

Original

WATER RIGHTS SETTLEMENT AGREEMENT

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This Settlement Agreement is made by and between Geraldine B. McNee, Donna Rae Vaughan, Kent Jensen on behalf of Iva Lou Jensen, Lonna Maynard on behalf of Helen Jensen, and David Hartvigsen on behalf of the Reed & Doris Hartvigsen Family Trust and Richard N. Hartvigsen.

RECITALS

- A. Each of the parties have water rights in Aspen Creek which are in the process of being adjudicated as part of the Snake River Basin Adjudication ("SRBA").
- B. The Idaho Department of Water Resources ("DWR") evaluated each of these water rights and the Director of DWR has made his recommendations concerning these water rights to the SRBA Court in what are known as "Director's Reports."
- C. The Director's Reports on Water Right Nos. 29-02177 (in the name of Geraldine B. McNee), 29-02178 (in the name of Donna Rae Vaughan) and 29-02187 (in the names of Leon (deceased) & Iva Lou Jensen and Vestal (deceased) & Helen Jensen) (collectively referred to as the "Downstream Water Rights") recognized that two historic springs were no longer active diversion points and therefore listed Aspen Creek as the only source of water for these rights but failed to make any corresponding adjustments in the quantities of water under each water right.
- D. The Reed & Doris Hartvigsen Family Trust and Richard N. Hartvigsen filed objections to the Director's Reports on these water rights on the basis that an adjustment should be made to the quantity of water which reflects the amount of water contributed by the two springs.
- E. The parties have now agreed to settle this matter based on a negotiated compromise concerning the amount of water contributed that should be allocated to the springs. This compromise also applies, by the terms of this Agreement, to one of the Hartvigsens' water rights (i.e., No. 29-02174) which was similarly based in part on water from these two springs.

THEREFORE, in consideration of the terms and agreements set forth below, which are acknowledged to be adequate consideration, the parties hereby mutually agree as follows:

1. The parties agree that the historic allocation of water between the springs and Aspen Creek listed too large of a proportion of water as coming from the springs. The parties therefore agree to reduce the amount diverted from the springs by two-thirds. Based on the calculations circulated between the parties, the following amounts are agreed upon by the parties as the amount of water historically diverted from the two springs for the water rights listed:

29-02174	0.04 cfs	29-02177	0.11 cfs
29-02178	0.10 cfs	29-02187	0.11 cfs

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2. The parties therefore stipulate and agree that the quantity of water set forth in Paragraph 1 above be deducted from the quantities of water recommended by the Director of DWR for each water right, leaving the following quantities which may be diverted from Aspen Creek under the Downstream Water Rights:

29-02177 - 0.39 cfs
 29-02178 0.57 cfs
 29-02187 0.39 cfs

3. The Hartvigsens' Water Right No. 29-02174 has already been decreed in the amount of 0.56 cfs. However, they hereby contractually agree, pursuant to the terms of this Agreement, to reduce the quantity of water diverted under this water right by the amount set forth in Paragraph 1 above, leaving the following quantity which may be diverted under this right from Aspen Creek:

29-02174 0.52 cfs

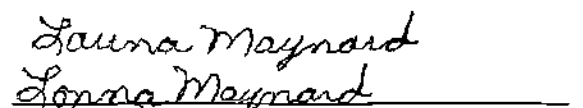
4. The parties agree to execute the appropriate Standard Form 5 for each of the Downstream Water Rights prepared by DWR in accordance with the terms of this Agreement.
5. This Agreement is contingent upon a Standard Form 5, a Special Master's Report and Recommendation, and a Partial Decree, each being duly signed, filed, and/or issued and each being consistent with the terms of this Agreement.
6. The parties agree to each bear their own attorneys fees.
7. The terms of this Agreement are intended solely for the benefit of the parties signing this Agreement, and their respective successors and assigns, and no third-party beneficiary rights are to be created hereby.
9. This Agreement constitutes the entire agreement between the Parties with respect to the Downstream Water Rights and Water Right No. 29-02174.

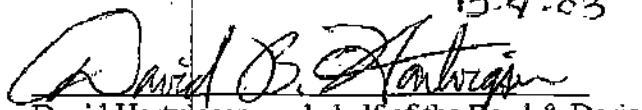
AGREED TO this 26th day of January, 2005

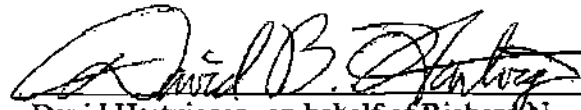

 Geraldine B. McNee


 Donna Rae Vaughan


 Kent Jensen, on behalf of Iva Lou Jensen
 under a Power of Attorney dated 1-18-05
12-4-03


 Lonna Maynard, on behalf of Helen Jensen
 under a Power of Attorney dated 11-11-03


 David Hartvigsen, on behalf of the Reed & Doris
 Hartvigsen Family Trust under a P.O.A. dated 4/20/04


 David Hartvigsen, on behalf of Richard N.
 Hartvigsen, under a P.O.A. dated 4/20/2004

State of Idaho }
 : ss.
 County of Bannock }

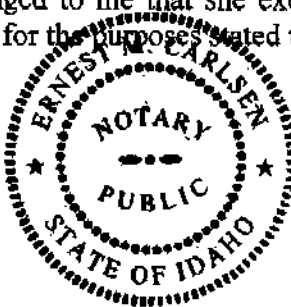
On this 25 day of January, 2005, **Geraldine B. McNee** personally appeared before me and, being duly sworn, acknowledged to me that she executed the foregoing Water Rights Settlement Agreement on her own behalf for the purposes stated therein.

BARBARA A. BYBEE
 Notary Public
 State of Idaho

Barbara A. Bybee
 Notary Public

State of Idaho }
 : ss.
 County of ~~Bannock~~ *Bannockville* }

On this 26 day of January, 2005, **Donna Rae Vaughan** personally appeared before me and, being duly sworn, acknowledged to me that she executed the foregoing Water Rights Settlement Agreement on her own behalf for the purposes stated therein.



Ernest M. Carlson
 Notary Public

State of Idaho }
 : ss.
 County of Bannock }

On this 18 day of January, 2005, **Kent Jensen** personally appeared before me and, being duly sworn, acknowledged to me that he executed the foregoing Water Rights Settlement Agreement for the purposes stated therein on behalf of Iva Lou Jensen under a Power of Attorney dated 12-4-03

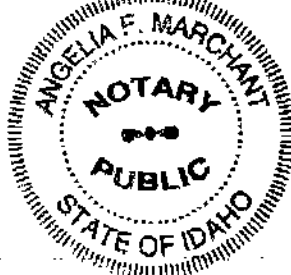
BARBARA A. BYBEE
 Notary Public
 State of Idaho

Barbara A. Bybee
 Notary Public

State of Idaho }
: ss.

County of Bannock }
BOONEVILLE

On this 21 day of January, 2005, ^{Laura}~~Lonna~~ Maynard personally appeared before me and, being duly sworn, acknowledged to me that she executed the foregoing Water Rights Settlement Agreement for the purposes stated therein on behalf of Helen Jensen under a Power of Attorney dated 11-11-03.



Angelia F. Marchant
Notary Public

State of Utah }
: ss.

County of Salt Lake }

On this 21 day of January, 2005, **David B. Hartvigsen** personally appeared before me and, being duly sworn, acknowledged to me that he executed the foregoing Water Rights Settlement Agreement for the purposes stated therein on behalf of the Reed & Doris Hartvigsen Family Trust and Richard N. Hartvigsen under separate Powers of Attorney both dated April 20, 2004.



David B. Hartvigsen
Notary Public

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David Hartvigsen
RECORDED AT REQUEST OF
FEE 12 DEPUTY BP

2005 JAN 31 AM 9 55
OFFICIAL RECORDING # 861
RECORDER
BANNOCK COUNTY IDAHO