

Keen, Shelley

From: Keen, Shelley
Sent: Tuesday, January 02, 2018 8:49 AM
To: 'dbalsecr@gmail.com'
Subject: RE: Power County Water Rights: 34-14014, 34-14015
Attachments: 20171219133626739.pdf; Preliminary Order Rescinding Transfer.pdf

Ms. Guerrero,

Per your request, IDWR will add the attached document to the files for Water Rights 29-2284 and 29-2301.

Please note that the water right numbers listed on the document, 34-14014 and 34-14015, indicate the wrong administrative basin. They should be 35-14014 and 35-14015. However, the transfer changing Water Rights 29-2284 and 29-2301 to 35-14014 and 35-14015 was not accomplished. I've attached a copy of the order rescinding the transfer and renumbering the rights back to 29-2284 and 29-2301.

Please call or email if you have questions.

Sincerely,

Shelley Keen
Water Rights Section Manager
Idaho Department of Water Resources
Shelley.Keen@idwr.idaho.gov
208-287-4947

-----Original Message-----

From: dbalsecr@gmail.com [mailto:dbalsecr@gmail.com]
Sent: Tuesday, December 19, 2017 1:39 PM
To: Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov>
Cc: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>; Condon, Mary <Mary.Condon@idwr.idaho.gov>; Funk Ron <rjffarms@gmail.com>; Anderson Delane <anderson.delane@gmail.com>; Lasley Bill <blasley@co.power.id.us>; Sprague Sharee <ssprague@co.power.id.us>; balfour doug <dbal0680@gmail.com>
Subject: Power County Water Rights: 34-14014, 34-14015

PLEASE SEE ATTACHED.....

Thank you,
Elizabeth Guerrero
Secretary to Douglas J. Balfour
(208) 233-0680
(208) 233-0319 (fax)

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Douglas J. Balfour, Chartered

230 W. Lewis

P.O. Box 490

Pocatello, ID 83204-0490

Phone: 208-233-0680

Fax: 208-233-0319

Email: dbal0680@gmail.com

December 19, 2017

Matt Weaver
Deputy Director
Idaho Department of Water Resources
Sent Via Email

RE: Power County Water Rights: 34-14014, 34-14015

Dear Matt:

In an abundance of caution, I am sending you a copy of the lease contract that Power County has entered into with the American Falls-Aberdeen Area Groundwater District for their water rights, 34-14014 and 34-14015.

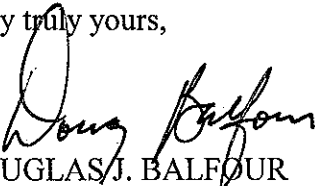
You will see that Power County has leased those rights to Groundwater District for the crop years 2018 and 2019. This lease will continue unless terminated.

I am sending this to you, for your records, so that the IDWR is aware of the beneficial use of these water rights, so there is no question about beginning a forfeiture.

The water rights will be used by the Groundwater District for mitigation.

If you need any other information or further documentation, please do not hesitate to contact me.

Very truly yours,


DOUGLAS J. BALFOUR

DJB/eg
c Remington Buyer
Mary Condon

Instrument # 210624

POWER COUNTY, IDAHO

3-20-2017 03:59:05 PM No. of Pages: 6

Recorded for : POWER COUNTY

SHARIE SPRAGUE

Ex-Officio Recorder Deputy Fee: 0.00

Sharie Sprague

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into this 20th day of March, 2017 by and between Power County Idaho through its Board of County Commissioners, whose address is 543 Bannock Avenue, American Falls, Idaho 83211 ("County") and the American Falls Aberdeen Area Groundwater District whose address is 505 N. Oregon Trail Road, American Falls, Idaho 83211 ("District").

RECITALS:

A. The County is in the process of acquiring ownership of the following water rights currently owned by Magnolia Nitrogen Idaho, LLC and previously owned by FMC Corporation ("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	4/24/1951	4.0 cfs / 2858.3 AFA	Industrial and Mitigation by Non-Use
Total:		8.5 cfs / 6,153.8 AFA	

C. The County anticipates that once it has acquired ownership of the Water Rights from Magnolia Nitrogen Idaho, LLC, the point of diversion and place of use will be transferred back to the FMC site, with the full 6153.8 acre feet available to lease.

D. The District desires to lease the Water Rights for the years 2018 and 2019.

AGREEMENT:

1. **Option.** Upon execution of this Agreement the District agrees to pay the County \$50,000.00 dollars, for the right to lease the Water Rights in for the years 2018 and 2019 upon the terms set forth below.
2. **Term.** The initial term of this lease will commence January 1, 2018 and end December 31, 2019. Thereafter, the lease shall automatically renew for successive one-year terms unless or until either party gives not less than thirty (30) days written notice to terminate this Agreement at the end of the initial term or any annual renewal term.
 - 2.1. To the extent that all or any portion of the water rights are needed by the County for future industrial development, the County reserves the right to terminate this Agreement in full or in part at the end of any year upon providing not less than twelve (12) month written notice to the District.

- 2.2. If the County decides to sell or lease the Water Rights after the termination of this Agreement, the District shall have a right of first refusal and option to purchase or lease the Water Rights upon the terms offered by any third party. This right of first refusal and option must be exercised by the District within thirty (30) days of receiving written notice and the terms of any third party offer to purchase or lease which the County is willing to accept. This option does not apply to any Water Rights withdrawn pursuant to paragraph 2.1.
3. **Payment of Rent.** The District will pay rent to the County for the leased Water Rights on or before March 15 of each year the lease is in effect as follows:
 - 3.1. \$225,000 for 2018.
 - 3.2. \$250,000 for 2019 and each year thereafter until the Agreement is terminated.
 - 3.3. The rent amounts are based upon the full amount of the Water Rights being available to the District. In the event that the full quantity of water available is reduced by reason of the County's inability to change the point of diversion and place of use back to the FMC site, by reason of a termination by the County pursuant to paragraph 2.1 or for any other reasons, the rental amounts will be adjusted and reduced on a pro-rata basis..
4. **Administrative and Transfer Fees.** The District will pay any administrative fees associated with the lease of the Water Rights. The County 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 Water Rights will not be pumped by the District and will be used for mitigation purposes pursuant to the mitigation plan of the Idaho Ground Water Appropriators, Inc. ("IGWA") approved under the Conjunctive Management Rules of the Idaho Department of Water Resources by *Final Order Approving Stipulated Mitigation Plan* entered by the Director on May 2, 2016 approving the Settlement Agreement between the Surface Water Coalition and IGWA as a CMR43 Mitigation Plan. Accordingly, the Water Rights shall not be subject to forfeiture under Idaho Code § 42-223(10)
6. **Conditions.** This Agreement is entered into conditional upon the following:
 - 6.1. The County acquiring ownership of the Water Rights.
 - 6.2. The County's ability to enter into this Agreement for the purpose of leasing the water rights to the District.
 - 6.3. The District's ability to lease the Water Rights and receive credit therefore pursuant to the *Final Order Approving Stipulated Mitigation Plan* entered by the Director on May 2, 2016 approving the Settlement Agreement between the Surface Water Coalition and IGWA as a CMR43 Mitigation Plan.

In the event any of these condition are not met, the District reserves the right to terminate this Agreement and have any option or lease payments made to the County refunded.

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:
 - 7.1. To terminate this Agreement.
 - 7.2. To seek specific performance of this Agreement.
8. **Assignment.** This Agreement may not be assigned by the District without the expressed written consent of the County, but the water leased under this Agreement may be assigned or otherwise made available to the District, to its members or any other entity for mitigation purposes.
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 informal 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 this section 11 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 regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:

County

Power County Idaho Board of
County Commissioners
543 Bannock Ave.
American Falls, Id 83211

The District

American Falls Aberdeen Area Groundwater District
505 N. Oregon Trail Rd.
American Falls, Id 83211

County's Representative

Douglas J. Balfour
Douglas J. Balfour Chtd.
P.O. Box 490
Pocatello, Id 83204-0490

District's Representative

Randall C. Budge
Racine Olson Nye & Budge, Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391

15. Miscellaneous Provisions.

15.1. This Agreement supersedes any and all other written or verbal agreement between the parties hereto regarding the Water Rights. Neither the District nor the County shall be bound by any understanding, agreement, promise representation or stipulation, express or implied, not specifically contained herein.

15.2. The parties hereby agree that they shall sign such other and further documents as

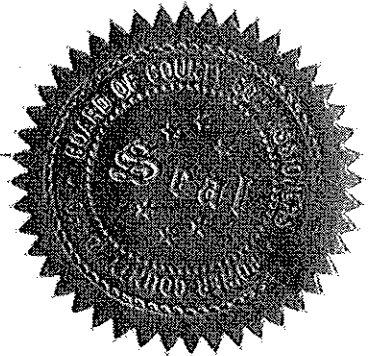
may be required by the Idaho Department of Water Resources or others to carry into effect the terms and conditions of this Agreement.

- 15.3. The validity of enforce ability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.
- 15.4. The Agreement may be executed in any number of counterparts for all the convenience of the parties, all of which, when taken together and after execution by all parties, hereto, shall constitute one and the same Agreement.
- 15.5. The Agreement is for the benefit only of the parties hereto and shall inure to the benefits of and bind their respective heirs, agents, personal representatives, successors and assigns.
- 15.6. This Agreement will not be recorded. Instead, the parties will execute a Memorandum of Agreement for recording in the Power County Recorder's Office to give notice of this Agreement.
- 15.7. The District shall take all and any actions necessary, during the term of this lease, to fully protect and maintain the Water Rights before the Idaho Department of Water Resources, or any other entity or challenge.

Power County Board of Commissioners

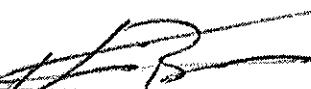
Dated: 20 MAR 2017

By: *Ron L. L.*
Chairman



American Falls Aberdeen Area Groundwater District

Dated: 3-17-17

By: 
Chairman