

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between **FREMONT-MADISON IRRIGATION DISTRICT**, an Idaho Irrigation District of P.O. Box 15, St. Anthony, ID 83445 (hereinafter "FMID"), **NORTH FORK RESERVOIR COMPANY**, an Idaho irrigation company of P.O. Box 250, Rexburg, ID 83440 (hereinafter "NFRC") and **THE NATURE CONSERVANCY**, of 116 1st Ave. North, Hailey, ID 83333 (hereinafter "TNC"), to-wit:

Recitals:

Whereas, on or about April 2, 2019, TNC filed an application with the Idaho Department of Water Resources for transfer of four water rights, namely 21-178; 21-179; 21-11192 & 21-12906 as more fully described in that certain application No. 83216 which intends to transfer "a portion of existing irrigation water rights" to "be used to fill and maintain a 15-acre pond for wildlife habitat." in Fremont County, Idaho (hereinafter "Application"), and

Whereas, on or about the 15th day of July, 2019, FMID and NFRC each filed a protest against the Application based upon the claim that an approval of the transfer will impact or injury FMID & NFRC or its electors and shareholders, respectively. Specifically potential impact to Henry's Lake, Henry's Fork and/or Island Park Reservoir; and

Whereas, the parties desire, by this Memorandum of Understanding (hereinafter "Agreement") to settle FMID & NFRC's protest in a manner which fully mitigates the impacts and injury to FMID and NFRC's valid and priority water rights;

Now Therefore, it is agreed by and between the Parties as follows:

TNC shall modify its Application and Proposed Application to comply with the following terms:

1. TNC may construct a pond that is no larger than 15 acres in surface area with a maximum depth of 4 feet. The total designed volume of the pond shall not exceed 37.2 acre-feet.
2. TNC represents that evaporation from the pond has been calculated to be 17 acre-feet annually and seepage losses are calculated to be 8.3 acre-feet annually. Therefore, TNC represents the total pond requirements, including annual fill and maintenance, are calculated to be 62.5 acre-feet annually.
3. The pond will be filled and maintained using existing water right 21-12906, which currently is appurtenant to the property on which the pond will be built. Transfer 83216 proposes to change a portion of water right 21-12906 from irrigation to storage for the new pond.

4. Water right 21-12906 currently is appurtenant to 155 irrigated acres within the shared place of use of water rights 21-178, 21-179, and 21-11192. Converting the existing water right from the irrigated lands for use in filling and maintaining the 15-acre pond requires that 67.9 acres of irrigated acres be retired, leaving 87.1 acres of irrigated acres under the water right.
5. TNC shall only divert water right 21-12906 into the pond when it is in priority on the Henry's Fork. Right 21-12906 has a priority date of November 25, 1902.
6. Approval to Use Storage Water.
 - A. TNC owns storage water in Palisades Water Users, Inc. (Hereinafter PWUI). TNC agrees that if it intends to use its storage water to fill or maintain the 15-acre pond, it will seek approval from FMID and NFRC because the use of said PWUI storage water requires an exchange between the South Fork of the Snake river and the Henry's Fork of the Snake River. FMID and NFRC may deny TNC's use of PWUI water for the purpose of the pond if FMID and NFRC collectively agree and reasonably demonstrate to TNC that their water users will be impacted by the exchange, as in the case of lower than average storage levels due to less than average snow/rain accumulation or base flows.
 - B. TNC shall request approval by providing FMID and NFRC written notice of its intent to use a portion of its storage water to fill or maintain the pond. FMID and NFRC shall have 21 days following receipt of the request to notify TNC in writing of denial of said request. The failure of FMID and NFRC to respond in writing within the time stated will be deemed an approval of TNC's request to use its storage water to fill or maintain the pond. If FMID and NFRC deny TNC's request for approval to use its PWUI storage water for pond fill, TNC shall have the right to request that the parties convene a meeting to discuss the matter. TNC's request to convene a meeting shall be made in writing, in which case the parties agree to convene within 21 days following receipt of the request.
 - C. If at any time Water District 01 Rental Pool Procedures pertinent to the delivery of PWUI storage are amended or otherwise changed in a manner which makes this provision and process obsolete, unnecessary, or duplicative, the Parties agree to amend this Agreement, remove this provision, and conform to applicable Water District 01 Rental Pool Procedures
7. TNC agrees to install measuring devices on the pond inlet in order to measure and monitor the volume of water that will be delivered to the pond each year. No more than 62.5 acre-feet will be delivered to the pond under water right 21-12906. Any additional volume should be accounted as storage water, provided the use of storage water is approved in advance.

8. If any party defaults in performance of any of the terms of this Agreement, then the non-defaulting party(ies), without in any manner limiting its legal and equitable remedies, may provide the defaulting party(ies) a telephonic followed by immediate written notice (including email) requiring it to cause such default to be corrected immediately. Unless within 5 days after such notice to the defaulting party(ies), such default shall be corrected or arrangements for the correction shall be made, the non-defaulting party(ies) may immediately exercise its/their rights against the defaulting party(ies), including but not limited to injunctive relief, and the defaulting party(ies) shall be liable to the non-defaulting party(ies) for any related costs or expenses. The non-defaulting party(ies) may exercise any rights, claims, or demands which the defaulting party(ies) may have against third persons in connection with its default and the defaulting party(ies) does hereby assign, transfer, and set over unto the non-defaulting party(ies) all such rights, claims, and demands it may have to assist the non-defaulting party(ies) to cure a default by the defaulting party(ies).
9. No party may assign its rights or obligations within this Agreement to a third party without the express written consent of the other party(ies).
10. This Agreement shall inure to and be binding upon the parties hereto and their successors and assignees, including the successors and assigns of the lands upon which the transfer is authorized as its place of use. The Parties represent that each has the right, power and authority to enter into this Agreement without further contingent requirements than those set forth hereinabove.
11. This Agreement and related documents specifically contemplated by this Agreement constitute and contain the entire agreement of the parties and supersedes and merge all other prior understandings and/or agreements between the parties, if any, whether verbal or written.
12. This Agreement shall be governed by and interpreted under the laws of the State of Idaho.
13. Any reference in this Agreement to the time for the performance of obligations or elapsed time shall mean consecutive calendar or business days, months, or years, as applicable. Unless business days are explicitly stated, any reference to days shall be construed to mean calendar days.
14. Unless otherwise provided, any notice or written correspondence required by this Agreement shall be deemed properly given on the date it is delivered to an overnight courier service, or deposited with the United States Postal Service by registered or certified mail, postage prepaid, addressed to:

If to FMID: to the St. Anthony, Idaho address set forth above.

With copy to:
Rigby, Andrus & Rigby Law, PLLC
P.O. Box 250
Rexburg, ID 83440
Attn: Jerry Rigby

If to NFRC: to the Rexburg, Idaho address set forth above.

With copy to:
Rigby, Andrus & Rigby Law, PLLC
P.O. Box 250
Rexburg, ID 83440
Attn: Jerry Rigby

If to TNC: to the Hailey, Idaho office address set forth above.

With copy to:
The Nature Conservancy
559 East South Temple
SLC, UT 84102
Attn: Legal Department

IN WITNESS WHEREOF the parties executed this contract on the date following their respective signatures.

"FMID"



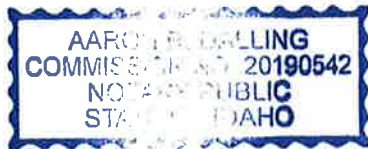
By: Jeff Raybould
Its: Chairman

8-5-20
Date

STATE OF IDAHO)
)ss.
County of Fremont)

On this 5 day of August, 2020 before me a notary public in and for said State, personally appeared Jeff Raybould known to be the Chairman of the irrigation district that executed the instrument or the person who executed this instrument on behalf of said irrigation district and acknowledged to me that such irrigation district 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 above written.



Aaron Dalling
Notary Public for Idaho
Residing at: Fremont
My commission expires: 3/14/25

"NFRC"

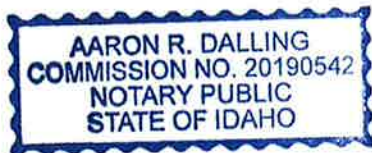
Mike Rasmussen
By: Mike Rasmussen
Its: President

July 17 2020
Date

STATE OF IDAHO)
)ss.
County of Fremont)

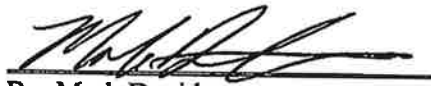
On this 17 day of July, 2020 before me a notary public in and for said State, personally appeared Mike Rasmussen known to be the President of the irrigation company that executed the instrument or the person who executed this instrument on behalf of said company and acknowledged to me that such company district 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 above written.



Aaron Dalling
Notary Public for Idaho
Residing at: Fremont
My commission expires: 3/14/25

"TNC"



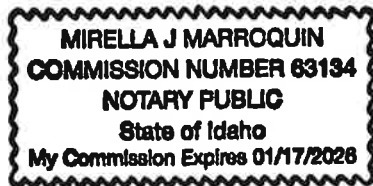
By: Mark Davidson
Its: Conservation Director

6/17/2020
Date

STATE OF IDAHO)
)ss.
County of Blaine)

On this 17 day of June, 2020 before me a notary public in and for said State, personally appeared Mark Davidson known to be the Conservation Director of the Nature Conservancy Idaho that executed the instrument or the person who executed this instrument on behalf of said entity and acknowledged to me that such entity 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 above written.



 Mirella J. Marroquin
Notary Public for Idaho
Residing at: Blaine
My commission expires: 01-17-2026