

**PORTNEUF RIVER SETTLEMENT AGREEMENT
BASIN 29: PORTNEUF RIVER**

THIS PORTNEUF RIVER SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of February, 2005, by and between the STATE OF IDAHO, by and through the Director of the Department of Water Resources, PORTNEUF-MARSH VALLEY CANAL COMPANY, McCAMMON DITCH COMPANY, PORTNEUF IRRIGATING COMPANY, LAVA IRRIGATION COMPANY, DEMPSEY IRRIGATING COMPANY, TOPAZ IRRIGATION COMPANY, INDIAN FALLS PROPERTY ASSOCIATION/INDIAN FALLS WATER USERS ASSOCIATION, FISH CREEK IRRIGATING COMPANY (referred to collectively as the "Canal Companies"), and the individual parties whose names are set forth upon the signature page. The foregoing are sometimes referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS:

A. The water rights in the Portneuf River and its tributaries (Basin 29) are being adjudicated in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, Case No. 39576 in the Matter of the Snake River Basin Adjudication ("SRBA").

B. The parties have submitted water right claims in the Portneuf River Basin 29 in the pending SRBA, IDWR has submitted Water Right Recommendations with respect to each of said claims and certain parties have filed objections thereto.

C. The parties desire to enter into this Agreement for the purpose of fully compromising and settling all of their pending claims and objections in Portneuf River Basin 29.

AGREEMENT:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED among the parties as follows:

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**DEPARTMENT OF
WATER RESOURCES**

1. Extended Irrigation Season.

All extended irrigation season water right claims submitted by the parties as recommended by IDWR are approved with a period of use commencing September 16 and ending October 31 each year, and shall be partially decreed by the Court accordingly. After October 31 each year, all headgates will be closed and no water may be diverted, excepting only the diversion of quantities as may be necessary to supply stock water rights that are partially decreed.

2. Administration by Division.

For the purpose of administering and delivering all water rights in Portneuf River Basin 29, the Portneuf River will be divided at the Topaz Gauge and administered in two separate reaches. The reach above the Topaz Gauge will be known as the "Upper Division", and the reach below the Topaz Gauge will be known as the "Lower Division".

3. Minimum Stream Flow at Topaz Gauge.

A minimum stream flow will be established in the manner described below and maintained at the Topaz Gauge each year for purposes of administering and delivering water during the extended irrigation season. Above the minimum flow level at the Topaz Gauge, extended season water rights in the Upper Division may be diverted and delivered as decreed without restriction. Below the minimum flow level at Topaz, water rights in the Upper Division will be subject to administration and curtailment by the water master as necessary to maintain the established minimum flow at Topaz during the extended irrigation season.

The minimum stream flow level at Topaz will be established annually in the following manner. First, the average flow at the Topaz Gauge will be determined as of the end of the normal irrigation season, September 15, by averaging the 15th and preceding four days of flows, i.e., September 11-15, to establish the base flow each year. The base flow will be reduced by the historic depletion in flow at the Topaz Gauge station, 17 cfs, during the extended irrigation season from September 20 through October 31. Each year this 17 cfs depletion amount will be subtracted from the average 9/11-9/15 base flow at Topaz Gauge to establish the minimum flow at Topaz to be used for purposes of administration by the Watermaster during the extended season of use, provided that regulation shall be conducted on a five-year running average as described below.

The five-year running average regulation will be conducted as follows:

- (a) On September 15, determine the average of Topaz Gauge flows from 9/11 through

9/15. If flows at Topaz Gauge are affected by local rainfall events during this period, the Watermaster should remove such effects from the calculations in consultation with IDWR.

(b) Allow the late-season irrigation flows to equilibrate from 9/16 through 9/19.

(c) If on 9/20 the drop in flow (as compared with the 9/11-9/15 average) exceeds 17 cfs, then compute the average drops for the four previous years.

(d) If the average drop on this date for the previous four years equals or exceeds 17 cfs, then regulate irrigation diversions of upstream signatories, to reduce the flow reduction to not exceed 17 cfs at the Topaz Gauge.

(e) Repeat steps 3 and 4 for each day until late season irrigation is discontinued, no later than October 31.

(f) The minimum flow calculation will be "net" of Chesterfield Reservoir storage. Stated another way, the flows of Chesterfield Storage will be deleted from the flows at the Topaz Gauge, including consideration of time of travel and assuming negligible shrink.

4. Allocation Within Each Division.

Water available during the normal irrigation season from April 15 through September 15 shall be allocated and delivered to the parties in accordance with their water rights as partially decreed.

Water available in the Upper Division during the extended irrigation season will be allocated to those Parties holding extended season irrigation rights in the Upper Division in the manner in which they agree. Water available in the Lower Division for allocation during the extended irrigation season will be allocated among the Parties holding extended season irrigation rights in the Lower Division in the manner in which they agree. During the extended season, no water right holder above Topaz can make a call on any water right holder below the Topaz Gauge; and, no water right holder below the Topaz Gauge can make a call on any water right holder above the Topaz Gauge.

5. East and West Bob Tributaries.

Those Parties with water rights in East Bob Creek and West Bob Creek which are tributary to the Portneuf River immediately below the Topaz Gauge will have their extended irrigation season water rights administered and delivered as if they were in the Upper Division. Accordingly, these Parties' extended season rights may be subject to curtailment at the same times and in the same

percentages as water right holders in the Upper Division may be curtailed during the extended irrigation season.

6. Diversion Structure Modification.

Water right holders in the Upper Division may repair, maintain or replace diversion structures as needed; provided, however, that no modification or replacement may occur which increases the diversion capacity beyond the presently existing capacity of such structure.

7. Withdrawal of Objections.

All objections of all parties to all water right claims in Basin 29, including in-season and extended-season claims and objections are withdrawn.

8. Partial Decrees.

All of the Parties' in-season and extended season water rights shall be partially decreed by the Court as recommended by IDWR, with the following exceptions:

- 8.1 Portneuf-Marsh Valley Canal Company's Claim No. 29-4060 and 29-13319 shall be partially decreed as claimed and IDWR's Recommendations shall be amended to provide for the delivery of these rights without conveyance loss allowance to be consistent with Water Right Nos. 29-0052, 29-0053, 29-0589 and historic practices.

9. Capacity to Execute Agreement.

The Parties warrant and represent that the person executing this Agreement is empowered to do so on behalf of each company or entity and thereby binds such entity by signing this Agreement.

10. Waivers.

The failure to object to any breach of any term or condition in this Agreement shall not constitute a waiver and no failure to object shall be deemed a waiver of any prior to subsequent breach.

11. Entirety of Agreement.

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and oral agreements. No promise or inducement has been offered or made except as herein set forth, and this Agreement is executed without reliance on any statement or representation by any other Party or their agent.

12. Modification.

This Agreement may amended or modified only by a written agreement signed by each of the Parties to this Agreement.

13. Execution of Agreement in Parts.

Due to time constraints and practicalities, the Parties acknowledge it is not possible to have all parties sign the same copy of this Agreement at the same time. Therefore, the Parties agree that this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. Signatures.

In witness whereof, the Parties to this Agreement through their duly-authorized representatives have executed this Agreement and certify that they have read, understood and agree to the terms and conditions of this Agreement as set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

By _____
KARL DREHER, Director

PORTNEUF-MARSH VALLEY CANAL CO.

By _____
McCAMMON DITCH COMPANY

By _____
PORTNEUF IRRIGATING COMPANY

By _____

LAVA IRRIGATION COMPANY

By_____

DEMPSEY IRRIGATING COMPANY

By_____

TOPAZ IRRIGATION COMPANY

By_____

INDIAN FALLS PROPERTY ASSOCIATION/
INDIAN FALLS WATER USERS ASSOCIATION

By_____

FISH CREEK IRRIGATING COMPANY

By_____

INDIVIDUAL SIGNATORY PARTIES

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