

Skaggs, Pam

From: Greg Sullivan [greg.sullivan@brockwayeng.com]
Sent: Tuesday, March 13, 2012 4:45 PM
To: Skaggs, Pam
Subject: MVCP Transport Agreement
Attachments: 600DOC009.PDF

Pam,

Attached is the transport agreement between MVCP and the Burley Irrigation District.

Greg Sullivan
2016 N. Washington St. Suite 4
Twin Falls, Id 83301
208-736-8543

WATER TRANSPORT AGREEMENT

THIS AGREEMENT, made and entered into this 13th day of March, 2012, by and between MOO VILW COW PALACE of Cassia County 574 E 550 S, Burley, Idaho, hereinafter referred to as "Users" and Burley Irrigation District, an irrigation district duly organized under the laws of the State of Idaho, with its principal office in Burley, County of Cassia, State of Idaho, hereinafter referred to as "District."

W I T N E S S E T H :

WHEREAS, Landowner is the owner of certain real property located outside the boundaries of the District, described as follows, to-wit:

TOWNSHIP	RANGE	SECTION	1/4 OF 1/4	LOT	ACRES
11 S	23 E	26	W $\frac{1}{4}$ SE $\frac{1}{4}$ & SE $\frac{1}{4}$ SE $\frac{1}{4}$		55
11 S	23 E	35	NE $\frac{1}{4}$		160
11 S	24 E	28	SW $\frac{1}{4}$ & SE $\frac{1}{4}$		320
11 S	24 E	30	SE $\frac{1}{4}$ & W $\frac{1}{4}$ NE $\frac{1}{4}$		237
11 S	24 E	32	E $\frac{1}{4}$ SW $\frac{1}{4}$ & S $\frac{1}{4}$ SE $\frac{1}{4}$		160
11 S	23 E	32			640

Containing 1572 irrigable acres: and,

Whereas, landowner has certain groundwater rights appurtenant to the above-described real property, which rights are described as follows, to wit:

License No. : 45-02111A, 45-02125, 45-02312, 45-2383

Date of Priority: 1/8/73, 1/31/73, 2/11/77, 6/14/51

Rate of Diversion: 11.02 cfs @ 2520 AF

Point of Diversion: SEE ATTACHED

Acres irrigable under said right: 1270; and

WHEREAS, Landowner desires the District to transport water diverted under the above-described right(s) through an existing canal of District for use on the lands of Landowner above-described: and,

WHEREAS, the District has, from time to time, additional capacity within said canal that could be used for the delivery of water to landowners outside of the District; and,

WHEREAS, User desires the District to transport not more than 1100 gallons per minute of groundwater diverted by Users through the existing 1 Canal(s) of the District to a point on the 1 Canal of the District where said water will be diverted

to Users water distribution system, the point of diversion into and from said canal being described as follows:

INTO: the J canal at the NE4 NE4 SE4 of Sec. 30 T11 Rq 24

FROM: the J canal at the SE4 SE4 of Sec. 26 T12 Rq 23

and,

WHEREAS, DISTRICT is the owner of the J Canal which is a part of the facilities of the District for the transmission of decreed and storage waters for use on lands within the boundaries of said District and is willing to transport water for Users under the terms herein contained.

NOW, THEREFORE, it is mutually understood and agreed as follows:

1. For and in consideration of the covenants herein contained, Burley Irrigation District does hereby agree to transport water diverted by Users into the District's Canal from the point where said water is diverted into the J Canal to the point where said water will be diverted from the J Canal to Users, less two percent 2% transportation loss, in an amount not greater than 1100 gallons per minute. Transportation loss may be adjusted from time to time during the term of this agreement when it is determined by the district that the actual loss is greater or less than herein provided.

2. Users are not to exceed the rate of diversion provided in Landowner's water rights hereinabove described and actually diverted into the District's canal, less losses for seepage and evaporation as hereinafter provided, for the irrigation of Landowner's lands above described.

3. Users shall construct and maintain at his sole cost and expense, all pipelines, pumps, headgates and other structures or other improvements necessary to divert water into the District's Canal and to redivert said water from the District's Canal, less transportation loss as hereinafter provided, and District assumes no responsibilities of whatsoever kind or nature for said water after it leaves the District's canal at the point of delivery above-described to Users. Users further hereby agrees to hold District harmless from all claims of whatsoever kind or nature arising from the transportation and use of said water by Users from the point of delivery from the District's canal.

4. The right of Users under the terms of this agreement is subordinated to all existing and prior right for the transportation of water of the District and Minidoka Irrigation District in and through said Canals, and the right granted herein is granted only so long as there is sufficient additional capacity in the District's Canal beyond the needs and uses of the District and Minidoka Irrigation District to transport said water of Users. The determination of the availability of additional capacity in the Canal shall be the sole determination of District. In the event there is no additional capacity in the Canal for the transportation of said water under this agreement, Users agrees to construct at his sole expense any additional carrying capacity in the Canal, or to immediately cease diverting water into the Canal for transportation under this agreement. In the event Users decides to forego the use of the Canal when there is no additional capacity, this Agreement may be terminate at the request of ether District or Users.

5. Users shall be required to provide and maintain adequate measuring devices to measure the total quantity of water diverted into the District's Canal and the water diverted from the Canal by Users. Under no condition shall Users be entitled to withdraw or divert from the Canal under this agreement, a quantity of water in excess of the quantity of water diverted into the Canal by Users under the terms hereof, less transportation losses. No water may be diverted into the Canal by Users or diverted from the Canal by Users under this agreement without first providing to the District twenty-four (24) hours notice as to the diversion into the Canal and the amount to be diverted therein and the amount to be diverted from the Canal, and the diversion rate thereof.

6. In the event Users shall, upon notice, divert more water into the Canal, less transportation loss, than Users diverts from the Canal, the District will not grant to Users credit for such excess water.

7. Water Transportation for Landowner by the District under this agreement shall be limited to those periods of time in which the District is delivering water through its facilities for the irrigation of lands within the District.

8. For and in consideration of the transportation of water by the District, User does hereby agree to pay to the District, for the transportation of said water, a minimum monthly service fee of One Hundred Dollars (\$100.00) per month and the sum of \$1.00 for each acre-foot diverted from the Canal by Users. Said acre-foot charge shall be computed monthly, and Users shall pay to the District the transportation fee due within ten (10) days after

receipt from the District showing the amount diverted by Users in the previous month under this Transportation Agreement.

9. No water rights, transmission rights, or ditch rights in the facilities of District shall accrue to Users by reason of this Agreement, the rights of Users being fully contained herein, and User does hereby waive any other claims he may have.

10. This Agreement shall be for a term of five (5) irrigation season, beginning on date hereof, and shall remain in full force and effect until December 31 2016, unless terminated as hereinafter provided.

11. Failure to pay all charges agreed to be paid by Users when due shall be considered a material breach of this Agreement. Failure of Users to accurately measure the water diverted into the District's Canal for transportation and the water diverted from the Canal by Users shall constitute a material breach of this Agreement. Any material breach of this Agreement shall constitute grounds for the District to terminate this Agreement upon mailing to Users at his address hereinabove provided, a ten (10) day notice of said breach and the intent of the District to terminate the agreement.

12. In the event the District is required to file suit to collect any past due charges under this agreement or to remedy any other breach of this agreement, Users hereby agrees to pay all costs and attorneys fees incurred by the District in the enforcement of this agreement.

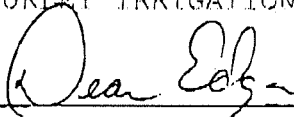
13. It is mutually understood and agreed by the parties hereto that this Agreement is not assignable, and no transfer of this Agreement shall be recognized by the parties hereto.

14. This Agreement constitutes the full agreement of parties hereto and no amendments may be made hereto unless in writing, duly signed by the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hand the day and year first above written.

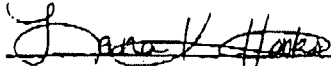
BURLEY IRRIGATION DISTRICT

By: _____



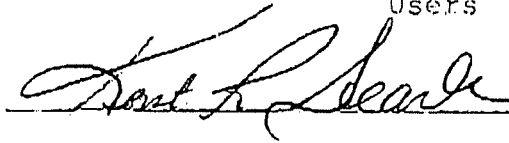
President

ATTEST;



Secretary

Users



Users

POINT OF DIVERSION

NW ~~X~~ SW ~~X~~	Sec 28	T11S	R24E
SW ~~X~~ SW ~~X~~	Sec 28	T11S	R24E
SE ~~X~~ SE ~~X~~	Sec 30	T11S	R24E
SE ~~X~~ SE ~~X~~	Sec 32	T11S	R24E