



To: John Simpson, Randall Budge, Travis Thompson and James Cefalo
From: Greg Sullivan
Cc: Lance Funk, Rob Harris
Date: July 2, 2019
Re: Lance Funk Permits 35-14240, 35-14241, 35-14242 and 35-14243

This document is being prepared to satisfy the stipulated agreement dated December 1, 2014 signed agreement between SWC, Idaho Power, IGWA and Lance Funk pertaining to the approval of water right permits 35-14240, 35-14241, 35-14242 and 35-14243. The stipulated agreement states that a written report by a qualified consultant will verify the actual acres irrigated during the current irrigation season by August 15 of each year.

Water right permit 35-14240 is irrigating 168.7 acres during the 2019 irrigation season. A site inspection was performed on June 25, 2019. The flowmeters for this water right were inspected and appear to be working correctly.

Water right permit 35-14241 is irrigating 369.1 acres during the 2019 irrigation season. A site inspection was performed on June 25, 2019. The flowmeters for this water right were inspected and appear to be working correctly.

Water right permit 35-14242 is irrigating 119.5 acres during the 2019 irrigation season. A site inspection was performed on June 25, 2019. The flowmeters for this water right were inspected and appear to be working correctly.

Water right permit 35-14243 is irrigating 659.0 acres during the 2019 irrigation season. A site inspection was performed on June 25, 2019. The flowmeters for this water right were inspected and appear to be working correctly.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into this 1st day of January, 2019 by and between the American Falls Aberdeen Area Groundwater District whose address is 505 North Oregon Trail Road, American Falls, Idaho 83211 ("District") and Lance Funk and Lisa Funk, husband and wife, whose address is 2960 Cedar Lane, American Falls, Idaho 83211 ("Funk"). The District and Funk are individually a "Party" and together the "Parties".

RECITALS:

- A. Power County, Idaho ("County") owns the following water rights ("Water Rights"), to wit:

Water Right No.	Priority Date	Quantity (cfs/ AFA)	Purpose of Use
34-14014	3/2 /1949	4.5 cfs/3215.5 AFA	Industrial and Mitigation by Non-Use
34- 14015	4/2 4 /1951	4.0 cfs / 2858.3 AFA	Industrial a n d Mitigation by Non-Use
Total:		8.5 cfs / 6,153.8 AFA	

- B. The County acquired the Water Rights from Magnolia Nitrogen Idaho, LLC, they were previously owned by FMC Corporation with the point of diversion and place of use at the FMC plant site.
- C. The District has leased the Water Rights from the County for the term commencing January 1, 2018 and ending December 31, 2019. Thereafter the lease automatically renews for successive one-year terms unless or until either Party gives not less than thirty (30) days written notice of termination.
- D. Funk desires to sub-lease a portion of the Water Rights from the District for the year 2019 pursuant to this Agreement.

AGREEMENT:

- I. **Water Right Lease.** Upon execution of this Agreement the District leases to Funk the right to use up to a maximum of 6,000 acre feet of the Water Rights to be utilized as part of Funk' s mitigation plan associated with four water right permits identified as IDWR Permit Nos. 35-14240, 35-14241, 35-142242, and 35-14243 ("Permits") owned by Funk. The Permits authorize the irrigation of 1,316.3 acres of property located in Power County, Idaho. The portion of the Water Rights leased will be used for mitigation of the Permits and not for the irrigation of any new or additional acreage.

- II. Funk shall be solely responsible at his expense to change the point of diversion and

place of use of the leased Water Rights as may be necessary as a part of his mitigation plan.

12. Upon termination of this lease Funk shall be responsible at his sole expense to change the point of diversion and place of use of the Water Rights back to the original location at the FMC plant site.
 2. **Term.** The term of this lease will commence January 1, 2019 and end December 31, 2019.
 3. **Consideration.** As consideration, Funk will provide the District with 6,000 acre feet of water recharge within the Snake River Basin Aquifer on or before April 3, 2018 and provide proof and documentation thereof. All other mitigation credits associated with non-use of the Water Rights shall belong solely to the District.
 4. **Administrative and Transfer Fees.** Funk will pay any administrative fees associated with the lease of the Water Rights. Funk will pay all fees associated with the change of the point of diversion and place of use of the Water Rights back to the original FMC site.
 5. **Use of Water Rights.** It is understood and agreed that the leased Water Rights will not be pumped by Funk and will be used for mitigation purposes only pursuant to Funk's mitigation plan for the Permits.
 6. **Conditions.** This Agreement is entered into conditional upon the following:
 61. The County's approval of the sub-lease of the Water Rights to Funk pursuant to the Agreement.
 62. The District's ability to enter into this Agreement for the purpose of leasing the Water Rights to Funk.
- In the event any of these conditions are not met, the District reserves the right to terminate this Agreement.
7. **Breach.** If either party defaults in the performance of its obligations under this Agreement, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect any or all of the following exclusive remedies:
 71. To terminate this Agreement.
 72. To seek specific performance of this Agreement.
 8. **Assignment.** This Agreement may not be assigned by the Funk without the expressed written consent of the District.
 9. **Negotiation and Mediation.** In the event of a substantial dispute between the Parties in connection with this Agreement, the Parties shall attempt in good faith to resolve such dispute.

If no resolution is reached through in formal negotiations, any complaining Party must give the other Party written notice that a dispute exists ("**Notice of Dispute**"). The Notice of Dispute shall include a statement of the Party's position. Within fifteen days of the delivery of a Notice of Dispute, the Parties shall endeavor to settle the dispute by mediation under the then-current CPR Mediation Procedure ("**CPR Mediation Rules**"). The Parties shall agree upon a mediator or, if they cannot agree upon a mediator within five days of commencement of the mediation procedure, they shall select a mediator pursuant to the CPR Mediation Rules. Expenses of mediation shall be divided equally between the Parties.

10. **Arbitration.** If Parties do not resolve any substantial dispute through negotiation and mediation, as set forth above, such dispute shall be settled by arbitration in American Falls, Idaho, by a single arbitrator mutually acceptable to the Parties. Once 60 days have passed since delivery of a Notice of Dispute, either Party may initiate arbitration. Arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1-16, and the arbitrator's award shall be final and binding on the Parties and shall also be non-appealable. Both Parties shall share equally the fees and expenses of the arbitrator. Arbitration will be governed by the CPR Rules for Non-Administered Arbitration ("**CPR Arbitration Rules**").

11. **Litigation.** Litigation of a dispute between the Parties in connection with any transaction, contract, or agreement arising from this Agreement is not allowed, except to 1) enforce a settlement agreement entered into by the Parties through mediation or 2) enforce or confirm an arbitrator's decision. If litigation ensues, jurisdiction and venue shall be in the District of the State of Idaho in Power County.

12. **Attorney Fees and Costs.** The prevailing Party shall be entitled to reasonable attorney fees and costs incurred during arbitration and litigation, including costs incurred to compel mediation and/or arbitration. Each Party shall bear their own attorney fees and costs incurred during negotiations and mediation.

13. **Choice of Law.**

13.1. **Governing Law, Jurisdiction, and Venue.** This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction, and agree that Power County is the proper venue.

13.2. **Exclusive Procedures.** The procedures specified in paragraph 9 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the mediation and arbitration procedures specified above are pending.

14. **Notices.** All notices given pursuant to this Lease must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving Party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing for certified mail and

American Falls Aberdeen Area Groundwater District

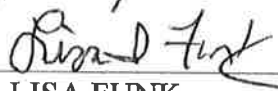
Dated: 4-17-19

By: 
NIC BEHREND, Chairman

Dated: 6-2-19


LANCE FUNK

Dated: 6-2-19


LISA FUNK

Cefalo, James

From: Greg Sullivan <greg.sullivan@brockwayeng.com>
Sent: Tuesday, July 02, 2019 3:12 PM
To: 'John Simpson'; 'Randy Budge'; Travis Thompson; Cefalo, James
Cc: 'Lance Funk'; Rob Harris
Subject: Lance Funk Permits Report
Attachments: AFAGWD Lease Agreement.pdf; July 2, 2019 Funk Permits Report.pdf

Gentlemen,

See the attached site visit report for 2019 and the lease agreement with American Falls Aberdeen Ground Water District. The lease agreement is providing mitigation water for water right permits 35-14240, 35-14241, 35-14242 and 35-14243.

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.