



American Falls Energy Center

CONFIDENTIAL

November 5, 2002

James F. Mayer
Carl Mayer
Max L. Mayer and Sons
c/o James F. Mayer
730 Calder Avenue
American Falls, ID 83211

Re: Option to Purchase Land located in Power County, Idaho

Dear James and Carl:

In accordance with our letter agreement with you of September 17, 2002, I am enclosing for your review two copies of a draft Option Agreement, including its Attachment 2, Purchase Agreement and Escrow Instructions, for the option to purchase property and water right generally located in Section 8. There are a few items that I describe below in these draft agreements that are either slightly different from or expansions of our September 17 letter agreement. Generally, however, beyond these particular differences, the drafts of the Option Agreement and the Purchase Agreement and Escrow Instructions follow the outline established in the September 17 letter.

As we reviewed your water right #A29-7175, we found that the Idaho Department of Water Resources (IDWR) considers the licensed place of use to be an area apparently slightly different than your current actual place of use, and also perhaps slightly different from the IDWR's recommended place of use. Our research into these discrepancies delayed our preparation of the draft Option Agreement somewhat, which is why we were not able to provide this draft to you prior to today. But more importantly, these discrepancies will ultimately need to be rectified with IDWR in order for us to have certainty that the water right is verified and valid for its full quantity.

You can see, in particular, the differences between the IDWR's licensed place of use and actual place of use in the drawing attached to this letter, where the yellow cross hatched areas indicate the IDWR's place of use, and the green circles indicate our own observations (not IDWR's) via aerial photography we conducted this summer. We have of course not discussed this with the IDWR, but our water counsel has advised us that the IDWR has in the past, and is beginning to again review carefully actual places of use, and to send deficiency notices if differences are observed, and in some cases "cease and desist" orders that could jeopardize the ultimate validity of the water right. Therefore, it appears that both for your and our best interest, a pre-emptive contact with the IDWR by you would be appropriate.

As a result of these discrepancies, we concluded that it is necessary to have you confirm with IDWR the place of use to ensure that the water right continues to be valid. We have proposed in this draft Option Agreement (see Recital E on p. 1 of the Option Agreement) a process whereby you will diligently pursue confirmation of the place of use by the IDWR as part of your Due Diligence Deliveries, and when that confirmation is received it will be incorporated into the Option Agreement. We further propose that at that time we pay the second \$5,000 of the initial Option Payment (see paragraph 2 on p. 2 of the Option Agreement), rather than paying the entire remaining \$8,000 upon signing of this

Mrs. Mayer
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Agreement. Delaying this portion of the initial payment would provide some protection for us if this portion of the place of use is not ultimately verified.

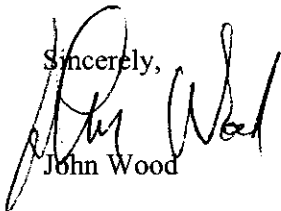
Also, we have continued to show Max L. Mayer & Sons as a signatory of this Option Agreement, as this is the name the IDWR indicates is the valid owner of the water right #29-7175. If you intend to revise the name of ownership, or if Max L. Mayer and Sons is not a validly existing entity (a representation of which you would be making in this Option Agreement), then we would anticipate making revisions to this draft Option Agreement accordingly.

I am still awaiting a preliminary title commitment that will give the final legal descriptions of the Property (see Attachment 1A on p. 12 of the Option Agreement), and I would expect to revise that legal description accordingly prior to execution of this Option Agreement. I have also incorporated into this draft a procedure whereby we can exercise the purchase of the water right, but have the property purchased with that water right be located primarily on the northern edge of your holdings in Section 8 (including only the larger of the two existing pivots), so as to disturb your remaining properties as little as possible. You can see this procedure outlined in Paragraph 1 (on p. 2) of the Option Agreement, and the "Replacement Irrigated Property" is described in Attachment 1C, on p. 14 of the Option Agreement.

You can find the actual purchase price for the property located in Paragraph 2.2 on p. 2 the Purchase Agreement and Escrow Instructions, which is Attachment 2 of the Option Agreement. I have included here the \$2700 per acre for the 309 acres, plus my proposal to pay you \$800 per acre for other easements that we may require elsewhere on your property. You will also note that I've included two methods for you to implement at your discretion your own tax strategies, either by our facilitating a "1031" tax-deferred exchange (see Paragraph 7.7 on p. 7 of the Purchase Agreement and Escrow Instructions), or by your electing to be paid via a Note (see Paragraph 2.3 on p. 3, and Exhibit B, of the Purchase Agreement and Escrow Instructions) rather than cash. I've also included our obligation to compensate you for crops if we exercise the option without allowing you to complete your crop cycle (see Paragraph 8.1 on p. 7 of the Purchase Agreement and Escrow Instructions).

Please review the enclosed documents, and at your earliest convenience send any comments or questions to me. I would be pleased to discuss any of the provisions of these agreements over the telephone. I will, in the meantime, continue to complete these documents with final legal descriptions and other features that remain.

Sincerely,

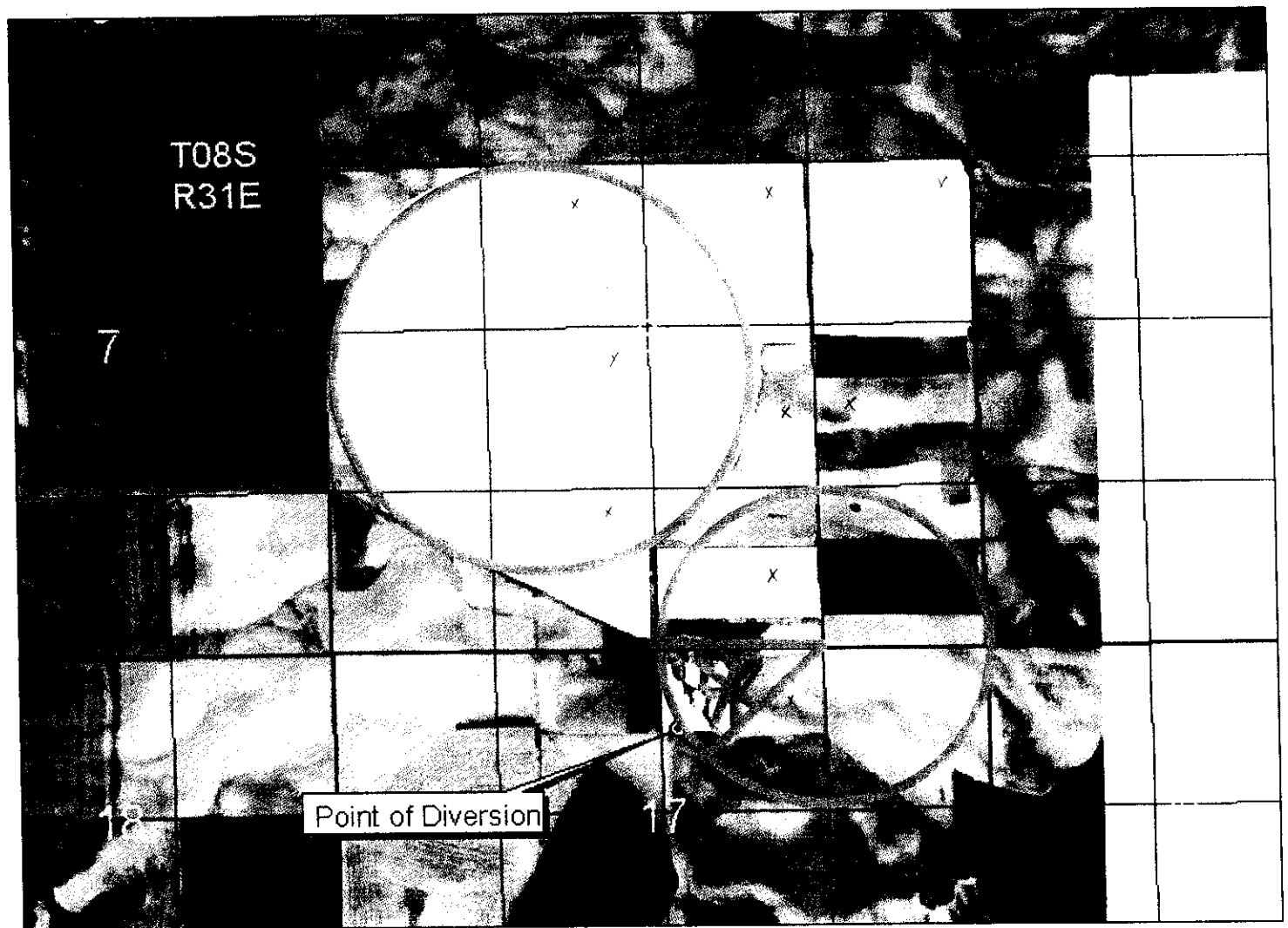


John Wood

Enclosures

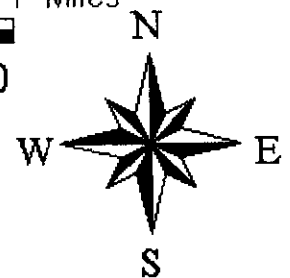


State of Idaho
Department of Water Resources
Eastern Region
Water Right: 29-7175



0.5 0 0.5 1 Miles

1:16000



- ⊙ Point(s) of Diversion
- Place of Use
- Section Lines
- Quarter Quarter Lines



Pivots observed in
Summer 2002 aerial
photography

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: P. Meyer
Date: June 2002