the GWD's stored water lease (portion of 27,500 AF), and water delivered under the Idaho Water Resource Board's recharge water right.

Table 1 on the following page provides an accounting of the total 27,500 AF leased by the GWDs in 2009. Due to the Sawtooth Sheep sublease, the total amount of leased water that can be credited to the GWDs for conversions and recharge is 26,523 AF. The Wylie memos documented that 16,858 AF had been delivered for conversion projects (both new and ongoing). The amount of water available to the GWDs for recharge therefore is simply the difference between the total 27,500 AF lease and the sum of the amount of water used for conversions and the Sawtooth Sheep sublease. The difference, or amount of leased water delivered for recharge by the GWDs is 9,665 AF. This adjusted recharge delivery was used to adjust the GWD's mitigation recharge credit shown in Table 2 below. The adjusted credit is 2.12 cfs. The credit was adjusted by proportioning the adjusted GWD delivery to the total delivery and credit reported in the original IDWR memo dated January 11, 2010. Specifically, 9,665 AF is 70.6% of 13,687 AF, and 70.6% of the 3.00 cfs recharge credit reported in the IDWR January 11 memo is 2.12 cfs.

Table 1.

Storage Water Leased by GWDs - 2009			
- Recharge, Conversions and Sublease			
Total Storage Water Leased by GWD - 2009 (AF):			27,500
GWD Conversion Deliveries			
	Hgead Gate Delivery (AF)	30% conveyance (AF)	Total (AF)
- New Conv	3,474.2	1,041.7	4,515.9
- Old Conv	<u>9,493.7</u>	<u>2,848.1</u>	<u>12,341.8</u>
	12,967.9	3,889.8	16,857.7
Total Recharge Delivery - 2009			20,206.0
- IDA Recharge			3,687.0
- GWD Recharge			9,665.2
- IWRB Recharge			<u>6,853.8</u>
- subtotals			20,206.0
GWD Sublease			
Sawtooth Sheep HG Delivery			751.6
Sawtooth Sheep 30% conveyance			<u>225.5</u>
Total Sublease			977.1
GWD Total Water availabe for credit (Conversions + Recharge)			26,523
GWD Totals: Conversions, Recharge & Sublease			27,500

GWD = Ground Water Districts

Explanation of Excess Delivery Credit

IDWR has found that surface water deliveries and/or the combination of surface water deliveries and ground water use on conversion project acres in Water District 130 sometimes exceeds the normal annual water use or diversion volume limits established by IDWR. IDWR assigns maximum diversion volume limits to water rights licenses and Snake River Basin Adjudication partial decree recommendations. The maximum annual diversion volume, also known as field head gate volume, which is normally authorized for water rights in Water District 130, is 4.0 acre-feet per acre (afa).

When analyzing conversion credits in Water District 130, the watermaster gathers surface water delivery records from NSCC for individual conversion project head gates. The watermaster also determines or estimates ground water use for the conversion project wells that are identified in Tables 1 and 2 of the Allan Wylie 2009 Conversion Post Audit Memo Dated January 6, 2010. Those tables include a column called "2009 Excess Credit AF". Using the Veenstra/V&L Dairy well (well no.100078) in Table 2 of the Wylie memo as an example, excess diversions are calculated as follows:

Total ground water diverted from well:	627.0 AF
<u>Total 2009 surface water delivered to head gate/ land served by well:</u>	<u>599.1 AF</u>
Total surface & ground water delivered:	1,226.1 AF

Acres served by well (gw right 36-7569):	302 acres
Maximum authorized well head diversion volume:	4.0 AF/acre
Ground water right authorized volume:	302 acres x 4.0 AF/acre = 1,208 AF
<u>Less total gw diverted from well:</u>	<u>627 AF</u>
= Surface Water Conversion Credit	581 AF

Total surface and ground water delivered:	1,226.1 AF
<u>Less authorized water right volume:</u>	<u>1,208.0 AF</u>
Excess Surface Water Delivery Credit	<u>18.1 AF</u>

Excess delivery credit (18.1 AF) + conversion credit (581 AF) = total sw delivered (599 AF)

As stated on page 3 of the Wylie memo, all surface water delivered above the 4.0 af/acre limit (excess delivery credit) is spread evenly across the NSCC service area. The Buhl-Thousand Springs trim line is then applied to the NSCC area, resulting in some loss of water. Specifically, reach benefits computed from excess water being 'spread evenly' over the referenced area is similar to the computation of reach benefits from conveyance loss and recharge in NSCC canals and laterals. The difference is that excess water is spread evenly across model grid cells overlying surface water irrigated lands located in the NSCC service area, whereas recharge deliveries and conveyance losses are spread through only those model cells where such recharge deliveries or conveyance losses occur.

Evaluation of Potential Impacts from Pumping Ground Water from Conversion Wells

The Court has asked IDWR to address the request made by CSF that “IDWR evaluate the impacts of ground water pumping that occurred in 2009 on acres the Ground Water Districts previously represented would be converted to a surface water supply” (see CSF response, p. 10, item 2).

All ground water irrigated acres located within the Buhl-Thousand Springs trim line and junior to the CSF Snake River Farm priority date are evaluated by IDWR using the Eastern Snake Plain Aquifer Model (ESPAM). An ESPAM simulated curtailment of ground water on irrigated acres with ground water right priority dates junior to February 4, 1964 results in a depletion of 39 cfs to the Buhl-Thousand Springs reach. Accordingly, IDWR’s prior curtailment orders required junior ground water right holders to provide 39 cfs of replacement water to the Buhl-Thousand Springs reach, or direct delivery of 2.68 cfs suitable quality water to the Snake River Farm facility, or a combination thereof.

IDWR’s *Order Approving Ground Water Districts’ Replacement Water Plan* dated March 26, 2009 documented that the Ground Water Districts’ would provide a 12.23 cfs reach gain benefit to the Buhl-Thousand Springs reach by continuing existing conversion projects and CREP enrollments, and adding the new conversion projects associated with the Ground Water Districts over-the-rim (OTR) plan. The 12.23 cfs reach gain benefit was determined using the ESPAM. IDWR’s *Order Granting Stay of Ground Water Districts’ Replacement Water Plan for 2009*, dated May 15, 2009, stayed the construction of the OTR pipeline for direct delivery of ground water to the Snake River Farm facility but required the Ground Water Districts to satisfy “the remainder of the 2009 plan approved by the March 26, 2009 Order of the Director” (see p. 2 of Order). IDWR issued the May 15, 2009 Order in response to CSF’s *Motion for Partial Stay of Implementation of Director’s March 26, 2009 Order Approving Ground Water Districts’ Replacement Water Plan for 2009*, dated April 27, 2009. CSF stated in its Partial Stay Motion that it would “accept the remainder of the 2009 Plan as acceptable mitigation for this year.” The 2009 Plan and IDWR’s approval did not include any post season recharge activity.

The fact that the Ground Water Districts did not maintain or continue all of the existing conversion projects in 2009 simply results in a shortfall to the 12.23 cfs ESPAM simulated reach gain benefit. In its use of the ESPAM to evaluate benefits from limited conversion activity in 2009, IDWR only made adjustments in simulated ESPAM runs for ground water use at the well locations for which conversion credits accrued. The simulated ESPAM run assumed on-going ground water use or diversions at the well locations where no conversion credits were accrued, thereby resulting in on-going depletions to the reach from those wells. As a result, any further evaluation by IDWR of some additional impact resulting from continued pumping of conversion wells as suggested by CSF is not appropriate. Any further assignment of shortfall as suggested by CSF as a result of continued pumping of conversion wells would result in some double-accounting of reach depletions and the overall shortfall.

Evaluation of Recharge Water: Targeted Recharge and Spills

CSF’s response to the Court asked the Court to “further require IDWR to report on the actual implementation of the Districts’ recharge program in 2009. Specifically, the Recharge Memo contains no evaluation of whether all water diverted was actually recharged into the

aquifer and ‘targeted’ to the area of the rim immediately above Clear Springs’ facility, or whether water was spilled or returned back to the Snake River or its tributaries at any locations.”

Although IDWR did not specifically report on spills returning back to the Snake River, Figure 1 of the Wylie recharge memo does show the location of NSCC canals and laterals used during 2009 post season recharge. Figure 2 of the Wylie memo shows the computed seepage along the canals and laterals. The Wylie memo explained how the seepage was computed and stated that 3.0 cfs was computed as the benefit to the Buhl-Thousand Springs reach (based on 13,687 AF of recharge delivery). The updated reach benefit provided by the Ground Water Districts recharge delivery is 2.12 cfs. The assumed direct benefit to the Snake River Farm facility from the Ground Water Districts’ recharge effort is 0.15 cfs when applying the same 6.9% proportional benefit factor used in prior IDWR orders.

The NSCC post season recharge delivery records provided to IDWR shows no reported flows or spills over the rim. A copy of the NSCC records were provided to CSF prior to the Court’s last status conference and before CSF filed its response to the Court. IDWR staff also contacted the NSCC manager, Ted Diehl, and confirmed that no recharge water spilled over the rim and/or returned back to the Snake River. Although IDWR staff did not make a specific effort to monitor or visit spill sites, staff did have occasion to drive by and observe several of the spill sites during the recharge period and report that no spills were observed.

Figure 2 of the Wylie memo does show that recharge deliveries were made to the S and L canals which extend towards the rim above the Snake River Farm facility. NSCC canal and lateral recharge measurements show that smaller amounts were delivered to the head of the S and L canals as opposed to the W canal, which is located further north of the Snake River Farm facility and extends toward spring reaches that are lower or downstream of the Buhl-Thousand Springs reach. The NSCC manager and ditch riders made smaller deliveries to the S and L canals in order to prevent water spilling over the rim from those laterals. Larger deliveries were made to the W canal in order to prevent spills to the Snake River, and because that system is longer, more extensive and generally provides for higher seepage rates. Accordingly, Figure 2 does show generally higher seepage rates throughout the W canal system.

Larger recharge flows could not be “targeted to the area of the rim immediately above Clear Springs’ facility” because doing so would result in spills to the Snake River that all parties, including CSF, were trying to avoid. CSF attended a general meeting at IDWR’s office on October 1, 2009 along with representatives from NSCC and the Ground Water Districts to discuss recharge plans and locations. In fact, legal counsel for CSF also represented NSCC at this same meeting. IDWR staff present at that meeting can testify that NSCC had developed experience from recharge deliveries made the prior year where some spills to the Snake River did occur, and that NSCC would endeavor in 2009 to direct deliveries similar to the prior year but regulate flows better to avoid spills. All parties present agreed on this general approach. IDWR commends NSCC on its efforts to avoid spills and believes that NSCC tried to maximize deliveries targeted toward the rim above the Snake River Farm facility within the physical limitations of its conveyance system.

Attachment A

W. KENT FLETCHER
ATTORNEY AT LAW

FLETCHER LAW OFFICE

1200 OVERLAND AVENUE
P. O. BOX 248
BURLEY, IDAHO 83318-0248
(208) 678-3250
August 18, 2009

FAX: (208) 678-2548

E-MAIL
wkf@pmt.org

Lyle Swank
Water District No. 1, Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

RE: Water Mitigation Coalition – Minidoka Irrigation District Lease – 2009

Dear Lyle:

Pursuant to the terms of the Water Mitigation Coalition – Minidoka Irrigation District Lease, ten thousand (10,000) acre feet of storage water is currently in Minidoka Irrigation District's storage account that should be assigned as directed by Clear Springs and the irrigation districts and canal companies named in the Lease. You are notified that the ten thousand (10,000) acre feet is assigned as follows:

1. 1,500 acre feet is under the control of Clear Springs, and that amount is assigned to the Idaho Dairymen's Association for recharge through the North Side Canal Company system as directed by the Idaho Dairymen's Association and North Side Canal Company, for the purposes of recharge.
2. 2,187 acre feet of the amount under the control of the irrigation districts and canal companies is assigned to the Idaho Dairymen's Association for recharge through the North Side Canal Company system as directed by the Idaho Dairymen's Association and North Side Canal Company, for the purposes of recharge.
3. Up to 6,313 acre feet of the amount under the control of the irrigation districts and canal companies is assigned to the City of Blackfoot for recharge at Jensen Grove as directed by the City of Blackfoot. In the event the City cannot use the entire 6,313 acre feet this fall for recharge purposes, we will provide further direction concerning any unused amount.

If you have any questions, please contact me. Thank you for your attention to this.

Sincerely,

FLETCHER LAW OFFICE

Kent Fletcher

Minidoka Irrigation District
John K. Simpson
Tom Arkoosh
Travis Thompson
Michael C. Creamer
City of Blackfoot

RECEIVED

AUG 19 2009

Department of Water Resources
Eastern Region

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

June 11, 2009

Via Express Mail

Lyle Swank, Watermaster
Water District 01
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: *May 11, 2007 Water Rental Agreement between the
Water Mitigation Coalition and the Minidoka Irrigation District*

Dear Mr. Swank:

Pursuant to the May 11, 2007 Water Rental Agreement, enclosed are checks to Water District 01 from the members of the Water Mitigation Coalition, as follows:

J. R. Simplot Company:	\$10,000.00
Basic American Foods:	\$ 5,000.00
ConAgra Foods/Lamb Weston:	\$ 5,000.00

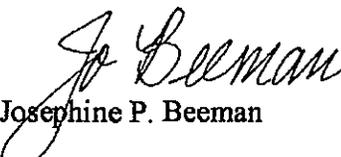
These checks are for the Water District 01 administrative charges associated with the Water Mitigation's 2009 rental of 10,000 acre feet of water from Minidoka Irrigation District (MID). The rental price is \$12 per acre foot. A copy of the letter to MID and copies of the checks to MID are enclosed.

A copy of this letter and copies of the checks are being provided to Minidoka Irrigation District in care of its attorney, Kent Fletcher.

Please feel free to contact me if you have any questions.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

Enclosures

cc: Water Mitigation Coalition (w/o enclosures)
Minidoka Irrigation District (w/ copies of enclosures)

RECEIVED

JUN 12 2009

Department of Water Resources
Eastern Region

VERIFY DOCUMENT AUTHENTICITY - THIS DOCUMENT HAS A MULTICOLORED AND VOID BACKGROUND

Simplot
AP CHECK

WELLS FARGO BANK, N.A.

926
1241

06/01/09

Check No
00958992

\$10,000.00

PAY *Ten thousand and 00/100 Dollars.*
TO THE WATER DISTRICT 01
ORDER OF

Annette D. Elg

SIGNATURE HAS A COLORED BACKGROUND • BORDER CONTAINS MICROPRINTING

⑈958992⑈ ⑆124100064⑆ 5130002990⑈

ConAgra Foods

ConAgra Foods
Lamb Weston
P.O. Box 1900
Pasco WA 99302-1900

Lamb Weston

CHECK NO.
10552021

JPMorgan Chase Bank, N.A.
Syracuse, NY

VOID IF NOT CASHED WITHIN 90 DAYS

051414

DATE 06/10/09

50-937
213

\$5,000.00

AMOUNT EXACTLY FIVE THOUSAND AND NO/100***** DOLLAR

PAY TO THE ORDER OF WATER DISTRICT NO 1
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402

⑈10552021⑈ ⑆021309379⑆ 6010020037373⑈

B **BASIC AMERICAN FOODS**
A Division of Basic American, Inc.
2121 N CALIFORNIA BLVD
WALNUT CREEK, CA 94596

LOC	VENDOR NUMBER	CHECK DATE	CHECK NO.
40	78858	06/05/09	221740

BANK OF AMERICA
COMMERCIAL DISBURSEMENT ACCOUNT
NORTHBROOK, ILLINOIS

CHECK AMOUNT
*****\$5,000.00

70-2328/0719

PAY *Five thousand and 00/100 Dollars*

TO THE ORDER OF
WATER DISTRICT 01
BEEMAN & ASSOCIATES, P.C.
COUNSELORS & ATTORNEYS AT LAW
409 WEST JEFFERSON ST
BOISE, ID 83702-6049

J.W. Argent
AUTHORIZED SIGNATURE
CHIEF FINANCIAL OFFICER

⑈0000221740⑈ ⑆071923284⑆ 8765650423⑈

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

June 11, 2009

By Express Mail

Minidoka Irrigation District
c/o Kent Fletcher
1200 Overland Avenue
Burley, ID 83318

Re: *May 11, 2007 Water Rental Agreement between the
Water Mitigation Coalition and the Minidoka Irrigation District*

Dear Mr. Fletcher

Pursuant to the May 11, 2007 Water Rental Agreement (Water Rental Agreement), enclosed are checks to Minidoka Irrigation District (MID) from the members of the Water Mitigation Coalition, as follows:

J. R. Simplot Company:	\$60,000
Basic American Foods:	\$30,000
ConAgra Foods/Lamb Weston:	\$30,000

The total of \$120,000 is the 2009 Water Rental Agreement price for 10,000 acre feet of storage water at \$12 per acre foot.

The Water Rental Agreement also provides that the Water Mitigation Coalition will pay the Committee of Nine administrative charges for the 10,000 acre foot rental. Based on the Water District 01 rental pool procedures currently in effect, those administrative charges total \$20,000 and are comprised of the Water District 01 administrative fee (\$.80/acre foot for 10,000 acre feet = \$8000) and the Idaho Water Resource Board (IWRB) 10% surcharge (\$1.20/acre foot for 10,000 acre feet = \$12,000). Lyle Swank, Water District 01 Watermaster, has confirmed that the entire \$20,000 is paid to Water District 01 and that Water District 01 then accounts for the split between the Water District 01 fees and the IWRB surcharge.

RECEIVED

JUN 12 2009

Department of Water Resources
Eastern Region

Minidoka Irrigation District
c/o Kent Fletcher
June 11, 2009
Page 2

Enclosed with this letter are copies of checks to Water District 01 from the members of the Water Mitigation Coalition as follows:

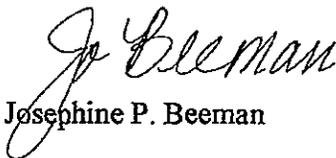
J. R. Simplot Company:	\$10,000 to Water District 01
Basic American Foods:	\$ 5,000 to Water District 01
ConAgra Foods/Lamb Weston:	\$ 5,000 to Water District 01

A copy of this letter along with copies of the checks are being sent to Lyle Swank at Water District 01.

Please feel free to contact me if you have any questions.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

Enclosures
cc: Water District 01 (w/ copy of enclosures)
Water Mitigation Coalition (w/o enclosures)

VERIFY DOCUMENT AUTHENTICITY - THIS DOCUMENT HAS A MULTICOLORED AND VOID BACKGROUND



AP CHECK

WELLS FARGO BANK, N.A.

02-8
1241

06/01/09

Check No.
00858991

\$60,000.00

PAY *Sixty thousand and 00/100 Dollars*
TO THE MINIDOKA IRRIGATION DISTRICT
ORDER OF

Annette D. Ely

SIGNATURE HAS A COLORED BACKGROUND - BORDER CONTAINS MICROPRINTING

⑈95899⑈ ⑆124100064⑆ 5130002990⑈



BASIC AMERICAN FOODS

A Division of Basic American, Inc.
2121 N CALIFORNIA BLVD
WALNUT CREEK, CA 94596

LOC.	VENDOR NUMBER	CHECK DATE	CHECK NO.
40	78855	06/05/09	221739

BANK OF AMERICA
COMMERCIAL DISBURSEMENT ACCOUNT
NORTHBROOK, ILLINOIS

CHECK AMOUNT *****\$30,000.00

70-2328/0719

PAY *Thirty thousand and 00/100 Dollars*

TO THE
ORDER OF

MINIDOKA IRRIGATION DISTRICT
BEEMAN & ASSOCIATES, P.C.
COUNSELORS & ATTORNEYS AT LAW
409 WEST JEFFERSON ST
BOISE, ID 83702-6049

J.W. Argent
AUTHORIZED SIGNATURE
CHIEF FINANCIAL OFFICER

⑈0000221739⑈ ⑆071923284⑆ 8765650423⑈



ConAgra Foods
Lamb Weston
P.O. Box 1900
Pasco WA 99302-1900



CHECK NO.

10552019

JPMorgan Chase Bank, N.A.
Syracuse, NY

VOID IF NOT CASHED WITHIN 90-DAYS

051412

DATE

06/10/09

50-937-213

\$30,000.00

AMOUNT EXACTLY THIRTY THOUSAND AND NO/100 ***** DOLLAR

MINIDOKA IRRIGATION DISTRICT
98 W 50 S
RUPERT ID 83350

TO THE
ORDER OF

⑈10552019⑈ ⑆021309379⑆ 6010020037373⑈

Attachment B

Table 31 2009 Applications to Purchase from Water District 1 Rental Pool

Large Water Leases (over 100 acre-feet)

Water Available 50,000 acre-feet

Request Date	Water User	Diversion Location	Amount (AF)	Rate Paid	\$ Collected
4/15/2009	Call, Brent	Burgess Canal	400.0	\$ 6.30	\$ 2,520.00
7/13/2009	Fremont Madison	Jeppesen Pump (Moody Crk)	120.0	\$ 6.30	\$ 756.00
				\$ 6.30	\$ -
Total Large Water Leases (over 100 acre-feet)			520.0		\$ 3,276.00

Small Water Leases (under 100 acre-feet) and Long-Term Leases

Water Available 5,000 acre-feet

Request Date	Water User	Diversion Location	Amount (AF)	Rate Paid	\$ Collected
4/15/2009	Tejo, Roque Trejo	New Sweden	1.0	\$ 6.30	\$ 6.30
4/15/2009	Dean Snarr & Sons	Butte Market Lake	50.0	\$ 6.30	\$ 315.00
4/15/2009	Hansen, Steve	New Sweden	5.0	\$ 6.30	\$ 31.50
4/15/2009	Miller, Yvonne	Palisades Canal	2.0	\$ 6.30	\$ 12.60
4/15/2009	Grover, Gerald	Lenroot	10.0	\$ 6.30	\$ 63.00
4/15/2009	Moncur, J. Blair	Farmers Friend	4.0	\$ 6.30	\$ 25.20
4/15/2009	Zaugg, Alonzo N.	13038147 SR Pump	5.0	\$ 6.30	\$ 31.50
4/15/2009	Denny, Eve L	Great Feeder	5.0	\$ 6.30	\$ 31.50
4/15/2009	Quapp, William & Catherine	New Sweden	5.0	\$ 6.30	\$ 31.50
4/15/2009	Breeding, Glen	Milner Pool	500.0	\$ 6.30	\$ 3,150.00
4/24/2009	Avery, Herman	Farmers Friend	2.0	\$ 6.30	\$ 12.60
4/27/2009	French, Gene	Burgess Canal	100.0	\$ 6.30	\$ 630.00
5/11/2009	Graham, Zeb	Parks & Lewisville	0.5	\$ 6.30	\$ 3.15
5/14/2009	Horsley, John & Angie	New Sweden	3.0	\$ 6.30	\$ 18.90
6/4/2009	Skaar Brothers	Dry Bed	100.0	\$ 6.30	\$ 630.00
9/21/2009	RSCI	Snake River	20.0	\$ 6.30	\$ 126.00
Total Small Water Leases (under 100 acre-feet)			812.5		\$ 5,118.75
Total Water Leases (Large and Small)			1,332.5		\$ 8,394.75

Private Leases

Request Date	Water User	Supplier	Diversion Location	Amount (AF)	\$ per AF	\$ Collected
4/27/2009	Southwest Irrigation Dist	Snake River Valley Irrig District	Twin Falls Canal Company	1,000.0	\$ 1.30	\$ 1,300.00
4/27/2009	Southwest Irrigation Dist	Snake River Valley Irrig District	Milner Irrigation District	4,000.0	\$ 1.30	\$ 5,200.00
4/29/2009	Ardel Wickel	Minidoka Irrigation District	Minidoka Irrigation District	300.0	\$ 2.80	\$ 840.00
6/12/2009	Water Mitigation Coalition	Minidoka Irrigation District	North Side Canal Company	3,687.0	\$ 2.00	\$ 7,374.00
6/12/2009	Water Mitigation Coalition	Minidoka Irrigation District	Jensen's Grove	6,313.0	\$ 2.00	\$ 12,626.00
7/2/2009	IGWA	Aberdeen Springfield	North Side Canal Company	5,454.6	\$ 1.40	\$ 7,636.44
7/2/2009	IGWA	New Sweden	North Side Canal Company	2,727.3	\$ 1.40	\$ 3,818.22
7/2/2009	IGWA	People's Canal	North Side Canal Company	1,636.4	\$ 1.40	\$ 2,290.96
7/2/2009	IGWA	Snake River Valley Irrig District	North Side Canal Company	2,727.3	\$ 1.40	\$ 3,818.22
7/2/2009	IGWA	PWUI	North Side Canal Company	272.7	\$ 1.40	\$ 381.78
7/2/2009	IGWA	Enterprise Canal Company	North Side Canal Company	1,636.4	\$ 1.40	\$ 2,290.96
7/2/2009	IGWA	Idaho Irrigation District	North Side Canal Company	545.5	\$ 1.40	\$ 763.70
10/6/2009	IGWA	Aberdeen Springfield	North Side Canal Company	4,545.4	\$ 1.40	\$ 6,363.56
10/6/2009	IGWA	New Sweden	North Side Canal Company	2,272.7	\$ 1.40	\$ 3,181.78
10/6/2009	IGWA	People's Canal	North Side Canal Company	1,363.6	\$ 1.40	\$ 1,909.04
10/6/2009	IGWA	Snake River Valley Irrig District	North Side Canal Company	2,272.7	\$ 1.40	\$ 3,181.78
10/6/2009	IGWA	PWUI	North Side Canal Company	227.3	\$ 1.40	\$ 318.22
10/6/2009	IGWA	Enterprise Canal Company	North Side Canal Company	1,363.6	\$ 1.40	\$ 1,909.04
10/6/2009	IGWA	Idaho Irrigation District	North Side Canal Company	454.5	\$ 1.40	\$ 636.30
10/31/2009	Southwest Irrigation Dist	Minidoka Irrigation District		5,000.0	\$ 2.80	\$ 14,000.00
10/31/2009	Southwest Irrigation Dist	Burley Irrigation District	Burley Irrigation District	1,947.0	\$ 2.00	\$ 3,894.00
10/31/2009	Mike Clawson	Idaho Irrigation District	Idaho Irrigation District	130.0	\$ 1.30	\$ 169.00
1/19/2010	Fremont Madison	Fremont Madison	Egin Lakes/Tibbitts Lake	5,000.0	\$ 0.80	\$ 4,000.00
Total Private Leases				54,877.0		\$ 87,903.00
Subtotal (Large, Small, Private Leases)				56,209.5		\$ 96,297.75

USBR Leases

				Amount (AF)	\$ per AF	\$\$ Collected
6/24/2009	USBR			180,000.0	14.0	\$2,520,000.00
6/24/2009	USBR	Own Space		19,758.0	0.8	\$15,806.40
Total USBR Leases				199,758.0		\$2,535,806.40
Total of all Leases				255,967.50		\$2,632,104.15

Attachment C

RECEIVED
MAR 31 2009
DEPT. OF WATER RESOURCES
SOUTHERN REGION

WATER RIGHTS SUBLEASE AGREEMENT

This Water Rights Sublease Agreement ("Agreement") shall be effective April 1, 2009, between IDAHO GROUND WATER APPROPRIATORS, INC., 201 East Center, Pocatello, Idaho 83201 ("IGWA") and SAWTOOTH SHEEP, INC., 1989 South 1875 East, Gooding, Idaho 83330 ("Lessee").

- A. Lessee desires to lease storage water from the upper Snake River Basin reservoir system to be delivered through the North Side Canal Company ("NSCC") canal and ditch system for recharge or mitigation purposes.
- B. IGWA regularly leases storage water in the upper Snake River Basin reservoir system and is willing to sublease a portion of the same to Lessee on the terms and conditions set forth herein.

Therefore, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **Water Rights Sublease.** IGWA hereby subleases to Lessee, and Lessee hereby subleases from IGWA, up to 1,000 acre-feet of storage water leased by IGWA from owners of storage water rights in the upper Snake River Basin reservoir system. The foregoing water rights are referred to hereafter as the "leased water."
 - 1.1 IGWA's obligation to deliver the leased water to Lessee is subject to IGWA's ability to lease adequate storage water rights from space-holders in the upper Snake River Basin reservoir system.
 - 1.2 IGWA's obligation to deliver the leased water to Lessee shall be secondary in priority to IGWA's delivery of water leased to its members.
 - 1.3 IGWA agrees to make a good faith effort to deliver the leased water to Lessee through the NSCC system under any conveyance agreement in effect between NSCC and IGWA or its members. In the event IGWA is unable to deliver the leased water through the NSCC system, Lessee will remain independently responsible to arrange for delivery of the leased water.
 - 1.4 IGWA will file the appropriate applications with Water District 01 and the Idaho Water Supply Bank to enable Lessee's use of the leased water rights, but makes no guarantee that Water District 01 or the IDWR will approve such applications. Lessee has the ultimate responsibility to facilitate its use of the leased water.
- 2. **Term and Termination.** This Agreement shall continue in full force and effect until terminated by either party as provided herein.
 - 2.1 In the event of a default which is not cured within thirty (30) days of receipt of written notice of default, the non-defaulting party may elect to terminate this Agreement.
 - 2.2 This Agreement may be terminated in full or in part by either party to the extent that the leased water is unavailable due to water conditions or IGWA is otherwise unable to deliver the leased water to Lessee.
 - 2.3 Either party may elect to terminate this Agreement without cause by providing not less than 90 days written notice to the other party given prior to April 1. However, in no event may termination occur under this subsection 2.3 during the course of the irrigation season.
- 3. **Rent.** For use of the leased water, lessee shall pay annually as rent:
 - (a) the amount paid by IGWA to the owner(s) of the leased water;
 - (b) rental fees incurred under the Water District 01 rental pool rules;
 - (c) fees imposed by the Idaho Water Supply Bank;
 - (d) water conveyance fees imposed by NSCC or any other water delivery entity; and
 - (e) an administrative fee of fifty cents (\$0.50) for each acre-foot of lease water.

Rent shall be paid one half on or before June 15 and one half on or before October 15 of each year in

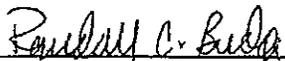
which this Agreement is in effect. In the event IGWA is unable to deliver all or part of the leased water, IGWA will refund any un-accrued Water District 01, Water Supply Bank, and water conveyance fees.

4. **Use of Leased Water.** During the term of this Lease, Lessee will not divert or utilize the leased water except for recharge or mitigation purposes. IGWA will have no authority or responsibility for the operation, maintenance, or use of the leased water rights by Lessee, and will not be liable for damages that may arise from Lessee's use of the leased water.
5. **Representations by IGWA.** IGWA represents that it is not aware of anything that restricts or precludes IGWA from entering into this Agreement or from Lessee utilizing the leased water as set forth in section 1 of this Agreement. IGWA covenants that it will endeavor in good faith effort to lease sufficient storage water rights from the upper Snake River Basin reservoir system to enable delivery of the leased water to Lessee. However, IGWA makes no guarantee as to the amount of storage water rights that it will lease from the upper Snake River Basin or that the quantity of water that will in fact be available under such water rights will enable delivery of the leased water to Lessee.
6. **Breach.** Subject to the dispute resolution requirements set forth in Paragraph 9 below, in the event either party breaches this Lease and such breach is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect either of the following cumulative remedies, but none other:
 - (a) Terminate this Lease Agreement;
 - (b) Seek specific performance of this Lease Agreement;
7. **Assignment.** This Agreement may not be assigned by Lessee without the express written consent of IGWA, which will not unreasonably be withheld.
8. **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 Gooding County, Idaho. Jurisdiction and venue for any litigation shall be in the District Court of the State of Idaho in Gooding County.
9. **Dispute Resolution.** Any substantial dispute between the parties shall be resolved in accordance with the following provisions:
 - 9.1 **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 upon 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. Mediator costs will be split evenly between IGWA and the Lessee.
 - 9.2 **Arbitration.** In the event the dispute between the parties cannot be settled as a result of mediation as described in paragraph 9.1 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.
 - 9.3 **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 pursuant to an arbitrator's decision.
10. **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.
11. **Binding Effect.** This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

SUBLESSOR: Idaho Ground Water Appropriators, Inc.

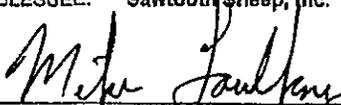
By: 
Tim Deeg, President

Date: 3-30-09

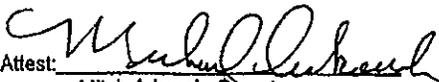
Attest: 
Randall C. Budge, Secretary

Date: 3-30-09

SUBLESEE: Sawtooth Sheep, Inc.

By: 
Mike Falkner, President

Date: 3-30-09

Attest: 
Mitch Arkoosh, Secretary

Date: 3/30/09

RECEIVED
MAR 31 2009
DEPT. OF WATER RESOURCES
SOUTHERN REGION

X-1 CANAL SITE WATER CONVEYANCE AGREEMENT

**BETWEEN SAWTOOTH SHEEP CO.
AND THE NORTH SIDE CANAL COMPANY, LTD**

THIS AGREEMENT is made and entered into this 31st day of March, 2009, by and between the SAWTOOTH SHEEP CO. ("SSC") and the NORTH SIDE CANAL COMPANY, LTD. ("NSCC").

RECITALS

A. SSC is an Idaho general business corporation that has a lease agreement with the Idaho Department of Lands to use certain state lands to which water right permit no. 37-7372 is appurtenant.

B. As a condition of the lease agreement with IDL and the use of water right permit no. 37-7372, SSC is required to provide recharge water to a site located in the NESE of Section 23, Range 7 South, Township 15 East, Gooding County, Idaho.

C. The North Side Canal Company, LTD. (NSCC) is non-profit Carey Act irrigation company, organized pursuant to the laws of the State of Idaho, which operates and maintains an irrigation delivery system.

D. SSC and the NSCC seek to enter into an agreement for the delivery of water through the NSCC system to the location identified above for mitigation purposes for water right permit no. 37-7372 ("X-1 Canal Site").

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:

1. DESIGNATION OF PROJECT MANAGERS

A. SSC's Project Manager shall be John Faulkner.

B. The NSCC's Project Manager shall be Ted Diehl, Manager of the North Side Canal Company, or his successor. The NSCC may change the project manager at anytime by written notice served on SSC. The NSCC project manager works under the direction of the NSCC Board who may limit the authority of the project manager to make decisions relative to this contract. The NSCC project manager will determine if he has the authority to make decisions relative to this contract.

2. STATEMENT OF PURPOSE

The purpose of this Contract is to provide the conditions for the conveyance of water through the canal system of NSCC to the X-1 Canal Site (Project). The project is located along the NSCC's X-1-Canal at NESE of Section 23, Range 7 South, Township 15 East, Gooding County, Idaho.

3. SCOPE OF WORK TO BE PERFORMED

A. The NSCC will convey SSC's storage water that it acquires, through the Water District 01 Rental Pool, from the Snake River to the Project during the irrigation season when SSC has water available for delivery to the Project and when NSCC has the capacity and ability to make deliveries to the Project. All deliveries made to the Project will be made at the discretion of NSCC upon consideration of the operational condition of the system and NSCC's ability to safely deliver water to the project. For the purposes of this contract the irrigation season is defined as the period during which NSCC is diverting its natural flow, or its storage water for irrigation of its lands.

B. Within (7) days of the date of storage allocation identified by Water District 01, SSC shall cause the storage water that it has obtained through the Water District 01 Rental Pool or otherwise to be transferred to NSCC's storage account.

C. Provided the conditions set forth in this Agreement are met, including the requirement that SSC's storage water is transferred to NSCC's account as specified in Paragraph B, NSCC shall use its best efforts to deliver up to 700 acre-feet of the SSC's water to the Project, provided that such diversion of any water of SSC may be curtailed in the discretion of NSCC for whatever reason. If such event occurs, NSCC shall not be responsible for any obligations owed as a result of NSCC not delivering said water.

D. Water diverted for SSC, shall be measured at Milner Dam. Losses between Milner Dam and the Project shall be measured by NSCC and only net amounts delivered. The conveyance losses in NSCC's canal system are estimated to be about 30% between Milner Dam and the location of the Project. Nothing in the Agreement shall be construed as other than NSCC's consent to divert SSC's water into NSCC's system.

E. SSC will be required to order water deliveries two (2) weeks in advance of water delivery to the site to allow NSCC to ramp their diversion rates. SSC will order water in the same manner as shareholders of the NSCC.

F. Not later than the beginning of the irrigation season the Project Managers for SSC and the NSCC shall meet to coordinate conveyance of water to the Project. The IWRB will provide the NSCC with emergency contact numbers. Additional coordination shall occur as deemed necessary by the Project Managers and this contract.

4. TERM

The term of this agreement shall be for the 2009 irrigation season only, as determined by NSCC in its sole discretion. Any extension of this Agreement must be in writing by both parties.

5. COMPENSATION AND INVOICES

SSC shall pay the NSCC \$8.00 per acre-foot measured at Milner Dam as the conveyance cost for NSCC to divert and deliver SSC's water to the Project. SSC shall pay NSCC 50% of the costs of the water to be conveyed on or before May 1, 2009. SSC shall pay NSCC the remaining 50% of the costs on or before October 31, 2009.

6. WAIVER.

SSC expressly and knowingly waives any rights or claims under Article 15, Section 4 of the Idaho Constitution and Idaho Code Section 42-914 to compel NSCC to continue to divert water into NSCC's system after the termination of this Agreement. SSC represents that it has knowledge of the existence of Article 15, Section 4 of the Idaho Constitution and Idaho Code Section 42-914, understands and agrees with the interpretation herein stated, and further understands that the waiver contained in this paragraphs is a condition precedent to NSCC's execution of the Agreement.

7. INDEMNIFICATION / HOLD HARMLESS

SSC agrees to indemnify and hold NSCC, its officers, directors and employees harmless from any claim or claims of any third party claiming injury or damage by reason of diversion and conveyance, or non-delivery of SSC's water pursuant to this Agreement, including attorneys' fees. SSC, as the lessees of the water conveyed, shall be responsible for providing water that complies with all applicable water quality standards and requirements for all water diverted into NSCC's system and to further indemnify NSCC for any costs, penalties, fees or other charges, including attorneys' fees, incurred by or assessed against NSCC by reason of SSC's water, or the diversion of same, to meet or comply with any and all applicable federal, state, or local laws, rules or regulations.

8. AGREEMENT PREPARATION COSTS.

SSC agrees to pay to NSCC actual legal fees incurred by NSCC for the preparation of this Agreement, not to exceed \$2,000.00.

9. ATTORNEYS FEES.

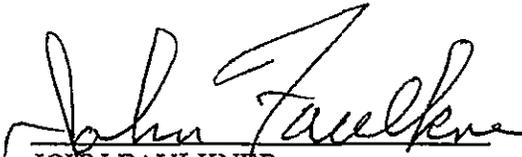
Should any dispute or disagreement as to the terms or conditions of this Agreement arise, the prevailing party shall be entitled to recover reasonable attorney fees and costs incurred in defending or pursuant their respective legal rights.

10. TERMINATION

NSCC may terminate this Agreement if water delivery costs are delinquent for 60 days after billing or for violation of any other provision of this Agreement. NSCC may further terminate this Agreement in the event the Project site is inoperable, if it threatens NSCC's deliveries to its shareholders, or if it poses a risk to NSCC's canal system in any way during the 2009 irrigation season.

IN WITNESS WHEREOF, the parties have executed this agreement on the date following their respective signatures.

SAWTOOH SHEEP CO.



JOHN FAULKNER

31 March 09
Date

**NORTH SIDE CANAL
COMPANY, LTD.**

921 North Lincoln
Jerome, Idaho 83338



TED DIEHL, Manager

March 30, 2009
Date

Your correct. IGWA did sublease to Faulkner earlier this year. I am pretty sure that IGWA paid those fees and it should be refunded to IGWA. Before you send a check, let me double-check with our Comptroller Andrea Buckalew and one of us will get back to you Monday.

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chtd.
201 E. Center Street
P. O. Box 1391
Pocatello, ID 83204
(208) 232-6101 Ext. 340
(208) 232-6109 Facsimile
rcb@racinelaw.net

From: Murphy, Wendy [mailto:Wendy.Murphy@idwr.idaho.gov]
Sent: Friday, July 10, 2009 8:32 AM
To: Randy Budge
Cc: Swank, Lyle; Olenichak, Tony
Subject: IGWA Leases

Randy,

Thank you for your 2009 Rental Pool Private Leases and Fees.

Earlier in the year I received a check from Faulkner Land and Livestock for \$1800. It is my understanding, through Tony Olenichak, this was suppose to be a sublease from IGWA to Faulkner. If this is correct, it appears that IGWA paid all the appropriate Rental Pool fees with the lease sent on June 29th and that Faulkner's payment to the Rental Pool is an overpayment. If my understanding is correct should a refund be issued to IGWA or Faulkner?

Thanks for the help

Wendy

7/22/2009

Murphy, Wendy

From: Randy Budge [rcb@racinelaw.net]
Sent: Wednesday, July 22, 2009 12:01 AM
To: Murphy, Wendy
Cc: Andrea Buckalew; Randy Budge
Subject: RE: IGWA Leases

The refund should come to IGWA. Thanks!

Randall C. Budge
 Racine, Olson, Nye, Budge & Bailey, Chtd.
 201 E. Center Street
 P. O. Box 1391
 Pocatello, ID 83204
 (208) 232-6101 Ext. 340
 (208) 232-6109 Facsimile
 rcb@racinelaw.net

From: Randy Budge
Sent: Monday, July 20, 2009 9:51 PM
To: Murphy, Wendy
Cc: Andrea Buckalew; Randy Budge
Subject: RE: IGWA Leases

Sorry. I was out of town today and will check with our Comptroller Andrea Buckalew and have her get back to you.

Randall C. Budge
 Racine, Olson, Nye, Budge & Bailey, Chtd.
 201 E. Center Street
 P. O. Box 1391
 Pocatello, ID 83204
 (208) 232-6101 Ext. 340
 (208) 232-6109 Facsimile
 rcb@racinelaw.net

7/30/2009
 Dated

Lyle Swank
 Signed - Lyle Swank, Watermaster

From: Murphy, Wendy [mailto:Wendy.Murphy@idwr.it]
Sent: Monday, July 20, 2009 4:06 PM
To: Randy Budge
Subject: RE: IGWA Leases

Just following up to this email. I have not heard anything further.

Wendy

From: Randy Budge [mailto:rcb@racinelaw.net]
Sent: Saturday, July 11, 2009 6:04 PM
To: Murphy, Wendy
Cc: Swank, Lyle; Olenichak, Tony; Randy Budge; Andrea Buckalew
Subject: RE: IGWA Leases

7/22/2009

Water District #1
Rental Pool Account
900 N. Skyline Dr, Ste A
Idaho Falls, ID 83402
208-525-7171

THE BANK OF COMMERCE
92-41/1241

1833

7/30/2009

© 2005 INTUIT INC. # 216 1-800-433-8310

PAY TO THE ORDER OF Idaho Ground Water Appropriators, Inc. \$ **1,800.00

One Thousand Eight Hundred and 00/100***** DOLLARS

Idaho Ground Water Appropriators, Inc.
PO Box 1391
Pocatello, ID 83204-1391

COPY NOT NEGOTIABLE

MEMO

⑈001833⑈ ⑆124100417⑆ 15 0503908 6⑈

Water District #1

1833

Idaho Ground Water Appropriators, Inc.

7/30/2009

Refund for Faulkner Lease

1,800.00

Bank of Commerce

1,800.00

Water District #1

1833

Idaho Ground Water Appropriators, Inc.

7/30/2009

Refund for Faulkner Lease

1,800.00

PAYMENT
RECORD

Bank of Commerce

1,800.00