

RECEIVED

SEP 26 2005

Department of Water Resources

**PORTNEUF RIVER SETTLEMENT AGREEMENT
BASIN 29: PORTNEUF RIVER**

THIS PORTNEUF RIVER SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this 23rd day of March, 2005, PORTNEUF-MARSH VALLEY CANAL COMPANY, McCAMMON DITCH COMPANY, PORTNEUF IRRIGATING COMPANY, LAVA IRRIGATION COMPANY, DEMPSEY IRRIGATING COMPANY, TOPAZ IRRIGATION COMPANY, INDIAN FALLS PROPERTY ASSOCIATION/INDIAN FALLS WATER USERS ASSOCIATION, FISH CREEK IRRIGATING COMPANY (referred to collectively as the "Canal Companies"), and the individual parties whose names are set forth upon the signature page. The foregoing are sometimes referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS:

A. The water rights in the Portneuf River and its tributaries (Basin 29) are being adjudicated in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, Case No. 39576 in the Matter of the Snake River Basin Adjudication ("SRBA").

B. The parties have submitted water right claims in the Portneuf River Basin 29 in the pending SRBA, IDWR has submitted Water Right Recommendations in the Basin 29 Director's Report filed with the SRBA District Court in July 2003 with respect to each of said claims and certain parties have filed objections thereto.

C. The parties desire to enter into this Agreement for the purpose of fully compromising and settling all of their pending claims and objections in Portneuf River Basin 29.

AGREEMENT:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED among the parties as follows:

1. Extended Irrigation Season.

All extended irrigation season water right claims submitted by the parties as recommended by IDWR are approved with a period of use commencing April 1 and ending April 14 (the "early season") and September 16 and ending October 31 (the "late season") each year, and shall be partially decreed by the Court accordingly. After October 31 each year, all headgates will be closed and no water may be diverted, excepting only the diversion of quantities as may be necessary to supply stock water rights that are partially decreed.

2. Administration by Division.

For the purpose of administering and delivering all water rights in Portneuf River Basin 29, the Portneuf River will be divided at the Topaz Gauge and administered in two separate reaches. The reach above the Topaz Gauge will be known as the "Upper Division", and the reach below the Topaz Gauge will be known as the "Lower Division".

3. Minimum Stream Flow at Topaz Gauge.

A minimum stream flow will be established in the manner described below and maintained at the Topaz Gauge each year for purposes of administering and delivering water during the late irrigation season. Above the minimum flow level at the Topaz Gauge, late season water rights in the Upper Division may be diverted and delivered as decreed without restriction. Below the minimum flow level at Topaz, water rights in the Upper Division will be subject to administration and curtailment by the water master as necessary to maintain the established minimum flow at Topaz during the late irrigation season.

The minimum stream flow level at Topaz will be established annually in the following manner. First, the average flow at the Topaz Gauge will be determined as of the end of the normal irrigation season, September 15, by averaging the 15th and preceding four days of flows, i.e., September 11-15, to establish the base flow each year. The base flow calculation will be "net" of Chesterfield Reservoir storage as further described in 3(g) below. The base flow will be reduced by the historic depletion in flow at the Topaz Gauge station, 17.4 cfs, during the late

irrigation season from September 20 through October 31. Each year this 17.4 cfs depletion amount will be subtracted from the average 9/11-9/15 base flow at Topaz Gauge to establish the minimum flow at Topaz to be used for purposes of administration by the Watermaster during the late season of use, provided that regulation shall be conducted on a five-year running average as described below.

The five-year running average regulation will be conducted as follows:

- (a) On September 15, determine the average of Topaz Gauge flows from September 11 through September 15. If flows at Topaz Gauge are affected by local rainfall or Lava hydro plant impact events during this period, the Watermaster should remove such effects from the calculations in consultation with IDWR.
- (b) Allow the late-season irrigation flows to equilibrate from September 16 through September 19.
- (c) If on September 20 the drop in flow at the Topaz Gauge (as compared with the September 11-15 average) exceeds 17.4 cfs, then compute the average drops for the four previous years using the same method outlined above.
- (d) If the average drop on this date for the previous four years equals or exceeds 17.4 cfs, then regulate irrigation diversions of upstream signatories, to reduce the flow reduction to not exceed 17.4 cfs at the Topaz Gauge.
- (e) If the average drop on this date for the previous four years is less than 17.4 cfs, the Upper Division rightholders may divert water in accordance with their respective decreed rights.
- (f) Repeat steps (c) and (d) for each day until late season irrigation is discontinued, no later than October 31.
- (g) The minimum flow calculation will be "net" of Chesterfield Reservoir storage. Stated another way, the releases of storage water from Chesterfield Reservoir will be subtracted from the flows at the Topaz Gauge, including consideration of time of travel and assuming negligible shrink.

4. Allocation Within Each Division.

Water available during the normal irrigation season from April 15 through September 15 shall be allocated and delivered to the parties in accordance with their water rights as partially decreed.

Water available in the Upper Division during the extended irrigation season will be allocated to those Parties holding extended season irrigation rights in the Upper Division in the manner in which they agree. Water available in the Lower Division for allocation during the extended irrigation season will be allocated among the Parties holding extended season irrigation rights in the Lower Division in the manner in which they agree. During the extended season, no water right holder in the Portneuf River and tributaries above Topaz can make a call on any water right holder in the Portneuf River and tributaries below the Topaz Gauge; and, no water right holder in the Portneuf River and tributaries below the Topaz Gauge can make a call on any water right holder in the Portneuf River and tributaries above the Topaz Gauge. This allocation agreement shall apply only to the parties to this Agreement with regard to the water rights covered by this Agreement.

5. East and West Bob Tributaries.

Those Parties with water rights in East Bob Creek and West Bob Creek which are tributary to the Portneuf River immediately below the Topaz Gauge will have their late irrigation season water rights administered and delivered as if they were in the Upper Division. Accordingly, these Parties' late season rights may be subject to curtailment at the same times and in the same percentages as water right holders in the Upper Division may be curtailed during the extended irrigation season, subject to the following limitations:

5.1 If the amount of water contributed to the Portneuf River by West Bob Creek after curtailment is less than 0.50 cfs, measured above the springs located in NENE Section 22, T09S R37EB.M., it shall be deemed a futile call and not subject to any curtailment.

5.2 Water right no. 29-11681 diverted from East Bob Smith Creek shall be allowed to divert 2 cfs or its pro-rated share of irrigation water rights diverted in the lower reach, whichever is greater.

6. Diversion Structure Modification.

Water right holders in the Upper Division may repair, maintain or replace diversion structures as needed; provided, however, that no modification or replacement may occur which increases the diversion capacity beyond the presently existing capacity of such structure.

7. Withdrawal of Objections.

All objections of all parties to all water right claims in Basin 29, including in-season and extended-season claims and objections, are withdrawn.

8. Partial Decrees.

All of the Parties' water rights, including extended season water rights, shall be partially decreed by the Court as reflected in the attached water right descriptions which are attached hereto and incorporated by this reference.

9. Capacity to Execute Agreement.

The Parties warrant and represent that the person executing this Agreement is empowered to do so on behalf of each company or entity and thereby binds such entity by signing this Agreement.

10. Waivers.

The failure to object to any breach of any term or condition in this Agreement shall not constitute a waiver and no failure to object shall be deemed a waiver of any prior to subsequent breach.

11. Entirety of Agreement.

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and oral agreements. No promise or inducement has been offered or made except as herein set forth, and this Agreement is executed without reliance on any statement or representation by any other Party or their agent.

12. Modification.

This Agreement may amended or modified only by a written agreement signed by each of the Parties to this Agreement.

13. Execution of Agreement in Parts.

Due to time constraints and practicalities, the Parties acknowledge it is not possible to have all parties sign the same copy of this Agreement at the same time. Therefore, the Parties agree that this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. Signatures.

In witness whereof, the Parties to this Agreement through their duly-authorized representatives have executed this Agreement and certify that they have read, understood and agree to the terms and conditions of this Agreement as set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

PORTNEUF-MARSH VALLEY CANAL CO.

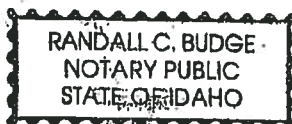
STATE OF IDAHO)
) ss.
County of Bannock)

On this 21st day of April, in the year of 2005, before me Randall C. Budge, personally appeared Ellis Gilbert known or identified to me to be the president, or vice-president, or secretary or assistant secretary, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

DATED this 21st day of April, 2005.



SUBSCRIBED AND SWORN before me this 21 day of April, 2005.



Randall C. Budge
NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello, ID.
My commission expires: 10/11/2006

ADDENDUM AGREEMENT:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED upon between the Parties as follows:

1. Should the Portneuf River water right holders in the lower division (including Portneuf-Marsh Valley Canal Co., McCammon Ditch Co. and Portneuf Irrigating Co.) make a change in their diversions from their present place of use or from their present nature of use which materially and substantially impacts the historical late season diversions (both those in and out of priority) of the upper river water right holders, then the upper river water users may request the Idaho Department of Water Resources to determine if a material and substantial impact has occurred. When so determined by IDWR, the Department will calculate an appropriate adjustment to the 17.4 cfs minimum stream flow at Topaz gauge as set forth in paragraph 3 of the Settlement Agreement which will be applied in future regulation.

2. "Historical late season diversions" are diversions by Lava Irrigation Co. and Dempsey Irrigating Co. from August 1 through September 15, determined from the approved IDWR water masters historic daily diversion logs on file with IDWR to be an average of 24.8 cfs, as more particularly set forth in the spreadsheet produced by IDWR and entitled "Avg_Lava-Dempsey_Diversions-Aug1-Sep15.xls" which shall be made a part of this Addendum Agreement.

3. Upon a determination by IDWR of any such impact or adjustment, either party may have a right to appeal in the normal administrative process.

4. This Addendum Agreement shall be submitted to the Court for approval and thereupon shall be binding upon all parties to the Basin 29 sub-cases, including any who have not executed the Addendum Agreement, and then recorded in the official records of Bannock County Recorder's Office.

5. Except for the specific additional terms contained herein, the original PORTNEUF RIVER SETTLEMENT AGREEMENT referred to above shall remain in full force and effect and is not further modified by this Addendum.

Dated this ____ day of June, 2007.