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United States Department of the Interior **RECEIVED**

FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue
Portland, Oregon 97232-4181

FEB 14 2002

Department of Water Resources

February 13, 2002

Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706

The following are U.S. Fish and Wildlife Service (Service) comments regarding the newly proposed "Water Districts" for the Eastern Snake River Plain Aquifer. The Service is concerned about its obligation to measure and report water use under existing water rights within each proposed Water District.

The Service recently received a copy of the State of Idaho's Motion for Order of Interim Administration in the Eastern Snake Plain Aquifer that was filed with the Snake River Basin Adjudication (SRBA) Court on November 19, 2001. On January 8, 2002, the SRBA District Court held a hearing on the State's Motion and issued an order authorizing the Director of the Idaho Department of Water Resources (Director) to divide the state into "Water Districts" for the purpose of distributing water among appropriators for all parts of Basins 35, 36, 41, and 43 under the laws of the State of Idaho. After creating these Water Districts, Water Masters will be elected and given several regulatory duties, including measuring and reporting water use for each water right within their district.

IDWR has in the past, established several "Water Measurement Districts" within the Eastern Snake Plain which are currently charged with measuring and reporting water use for water right diversions for each district. It is our understanding that the newly established "Water Districts" would replace the Measurement Districts and take over the duties of measuring and reporting water use.

According to Idaho Code § 42-706, certain appropriators or users of water may petition the Director to be excluded from the Water Measurement Districts, if they can demonstrate that they are currently measuring and recording their diversions with methods that meet acceptable standards and agree to report annual usage to the Director. The Service falls into this category and in December of 1998 entered into a cooperative agreement (attached for your review) with IDWR's Northern Water Measurement District (NWMD) on behalf of the Camas National Wildlife Refuge (Refuge).

The purpose of the agreement is to provide a process for measuring and reporting ground water usage at the Refuge to assist the State of Idaho in monitoring and managing water resources within the state. Specifically, the objectives of this cooperative agreement are to provide for the Service to annually measure and report its Refuge ground water usage to the NWMD and for the NWMD to review and incorporate the usage information into the District Hydrographer's annual report as required by Idaho Code § 42-708. This agreement should continue to be in force.

The Service is interested in establishing a similar agreement with IDWR for all of its facilities which may fall within any of the proposed districts. Currently, the Service has a comprehensive water use monitoring network for all facilities in Region 1 (California, Nevada, Oregon, Washington, Idaho, and Hawaii). This network was established in an effort to meet state water use reporting requirements and to provide data for ongoing hydrologic and water management studies. All of our monitoring methods meet or exceed state standards, including those developed by your office. Site descriptions and further information on measurement methods for individual monitoring sites at all Idaho facilities are available upon request.

When appropriate, the Service requests the opportunity to meet with you and/or your representatives to negotiate terms of an agreement to monitor and report Service diversions. Your assistance in this matter is greatly appreciated. Please direct your response to David Langman, Division of Engineering/Water Resources at (503) 231-2057.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David J. Langman', with a long horizontal flourish extending to the right.

David J. Langman
Acting Regional Engineer

Enclosure

cc: (w/enclosure)
Dick Munoz, SE Idaho NWRC
Refuge Manager, Camas NWR
Refuge Manager, Grays Lake, NWR
Refuge Manager, Hagerman NFH
Refuge Manager, Minidoka NWR

ORS _____
SECT RF _____
ATTY RF _____
CASE FILE ☒

FWS AGREEMENT # 146119J014

TYPE OF AGREEMENT:

TYPE OF ORGANIZATION

☐ Grant
☒ Cooperative Agreement
☐ Private Lands
☐ Challenge Cost-Share
☐ Inter-Agency
☐ Intra-Agency

☒ State, Local or Indian Gov.
☐ Non-Profit Organization
☐ Higher Education Inst.
☐ Private Individual
☐ Business Organization
☐ Federal Agency

PARTICIPANTS

U.S. Fish & Wildlife Service
Camas National Wildlife Refuge
2150 East 2350 Drive
Hamer, ID 83254
(208) 662-5423
FAX (208) 662-5525

Northern Water Measurement
Dist.
900 N. Skyline Drive, Ste. A
Idaho Falls, ID 83402
(208) 525-7171
FAX (208) 525-7177

PROJECT OFFICERS

FWS Officer:
Name: Gerald Deutscher
Phone: (208)662-5423

Grantee/Cooperator:
Name: Kirk Jacobs, Chairman
Phone: (208)662-5415

**NORTHERN WATER MEASUREMENT DISTRICT, IDAHO
AND
U.S. FISH AND WILDLIFE SERVICE
COOPERATIVE AGREEMENT**

I. PARTIES TO THE AGREEMENT

The parties to this Cooperative Agreement (Agreement) are the Idaho Northern Water Measurement District (NWMD or District), a State entity duly organized under the laws of the State of Idaho, and the U.S. Fish and Wildlife Service (Service), the federal agency which owns and manages the Camas National Wildlife Refuge (Refuge), collectively, the Parties.

II. PURPOSE AND OBJECTIVES

The purpose of this Agreement is to provide a process for measuring and reporting ground water usage at the Refuge to assist the State of Idaho in monitoring and managing water resources within the State. Specifically, the objectives of this Agreement are to provide for the Service to annually measure and report its Refuge ground water usage to NWMD and for NWMD to review and incorporate the usage information into the District hydrographer's annual report required by Idaho Code §42-708, and to provide for an appropriate assessment to the Service for the District's review and report preparation.

III. AUTHORITY

NWMD enters into this Agreement pursuant to the NWMD Resolution adopted at its November 4, 1996, annual meeting, and Idaho Code § 42-707(3)(4). The Service enters into this Agreement pursuant to the Refuge Administration Act of 1996 (16 U.S.C. 668dd-668ee, 80 Stat. 927), as amended.

THE PARTIES AGREE AS FOLLOWS:

IV. SPECIFIC OBLIGATIONS OF EACH PARTY:

A. NWMD Obligations:

1. NWMD will conduct an initial site-survey of each ground water diversion at the Refuge. The site survey will include collecting GPS data required by the Idaho Department of Water Resources (IDWR) and affixing IDWR site tags.

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2. NWMD will review and verify initially the measurement methods used by the Service and report the adequacy of the methods to the Service and IDWR.
3. NWMD will produce an annual estimate of the Refuge's total volume of ground water usage, in acre feet, from the Refuge's annual power consumption records as a means of comparison and verification of the Service's reported diversion data; and in the event there are any discrepancies will attempt to reconcile with the Service any discrepancies.
4. NWMD will receive and incorporate Service data regarding ground water usage at the Refuge into the District hydrographer's annual report, pursuant to Idaho requirements for the annual report.
5. NWMD will provide annually to the Service's Regional Office, Water Resources Branch, a copy of the portion of the District Hydrographer's annual report pertaining to Refuge water use.
6. NWMD will provide by April 1 of each year an invoice to the Service, for a reduced annual assessment for assistance of NWMD in preparing an annual report of Refuge ground water usage.
7. NWMD will request access to Service facilities with reasonable notice to the Service of the need for access.

B. Service Obligations:

1. The Service will measure and record its ground water diversions throughout the year and, by January 30 of each year, report to NWMD, using the NWMD Field Report, the Refuge's ground water and power consumption information for the previous calendar year, specifically:
 - a. The maximum ground water diversion rate in cubic feet per second (cfs) for the year;
 - b. The annual total ground water diversion volume in acre-feet;
 - c. Any changes to the information provided in the NWMD Field Report, specifically regarding the following items:

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owner/operator, diversion structure, or pumping plant; and

- d. All utility meter data for the year, as indicated in the NWMD Field Report, and the utility account number.
2. The Service will participate in the annual IDWR accuracy and reliability tests of sonic flow meters every three years or as required in current IDWR Guidelines for Measuring and Reporting Water Diversions and Ground Water Levels in Idaho ("Guidelines"). The Service will provide a standard pipe section for measurement and calibration.
3. The Service will verify the accuracy of its permanently installed flow meter(s) and provide verification to NWMD by November 1, 1999, and thereafter every three years, i.e., the next date after 1999 is November 1, 2002, and every three years thereafter, or as required by current IDWR Guidelines.

Verification of installed flowmeters shall be performed by one of the following:

- a. Registered Professional Engineer;
- b. Water Right Examiner certified by IDWR;
- c. Watermaster or assistants of an organized Idaho Water District;
- d. Hydrographer or assistants of an organized Idaho Water Measurement District or Ground Water District;
or
- e. The manufacturer of the flowmeter;

or as specified by current IDWR Guidelines.

4. The Service will submit annually a reduced annual assessment to NWMD, subject to the availability of federally appropriated funds, by May 15 of each year, or within 30 days of receipt of an invoice, whichever is later.
5. The Service will provide reasonable access to Service facilities to

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and u.s. fish and wildlife service

the NWMD Hydrographer or officers, upon request.

V. FUNDING INFORMATION

The Service will be responsible, subject to the availability of federally appropriated funds, for an annual reduced assessment for NWMD's data entry, evaluation, and reporting costs for Refuge ground water usage. The 1997 rate was \$50 per ground water diversion; the rate in 1998 and thereafter is \$25 per ground water diversion. No other funding is or will be required by either Party.

VI. MODIFICATION

This Agreement may be modified only by mutual agreement of the Parties in writing.

VII. TERM OF AGREEMENT AND TERMINATION

This Agreement shall remain in effect unless terminated by a Party. This Agreement may be terminated as follows:

A. Termination for Cause

1. The Service may terminate this Agreement in full, or in part, at any time, whenever it is determined that NWMD has failed to comply with the conditions of the Agreement. The Service shall promptly notify NWMD in writing of this determination, the reasons for the termination, and the effective date. Payments made to NWMD or recovery by the Service, shall be in accord with the legal rights and liabilities of the Parties.

2. The NWMD may terminate this Agreement if:

a. It is determined that the Service has failed to comply with the conditions of the Agreement;

b. IDWR ceases to accept user reported data in Water Measurement Districts;

c. IDWR imposes additional reporting requirement on NWMD which cannot be met by the plan outlined in the Agreement.

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B. Termination of Convenience

The Service or NWMD may terminate this Agreement in whole, or in part, when both Parties agree that the continuation of the project would not produce beneficial results commensurate to the intent of this Agreement. The Parties shall agree upon the termination conditions including the effective date and, in the case of partial terminations, the portion to be terminated. The NWMD shall not incur new obligations after the effective date of termination, and shall cancel as many outstanding obligations as possible. The Service shall allow full credit to the NWMD for the Federal share of the non-cancelable obligations properly incurred prior to termination.

VIII. GENERAL PROVISIONS

A. Officials Not to Benefit

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

B. Comity

The Service enters into the Agreement as a matter of comity and does not intend that entering into this Agreement or complying with its terms may be interpreted as acquiescence by the Service that it could otherwise be required at this time to comply with the requirements of this Agreement. This Agreement does not waive nor is it intended to waive any right of the Service or legal positions pertaining thereto.

C. Compliance with OMB Circulars

Grantees/Cooperators are responsible for compliance with the administrative requirements of Office of Management and Budget (OMB) Circulars that apply to their type of organization. OMB Circulars applicable to State, Local and Tribal Governments, A-102 (Admin), A-87 (Costs) and A-133 (Audits) are hereby incorporated by reference. Hard copies are available on request or obtainable on the internet at: <http://www.whitehouse.gov/WH/EOP/OMB/Grants>.

D. Certifications

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The Grantee/Cooperator, as a recipient of federal assistance funds, certifies compliance with the following:

1. The Equal Protection Clause of the 14th Amendment, which guarantees equal treatment for all groups.
2. Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin in any program receiving federal funding.
3. The Rehabilitation Act of 1973, as amended in 1978, which prohibits discrimination against the handicapped.
4. The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.

FOR THE NORTHERN WATER MEASUREMENT DISTRICT:

By: Signature: *[Signature]* Date: 12/15/98

Title: Chairman NWM D

FOR THE U.S. FISH AND WILDLIFE SERVICE:

By: Signature: *[Signature]* Date: 12/19/98

Title: Refuge Manager

FISH AND WILDLIFE SERVICE CONTRACT SUFFICIENCY REVIEW:

By: Signature: *[Signature]* Date: 12-7-98

Contracting Officer-FWS# 19072

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