



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

March 20, 2012

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Water District 140
c/o Oakley Valley Canal Co.
PO Box 207
Oakley ID 83346

RE: Nondisclosure and Confidentiality Agreement

Idaho Department of Water Resources acknowledges receipt of the Nondisclosure and Confidentiality Agreements relating to electrical consumption reports for groundwater pumping.

Please find the enclosed copy of the Nondisclosure & Confidentiality Agreement, signed by Tim Luke, Water Compliance Bureau Chief, on behalf of Idaho Department of Water Resources and Water District 140, c/o Oakley Valley Canal Co.

Sincerely,

Christine Roberts
IDWR Compliance Bureau
322 E Front
PO Box 83720
Boise Id 73720-0098

SCANNED
MAR 20 2012

**IDAHO DEPARTMENT OF WATER RESOURCES
NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT RELATING TO
ELECTRICAL CONSUMPTION REPORTS FOR GROUNDWATER PUMPING**

This Nondisclosure and Confidentiality Agreement (the "Agreement") is made and entered into this 1st day of February, 2012 ("Effective Date"), by and between Water District 140 ("WD 140") whose address is c/o Oakley Canal Company, PO Box 207, Oakley, Idaho 83346, and the State of Idaho Department of Water Resources ("IDWR") whose address is 322 E. Front Street, Boise, Idaho 93720. WD 140 and IDWR are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, pursuant to the Electrical and Natural and Manufactured Gas Consumption Act (*I.C. §62-1305*) and the Idaho Public Utilities Commission's Rules Relating to Electric and Natural or Manufactured Gas Consumption for Ground Water Pumping (*IDAPA 31.81.01.000*), suppliers of electricity, including public utilities, municipal, mutual non-profit and cooperative corporations, provide ground water pumping electrical data to IDWR by January 5 of each calendar year; and

WHEREAS, WD 140 and IDWR both acknowledge that the energy suppliers are the owners of such ground water pumping electrical data that the Idaho Public Utilities Commission considers confidential and proprietary to energy suppliers; and

WHEREAS, WD 140 and IDWR desire to protect the confidentiality of, maintain its rights in, and prevent the unauthorized use and disclosure of such ground water pumping electrical data; and

WHEREAS, IDWR discloses its groundwater pumping electrical data to WD 140 on the condition that the information be retained in confidence according to the following provisions and that WD 140 does not use such information contrary to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual obligations and undertakings, the sufficiency of which is acknowledged, WD 140 and IDWR agree as follows:

1. RECITALS:

The Parties acknowledge and agree as to the accuracy of the Recitals set forth above, and such Recitals are incorporated herein by reference.

2. CONFIDENTIAL INFORMATION:

As used in this Agreement, "energy suppliers' data" means all data, including but not limited to, groundwater electrical pumping data, and all data regarding the energy suppliers, its customers or vendors that is either: (a) furnished, disclosed, or otherwise made directly or indirectly available to WD 140 or its directors, officers, employees, agents, lawyers, engineers, accountants, consultants or financial advisers (collectively, "Representatives") by or on behalf of IDWR pursuant to the legal authority referenced above; or (b) collected or created by IDWR on behalf of the energy suppliers pursuant to applicable legal authority. All energy suppliers' data are and shall be treated as

confidential, regardless of whether marked as "CONFIDENTIAL" or otherwise. The Energy Suppliers' Data in oral, visual, or electronic format shall also be confidential.

3. USE AND NONDISCLOSURE OF CONFIDENTIAL INFORMATION:

WD 140 shall not disclose any confidential information to any person, firm or corporation, nor use such confidential information for any purpose other than in accordance with this Agreement or as authorized pursuant to applicable legal authority without the energy suppliers' prior written consent. WD 140 shall take affirmative steps to protect and safeguard such the energy suppliers' data and at minimum use the same degree of care it uses to prevent the unauthorized use, dissemination, or publication of its own confidential information and, in any event, not less than the level of care standard for political subdivisions in Idaho. WD 140 shall limit disclosure of the energy suppliers' data to only those employees or agents who need to know such information, and shall notify anyone with access to the energy suppliers' data in writing that it is confidential.

4. EXCEPTIONS:

The confidentiality obligations set forth in this Agreement shall not apply to the energy suppliers' data that: (a) is or becomes publicly known or available other than by the WD 140's act or fault or the WD 140's breach of Section 3; (b) is rightly received by the WD 140 from a third party who was authorized to disclose such The energy suppliers' data; (c) is proven by written evidence to have been independently developed by the WD 140; or (d) is approved for disclosure by written authorization from the energy suppliers.

5. OWNERSHIP OF CONFIDENTIAL INFORMATION:

All of the energy suppliers' data remains the sole property of the energy suppliers'. WD 140 may not use the energy suppliers' data for any purpose other than to perform its obligations under this Agreement. The energy suppliers' data may not be sold, assigned, leased or otherwise disposed of or commercially exploited by WD 140.

6. DATA SECURITY:

WD 140 shall establish and maintain commercially reasonable safeguards against the destruction, loss, theft, or alteration of the energy suppliers' data in the possession or control of WD 140. WD 140 shall be required to promptly remedy and mitigate any damages, losses or expenses caused by a breach in the security of WD 140's systems.

7. RESPONSIBILITY:

WD 140 shall be wholly responsible for maintaining the secrecy and confidentiality of the energy suppliers' Data disclosed by IDWR to WD 140 or otherwise obtained by WD 140, and shall be responsible in this regard for the actions and activities of all its Representatives.

8. DURATION OF AGREEMENT; SURVIVAL OF OBLIGATIONS:

This Agreement shall remain in force and effect for a period for the duration of the existence of the Electrical and Natural and Manufactured Gas Consumption Act (*I.C. §62-1301 et seq.*).

9. INDEMNIFICATION:

WD 140 agrees, to the extent allowed by law, to protect, defend, indemnify, and hold harmless IDWR, its officers, directors, agents and employees for, from and against any and all liability, suits, loss, damages, claims, actions, costs and expenses of any nature, including court costs and attorneys fees, growing out of injury to or death of any person or persons and any and all destruction of, loss of or damage to property arising in any way in connection with, or related to, WD 140 breaching any term or condition of this Agreement.

10. ATTORNEY FEES:

If any action is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to its costs and reasonable attorney fees, whether or not suit is prosecuted to judgment.

11. NONWAIVER:

The waiver by either WD 140 or IDWR of a breach of any provision hereof must be in writing and shall not constitute a waiver of a similar breach in the future, or of any other breach, or nullify the effectiveness of such provision.

12. NO ASSIGNMENT:

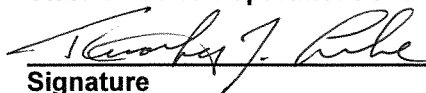
Neither Party may assign all or any part of this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld or denied. This Agreement shall be binding on and inure to the benefit of each Party's successors and assigns.

13. GOVERNING LAW, ETC.:

This Agreement shall be governed, interpreted and construed in accordance with the laws of the state of Idaho, without reference to its choice of law rules, and may be executed in several counterparts. The venue of any action shall be Ada County, Idaho. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement shall be deemed enforceable to the fullest extent permissible under applicable law.


IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the Effective Date.

State of Idaho Department of Water Resources


Signature
Timothy J. Luke
Printed Name and Title of Signor
3/15/2012
Date

Water Compliance
Bureau Chief

Water District


Signature
Randy BROWN SEC
Printed Name and Title of Signor
Feb 28, 12
Date