

Idaho Water Resource Board

Water Right Lease Agreement
with
DOT, LLP

This Lease Agreement ("Agreement") is made and entered into by and between the Idaho Water Resource Board, ("Board") and **DOT, LLP**, ("Lessor").

RECITALS

- A. WHEREAS, the Board has entered into Contract No. _____, dated _____, 2005 with National Fish and Wildlife Foundation, under the authority of the Department of Energy, Bonneville Power Administration ("BPA"), which recognizes that the Board intends to develop and operate the newly created Water Transaction Program ("Program") to lease water from willing Idaho water right owners to address water shortages including flow augmentation for endangered salmon. Under this Program, water right owners will forego irrigation of land and place their water rights into the Idaho State Water Supply Bank ("Bank") operated by the Idaho Department of Water Resources ("Department") on behalf of the Board.
- B. WHEREAS, the Board solicited offers from the public to sell or lease water to facilitate the flow of additional water in the Upper Salmon River and tributaries. In response, the Lessor submitted a proposal for participation in the Program. The proposal shows that the Lessor has a right to use water for irrigation, stockwater, or other consumptive purposes. Placing the Lessor's water in the Bank during the 2005 irrigation season and subsequent years will result in additional water in the Salmon River for endangered salmon.

AGREEMENT

NOW THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties agree as follows:

I Description of Lease

- A. Lessor agrees to lease to the Board 834.6 acre-feet of water under water right no(s) 71-2091C, 71-2091D, 71-7008, 71-7009, 71-7083, 71-10665A, and 71-10665B appurtenant to the 278.2 acres further described in the map incorporated herein, which is attached and labeled as Attachment A. Lessor agrees not to divert water under these rights and to idle the lands identified in attachment A for the duration of the lease.
- B. The Lessor acknowledges and agrees that the water acquired under this Lease Agreement will be placed in the Bank for a term of ten (10) years, and that the Lessor is offering the water rights described herein to the Bank by signing this Agreement. The Lessor agrees to provide any additional information that the Department may require to process or facilitate acceptance of the water rights into the Bank. Failure to comply with Department requests for information or other requirements is cause for termination of this Agreement.

- C Lessor warrants that it is the owner of the water rights and the lands identified herein and possesses the right, title and interest in the water and land or has obtained any necessary consent or approval to enter into this Agreement. Lessor further warrants that it has not entered into any other type of agreement that would prohibit the Lessor from placing the water into the Bank.

II. Additional Conditions

- A. If it is determined after the execution of this Lease Agreement that certain acres are not eligible under the Program because of a mistake, error, or misrepresentation in the Lessor's application, compensation will be reduced accordingly.
- B. The Lessor's idled lands will be monitored in accordance with Water Transaction Program requirements. The monitoring may include field visits, and the collection and analysis of satellite data and related pump and flow measurements collected at the Board's discretion. The Lessor agrees to allow the collection of data and access for field visits.
- C. The Lessor shall immediately notify the Board if there are any changes in ownership, or any encumbrances or liens placed upon, any of the real property or water rights covered by this contract during the term of this Lease Agreement.

III. Payment

- A. The Lessor agrees to lease and the Board agrees to compensate the Lessor for the rental of water described herein through payment from the Idaho State Water Supply Bank at an annual price of **\$20.00 per acre** of land idled. An additional ten percent administration fee will be paid by the Board to the Department in accordance with Water Supply Bank Rules, IDAPA 37.02.03.
- B. Payment as shown in section III A above is based upon a dollar amount per acre of land idled, regardless of the diversion rate or maximum diversion volume allowed under the water right, the historical diversion rate or consumptive use under the water right, or the diversion rate or diversion volume approved for lease by the Department.
- C. Pursuant to the Water Supply Bank Rules, IDAPA 37.02.03, after the water rights are rented from the Bank, payment is to be made by the Water Supply Bank to the Lessor. Lessor shall submit an invoice for the annual rent amount to the Board on or about September 1st of each year. Payment will be made on or about November 15 of each year, after the irrigation season and subject to the final verification of program compliance.

IV. Term, Termination of Agreement and Remedies

- A. This Lease Agreement shall become effective on the date of the last signature hereto and shall extend through December 31, 2014.
- B. At the Board's discretion, this Lease Agreement may be terminated upon:
 - (1) Failure of the Lessor to abide by the terms and conditions of the lease agreement;
 - (2) Refusal of the Lessor to allow representatives of the Board to access to the land to monitor compliance with the Lease Agreement;
 - (3) Application of water by the Lessor to the lands during the period of this Lease Agreement, except in emergency situations where the application of water is required for public safety reasons;
 - (4) Discovery of fraudulent information submitted in the Lessor's Application.
- C. If this Lease Agreement is terminated for any reason listed under section IV B, or by the Lessor for any other reason, prior to its ending date, the Lessor shall reimburse the Board for a prorated portion of the amount stated in Section III.A of the Lease Agreement, as determined by the Board.

V. Miscellaneous

- A. The Landowner or Lessor is responsible for all taxes, assessments, soil conservation measures such as weed and erosion control and other obligations related to any of the lands described under this Lease Agreement.
- B. The landowner will indemnify and hold harmless the Board and the Department from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death, or property damage of any nature caused by the landowner or any person, firm or corporation acting on the landowner's behalf related to or arising out this Lease Agreement.
- C. Lessor acknowledges and agrees that a memorandum of this lease agreement will be executed simultaneously herewith and a copy thereof will be recorded in the records of the county.
- D. The terms of this lease agreement shall constitute a distinct transaction separate and apart from any potential efforts the Board may pursue in the future to purchase the water rights from the Lessor.

SIGNATURES

Lessor

Print name(s): STEVEN K JUSTUS

Mailing address: 581 E. PROVIDENT DRIVE

BOISE ID 83706

Phone: 208 343 7021

Signed Steven K Justus Date: 4-20-05

Signed _____ Date: _____

Title: Partner, DOT LLP

State of Idaho)

S.S.

County of Ada)

On this 20th day of April, 2005, before me the undersigned Notary Public in and for said county and state, personally appeared _____, known to me to be the person whose name is subscribed to within instrument and acknowledged to me that he/she 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 written.

Patsy A. McGarity
Notary Public in and for Idaho
Commission Expires: 8-19-10



State of Idaho
Idaho Water Resource Board

Signature: _____

Chairman, Idaho Water Resource Board

Date: 4-21-05

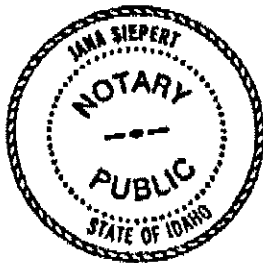
State of Idaho)

S.S.

County of Ada
Madison

On this 21st day of April, 2005, before me the undersigned Notary Public in and for said county and state, personally appeared Jerry R. Rigby, known to me to be the person whose name is subscribed to within instrument and acknowledged to me that he/she 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 written.



Jana Siepert
Notary Public in and for Idaho
Commission Expires: 3-15-2007

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