



To: Travis Thompson, John Simpson, and TJ Budge
From: Greg Sullivan
Cc: Lauren Cabrera, Trent Hooper, Jared Cobell, James Cefalo
Date: April 4, 2023
Re: Licensed Water Rights 35-14240, 35-14241, 35-14242, 35-14243 and 35-14655

This document is being prepared to satisfy the stipulated agreement dated December 1, 2014 signed agreement between SWC, Idaho Power, IGWA and Lance Funk pertaining to the approval of water right permits 35-14240, 35-14241, 35-14242 and 35-14243. The stipulated agreement states that a written report by a qualified consultant will describe the acres planned for irrigation for the current irrigation season by April 15 of each year.

The property and associated water right licenses have been purchased by Farmland Reserve Inc. The company representatives are Lauren Cabrera Jared Cobell.

Water right 35-14240 is allowed a diversion rate of 2.44 cfs, an annual volume of 488 afa and the irrigation of 122.0 acres. It is expected that during the 2022 irrigation season, 122.0 acres of irrigation will occur under 35-14240.

Water right 35-14241 is allowed a diversion rate of 5.9 cfs, an annual volume of 1476.4 afa and the irrigation of 369.1 acres. It is expected that during the 2022 irrigation season, 369.1 acres of irrigation will occur under 35-14241.

Water right 35-14242 is allowed a diversion rate of 2.39 cfs, an annual volume of 478.0 afa and the irrigation of 119.5 acres. It is expected that during the 2022 irrigation season, 119.5 acres of irrigation will occur under 35-14242.

Water right 35-14243 is allowed a diversion rate of 7.88 cfs, an annual volume of 2636.0 afa and the irrigation of 659.0 acres. It is expected that during the 2022 irrigation season, 659.0 acres of irrigation will occur under 35-14243.

Water right 35-14655 is allowed a diversion rate of 0.15 cfs, an annual volume of 63.7 afa and the irrigation of 46.7 acres. It is expected that during the 2022 irrigation season, 46.7 acres of irrigation will occur under 35-14655.

A contract agreement between Farmland Reserve Inc. and Aberdeen American Falls Area Ground Water District was agreed upon for the 2022 irrigation season utilizing water rights 29-2284 and 29-2301. The contract agreement automatically renews for successive terms of one year. A copy of the signed contract agreement will be attached to this document.

WATER RIGHTS LEASE AGREEMENT

This Water Rights Lease Agreement ("Agreement") is entered into effective April 1, 2022 ("Effective Date") between American Falls-Aberdeen Area Groundwater District, 505 N. Oregon Trail Road, American Falls, Idaho 83211 (the "District"), and AgReserves, Inc., a Utah corporation, 79 S. Main Street, Suite 1100, Salt Lake City, Utah 84111, operating under the assumed business name Canyon Falls Farms ("Canyon Falls"). The District and Canyon Falls may be referred to herein separately as a "party" and collectively as the "parties."

Recitals

A. The District has leased from Power County, Idaho (the "County") Idaho water right nos. 29-2284 and 29-2301 (the "County Water Rights"):

B. Canyon Falls desires to sublease the County Water Rights from the District, and the District is willing to sublease the County Water Rights to Canyon Falls, under the terms and conditions set forth in this Agreement.

Agreement

1. **Lease.** The District hereby subleases the County Water Rights to Canyon Falls, and Canyon Falls hereby subleases the County Water Rights from the District, for use under the mitigation plan associated with Idaho water right nos. 35-14240, 35-14241, 35-14242 and 35-14243 (the "Canyon Falls Water Rights"). To provided mitigation under the Canyon Falls Water Rights, Canyon Falls shall not divert water under the County Water Rights. Canyon Falls shall not change the County Water Rights or use the County Water Rights for any other purpose.

2. **Term.** The initial term of this Agreement shall commence on the Effective Date and end on December 31, 2022. Thereafter, this Agreement shall automatically renew for successive terms of one year each unless (a) either party terminates this Agreement by providing written notice to the other party by December 31 of the term in effect, or (b) this Agreement is terminated in accordance with section 4 of this Agreement.

3. **Rent.** As consideration for use of the County Water Rights, for each term of this Agreement Canyon Falls will conduct, on behalf of the District, 6,000 acre-feet of managed aquifer recharge within the Eastern Snake Plain Aquifer in accordance with the IGWA Recharge Policy attached hereto as Appendix A. Each 6,000 acre-feet of recharge must be completed by December 31 of the second year following the term to which it applies. For example, as rent for the initial term (2022) Canyon Falls must complete 6,000 acre-feet of recharge by December 31, 2024. Canyon Falls shall provide an annual written report to the District by February 1 that provides the information required under section 4 of the IGWA Recharge Policy. The annual report shall delineate between the recharge performed for each term of this Agreement. If Canyon Falls fails to pay rent (complete 6,000 acre-feet of recharge) for any term when due, Canyon Falls shall pay to the District by March 1 following the due date a penalty equal [REDACTED] acre-foot of recharge shortfall. All mitigation credits associated with recharge performed under this Agreement shall belong to the District. This section 3 shall survive termination of this Agreement.

4. Contingencies. This Agreement is contingent upon (i) the County's lease of the County Water Rights to the District, and (ii) the County's approval of the District's sublease of the County Water Rights to Canyon Falls. If the County's lease of the County Water Rights to the District is terminated for any reason, or if the County refuses to allow the District to sublease the County Water Rights to Canyon Falls, this Agreement shall automatically terminate.

5. Dispute Resolution. Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

5.1 Good Faith Negotiation. Upon written notice from one party to the other, authorized representatives of the parties will attempt in good faith to resolve the dispute by good faith negotiation.

5.2 Mediation. If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation by a mediator designated by mutual agreement of the parties. The mediation will be held in Power County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

5.3 Litigation. Litigation is allowed between the parties only (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement agreement entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief shall not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs from the non-prevailing party.

5.4 Governing Law, Jurisdiction, and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction, and agree that Power County is the proper venue.

5.5 Exclusive Procedures. The procedures specified in this section 5 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 5.1 and 5.2 are pending.

6. Miscellaneous.

6.1 Notices. Notices required or permitted to be given to any party under this Agreement shall be in writing and shall be effective (a) when personally delivered, (b) three days after mailing via U.S. Postal Service certified mail, (c) upon delivery by a reputable overnight courier, or (d) upon delivery via email to an authorized representative of the party. Notices sent by email shall be deemed received when the designated recipient acknowledges receipt via reply email. Any party may designate or change its address for the purpose of service of notice by giving written notice of such address or change of address to the other parties in any manner above specified five days prior to the effective date of such change.

6.2 Entire Agreement. This Agreement constitutes the complete agreement between the parties with respect to the transaction contemplated hereby and supersedes any prior oral or

written agreements between the parties with respect thereto.

6.3 Amendment. This Agreement may be amended only by a written instrument signed by both parties.

6.4 Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement unless a court of competent jurisdiction determines that such invalidity or unenforceability frustrates either party's primary purpose for entering into this Agreement.

6.5 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

6.6 Assignment. Neither party may assign its rights or obligations under this Agreement without the written consent of the other party, which shall not be unreasonably withheld.

6.7 Time is of the Essence. The parties hereto acknowledge and agree that time is of the essence with respect to each provision of this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

6.8 Construction. Each party participated in the negotiation and drafting of this Agreement; therefore, this Agreement shall not be construed more strongly in favor of or against any party regardless of who was more responsible for its preparation and shall be construed simply according to its fair meaning.

6.9 Waiver. No provision of this Agreement shall be deemed waived, and no performance shall be excused, unless written waiver or consent is given by the party against whom it is sought to be enforced. Any waiver of a default shall not constitute a waiver of the same or different default on a separate occasion.

6.10 Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one and the same agreement.

6.11 Electronic Signatures. Digital, scanned, or photocopied signatures to this Agreement transmitted by facsimile or email shall be valid and effective to bind the party so signing.

6.12 No Recording. Neither party shall record this Agreement or a memorandum or other instrument evidencing the existence of this Agreement.

[Remainder of page intentionally left blank; signature pages below]

CONTERPART SIGNATURE PAGE

**American Falls-Aberdeen Area
Groundwater District**

Dated: April 4, 2022

By: 
Tim Deeg, Chairman

CONTERPART SIGNATURE PAGE

**AgReserves, Inc., a Utah corporation doing
business as Canyon Falls Farms**

Dated: 4/22/22

By: Rex Burgener

Name: Rex Burgener

Title: Vice President

APPENDIX A

IGWA Recharge Policy

Approved November 9, 2020

For groundwater recharge to qualify for mitigation credit under the IGWA-SWC Settlement Agreement, the recharge must comply with the following:

1. Natural flow water rights used for recharge must have "recharge" listed as an authorized beneficial use.
2. Water must be recharged in the calendar year of the irrigation season in which mitigation credit is claimed.
3. In-canal recharge will be accounted for in accordance with Idaho Water Resource Board standards taking into consideration historical diversion rates.
4. The following information must be provided by the entity conducting the recharge:
 - 4.1 Water source.
 - 4.2 Water right number or storage spaceholder providing storage.
 - 4.3 If storage water is leased, a copy of the lease contract.
 - 4.4 Copy of the recharge contract with the entity that performed the recharge.
 - 4.5 Location(s) where recharge occurred.
 - 4.6 Dates recharge was performed.
 - 4.7 Total volume recharged at each recharge site.
 - 4.8 Daily or weekly measurement data supporting the total volume recharged.
 - 4.9 Description of measurement device and accuracy.