



State of Idaho

DEPARTMENT OF WATER RESOURCES

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June 23, 2009

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

William A. Parsons
Parsons, Smith & Stone LLP
137 West 13th St
PO Box 910
Burley, ID 83318

RE: Memorandum of Understanding – 2009 WD140 Adopted Resolutions

Dear Mr. Parsons:

Enclosed is the Memorandum of Understanding initiated on June 1, 2009, signed by Mike Cranney and Dave Tuthill. Also included is a copy of WD140 2009 Adopted Resolutions.

Should you have any questions, please contact me at (208)287-4959 or Cindy Yenter at (208)736-3033.

Sincerely,

A handwritten signature in black ink that reads "Tim Luke". The signature is written in a cursive style with a large, sweeping initial 'T'.

Tim Luke
Water Distribution

Cc: Cindy Yenter Water District 140 Watermaster

PARSONS, SMITH & STONE, LLP

ATTORNEYS AT LAW

137 WEST 13TH STREET

P. O. BOX 910

BURLEY, IDAHO 83318

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June 12, 2009

RECEIVED
JUN 15 2009
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Cindy Yenter
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

RE: Memorandum of Understanding - Water District 140
Our File No.: 19198.070010

Dear Cindy:

Enclosed, for your information, is the Memorandum of Understanding signed by Mike Cranney.

Should you have any questions, please contact me,

Very truly yours,

PARSONS, SMITH & STONE, LLP

Mailed without signature to avoid delay

William A. Parsons

WAP/sw
Enc.

MEMORANDUM OF UNDERSTANDING

June 1, 2009
RECEIVED
JUN 15 2009
DEPT. OF WATER RESOURCES
SOUTHERN REGION

This memorandum of understanding is entered into by and between the Director of the Idaho Department of Water Resources, (hereinafter called the Director or IDWR) and the water users of Water District No. 140, Oakley Valley Area, (hereinafter called Water District No. 140) acting through the Water District Advisory Committee.

WHEREAS, the statutes of the State of Idaho provide for the Director to have direction and control of the distribution of the waters of the state to those holding valid rights to the use thereto; and

WHEREAS, at the Water District No. 140 annual meeting held on February 10, 2009, the water uses of the district adopted a budget for the 2009 fiscal year, which included the authority for the Water District Advisory Committee to enter a memorandum of understanding authorizing a cooperative program with the Director to provide watermaster services for Water District No.140; and

WHEREAS, the Advisory Committee has now requested, through the Director, that IDWR continue to provide compensation for administrative Watermaster services at no charge through the 2009 water district fiscal year; and

WHEREAS, ongoing measurement and reporting is being conducted within Water District 140, and certain diversions which report directly to the Watermaster will need to be assessed during 2009 for measurement and reporting charges only.

NOW, THEREFORE, the Director agrees to provide the following services to Water District No. 140, effective upon the execution of this memorandum of understanding and to provide these services at no charge for the period February 10, 2009 to February 16, 2010, or the date of the 2010 annual Water District 140 meeting, whichever is later, in accordance with the purposes of this memorandum of understanding:

1) Appointment of Cindy Yenter, an IDWR employee, as watermaster to Water District No.140, as described in the adopted resolutions for Water District No. 140 for the period described above and as agreed to by the water users of Water District No. 140 at their annual meeting.. The adopted resolutions for Water District No. 140 are attached hereto and incorporated herein by this reference. The appointed watermaster will work under the direction of the Director consistent with the provisions of Title 42, Chapter 6, Idaho Code.

2) Appointment of any full-time or part-time IDWR employees as necessary for the water distribution operations of Water District No. 140.

3) Office space, vehicles, and equipment as necessary for operation of Water District No. 140 to the extent necessary to equitably administer, monitor, regulate and distribute water within Water District No. 140.

WATER DISTRICT NO. 140 agrees as follows:

1) The portion of the 2009 Adopted Budget approved as Administrative Charges in the amount of Forty Thousand Seven Hundred Four Dollars (\$40,704) shall be set aside and shall not be collected by the Watermaster.

2) The Watermaster of Water District 140 shall, in accordance with the 2009 Adopted Resolutions, assess for annual measurement and reporting of water use for ground water diversions that are measured directly by the watermaster and that were previously subject to measurement and reporting orders by the Director. A total of Thirteen Thousand Seven Hundred Forty Dollars (\$13,740) was identified in the 2009 Adopted Budget for measurement and reporting of diversions directly by the watermaster. Diversions that are measured and reported by a Water District 140 sub-district, such as Southwest or Goose Creek Irrigation District, are not included within this budget item.

THE PARTIES mutually agree that:

1) Any persons directly employed by the Department as classified state employees, performing duties on behalf of Water District No. 140 under this memorandum will only perform those duties as described in the adopted resolutions of Water District No. 140.

2) Nothing in this agreement will act to change, modify or release either party of any obligation or responsibility otherwise provided by contract or by law.

Water District No. 140

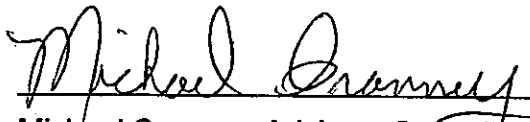
Idaho Department of Water Resources


10 June 2009

6/19/2009

Date

Date


Michael Cranney, Advisory Committee Chair
Water District No. 140


David R Tuthill Jr., Director
Idaho Department of Water Resources

**Water District No. 140
Oakley Valley Area
2009 Adopted Resolutions**

The water users of Water District No. 140, meeting at the annual district meeting on February 10, 2009, at the Burley City Council Chambers in Burley, Idaho, HEREBY ADOPT THE FOLLOWING RESOLUTIONS:

1. The watermaster shall perform the duties as required by Chapter 6, Title 42, Idaho Code and in accordance with the following:
 - a. The duties described in the Final Order Creating Water District No. 140 signed by the Director of IDWR, December 28, 2006, including:
 - 1) Assure that water uses are in compliance with Idaho water law;
 - 2) Administer and enforce water rights in order of priority, and curtail out-of-priority diversions under ground water rights in Water District No. 140 determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director;
 - 3) Measure, record and report flows under the water rights and diversions in the district, in accordance with requirements established by IDWR.
 - 4) Curtail unauthorized or excessive diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
 - 5) Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director and applicable in Water District No. 140.
 - b. Work with sub-district watermasters and advisory committees to assure that the duties described above in item 1a. are carried out in local sub-districts.
 - c. Direction and guidance provided by the Director of IDWR, including but not limited to, general guidelines as provided in the IDWR Watermaster Handbook.
 - d. The annual water district resolutions as adopted herein.
2. That IDWR be elected to provide the watermaster services for Water District No. 140 and that the Director appoint Cindy Yenter, an employee of IDWR, or other employees of IDWR as may be necessary, to serve as the watermaster for the ensuing year.
3. As provided in Idaho Code 42-608(4), the watermaster's term of service shall begin upon annual meeting election and continue until the next annual meeting.
4. The water users of Water District No. 140 hereby empower the duly elected Chairperson of the Water District No. 140 Advisory Committee created herein to enter into a Memorandum of Understanding between Water District No. 140 and the Director of IDWR that will provide the following:
 - a. Water District 140 will assume full responsibility for all expenses of the district incurred following the 2009 water district annual meeting. IDWR will provide full-time or part-time employees as necessary for watermaster duties during the dates of service as identified in Resolution #3, and pursuant to the adopted budget.
 - b. The Director of IDWR and the watermaster may appoint other staff as necessary to perform measurement and reporting of diversions within the water district that are not within a sub-district and/or heretofore have not measured or reported flows. Such staff will be appointed as watermaster assistants.

- c. The watermaster shall maintain an office for the ensuing year within the IDWR Southern Regional Office, located in Twin Falls, Idaho.
 - d. IDWR will provide office space, vehicle(s) and the use of all necessary office and field equipment and other necessary watermaster expenses during the watermaster's term of service as described in Resolution No. 3. This arrangement shall not give Water District No. 140 any ownership interest in any IDWR office space and equipment.
5. Water users in Water District 140 who are not reporting annual diversions to one of the sub-districts created herein shall report diversions directly to the watermaster of Water District 140. The fee for measurement and reporting for all diversions reporting directly to Water District 140, will be approximately Seventy-five dollars (\$75) per diversion per year. Measurement and reporting fees will appear as a separate line-item charge on the Water District assessment statement. *Measuring and reporting charges paid either to a subdistrict or directly to Water District 140 will not be used to determine voting shares.*
 6. The budget for Water District 140 for the fiscal year 2009 beginning March 1, 2009 and ending on February 28, 2010, be as follows: Forty Thousand Seven Hundred Four Dollars (\$40,704) for Watermaster Duties, and Thirteen Thousand Seven Hundred Forty Dollars (\$13,740) for measuring and reporting of diversions that are required to be measured and reported pursuant to an order of the Director of IDWR and that are not reporting to a sub-district. An itemized budget sheet is attached.
 7. Dave Pickett be elected Water District 140 treasurer. The duties of the treasurer will be to approve expenses and disburse Water District funds, and to prepare or review a written statement of financial affairs of the district at the end of each fiscal year, in accordance with Idaho Code Section 42-619, and to authorize a periodic formal review of the financial affairs of the district as is determined necessary
 8. In accordance with Idaho Code § 42-618, the Watermaster of Water District 140 is hereby authorized to collect the expenses of the Water District directly from the water users or from the subdistricts. The Watermaster will make an assessment to each individual water user, or, in aggregate to each subdistrict, in pro-rata amounts as determined by the budget which is formally adopted at the annual meeting. All funds shall be deposited in a separate bank account maintained by the Water District.
 9. Given that the water district cost for administering water for many water users is greater than their normal assessments would be based upon their total annual use of water, it is resolved that the watermaster of Water District 140 is authorized to assess a \$25 minimum charge for watermaster services for water users within his or her jurisdiction.
 10. The watermaster shall prepare assessments for the 2009 budget after the water users present at the 2009 annual meeting have formally adopted the budget. The advisory committee recommends that the 2009 assessments be due to Water District 140 on or before April 1, 2009 so that there will be sufficient funds early enough in the year to accommodate the expenses of the water district.
 11. All payments for assessments not received by May 1, 2009 shall accrue penalties in the amount of 10% of the charge plus interest in the amount of 1% per month, as provided pursuant to Idaho Code Section 42-617.
 12. It is resolved that the Watermaster is authorized pursuant to Idaho Code Section 42-618, to withhold or suspend deliveries of water to any water user who has not paid their assessment charges by January 1 of the year following the billing date.

13. An advisory committee shall be elected to provide input to the watermaster and the Director of IDWR. The number and composition of the advisory committee for the ensuing year shall total 12 seats as follows:

- 2 members of the Southwest Irrigation District;
- 2 members of the Goose Creek Irrigation District and Oakley Canal Co including Goose/Trapper Creeks (45-C), Birch Creek (45-B), and Cottonwood Creek (45-K) water districts;
- 2 Basin 45 ground water irrigators not in Southwest or Goose Creek Irrigation Districts;
- 1 ground water irrigator from Golden Valley Water District (45-O);
- 3 non-irrigation ground water users (1 from municipal, 1 from industrial, 1 from dairies);
- 2 members of Marsh Creek (45-F) and/or Basin Ck (45-A) water districts.

Each group represented may also select an alternate for each seat. Candidates will be voted on at caucus during the annual meeting. The advisory committee will meet as often as needed to address the structure, governance and operation of the district. Decisions or recommendations of the advisory committee must be made with at least 50% of advisory members present in favor

14. The Water District No. 140 annual meeting shall hereafter be held on the third Tuesday of February of each year unless the Director of IDWR should find it necessary to change the meeting date or unless changed by future resolution of the District at any annual meeting. An agenda for the annual meeting shall be prepared 14 days prior to the annual meeting by the advisory committee and posted to the IDWR water district web site. Copies shall be mailed to all advisory committee members.

15. Copies of the Minutes of the annual meeting, all approved resolutions, and any report prepared in accordance with Idaho Code 42-615, shall be filed with the Director of the IDWR in accordance with Idaho Code 42-617.

16. The watermaster shall be responsible for submitting to IDWR annual reports showing water use and such other information that may be deemed necessary by the Director of IDWR in accordance with Idaho Code 42-606, 42-708, and 42-709.

17. The Water District No. 140 watermaster, sub-district watermasters and any watermaster assistants are authorized as appointed agents of IDWR under Idaho Code 42-1701(5) to make reasonable entry on lands within the District, in accordance with IDWR policy, to carry out their duties as instructed by IDWR. These duties include but are not limited to:

- a. Monitoring diversion and measuring rate and volume of water diverted from surface and ground water and other public water sources.
- b. Measuring the depth to water in wells.
- c. Monitoring the place, period, and nature of use of water to identify unauthorized diversion and use of water and report to IDWR.

18. The Advisory Committee shall make available any proposed resolutions or budget at least fourteen (14) days prior to the annual meeting. This shall not preclude any water right owner from proposing any new resolution or proposing changes to resolutions at any annual meeting.

19. Water District 140 includes one or more water districts, ground water districts, irrigation districts, municipalities, or other geographical areas where the source of water or nature of water use is common among water right owners and users. Since water districts and irrigation districts may already be measuring and reporting diversions on their own, and in order to promote efficiency in the administration of water rights and water management, the Director of IDWR, working with the members of the water district through an advisory or steering committee, may

provide for sub-districts as he finds appropriate. The director therefore recognizes and provides the following sub-districts:

- Magic Valley Ground Water District (B45 portion)
 - Southwest Irrigation District
 - Goose Creek Irrigation District and Oakley Canal Company
 - City of Burley
 - Golden Valley Water District
 - Existing Surface Water Districts – Basin Creek (45-A), Birch Creek (45-B), Goose/Trapper Creek (45-C), Marsh Creek(45-F), and Cottonwood Creek (45-K).
20. Water rights in an existing active water district which has been designated as a sub-district of Water District 140, shall not be subject to assessments from Water District 140, provided that these sub-districts are providing adequate distribution of water. Existing Water Districts Basin Creek (45-A), Birch Creek (45-B), Goose/Trapper Creek (45-C), Marsh Creek(45-F), Cottonwood Creek (45-K), and Golden Valley (45-O) shall continue to hold annual meetings, elect watermasters, adopt a budget, and select an advisory committee. The Watermaster of Water District 140 shall not include the rights within these sub-districts in the general administrative assessment unless the Watermaster has been required to directly expend time or resources to deliver and/or regulate water in that sub-district.
21. The sub-districts designated above which are not active Water Districts may have employees or agents who measure and report diversions to IDWR, and who may provide other services to the sub-district. These sub-districts will be subject to an aggregate administrative assessment, but will not be charged by Water District 140 for measurement and reporting. The Director of IDWR may appoint employees or agents of the sub-districts as assistant watermasters for purposes of measuring and reporting water use to the watermaster of Water District 140. The Water District 140 watermaster and the Director of IDWR will provide direction and guidance to assistant watermasters for measuring and reporting of diversions in sub-districts, including but not limited to the following:
- a. Each sub-district shall prepare an annual report of diversion data to the water district watermaster in accordance with Idaho Code § 42-606, § 42-708, § 42-709, and the direction provided by the Director of IDWR.
 - b. Assistant watermasters from sub-districts shall cooperate and coordinate with the water district watermaster and IDWR in sharing water use information and in the investigation of water uses within sub-districts, including but not limited to investigation of water use to confirm reductions of water use when required, and confirm and report compliance of water use with valid water rights.
 - c. The regulation of diversions, including curtailment of diversions and other water right enforcement actions, shall be the primary responsibility of the Water District 140 watermaster or IDWR.
 - d. Sub-districts and sub-district assistant watermasters may cooperate and participate with the water district and IDWR in resolution of unauthorized diversions or other enforcement matters.
 - e. To the extent that sub-district assistant watermasters may otherwise be involved in the regulation or enforcement of diversions, such involvement will be under the instruction of the Water District 140 watermaster or the Director of IDWR.