

WATER RIGHT MITIGATION AGREEMENT

THIS AGREEMENT is entered into this 1st day of September, 2009, by and between SOUTHWEST IRRIGATION DISTRICT ("SWID"), an Idaho irrigation district, A&B IRRIGATION DISTRICT ("A&B"), an Idaho irrigation district, AMERICAN FALLS RESERVOIR DISTRICT #2 ("AFRD #2"), an Idaho irrigation district, BURLEY IRRIGATION DISTRICT ("BID"), an Idaho irrigation district, MILNER IRRIGATION DISTRICT ("Milner"), an Idaho irrigation district, NORTH SIDE CANAL COMPANY ("NSCC"), an Idaho non-profit corporation, and TWIN FALLS CANAL COMPANY ("TFCC"), an Idaho non-profit corporation, (together hereinafter referred to as "Parties").

RECITALS

WHEREAS, SWID filed an application for permit (45-14183) with the Idaho Department of Water Resources ("IDWR") on February 17, 2009, seeking to appropriate "wastewater" from BID's project which is tributary to the Snake River; and

WHEREAS, SWID seeks to appropriate this "wastewater" for irrigation purposes for use on approximately 6,000 acres in Basin 45 within SWID's project boundary; and

WHEREAS, SWID seeks to use this "wastewater" in addition with other surface water rights it obtains to irrigate lands formerly irrigated with groundwater rights; and

WHEREAS, this tributary "wastewater" enters the Snake River above the points of diversion for A&B, AFRD #2, Milner, NSCC, and TFCC and has been historically available for diversion and use by those entities under their prior natural flow water rights; and

WHEREAS, SWID recognizes that the "wastewater" tributary to the Snake River that it seeks to divert and use under water right permit 45-14183 is a source of water for the prior natural flow water rights held by A&B, AFRD #2, Milner, NSCC, and TFCC; and

WHEREAS, SWID agrees to mitigate its diversion and use of water under water right permit #45-14183 to ensure that prior water rights held by A&B, AFRD #2, Milner, NSCC, and TFCC are not injured or impacted in anyway; and

WHEREAS, BID agrees to assume SWID's mitigation responsibility as to NSCC and TFCC and has entered into a separate *Wastewater Mitigation Agreement* with NSCC and TFCC to that effect; and

WHEREAS, A&B, AFRD #2, BID, Milner, NSCC, and TFCC previously agreed not to protest SWID's application for permit based upon the consideration given as expressed and agreed to in the *Water Right Condition Agreement* dated April 17, 2009 (Ex. A); and

WHEREAS, the Parties wish to delineate their agreement in writing as follows.

COVENANTS

NOW THEREFORE, in consideration of the recitals, the mutual covenants, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SWID Annual Mitigation Requirement. In order to mitigate for the diversion and use of wastewater under water right 45-14183, SWID hereby agrees to provide either: 1) storage water; or 2) monetary compensation at the going Water District 01 rental pool price; to A&B, AFRD #2, Milner, NSCC, and TFCC, consistent with the procedures identified below. However, SWID is under no obligation to mitigate the diversion and use of wastewater at any time A&B's, AFRD #2's, Milner's, NSCC's and TFCC's diversions under their prior natural flow water rights are fully satisfied by the available natural flow in the Snake River.

2. Mitigation Calculation. SWID shall measure and record the diversion and use of all "wastewater" that it receives from BID at the End Waste Canal pumping site. It is anticipated that SWID will have at least two measuring devices, one for any water diverted from the Snake River, and one for the "wastewater" it receives from the BID End Waste Canal. Both measurements shall be reported to Water District 01 for its daily accounting. SWID will comply with the measurement procedures required by Water District 01. In the event SWID diverts "wastewater", at any time during the irrigation season when A&B, AFRD #2, Milner, NSCC, and TFCC are using storage, and the diverted "wastewater" would have otherwise gone to fill the natural flow water rights of A&B, AFRD #2, Milner, NSCC, and TFCC, SWID shall be responsible to mitigate that amount of water diverted. This mitigation calculation shall be determined by Water District 01's daily accounting process.

3. BID Assumes SWID's Obligation to NSCC and TFCC. BID shall assume SWID's obligation to mitigate the diversion and use of water under water right 45-14183 that would have otherwise been used by NSCC and TFCC's prior natural flow water rights at any time those prior rights are not fully satisfied by the available natural flow in the Snake River. BID has previously entered into a *Wastewater Mitigation Agreement* with NSCC and TFCC which identifies the mitigation obligation and how BID will satisfy that obligation every year.

4. Storage Delivered. SWID shall cause the mitigation storage water, of the obligation identified in Paragraph 1 above, to be delivered to the storage accounts of A&B, AFRD #2, and Milner by August 1st and again by October 31st (in the event additional mitigation is required after August 1st) of each irrigation season. SWID shall coordinate with the Parties and the Water District 01 Watermaster in order to satisfy this term. The Parties agree that Water District 01's final accounting process may alter the obligation in such case the Parties agree that additional storage will be provided or credited back to SWID if a change occurs.

5. Monetary Compensation Delivered. In the event A&B, AFRD #2 and/or Milner notifies SWID that it chooses to be mitigated with money instead of storage water in a particular year, or if SWID is unable to acquire the necessary storage to satisfy its mitigation obligations, SWID shall pay A&B, AFRD #2, and/or Milner the going Water District 01 rental pool price (per acre-foot) based upon the number of acre-feet that would have been required to satisfy its

mitigation obligation. If A&B, AFRD #2, and/or Milner desires to be mitigated with money in any particular year they shall notify SWID prior to August 1st. The monetary compensation shall be due and payable on August 5th (or the next business day) and again on October 31st (or the next business day), in the event additional mitigation is required after August 1st. The Parties agree that Water District 01's final accounting process may alter the obligation, and in such case the Parties agree that additional compensation will be provided or credited back to SWID, within five (5) business days of the final accounting if a change occurs.

6. Diversion Measurement Device. SWID shall install and maintain a diversion measurement device acceptable to Water District 01 in order to measure and record all diversions, including any "wastewater" diverted from BID's End Waste Canal and any other water diverted from the Snake River.

7. Reference Agreement as Condition on Water Right 45-14183. SWID agrees that this Agreement shall be referenced as a condition in the permit and license for water right 45-14183. Upon execution of this Agreement by the Parties, SWID shall deliver the same to IDWR and request that the Agreement be referenced in the permit and license for water right #45-14183.

8. Implementation of Agreement. The Parties agree to take any and all actions necessary to ensure this Agreement is implemented to the satisfaction of the Parties, including compliance with any requirements by IDWR and the Water District 01 Watermaster. In the event that implementation of the measurement, the accounting, the mitigation calculations, or other unforeseen circumstances arise, that create issues for the Parties with respect to the providing or receipt of mitigation, the Parties agree to meet and address those issues, and modify this Agreement to the extent deemed necessary by the Parties.

9. Representations. The Parties have the full legal right, power and authority to enter into and perform this Agreement.

10. Attorneys' Fees. In any suit, action or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing Party shall be entitled to recover all its costs reasonably incurred therein (and on appeal), including reasonable attorneys' fees.

11. Duty of Good Faith. Each of the Parties to this Agreement agrees to perform and execute this Agreement in accordance with the highest standards of good faith, honesty in fact, and fair dealing. Accordingly, the Parties agree to cooperate fully and execute any and all supplemental documents and take any and all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

12. Entire Agreement. This is the entire agreement of the Parties with respect to matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by the Parties.

13. Counterparts. This Agreement may be executed in any number of counterparts

for 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.

14. Idaho Law. This agreement shall be governed by the laws of the State of Idaho.

15. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

16. Captions to Paragraphs. The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

17. Binding Contract. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representative, administrators, successors, and assigns of the Parties hereto.

18. Effective Date. The Effective Date of this Agreement shall be the date on which the Parties executed this Agreement, if executed on the same day, or the later date, if executed on different days. This implementation of this Agreement shall begin in 2010.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

DATED this 27 day of August, 2009.

SOUTHWEST IRRIGATION DISTRICT

Grant Wyatt
Grant Wyatt, Chairman

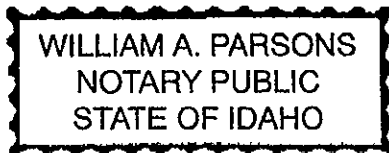
ATTEST:

Randy Brown
Secretary

STATE OF IDAHO)
) ss.
County of Cassia)

On this 27 day of August, 2009, before me, a Notary Public for said County and State, personally appeared GRANT WYATT and Randy Brown, known or identified to me, to be the Chairman and Secretary of the Southwest Irrigation District and whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of such district.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



William A. Parsons
NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My commission expires: 7/26/2010

DATED this 12th day of Aug, 2009.

BURLEY IRRIGATION DISTRICT

Dean Edgar

Dean Edgar, Chairman

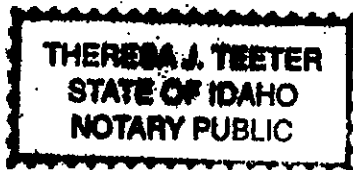
ATTEST:

Linda Leach
Linda Leach, Secretary

STATE OF IDAHO)
) ss.
County of Cassia)

On this 12th day of August, 2009, before me, a Notary Public for said County and State, personally appeared DEAN EDGAR and LINDA LEACH, known or identified to me, to be the Chairman and Secretary of the Burley Irrigation District and whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of such district.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



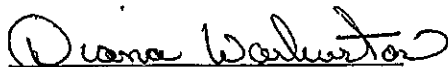
Theresa J. Teeter
NOTARY PUBLIC FOR IDAHO
Residing at: Highway 11, Id.
My commission expires: 5-17-2010.

DATED this 12th day of Aug., 2009.

A&B IRRIGATION DISTRICT


Dan Schaeffer, Vice-Chairman

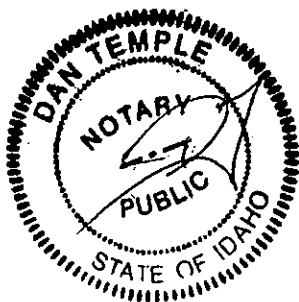
ATTEST:


Diana Warburton, Secretary

STATE OF IDAHO)
) ss.
County of Minidoka)

On this 12th day of August, 2009, before me, a Notary Public for said County and State, personally appeared DAN SCHAEFFER and DIANA WARBURTON, known or identified to me, to be the Vice-Chairman and Secretary of the A&B Irrigation District and whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of such district.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




NOTARY PUBLIC FOR IDAHO
Residing at: Rupert, Id.
My commission expires: 10-31-2009

DATED this 1 day of 9, 2009.

AMERICAN FALLS RESEVOIR DISTRICT #2

Bob Esterbrook
Bob Esterbrook, Chairman

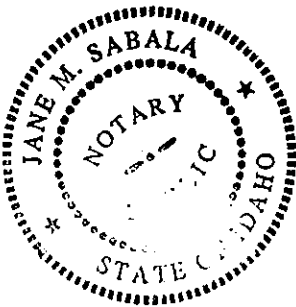
ATTEST:
Jane M. Ritchie
Secretary

STATE OF IDAHO)
) ss.
County of Lincoln)

On this 1 day of September, 2009, before me, a Notary Public for said County and State, personally appeared BOB ESTERBROOK and Jane M. Ritchie, known or identified to me, to be the Chairman and Secretary of the American Falls Reservoir District #2 and whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of such district.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Jane M. Sabala
NOTARY PUBLIC FOR IDAHO
Residing at: Wendell
My commission expires: 3-7-15



DATED this 12th day of AUGUST, 2009.

MILNER IRRIGATION DISTRICT

Scott Breeding
Scott Breeding, Chairman

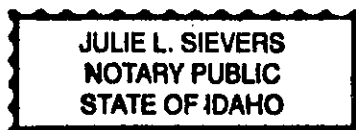
ATTEST:

Walt Mullins
Walt Mullins, Secretary

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 12 day of August, 2009, before me, a Notary Public for said County and State, personally appeared SCOTT BREEDING and WALT MULLINS, known or identified to me, to be the Chairman and Secretary of the Milner Irrigation District and whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of such district.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Julie Sievers
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, ID
My commission expires: 1/25/2011

DATED this 21st day of August, 2009.

NORTH SIDE CANAL COMPANY

Berwyn Mussman
Berwyn Mussman, Chairman

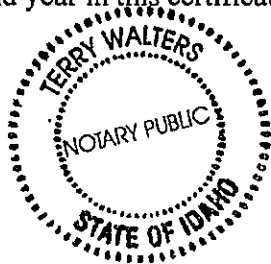
ATTEST:

Ted Diehl
Ted Diehl, Secretary

STATE OF IDAHO)
) ss.
County of Jerome)

On this 21st day of August, 2009, before me, a Notary Public for said County and State, personally appeared BERWYN MUSSMAN and TED DIEHL, known or identified to me, to be the Chairman and Secretary of the North Side Canal Company and whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of such corporation.

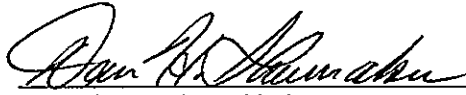
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Terry Walters
NOTARY PUBLIC FOR IDAHO
Residing at: Jerome, Idaho
My commission expires: 2-20-13

DATED this 11 day of August, 2009.

TWIN FALLS CANAL COMPANY


Dan Shewemaker, Chairman

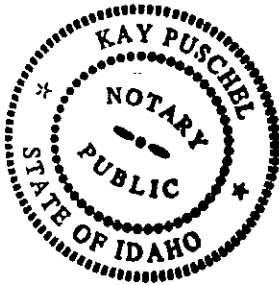
ATTEST:


Brian Olmstead, Secretary

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 11 day of August, 2009, before me, a Notary Public for said County and State, personally appeared DAN SHEWMAKER and ~~KAY PUSCHAL~~ ^{Brian Olmstead} known or identified to me, to be the Chairman and Secretary of the Twin Falls Canal Company and whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



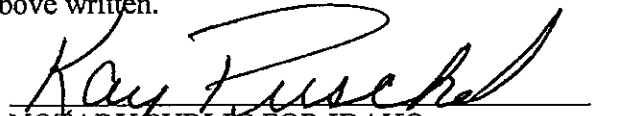

NOTARY PUBLIC FOR IDAHO
Residing at: TWIN FALLS
My commission expires: 4-28-2012

Exhibit A

WATER RIGHT PERMIT CONDITION AGREEMENT

THIS AGREEMENT is entered into this 11th day of April, 2009, by and between SOUTHWEST IRRIGATION DISTRICT ("SWID"), an Idaho irrigation district, and A&B IRRIGATION DISTRICT ("A&B"), an Idaho irrigation district, BURLEY IRRIGATION DISTRICT ("BID"), an Idaho irrigation district, MILNER IRRIGATION DISTRICT ("Milner"), an Idaho irrigation district, NORTH SIDE CANAL COMPANY ("NSCC"), an Idaho non-profit corporation, and TWIN FALLS CANAL COMPANY ("TFCC"), an Idaho non-profit corporation, (together hereinafter referred to as "Parties").

RECITALS

WHEREAS, SWID filed an application for permit (#45-14183) with the Idaho Department of Water Resources ("IDWR") on February 17, 2009, seeking to appropriate "wastewater" from BID's project which is tributary to the Snake River;

WHEREAS, SWID seeks to appropriate this "wastewater" for irrigation purposes for use on approximately 6,000 acres in Basin 45; and

WHEREAS, SWID seeks to use this "wastewater" in addition with other surface water rights it obtains to irrigate lands in conjunction with lands irrigated with groundwater rights; and

WHEREAS, SWID recognizes, among other things, that it needs BID's permission to construct and operate its pumping facilities within BID's End Waste Canal and to divert the "wastewater" from BID and SWID is currently negotiating an agreement with BID to that effect; and

WHEREAS, SWID recognizes that the "wastewater" tributary to the Snake River that it seeks to divert and use under water right permit #45-14183 is a source of water for prior natural flow water rights held by A&B, Milner, NSCC, and TFCC; and

WHEREAS, SWID agrees to mitigate its diversion and use of water under water right permit #45-14183 to ensure that prior water rights held by A&B, Milner, NSCC, and TFCC are not injured or impacted in anyway and SWID is currently negotiating an agreement with BID to that effect; and

WHEREAS, protests to SWID's water right application for permit #45-14183 must be filed with IDWR by Monday April 20, 2009; and

WHEREAS, the Parties wish to address SWID's above-referenced obligations outside of the contested case process before IDWR.

COVENANTS

NOW THEREFORE, in consideration of the recitals, the mutual covenants,

representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **AGREEMENT WITH BID:** As a condition to divert and use BID's "wastewater" under water right permit #45-14183, SWID agrees to negotiate and reach an agreement with BID to, among other things, construct SWID's pumping facilities in BID's End Waste Canal and divert, compensate for, and use the "wastewater" delivered by BID.

2. **AGREEMENT WITH A&B, MILNER, NSCC, and TFCC.** As a condition to divert and use BID's "wastewater" under water right permit #45-14183, SWID agrees to negotiate and reach an agreement with A&B, Milner, NSCC, and TFCC to, among other things, mitigate any injury or impact to A&B's, Milner's, NSCC's, and TFCC's senior water rights caused by the diversion and use of the "wastewater" under water right permit #45-14183.

3. **AGREEMENT TO REFERENCE AGREEMENTS AS CONDITIONS.** SWID agrees that the agreements referenced in Paragraphs (1) and (2) above shall be referenced as conditions in the permit and license for water right #45-14183. Once the agreements are finalized and signed by the Parties, SWID shall deliver the same to IDWR and request those agreements to be referenced in the permit and license for water right #45-14183. The Parties agree to take any and all actions necessary to ensure the agreements are implemented to the satisfaction of the Parties.

4. **NO PROTEST OF WATER RIGHT PERMIT #45-14183.** In exchange for the above covenants and promises of SWID, BID, A&B, Milner, NSCC, and TFCC agree they will not file protests to SWID's application for water right permit #45-14183.

5. **REPRESENTATIONS.** The Parties have the full legal right, power and authority to enter into and perform this Agreement.

6. **REMEDIES FOR NON-AGREEMENT OR BREACH.** In the event the agreements referenced in Paragraphs (1) and (2) are not reached or executed, or SWID breaches any of the provisions of this Agreement, SWID shall withdraw its application for permit #45-14183, with prejudice.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

DATED this 17 day of April, 2009.

SWID

BID, A&B, Milner, NSCC, TFCC

By: William A. Parsons
William A. Parsons, its attorney

By: Travis L. Thompson
Travis L. Thompson, their attorney