

 MEMORANDUM

To: Glen Saxton, Hal Anderson, Jeff Peppersack

From: Cynthia Bridge Clark

Date: July 15, 2004

Re: INVOICE TO USBOR FOR FIRST PAYMENT TO LESSORS PARTICIPATING IN THE 2004 SNAKE RIVER PILOT LEASING PROGRAM FOR RENTAL OF WATER FROM THE WATER SUPPLY BANK. WATER RIGHT NOS. 2-10205, 2-2159, 2-2354, 2-7184, 2-7229, 2-7284, 2-2386, 2-2387, 2-2388, 2-7148, 2-2279, 2-7012, 2-2249, 2-2250, 2-2251, 2-2252, 2-2253, 2-2254, 2-2255, 2-2256, 2-2361, 2-7001, 2-2371, 2-2372, 2-2262, 2-2145, 2-7144, 2-2443, 2-7030, 2-7068, 2-7076, 2-7132, 2-2198, 2-2191, 2-2370, 2-2194A, 2-2194B, 2-2186, 2-2204, 2-2206, 2-2214, 2-2215, 2-2217, 2-2218, 2-2210, 2-2269, 2-2367, 2-2379, 2-2298, 2-2376, AND 2-7182

The following is a summary of the estimated number of acres eligible for the first payment from the Water Supply Bank (bank) under the Snake River Pilot Leasing Program for 2004. Payments will be issued in accordance with the Contract number 1425-04-WL-10-0023 (Contract) between the United States Bureau of Reclamation (Reclamation) and the Idaho Department of Water Resources (IDWR) to Implement the Rental of Water Rights Under the Pilot Program for Leasing of Snake River Natural Flow Water Rights for 2004 (Program).

Under section II.C.1, the Contract specifies that payment to the individual lessors will be issued at a pay rate per acre identified in the individual agreements (Agreements) between Reclamation and the lessors minus ten percent (10%) to be credited to the Water Administration Account as provided in the Water Supply Bank rules (IDAPA 37.02.035.01). The individual Agreements provide that one half of the estimated payment will be paid on or around July 30, 2004, and one half shall be issued after the irrigation season has ended and verification of the Program compliance is complete. The Contract specifies that IDWR shall invoice Reclamation for each payment to the lessors plus the associated 10% for the Water Administration Account.

Three of the lessors provided a written request to receive a single payment after the end of the irrigation season. As per a telephone conversation on July 15, 2004, Gail McGarry agreed that a single payment could be issued after the end of the irrigation season, and plans to document this option in a letter to the department.

Section II.D.2 of the Contract indicates that monitoring compliance with the Agreements, will include review of satellite data and field visits to confirm the leased lands are not being irrigated. The department has visited all of the fields identified on the contracts, and has ordered two satellite images flown May 4 and June 21, 2004. A large percentage of the lands have a cover crop but do not appear to have been irrigated, though rain in the early part of the irrigation season supplemented crop growth. A number of other fields were

covered heavily by weeds, or were cut recently to control weed growth. A bean crop was observed on a 39.1-acre field in the Bell Rapids Irrigation Company. Though the field appeared to be dry during the site visit, detached hand lines were positioned across the field. Information has been requested from the company. They have been informed that the first payment will be issued for all of the contracted acres. However, the full payment for the field will be withheld from the final payment if the lands are determined to be ineligible.

Based on the data available and the review completed to date, all of the lands leased to the bank will be considered for payment. Withholding 50% of the estimated final payment as specified in the Contract, should be sufficient to cover payment reductions needed for unauthorized use of water during the irrigation season.

The attached table identifies the participating lessors, the contract amounts, the total estimated payments as specified in the individual Agreements, the amounts to be issued for the first payment to the lessors and the corresponding administrative fee. Reclamation should be invoiced for the total amount of the first payment, and state warrants should be issued to each lessor for amounts identified.

**2004 PILOT LEASING PROGRAM FOR LEASING OF SNAKE RIVER
NATURAL FLOW WATER RIGHTS
RENTAL OF WATER FROM THE WATER SUPPLY BANK**

**INVOICE TO U.S. BUREAU OF RECLAMATION
FOR LESSOR PAYMENT NO. 1**

LESSOR	AGREEMENT BETWEEN LESSORS AND USBOR ¹			PAYMENT 1 ²			RENTED WATER RIGHT(S)
	Agreement No.	Contracted Idled Acres (ac)	Payment Rate (price/ac)	Total Payment 1 by Reclamation (50% of Estimated Total)	Payment 1 To Lessor (90% Payment 1)	Administrative Fee (10% Payment 1)	
Bell Rapids Mutual Irrigation Co.	1425-04-WL-10-00012	2405.9	\$150.00	\$180,442.50	\$162,398.25	\$18,044.25	2-10205
Bergh Farms	1425-04-WL-10-0004	477.6	\$139.50	\$33,312.60	\$29,981.34	\$3,331.26	2-2159, 2-2354, 2-7184, 2-7229, 2-7284
Clover Hollow, LLC.	1425-04-WL-10-0002	3122.4	\$139.00	\$217,006.80	\$195,306.12	\$21,700.68	2-2386, 2-2387, 2-2388, 2-7148
Dirks, Robert	1425-04-WL-10-0007	185.7	\$149.00	\$13,834.65	\$12,451.19	\$1,383.47	2-2279, 2-7012
Falcon Butte Farms, Inc.	1425-04-WL-10-0004	4072.2 197.0	\$111.50 \$134.50	\$240,273.40	\$216,246.06	\$24,027.34	2-2249, 2-2250, 2-2251, 2-2252, 2-2253, 2-2254, 2-2255, 2-2256, 2-2361, 2-7001
Farm Development Corp.	1425-04-WL-10-00013	123.6	\$150.00	\$0.00	\$0.00	\$0.00	2-2371, 2-2372
Grindstone Butte Mutual Canal CO	1425-04-WL-10-00011	5856.3	\$150.00	\$0.00	\$0.00	\$0.00	2-2262
Huey Farms, Inc.	1425-04-WL-10-0006	589.9	\$149.00	\$43,947.55	\$39,552.80	\$4,394.76	2-2361, 2-7001
Killos, Constantine	1425-04-WL-10-00018	52.3	\$150.00	\$3,922.50	\$3,530.25	\$392.25	2-2145, 2-7144
Little Valley Mutual Irrigation Company	1425-04-WL-10-00016	814.6	\$150.00	\$51,095.00	\$46,985.50	\$6,109.50	2-2443, 2-7030, 2-7068
Mills, James	1425-04-WL-10-00017	258.3	\$150.00	\$19,372.50	\$17,435.25	\$1,937.25	2-7076, 2-7132
Montierth, Herbert, Edward Ray & Susan	1425-04-WL-10-00018	729.7	\$149.00	\$54,362.65	\$48,926.39	\$5,436.27	2-2198, 2-2191
Murphy Flats Water Company, Inc.	1425-04-WL-10-00018	537.9	\$150.00	\$40,342.50	\$36,308.25	\$4,034.25	2-2361, 2-2370, 2-7001
Martha Rosti	1425-04-WL-10-00010	111.4	\$150.00	\$8,355.00	\$7,519.50	\$835.50	2-2194A, 2-2194B
Sailor Creek Water Company	1425-04-WL-10-0009	870.8	\$150.00	\$0.00	\$0.00	\$0.00	2-2186, 2-2204, 2-2206, 2-2214, 2-2215, 2-2217, 2-2218
South Elmore Irrigation Company	1425-04-WL-10-0005	4883.9	\$140.00	\$341,873.00	\$307,585.70	\$34,187.30	2-2210, 2-2269, 2-2367
TLK Farms, Inc.	1425-04-WL-10-0003	573.4	\$140.00	\$40,138.00	\$36,124.20	\$4,013.80	2-2379
Young, Roger	1425-04-WL-10-00014	390.4	\$150.00	\$29,280.00	\$26,352.00	\$2,928.00	2-2298, 2-2376, 2-7182
TOTALS:		26253.3		\$1,327,558.65	\$1,194,802.79	\$132,755.87	\$3,682,722.30

¹ The "Agreement" represents the Water Rental and Forbearance Agreement entered into between the United States Bureau of Reclamation (Reclamation) and the individual Lessors. The Contracted Acres Idled and the Payment Rate represent the number of acres to be idled and the payment per acre agreed upon between the Lessors and Reclamation. The Estimated Total Payment by Reclamation is based on the Contracted Idled acres times the Payment Rate.

² Total Payment 1 by Reclamation was calculated based on one half (50%) of the Estimated Total Payment by Reclamation. For the purposes of the first payment, all of the contracted acres were considered to have been left idle in accordance with criteria set forth in the Lessor Agreements. This was based in part on site visits made to the leased lands by department staff prior to issuance of the first payment. Compliance with the Agreement will be monitored further throughout the irrigation season. Payment 1 to Lessor represents ninety percent (90%) of the Total Payment 1, while the Administrative Fee represents remaining ten percent (10%).
Total Payment 1 = (Contracted Acres Idled) x (Payment Rate per Acre) x (50%); Payment 1 to Lessor = (Total Payment 1) x (90%)



IN REPLY
REFER TO:

PN-3100
WTR-4.10

United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

JUN 25 2004

RECEIVED

JUN 25 2004

DEPARTMENT OF WATER RESOURCES

Mr. Karl Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard Street
Boise, ID 83720

Subject: Transmittal of the Contract to Implement the Rental of Water Under the Pilot Program for Leasing of Snake River Natural Flow Water Rights for 2004

Dear Mr. Dreher:

Please find enclosed three copies of the Contract Between the United States Bureau of Reclamation and the Idaho Department of Water Resources to Implement the Rental of Water Under the Pilot Program for Leasing of Snake River Natural Flow Water Rights for 2004 (BOR Contract No. 1425-04-WL-10-0023). Please sign all three copies and return two copies to our office at the address above, Attention: PN-3100.

If you have any questions, please contact me or Ms. Gail McGarry at 208-378-5306.

Sincerely,

J. William McDonald
Regional Director

Enclosure – 1 (In triplicate)

CONTRACT
Between
The United States Bureau of Reclamation
and
The Idaho Department of Water Resources
to
Implement the Rental of Water Under the
Pilot Program for Leasing of Snake River Natural Flow Water Rights for 2004
(BOR Contract No. 1425-04-WL-10-0023)

This Contract to Implement the Rental of Water Under the Bureau of Reclamation's Pilot Program for Leasing of Snake River Natural Flow Water Rights for 2004 (Contract) is entered into by and between the United States Bureau of Reclamation (Reclamation) and the Idaho Department of Water Resources (IDWR), and shall be effective as of the date of execution and shall remain in force until December 31, 2004. The purpose of this Contract is to provide for the implementation of the lease and rental of certain irrigation water rights held by pumpers on the Snake River. Reclamation enters into this Contract pursuant to the authority of the Act of June 17, 1902 (32 Stat. 388) and acts amendatory and supplementary thereto and the Act of December 28, 1973 (87 Stat. 884) and acts amendatory or supplementary thereto.

I. BACKGROUND

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.

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.

In 2003, there was insufficient storage water available for lease by Reclamation to meet the 427,000 acre-feet target. Therefore, Reclamation worked with IDWR pursuant to a Contract between the United States Bureau of Reclamation and the Idaho Department of Water Resources to Implement the Rental of Water Under the Pilot Program for Leasing of Snake River Natural Flow Water Rights for 2003 to have certain water right holders 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, Reclamation worked with the Governor's Office and the Idaho Power Company for the Idaho Power Company to lease the water out of the State Water Supply Bank for hydropower generation in Idaho resulting in additional water flowing to Lower Granite Dam for flow augmentation.

Again this year, it is expected that there will not be sufficient storage water available for lease for Reclamation to meet its 427,000 acre-feet rental target. Therefore, Reclamation initiated a pilot Snake River Leasing Program (Program) under which a request for proposals was publicly

advertised and copies were sent to eligible water right holders. Under this Program, water right holders forego irrigation of land and place their water rights into the State Water Supply Bank. The applicants to the Program offered a price per acre that they were willing to accept for forgoing irrigation. Reclamation signed individual agreements with the applicants selected.

As a practical way of ensuring that there is additional water in the river, over and above the water that would otherwise be available if there were no Program, Reclamation limited acceptable land to that which was irrigated last year or that which had been in Reclamation's 2003 program.

II. IMPLEMENTING ACTIONS

A. Acceptance of Water Rentals into the Idaho Water Supply Bank

1. Individual Agreements between Reclamation and the Lessors

Reclamation entered into agreements with certain water right holders, hereafter known as the Lessors, whereby the Lessors agree to idle land and lease the associated water right(s) into the State Water Supply Bank. There are 18 individual agreements totaling 26,253.3 idled acres at a total cost of \$3,682,722.30. If Reclamation accepts another one to five idled acres into the Program pursuant to an individual agreement between Reclamation and a Lessor, the total cost may be adjusted upward by \$697.50 for a total cost not to exceed \$3,683,419.80. The individual agreements entered into between Reclamation and the Lessors are appended as Attachment A to this Contract.

2. Land to be Idled

The individual agreements between Reclamation and the Lessors specify the exact location of the land. In section I.B. of the individual agreements between Reclamation and the Lessors, the Lessors agree that "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." If, at any time, IDWR finds that any land is not eligible, IDWR will promptly notify Reclamation.

3. Water Rights to be Leased to the State Water Supply Bank

Under the Program, the Lessors' water rights appurtenant to the land idled will be leased to the State Water Supply Bank. Under section II.A. of the individual agreements between Reclamation and the Lessors, the Lessors agree that the individual agreements will be submitted by Reclamation as applications to the bank. The Lessors also agree that any additional information or requirements 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. IDWR will work with each Lessor to accept the water rights into the State Water Supply Bank.

B. Rental of Water Rights from the State Water Supply Bank

1. Idaho Power Will Rent Water Rights from the State Water Supply Bank

Idaho Power has agreed to rent the water rights from the bank under its Hell's Canyon Complex water right. It is intended that Idaho Power rent the water at no cost to Idaho Power. IDWR will contact and work with Idaho Power for Idaho Power to rent the water rights or portions thereof from the State Water Supply Bank as shown in the attached Individual Agreements between Reclamation and the Lessors. IDWR will submit copies of the rental application made by Idaho Power Company to Reclamation.

2. Reclamation's Approval Required for Rentals out of the Bank

IDWR shall not approve rentals of the water rights associated with this Contract from the State Water Supply Bank without the prior consent of Reclamation to ensure the rentals are compatible with Reclamation's intent of the Program. Section II.B. of the individual agreements between Reclamation and the Lessors provides that "All rentals of the Lessor's water rights out of the water bank shall be subject to Reclamation's approval." The rental period shall be for the entire 2004 irrigation season.

C. Payment For the Water Leases

1. Payment by IDWR to Individual Lessors

Payment to the individual Lessors will be for the price that was stated in the individual agreements between Reclamation and the Lessors minus 10% which shall be credited to the Water Administration Account as required by IDAPA 37.02.035.01. The individual agreements between Reclamation and the Lessors provide that one half of the estimated payment will be made on or about July 30, 2004, and one half will be after the irrigation season has ended and verification of Program compliance is complete. IDWR shall comply with the payment scheme specified in the individual agreements between Reclamation and the Lessors. Prior to making payment to the Lessors, IDWR will invoice Reclamation for the payment plus the associated 10% for the Water Administration Account.

2. Payment by Reclamation to IDWR

It is not intended that Idaho Power will pay for any water leased by the Idaho Power Company under this Contract. The payments to the State Water Supply Bank shall be made by Reclamation and shall be the price agreed to in each individual agreement between Reclamation and each Lessor. Reclamation shall pay the invoices described in subsection II.C.1. above, prior to IDWR making payment to the Lessors. The total amount paid under this Contract to IDWR will not exceed \$3,683,419.80. Payment will be made under Reclamation Cost Authority No. A30-1678-6926-100-00-0-0.

3. Potential Reduction of Payments to Individual Lessors

- a. Payments will be reduced if there are any acres identified by IDWR that are not eligible to be placed into the State Water Supply Bank. The reduction shall be pro rata based on the per acre cost identified in section III.A. of the individual agreement between Reclamation and the Lessor.
- b. Payments will be reduced as described in section II.C.3.a. of this Contract for any unauthorized use of water on any of the land identified as land to be idled in the individual agreements between Reclamation and the Lessors or for any unauthorized use of the water rights leased under the agreements between Reclamation and the Lessors, although other legal remedies remain available to IDWR or to Reclamation including, but not limited to, immediate termination of the lease.
- c. Any part of the payment by Reclamation not used for the purposes authorized under this Contract will be reimbursed by IDWR to Reclamation by December 1, 2004.

D. Administration by IDWR

1. Protection of Water Right if Regulation is Required

IDWR will protect the water rented under this Program by the Idaho Power Company. The water will be protected to the Hells Canyon Complex.

2. Verification of Compliance with the Lease Agreements

In accordance with the provisions in this Contract, IDWR will periodically confirm, through satellite data and field visits, that the land from which the water rights are leased is not being irrigated.

3. Summary of Program Results

At the end of the irrigation season, IDWR will summarize findings regarding monitoring of compliance with the lease agreement. IDWR will work with Reclamation to estimate flow increases resulting from these Water Supply Bank rentals based on crop water requirement data, the number of acres dried up in accordance with the lease agreements and other pertinent information. Payments to the Lessors will not be affected by this data gathering.

III. GENERAL PROVISIONS

A. Officials Not To Benefit

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise out of it.

B. Covenant Against Contingent Fees

The recipient warrants that no person or agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the recipient for the purpose of securing agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

3. Triplicate Originals

This Contract is executed in triplicate. Each of the documents with an original signature of each party shall be an original.

IV. SIGNATURES

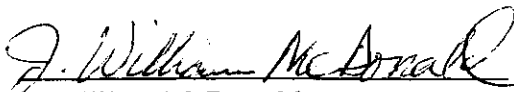
IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**UNITED STATES
BUREAU OF RECLAMATION**



Karl J. Dreher
Director



J. William McDonald
Regional Director

June 30, 2004

Date

June 25, 2004

Date

ATTACHMENT A

**To Contract to Implement the Rental of Water Under the Pilot
Program for Leasing of Snake River Natural Flow Water Rights for
2004 (BOR Contract No. 1425-04-WL-10-0023)**