

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Microfilm No. 573428
At 10:30 Day May 20 19
O'Clock A.M.
ABBIE MACE
FREMONT CO RECORDER
Fee \$28 - Deputy
Recorded at Request of
Rigby, Francis & Rigby

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between NORTH FORK RESERVOIR COMPANY, an Idaho corporation, of P.O. Box 250, Rexburg, ID 83440 (hereinafter "NFRC") and FREMONT-MADISON IRRIGATION DISTRICT, an Idaho Irrigation District of P.O. Box 15, St. Anthony, ID 83445 (hereinafter "FMID") and Shovelback Holdings, LLC, an Idaho limited liability company with a mailing address of 1493 W. 5000 N., Rexburg, ID 83440 (hereinafter "Shovelback"), to-wit:

Recitals:

Whereas, Shovelback made an application for transfer as more fully described in that certain application No. 82525 which intends to transfer ground water appurtenant to 2.5 acres from Bingham County, Idaho to Fremont County, Idaho for the purpose of irrigating lawn and open space within what is known as the Redrock RV and Campground (hereinafter "Application"), and

Whereas, FMID filed a protest against the Application based upon NFRC's position that said transfer is an expansion of the original water rights, especially due to the extreme change in distance from the original point of diversion and thus will cause injury to NFRC and FMID's valid and decreed storage water rights; and

Whereas, Shovelback also intends to make an additional application for transfer as more fully described in that certain draft application attached hereto which intends to transfer ground water appurtenant to 3.5 acres from Bingham County, Idaho to Fremont County, Idaho also for the purpose of irrigating lawn and open space within what is known as the Redrock RV and Campground (hereinafter "Proposed Application"), and

Whereas, the parties desire to settle NFRC and FMID's protest in a manner which fully mitigates the impacts and injury to NFRC and FMID's valid water rights; and

Whereas, it is understood that IDWR may not add the terms of this Stipulation to the approved transfers to be granted to Shovelback (hereinafter "Licenses") except perhaps to refer to this Stipulation if it is recorded in Fremont County, where the changed diversion(s) are to take place;

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

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

1. Shovelback agrees that it will require the approved transfers to refer to this Stipulation, which shall be recorded in the official records of Fremont County,

Idaho and that its terms and conditions shall apply to the use and diversion of any permit or eventual approved transfer resulting from the Application or Proposed Application.

2. Prior to any diversion to be made from either of the approved transfers, in addition to all other conditions required by IDWR, full mitigation must be made to NFRC and FMID as hereinafter determined:

- A. Mitigation shall be no less than the current E.T. data used in and around the area of proposed place of use or 1.5 acre feet per acre (1.5 af/ac), which mitigation shall be provided directly to NFRC and FMID for each acre watered under the Licenses.

- B. In order to account for changes in weather patterns over time, no less than each five year period from the grant of the transfers and resulting approved transfers by IDWR, an adjustment in af/ac shall occur which equals any adjustment made to the local E.T. af/ac by IDWR.

- C. Because Shovelback has not yet fully developed all of the acres it eventually intends to water under these transfers, it is agreed that Shovelback shall initially be required to mitigate for 3 acres or 4.5 acre feet for each year following the transfers and resulting approved transfers. Once Shovelback develops more than half of its proposed six (6) acre campground, then Shovelback shall be required to mitigate for all 6 acres which will result in 9 acre feet of water under the present E.T.

3. The source of the Mitigation shall be by whatever legal means available to Shovelback providing it results in what is deemed "wet water" to NFRC and FMID's storage rights. However, unless otherwise provided by Shovelback, it shall provided mitigation to NFRC and FMID as follows:

- A. Unless Shovelback obtains an additional source, Shovelback shall be granted the right to "rent" the mitigation required under this Agreement from NFRC and FMID under the following terms:

- i. The price per acre foot of water rented from NFRC and FMID by Shovelback shall be 2.25 times the current year's Water District 01 water supply procedures rental rate. Payment shall be made out to both NFRC and FMID jointly.

- ii. The minimum rental rate shall be \$45.00 per acre foot rented.

- iii. Payment must be made directly to NFRC and FMID on or before April 1st of each year mitigation is required by check naming both NFRC and FMID.

- iv. Any division of said rental rate payment between NFRC and

FMID shall be determined by NFRC and FMID following payment.

B. The above rental terms shall apply for a period of five (5) years from the date the Licenses are granted. After which, the rental terms shall be renegotiated or terminated by either party with the recognition that the 9 acre feet of mitigation shall continue to be required of Shovelback in order to divert any water under the approved transfers.

4. Upon all other Protestant's withdrawal of their protests/objections to Shovelback's Application and Proposed Application, and the recording of this Stipulation which shall be conditioned in any permit and approved transfer based upon the Application and/or Proposed Applications, NFRC and FMID shall withdraw its protest/objection.
5. Should Shovelback thereafter divert without providing the mitigation required herein, or otherwise fail to comply with the terms and limitation of acres required by this Stipulation, Shovelback shall be in default of this Stipulation and NFRC and FMID shall have the right to cause Shovelback's diversion to be curtailed immediately, by whatever legal means possible, including, but not limited to locking Shovelbacks' pumps either by IDWR or by NFRC and FMID's water master.
6. If either party defaults in performance of any of the terms of this Agreement, then the non-defaulting party, without in any manner limiting its legal and equitable remedies, may provide the defaulting party 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, such default shall be corrected or arrangements for the correction shall be made, the non-defaulting party may immediately exercise its rights against the defaulting party, including but not limited to injunctive relief, and the defaulting party shall be liable to the non-defaulting party for any related costs or expenses. The non-defaulting party may exercise any rights, claims, or demands which the defaulting party may have against third persons in connection with its default and the defaulting party does hereby assign, transfer, and set over unto the non-defaulting party all such rights, claims, and demands it may have to assist the non-defaulting party to cure a default by the defaulting party.
7. Neither party may assign its rights or obligations within this Agreement to a third party without the express written consent of the other party.
8. 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.

9. 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.
10. This Agreement shall be governed by and interpreted under the laws of the State of Idaho.

Dated this 23rd day of April, 2019.

“NFRC”



By: Mike Rasmussen
Its: President

“Shovelback”



By: Trever Einerson
Its: Manager

“FMID”

By: Jeff Raybould
Its: Chairman

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.

9. 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.
10. This Agreement shall be governed by and interpreted under the laws of the State of Idaho.

Dated this 22nd day of April, 2019.

"NFRC"

"Shovelback"

By: Mike Rasmussen
Its: President

By: Trever Einerson
Its: Manager

"FMID"

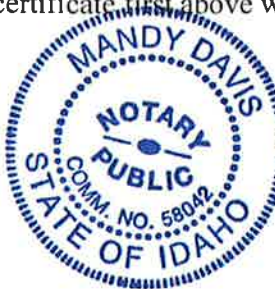


By: Jeff Raybould
Its: Chairman

STATE OF IDAHO)
)ss.
 County of Madison)

On this 22nd day of April, 2019 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.



Mandy Davis
 Notary Public for Idaho
 Residing at: ST Anthony
 My commission expires: 6/24/23

STATE OF IDAHO)
)ss.
 County of Madison)

On this 15th day of April, in the year 2019, before me, the undersigned, a Notary Public, personally appeared, **Trever Einerson**, known or identified to me, to be the manager or a member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.



Mandy Davis
 Notary Public for Idaho
 Residing at: ST Anthony
 My Commission Expires: 6/24/23

Corporate Acknowledgment

STATE OF IDAHO)
 ss.
County of Madison)

On this 18th day of April, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **Mike Rasmussen**, known to me to be the President, of **North Fork Reservoir Company, Inc.**, an Idaho Corporation, the corporation that executed the foregoing document, and acknowledged to me that such corporation executed the same.



Mandy Davis
Notary Public for Idaho
Residing at: St. Anthony
My Commission expires: 6/24/23