

United States Department of the Interior
Bureau of Reclamation

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JUN 25 2004

Water Rental and Forbearance Agreement

DEPARTMENT OF WATER RESOURCES
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With **Sailor Creek Water Company**
(Lessor's name)

Reclamation agreement number **#1425-04-WL-10-0009**

This Agreement is entered into pursuant to the Reclamation Act of 1902, as amended and supplemented, for the purpose of meeting commitments of the Bureau of Reclamation (Reclamation) under the Biological Opinions on the Operation of the Federal Columbia River Power System and the operation and maintenance of Reclamation Projects in the Snake River Basin above Brownlee Dam. This Agreement is by and between the United States of America, acting by and through the Department of the Interior, Bureau of Reclamation, represented by the officer executing this instrument on its behalf and Sailor Creek Water Company, hereafter known as the Lessor.

RECITALS

- A. WHEREAS, Reclamation has commitments under Biological Opinions on the operation of the Federal Columbia River Power System and the operation and maintenance of Reclamation Projects in the Snake River Basin above Brownlee Dam to provide flow augmentation for delivery at Lower Granite Dam.
- B. WHEREAS, The Idaho Legislature authorized Reclamation to annually rent up to 427,000 acre-feet of storage water per year during the years 2002-2004 under the provisions of Idaho Code § 42-1763B.
- C. WHEREAS, In 2003, there was insufficient storage water available for rental by Reclamation to meet the 427,000 acre-feet rental target. Therefore, Reclamation conducted a pilot leasing program under which water right holders submitted proposals to idle land and place their water rights in the State Water Supply Bank, thereby increasing water flow downstream to Lower Granite Dam. Rules governing the Idaho State Water Supply Bank, IDAPA 37.02.03, provide that rentals shall be approved only for use in Idaho unless there is compliance with the provisions of Idaho Code § 42-401(3). In order to avoid the complexities of Reclamation seeking approval for out-of-state use, the water was rented by the Idaho Power Company and used for hydropower generation in Idaho with the result that additional water flowed to Lower Granite Dam for flow augmentation.
- D. WHEREAS, Similar to 2003, it is expected that insufficient storage water will be available this year for rental by Reclamation. Therefore, Reclamation is conducting another similar pilot program (Program). Under this Program, water right holders will forego irrigation of land and place their water right into the Idaho State Water Supply Bank. As a practical way of ensuring that Reclamation receives additional water, over and above the water flows that would otherwise be available, a qualification was added requiring that the land to which the water right is appurtenant was either irrigated last year or was in Reclamation's 2003

program explained in Recital C above. Again, it is intended for Idaho Power to rent the water from the State Water Supply Bank.

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- E. Reclamation advertised a request for proposals to the public. 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 purposes and absent this Program was intending to irrigate with the water proposed for the Program. Therefore, placing the Lessor's water in the Water Bank during 2004 will result in additional water in the Snake River at Lower Granite Dam, Oregon. This additional water will be counted towards Reclamation's obligation to provide 427,000 acre-feet of water at Lower Granite Dam.

AGREEMENT

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

I. **Land Accepted into the Program**

- A. The total number of acres accepted into the Program is 870.8 acres. The land, hereinafter referred to as the Land, accepted into the Program is identified as "LL" on the map(s) included in Attachment A. This is the maximum number of acres eligible for payment under this Agreement. Reclamation recognizes the following conditions may exist: 1) additional acres may have been proposed in the Lessor's application, 2) the Lessor may have a right to irrigate additional acres, 3) the Lessor may intend to irrigate additional acres in 2004 and is willing to idle those acres, and 4) the Lessor may submit an application to the State Water Supply Bank to lease water rights appurtenant to acres other than the acres identified in this Agreement. Notwithstanding any of the conditions stated above or any other conditions, under this "willing seller, willing buyer" Agreement, the number of acres covered by the Agreement is limited to the number and location stated in this section I.A. of the Agreement.
- B. If it is determined after the execution of this Agreement that certain acres are not eligible for the Program because of a mistake, error, or misrepresentation in the Lessor's application, the land covered under this Program will be reduced accordingly.
- C. The Land may not be irrigated from any source, regardless of whether there is another valid water right appurtenant to the Land. Water authorized to be diverted under water rights, or portions of water rights, leased to the Water Supply Bank may not be applied to lands that are not identified in this Agreement. The Lessor may not water the Land for any reason; for example, testing equipment, irrigating a cover crop, or dust abatement.
- D. IDWR intends to monitor the Lessor's idled lands. The monitoring will include field visits, and the collection and analysis of satellite data and related pump and flow measurements collected at IDWR's discretion. The Lessor agrees to allow the collection of data and access for field visits.

II. Water Rights Appurtenant to the Leased Land

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- A. The Lessor agrees that this Agreement shall be submitted to the Idaho State Water Supply Bank as an application to lease water to the bank, and that the Lessor is offering the water rights described in Attachment A to the bank by signing this Agreement. The Lessor agrees that any additional information or requirement IDWR may require to process or accept the application shall be furnished promptly to IDWR, including but not limited to, the submission of a separate application form if required. Failure to comply with IDWR requests for information or other requirements is cause for termination of this agreement.
- B. All rentals of the Lessor's water rights out of the water bank shall be subject to Reclamation's approval.
- C. With respect to the water rights covered by this Agreement, the Lessor warrants that the Lessor has the right, title, and interest necessary to enter into this Agreement; and that there are no agreements, leases, licenses, liens or encumbrances which would prohibit the Lessor from placing the Lessor's water rights into the Idaho State Water Bank; and that to the extent necessary, the Lessor has obtained any consent or approval necessary to authorize the execution of this contract.
- D. The Lessor shall immediately notify Reclamation 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 the Agreement.

III. Payment

- A. By signing this Agreement the Lessor offers to the Idaho State Water Supply Bank the water rights described above for a total lease price of \$ 130,620⁰⁰. This amount is based on \$ 150⁰⁰ per acre of land idled. The Lessor understands that the amount the Lessor will receive from the Idaho State Water Supply Bank is 90% of the total lease price. Ten percent will be retained by IDWR for administrative costs of operating the Water Supply Bank, pursuant to the Water Supply Bank Rules.
- 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 IDWR.
- C. Pursuant to the Water Supply Bank Rules, IDAPA 37.02.03, after the water rights are leased, payment is to be made by the Water Supply Bank to the Lessor. Lessor agrees to accept the following intended plan for payment by IDWR: One half of the estimated payment will be made on or about July 30, 2004, and the remainder will be paid after the irrigation season ends and final verification of program compliance is complete. Reclamation will enter into a separate contract with IDWR to make payment to the Water Supply Bank for this purpose.

IV. **Term, Termination of Agreement and Remedies**

- A. The Agreement shall become effective on the date of the last signature hereto and shall extend through December 31, 2004.
- B. At Reclamation's discretion, this Agreement may be terminated upon:
- (1) Failure of the Lessor to abide by the terms and conditions of this Agreement;
 - (2) Refusal of the Lessor to allow Reclamation or IDWR access to the Land to monitor compliance with the Agreement;
 - (3) Application of water by the Lessor to the Land during the period of this 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 Agreement is terminated for any other reason prior to its ending date, the Lessor shall reimburse Reclamation for a prorated portion of the amount stated in Section III.A of this Agreement, as determined by Reclamation.

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 Land covered by this Agreement.
- B. The Landowner will indemnify and hold harmless Reclamation 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 Agreement.
- C. **Water Right Ownership**
- This Agreement shall not be used as evidence of ownership of water rights in the Snake River Basin Adjudication.
- D. **Officials Not to Benefit**
- No member of or delegate to Congress or the Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, but this restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.
- E. **Covenant Against Contingent Fees**

The Lessor warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees and bona fide commercial agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty, Reclamation shall have the right to revoke this Agreement without liability or in its discretion to require the Lessor to pay the full amount of such commission, percentage, brokerage, or contingency fee to the United States.

Signatures

Print name(s): ALLEN NOBLE

Mailing address: P.O. Box 1201, Boise ID 83701

Phone: 342-6524

Signed Allen Noble pres Sailor Creek
Water Co

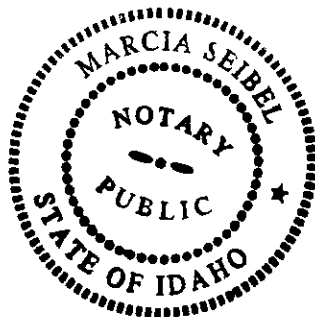
Signed _____

Title: President

Date: 4-1-04

On this 1 day of April, 2004, before me the undersigned Notary Public in and for said county and state, personally appeared Allen Noble, 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.



Marcia Seibel
Notary Public in and for Idaho
Residing at; Boise ID
Commission Expires: 12/21/05

Signature: Kenneth R Pedde
Regional Director, Pacific Northwest Region

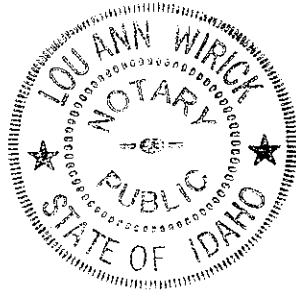
Date: 5/19/04

State of Idaho
County of Ada

Agreement # 1425-04-WL-10-0009

On this 19th day of May 2004, before me the undersigned Notary Public in and for said county and state, personally appeared Kenneth R Pedde, 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.



Lou Ann Wirick
Notary Public in and for Idaho
Residing at: Ada County
Commission Expires: Oct 22, 2008

Water Right Numbers for lands in 200~~8~~ Snake River Pilot Leasing Program.

02-2286, 02-2214, 02-2215, 02-2217, 02-2218, 02-2204, 02-2206

Legal Description of Lands Approved for 2008 Snake River Pilot Leasing Program.

TWN	RGE	SEC	NE			NW			SW			SE		
			NE	NW	SE	NE	NW	SE	NE	NW	SE	NE	NW	SE
65	9E	3		22.0	38.7	37.8	31.0	16.0	37.2	36.6				
		4					40.0	32.0	37.0	37.4				
		8	29.5			18.4					30.2	31.0	30.9	30.1
		9	38.8					38.8	38.2					
		14						38.7	40.0			34.0		
		15	39.0	36.7	37.7	39.9								

Applicant initials CE Applicant initials CE Applicant initials CE Applicant initials CE

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T06S R09E



Prepared by: M. Wilkins
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83709
(208) 327-7900

Water right boundaries identify the quarter quarters within the licensed or permitted place of use, but do not represent the number of acres authorized.

- ELIGIBLE
- INELIGIBLE
- QUESTIONABLE
- Water Right 2-2186
- Water Right 2-2214
- Water Right 2-2215, 2-2217, 2-2218
- Water Right 2-2204, 2-2206
- Township/Range
- Section Lines
- Quarter/Quarter

SPOT Satellite Image: 09-10-2002

4000

0

4000

8000 Feet

Total Number of Eligible Acres for Lease: 609.5 acres
Total Number of Questionable Acres for Lease: 261.3 ac

Sailor Creek Water Company

**2004 Snake River Pilot Leasing Program
Rental of Water from the Water Supply Bank**

Prepared: February 23, 2004

Applicant Signature

Date

USBOR Signature

Date

609.5
28.8
638.3
29.5
667.8
18.4
686.2
38.2
724.4
40.0
764.4
32.0
796.4
37.0
833.4
37.0

