

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 37-21974
Date Received: 11/17/2006
Receipt No: C082655
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

ROBERT J STRUTHERS Phone: (208)788-4613
388 GANNETT RD
BELLEVUE ID USA 83313

2. Date of Priority: 04/15/1981

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
01N	19E	20	SW NW	BLAINE	

5. Description of diverting works:

A 20-IN. DIAMETER, 170-FT. WELL WAS CONSTRUCTED AND LICENSED UNDER RIGHT NO. 37-2593 WITH A PRIORITY DATE OF 2-1-1957. THIS LICENSE ALLOWED 6.34 CFS OF GROUND WATER TO BE DIVERTED AND USED TO IRRIGATE 340 ACRES IN SECTION 20, T1N R19E. A SECOND WELL WAS LATER CONSTRUCTED UNDER RIGHT NO. 37-2705 TO PROVIDE ADDITIONAL GROUND WATER FOR IRRIGATION OF THESE LANDS. IN THE 1970S THE METHOD OF IRRIGATION FOR THESE LANDS WAS CHANGED FROM SURFACE TO SPRINKLER. THIS FREED RIGHT NO. 37-2593 TO BE USED ON AN ENLARGED PLACE OF USE. IRRIGATION OF THE ENLARGED PLACE OF USE BEGAN IN 1981 (SEE ATTACHED MAP). WATER IS PUMPED USING A DEEP WELL TURBINE PUMP POWERED BY A 100-HP ELECTRIC MOTOR INTO A POND FROM WHICH IT IS PUMPED INTO A MAINLINE FOR SPRINKLER APPLICATION OF THE FIELDS.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/31	6.34	

7. Total Quantity Appropriated is:
6.34 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
01N	19E	18	SW	NE	IRRIGATION	40
			SE	NE	IRRIGATION	40
			NE	SE	IRRIGATION	40
			NW	SE	IRRIGATION	40
			SW	SE	IRRIGATION	40
			SE	SE	IRRIGATION	40
Section Acres						240
01N	19E	19	NE	NE	IRRIGATION	40
			NW	NE	IRRIGATION	40
Section Acres						80
Total Acres						320

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used:

14. Remarks:

OTHER WATER RIGHTS USED AT THE SAME PLACE AND FOR THE SAME PURPOSES; 37-353D, 37-418D, 37-419D, 37-667K, 37-2345A AND 37-11671 (ALL FROM BIG WOOD RIVER).

THIS CLAIM IS FILED IN ACCORDANCE WITH SECTION 42-1426, IDAHO CODE, TO AN ENLARGEMENT OF THE USE OF WATER UNDER RIGHT NO. 37-2593. THE CLAIMANT DIVERTED WATER FROM THE WELL LICENSED UNDER RIGHT NO. 37-2593 TO PROVIDE WATER TO IRRIGATE LAND OWNED BY OTHERS IN ACCORDANCE WITH A LEASE AGREEMENT (COPY ATTACHED). THE LANDOWNER HAS RELEASED CLAIM OF INTEREST IN THE ENLARGEMENT RIGHT.

15. Basis of Claim: License

Should questions arise during the processing of this application please contact:
Josephine P. Beeman at Beeman and Associates 208-331-0950

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER:

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Receipt Number

39576

37-21974

11/17/06

C082655

d.e. so 11-24-06

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant(s) Robert J. Struthers Phone (208) 788-4613
Mailing Address 388 Gannett Road, Bellevue, Idaho Zip 83313
2. Date of Priority (Only one (1) per claim) April 15, 1981
3. Source of water supply (a) Ground water
Which is tributary to (b) N.A.
4. a. Location of point of diversion is: Township 01N Range 19E Section 20, ---- $\frac{1}{4}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Govt.
Lot N.A., B.M., County of Blaine
Additional points of diversion if any:
b. If instream flow, beginning point of claimed instream flow is: N.A.
Township _____ Range _____ Section _____, _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of
_____ $\frac{1}{4}$, Govt. Lot _____ B.M., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc.), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. A 20" diameter, 170' feet well was constructed and licensed under right No. 37-2593 with a priority date of 2/1/1957. This license allowed 6.34 cfs of ground water to be diverted and used to irrigate 340 acres in Section 20, T1N R19E. A second well was later constructed under right No. 37-2705 to provide additional ground water for irrigation of these lands. In the 1970's the method of irrigation for these lands was changed from surface to sprinkler. This freed right No. 37-2593 to be used on an enlarged place of use. Irrigation of the enlarged place of use began in 1981(See attached map). Water is pumped using a deep well turbine pump powered by a 100-hp electric motor into a pond from which it is pumped into a mainline for sprinkler application of the fields.

SCANNED

NOV 24 2006

6. Water is claimed for the following purposes:

For Irrigation purposes from April 15 to October 31 amount 6.34 cfs or _____
(both dates are inclusive) (cfs) (acre feet)

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 6.34 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is N.A. acre feet per annum.

9. Non-irrigation uses; describe fully. (Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) N.A.

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
			¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	
<u>01N</u>	<u>19E</u>	<u>18</u>			<u>40</u>	<u>40</u>									<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>240</u>
		<u>19</u>	<u>40</u>	<u>40</u>															<u>80</u>

Total number of acres irrigated 320

11. In which county (ies) are lands listed above as place of use located? Blaine

12. Do you own the property listed above as place of use? Yes _____ No XXX
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

37-353D, 37-418D, 37-419D, 37-667K, 37-2345A, and 37-11671 (all from Big Wood River)

or None ()

14. Remarks:

This claim is filed in accordance with §42-1426, Idaho Code, to an enlargement of the use of water under right No. 37-2593. The claimant diverted water from the well licensed under right No. 37-2593 to provide water to irrigate land owned by others in accordance with a lease agreement (copy attached). The landowner has released claim of interest in the enlargement right.

Last Name Struthers Ident. Number 37-21974

SCANNED

NOV 24 2006

PLAT TO ACCOMPANY CLAIM
TO ENLARGEMENT
OF RIGHT NO. 37-2593

PLACE OF USE

POINT OF DIVERSION

BASE MAP - ADJUDICATION PHOTO
FROM IDWR WEBSITE WITH PUBLIC
LAND SURVEY OVERLAY

Stuflers 37-21974

NOV 24 2006

SCANNED

15. Basis of Claim (Check One) Beneficial Use _____ Posted Notice _____ License **XX** Permit _____
Decree _____

If applicable provide IDWR Water Right Number **Enlargement of License No. 37-2593**

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." I/We do _____ do not **XX** wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of Attachments **2 (two)**

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) ROBERT J. SMITH Date 10.4.06

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

Title
of _____, that I have signed the foregoing
Organization
document in the space below as _____ of _____
Title Organization

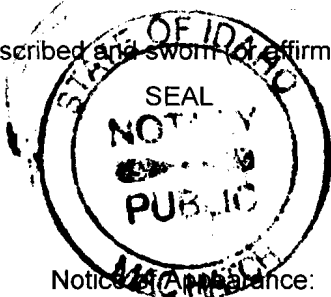
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)
County of TWIN FALLS) SS.

Subscribed and sworn (or affirmed) before me this 4TH day of October 20 06



Notary Public Mac Neitch

Residing at TWIN FALLS IDAHO

My Commission Expires 6/29/10

17. Notice of Appearance:

Please Print Name

Notice is hereby given that I, **Josephine P. Beeman** will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address **Beeman and Associates PC, 409 W. Jefferson St. Boise, Idaho 83702**

Date _____

Last Name Struthers Ident. Number 37-21974

SCANNED

NOV 24 2006

**NOTICE OF ERROR
REPLY**

Water Right No.: 37-21974

Robert J. Struthers
726 Robert Street
Picabo Rt
Bellevue, Idaho 83313
208-788-4613

1. Describe the portion of the proposed recommendation with which you disagree (e.g., priority date, period of use, source).

Disallowed ("No lawful appropriation shown.")

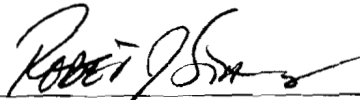
2. Describe the changes you wish to make in the proposed recommendation:

37-21974 should have been recommended as claimed.

3. Give a brief explanation as to why you disagree with these portions.

Expansion claim 37-21974 should have been recommended as explained in the April 10, 2002 IDWR file memo for water rights 37-2593 and 37-2705. The memo is attached.

DATE: January 19, 2007



Robert J. Struthers

726 Robert Street
Picabo Rt
Bellevue, Idaho 83313

IDWR State Office, 322 E. Front Street, P. O. Box 83720, Boise, ID 83720-0098

SCA
JAN 23 2007

12/20/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-21974
NAME AND ADDRESS: ROBERT J STRUTHERS
388 GANNETT RD
BELLEVUE ID 83313

DISALLOWED

SOURCE: GROUND WATER TRIBUTARY:
QUANTITY: 6.340 CFS
PRIORITY DATE: 04/15/1981
POINT OF DIVERSION:

T01N R19E S20 SWNW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	6.340 CFS

PLACE OF USE: IRRIGATION in BLAINE County

T01N R19E S18	SWNE	40.00	T01N R19E S18	SENE	40.00
T01N R19E S18	NESE	40.00	T01N R19E S18	NWSE	40.00
T01N R19E S18	SWSE	40.00	T01N R19E S18	SESE	40.00
T01N R19E S19	NENE	40.00	T01N R19E S19	NWNE	40.00

320 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

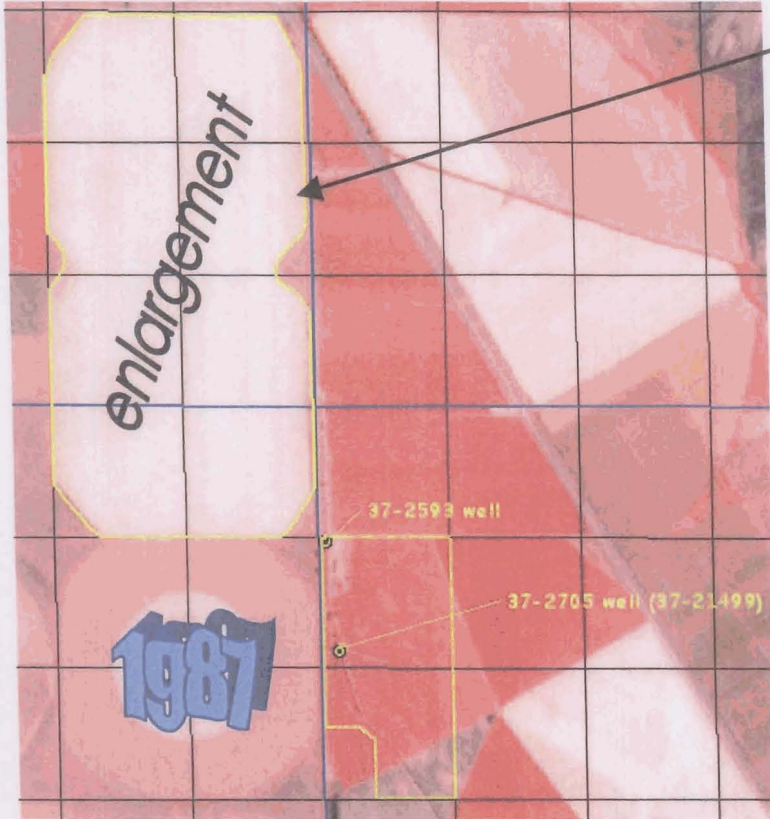
No lawful appropriation shown.

EXPLANATORY MATERIAL: BASIS OF CLAIM -

No lawful appropriation shown: There are a number of circumstances in which a claim is proposed to be disallowed on this basis. This is most commonly included for a claim based on beneficial use or posted notice that is proposed to be disallowed because the right claimed is not within an exception to the mandatory permit statute, and beneficial use of water prior to the mandatory permit statute was not confirmed. This is also included where a claim is proposed to be disallowed because the claim is to water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.

Struthers

37-21499, 2593 + enlargement 37-21974



37-21974: No evidence of priority supporting the claimed date of 1981...claim will be disallowed pending submittal of e of p.

PLAN OF ACTION

Disallow 37-21974

For **37-2593**: recommend 316 acres at licensed 6.34 diversion rate...even though Struthers doesn't own most of this POU. The acres should have been broken out along with the transfers related to 37-2705 portions, but they weren't. This will have to be dealt with by allocations should Struthers try to transfer water, etc from this right to what is now claimed under 37-21974.

For **37-21499** (portion of 37-2705): recommend **70** acres (although 107 are claimed & 96 are left over after the splits) based on ownership and 1.4 cfs (based on the licensed rate of 0.02 cfs/acre). 37-2705 license has a limiting volume of 3 afa per year "when combined with all other rights appurtenant to the same land".



Recommendation Conditions

1. 2573 + 21499 nte 6.34 cfs
2. Volume: *21499 nte 210 afa when combined w/ all other app. rights?*

IF E OF P SUBMITTED FOR 37-21974

PPU... 3 polygons, 1 for each right...
21974+2573 nte 6.34 cfs as well as
2573+21499 nte 6.34 cfs

K06, combined acre limits, etc.

WATER RIGHT LEASE

1. PARTIES: The names and addresses of the parties to this Lease are:

LESSOR: Robert J. Struthers, Jr.
388 Gannett Road
Bellevue, Idaho 83313
(hereinafter "Lessor")

LESSEE: Robert E. Gardner and Kathryn A. Gardner, husband and wife,
Box 470
Bellevue, Idaho 83313
(hereinafter "Lessee")

2. DESCRIPTION OF LEASED WATER RIGHT: Pursuant to the terms of this Lease, Lessor leases to the Lessee that certain ground water expansion right which was developed prior to November 19, 1987, as an expansion of ground water right license no. 37-2593 for beneficial use upon and irrigation of 300 acres of land located within the following place of use situated in Blaine County, Idaho:

T01N R19E § 18 SWNE, SENE, NESE, NWSE, SWSE, SESE
T01N R19E § 19 NENE, NWNE

and with the same point of diversion as ground water right license no. 37-2593 (hereinafter "the ground water expansion right"). This Lease confers no right upon Lessee to use ground water right license no. 37-2593, such right expressly being reserved to Lessor.

3. RENTAL: Lessee agrees to pay to Lessor the amount of \$ pump bill + repair if needed as payment for use of the ground water expansion right during the term of this Lease. The terms of payment are as follows: as due
-
-

4. TERM OF THIS LEASE: The term of this Lease shall commence on July 24, 2002, and shall automatically and without notice terminate on OCTOBER 1, 2002. The term of this Lease may be extended or renewed only upon written agreement of Lessor and Lessee, and neither shall be under any obligation to consent to such extension or renewal.

5. OBLIGATIONS OF THE LESSEE: The Lessee agrees to perform the following obligations at the Lessee's expense:

- (a) To apply the ground water expansion right to beneficial use for the purpose of irrigation during the term of this Lease.
- (b) To indemnify, save and hold harmless the Lessor from and for any and all losses, claims, actions, judgments for damage or injuries to persons or property and losses and expenses caused or incurred by Lessee, its agents, employees, guests and business invitees as a result of or in anyway related to Lessee's diversion of, or application to beneficial use, the ground water expansion right.
- (c) To repair and replace the water distribution systems that may be damaged due to accident or negligence of the Lessee, its agents, employees, guests and business invitees.

6. OBLIGATIONS OF THE LESSOR: The Lessor agrees to perform the following obligations:

- (a) To allow the Lessee the right to the exclusive use of the ground water expansion right during the term of this Lease; provided however, that Lessor shall in no way be liable for, and shall be held harmless by Lessee, from any loss sustained by Lessee as a result of (i) administration of the ground water expansion right, including the curtailment thereof, by the Idaho Department of Water Resources and its agents, including the watermaster, if any (hereinafter collectively referred to as "IDWR"), and (ii) failure of the well and diversion system to produce a sufficient quantity of water to irrigate the place of use of the ground water expansion right. It is expressly acknowledged that Lessee has inspected the well and diversion system and has evaluated the risks associated with the administration of the ground water expansion right by IDWR pursuant to Idaho law and hereby assumes any and all risks of loss associated with the use of the existing well, diversion system, and ground water expansion right.
- (b) To allow Lessee access to the well and diversion system for the ground water expansion right during the term of this Lease.

7. NO PARTNERSHIP BETWEEN LESSOR AND LESSEE: This Lease shall not be construed as creating the relationship of partners, joint venturers, principal and agent, or any other form of joint enterprise between Lessor and Lessee. Neither party shall be liable for any debts or obligations incurred by the other, and neither party shall have authority to bind the other in any contract with third parties.

8. DEFAULT BY THE LESSEE: The happening of any of the following events shall constitute a default by the Lessee under this Lease:

- (a) Delinquency in the payment of rent or on breach by the Lessee of any of the terms, covenants and conditions of this Lease.
- (b) An attempt by Lessee to sublease the ground water expansion right or any part thereof without the prior written consent of Lessor.
- (c) An attempt by Lessee to assign Lessee's rights under this Lease without the prior written consent of the Lessor.

If a default occurs, Lessor may immediately upon serving Lessee with a notice of default retake the ground water expansion right and prevent further delivery of the ground water expansion right to Lessee.

If within fifteen (15) days from the date of service of the notice of default, Lessee cures the default and provides notice to Lessor of such cure, Lessor shall allow Lessee to receive delivery of the ground water expansion right pursuant to the terms of this Lease.

If within fifteen (15) days from the date of service of the notice of default, Lessee fails to provide Lessor with notice that the default has been cured, this Lease shall automatically and without further notice terminate, and Lessor shall be entitled to keep all rental payments or other proceeds paid by Lessee to Lessor pursuant to this Lease as liquidated damages, which damages shall be deemed in addition to, and not a limitation of, all other remedies at law and equity available to Lessor as a result of Lessee's default under this Lease.

9. TIME IS OF THE ESSENCE: Time is of the essence of this Lease.

10. WAIVER: It is agreed that the waiver by the Lessor of any breach of any covenant, condition or stipulation contained in this Lease shall not be considered to be a waiver of any subsequent breach of the same or any other covenant, condition or stipulation of this Lease nor affect or prejudice any of the rights or remedies of the Lessor under this Lease.

11. ASSIGNMENT: This Lease cannot be assigned, transferred or sublet, either wholly or in part, by the Lessee without the written consent of the Lessor. Lessor specifically retains the right to refuse to allow the assignment, transfer or sublease of the obligations under this Lease for sound business reasons. Lessor further retains the right to hold Lessee responsible should any subtenant or sublessee fail to perform under the terms of this Lease. Any assignment, transfer or sublease shall be void if the Lessor does not consent in advance. The Lessor may assign any or all rights of the Lessor under this Lease.

12. FURTHER ASSURANCES: Lessee expressly acknowledges and agrees that Lessee's rights to the ground water expansion right are limited by the terms of this Lease and that Lessee has not heretofore and shall not subsequent to the date of this Lease make any claim in any

administrative or judicial tribunal, including the Snake River Basin Adjudication, of any right of ownership, title or interest in or to the ground water expansion right apart from the leasehold interest created by this Lease.

13. ORDINANCES AND STATUTES: Lessee shall comply with all state statutes and administrative rules now enforced, or which may hereafter be enforced, pertaining to the use of the ground water expansion right by Lessee.

14. INDEMNIFICATION OF LESSOR: Lessor shall not be liable for any damage or injury to Lessee, or to any other person, or to any property occurring as a result of Lessee's use of the ground water expansion right, and Lessee agrees to hold Lessor harmless from any loss, damage, liability or claims for damages of any nature, no matter how caused.

15. GOVERNING LAW: This Lease shall be governed by the laws of the State of Idaho.

16. INTERPRETATION: All parties hereto have either: (i) been represented by separate legal counsel; or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a party, regardless of which party prepared or caused the preparation of this Lease.

17. INVALID PROVISION: The invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions of this Lease, and this Lease shall be construed as if any invalid or unenforceable provision were omitted.

18. SECTION TITLES: The underlined paragraph headings used in this Lease are for convenient reference and shall not be resorted to for the interpretation of this Lease.

19. SUCCESSORS AND ASSIGNS: This Lease shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns.

20. ATTORNEY FEES AND COSTS: In the event either party shall commence an action in any court or administrative tribunal relating to the interpretation or enforcement of any provision of this Lease, the prevailing party to such action shall be entitled to reimbursement of all attorney fees and costs reasonably incurred by such party in defending or prosecuting such action.

21. **NOTICE:** Any notice to be given to either party to this Lease shall be deemed to have been sufficiently given by being personally served or by mailing said notice with postage prepaid thereon by certified mail, return receipt requested, addressed to the party at the address shown on the first page of this Lease or at any other address subsequently designated in writing and served by one party on the other party.

22. **TIME FOR PERFORMANCE:** Wherever under the terms of this Lease the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

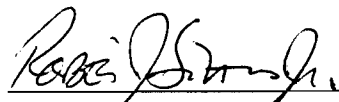
23. **COUNTERPARTS:** This Lease may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Lease.

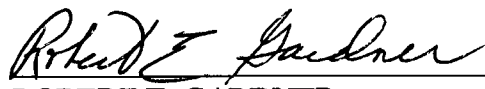
24. **ENTIRE AGREEMENT:** This instrument contains the entire agreement between the parties as to the terms of this Lease, and no prior agreement, communication, or understanding pertaining to the terms of this Lease shall be effective or used for any purpose whatsoever.

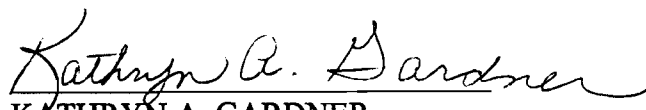
IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed the 24 day of July, 2002.

LESSOR:

LESSEE:

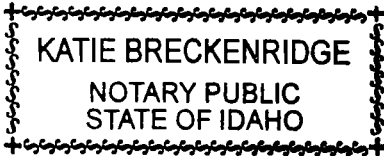

ROBERT J. STRUTHERS, JR.


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
) ss.
County of BLAINE

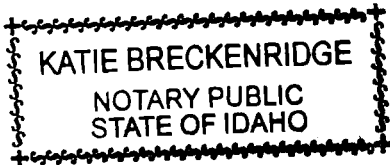
On this 24th day of JULY, 2002, before me, a Notary Public for the State of Idaho, personally appeared ROBERT J. STRUTHERS, JR., known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1/11/05

STATE OF IDAHO)
) ss.
County of BLAINE

On this 24th day of JULY, 2002, before me, a Notary Public for the State of Idaho, personally appeared ROBERT E. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.

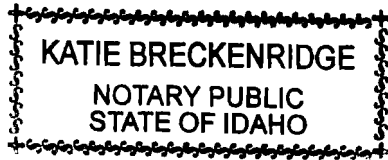


Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1/11/05

STATE OF IDAHO)

County of BLAINE)^{ss.}

On this 24th day of JULY, 2002, before me, a Notary Public for the State of Idaho, personally appeared KATHRYN A. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that she signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICABO IDAHO
Commission Expires: 1/11/05

WATER RIGHT LEASE

1. **PARTIES:** The names and addresses of the parties to this Lease are:

LESSOR: Robert J. Struthers, Jr.
388 Gannett Road
Bellevue, Idaho 83313
(hereinafter "Lessor")

LESSEE: Robert E. Gardner and Kathryn A. Gardner, husband and wife,
Box 470
Bellevue, Idaho 83313
(hereinafter "Lessee")

2. **DESCRIPTION OF LEASED WATER RIGHT:** Pursuant to the terms of this Lease, Lessor leases to the Lessee that certain ground water expansion right which was developed prior to November 19, 1987, as an expansion of ground water right license no. 37-2593 for beneficial use upon and irrigation of 300 acres of land located within the following place of use situated in Blaine County, Idaho:

T01N R19E § 18 SWNE, SENE, NESE, NWSE, SWSE, SESE
T01N R19E § 19 NENE, NWNE

and with the same point of diversion as ground water right license no. 37-2593 (hereinafter "the ground water expansion right"). This Lease confers no right upon Lessee to use ground water right license no. 37-2593, such right expressly being reserved to Lessor.

3. **RENTAL:** Lessee agrees to pay to Lessor the amount of \$ PUMP BILL & REPAIR IF NEEDED as payment for use of the ground water expansion right during the term of this Lease. The terms of payment are as follows: AS DUE
-
-

4. **TERM OF THIS LEASE:** The term of this Lease shall commence on JULY 17, 2003, and shall automatically and without notice terminate on OCTOBER 1, 2003. The term of this Lease may be extended or renewed only upon written agreement of Lessor and Lessee, and neither shall be under any obligation to consent to such extension or renewal.

5. **OBLIGATIONS OF THE LESSEE:** The Lessee agrees to perform the following obligations at the Lessee's expense:

- (a) To apply the ground water expansion right to beneficial use for the purpose of irrigation during the term of this Lease.
- (b) To indemnify, save and hold harmless the Lessor from and for any and all losses, claims, actions, judgments for damage or injuries to persons or property and losses and expenses caused or incurred by Lessee, its agents, employees, guests and business invitees as a result of or in anyway related to Lessee's diversion of, or application to beneficial use, the ground water expansion right.
- (c) To repair and replace the water distribution systems that may be damaged due to accident or negligence of the Lessee, its agents, employees, guests and business invitees.

6. **OBLIGATIONS OF THE LESSOR:** The Lessor agrees to perform the following obligations:

- (a) To allow the Lessee the right to the exclusive use of the ground water expansion right during the term of this Lease; provided however, that Lessor shall in no way be liable for, and shall be held harmless by Lessee, from any loss sustained by Lessee as a result of (i) administration of the ground water expansion right, including the curtailment thereof, by the Idaho Department of Water Resources and its agents, including the watermaster, if any (hereinafter collectively referred to as "IDWR"), and (ii) failure of the well and diversion system to produce a sufficient quantity of water to irrigate the place of use of the ground water expansion right. It is expressly acknowledged that Lessee has inspected the well and diversion system and has evaluated the risks associated with the administration of the ground water expansion right by IDWR pursuant to Idaho law and hereby assumes any and all risks of loss associated with the use of the existing well, diversion system, and ground water expansion right.
- (b) To allow Lessee access to the well and diversion system for the ground water expansion right during the term of this Lease.

7. **NO PARTNERSHIP BETWEEN LESSOR AND LESSEE:** This Lease shall not be construed as creating the relationship of partners, joint venturers, principal and agent, or any other form of joint enterprise between Lessor and Lessee. Neither party shall be liable for any debts or obligations incurred by the other, and neither party shall have authority to bind the other in any contract with third parties.

8. **DEFAULT BY THE LESSEE:** The happening of any of the following events shall constitute a default by the Lessee under this Lease:

- (a) Delinquency in the payment of rent or on breach by the Lessee of any of the terms, covenants and conditions of this Lease.
- (b) An attempt by Lessee to sublease the ground water expansion right or any part thereof without the prior written consent of Lessor.
- (c) An attempt by Lessee to assign Lessee's rights under this Lease without the prior written consent of the Lessor.

If a default occurs, Lessor may immediately upon serving Lessee with a notice of default retake the ground water expansion right and prevent further delivery of the ground water expansion right to Lessee.

If within fifteen (15) days from the date of service of the notice of default, Lessee cures the default and provides notice to Lessor of such cure, Lessor shall allow Lessee to receive delivery of the ground water expansion right pursuant to the terms of this Lease.

If within fifteen (15) days from the date of service of the notice of default, Lessee fails to provide Lessor with notice that the default has been cured, this Lease shall automatically and without further notice terminate, and Lessor shall be entitled to keep all rental payments or other proceeds paid by Lessee to Lessor pursuant to this Lease as liquidated damages, which damages shall be deemed in addition to, and not a limitation of, all other remedies at law and equity available to Lessor as a result of Lessee's default under this Lease.

9. TIME IS OF THE ESSENCE: Time is of the essence of this Lease.

10. WAIVER: It is agreed that the waiver by the Lessor of any breach of any covenant, condition or stipulation contained in this Lease shall not be considered to be a waiver of any subsequent breach of the same or any other covenant, condition or stipulation of this Lease nor affect or prejudice any of the rights or remedies of the Lessor under this Lease.

11. ASSIGNMENT: This Lease cannot be assigned, transferred or sublet, either wholly or in part, by the Lessee without the written consent of the Lessor. Lessor specifically retains the right to refuse to allow the assignment, transfer or sublease of the obligations under this Lease for sound business reasons. Lessor further retains the right to hold Lessee responsible should any subtenant or sublessee fail to perform under the terms of this Lease. Any assignment, transfer or sublease shall be void if the Lessor does not consent in advance. The Lessor may assign any or all rights of the Lessor under this Lease.

12. FURTHER ASSURANCES: Lessee expressly acknowledges and agrees that Lessee's rights to the ground water expansion right are limited by the terms of this Lease and that Lessee has not heretofore and shall not subsequent to the date of this Lease make any claim in any

administrative or judicial tribunal, including the Snake River Basin Adjudication, of any right of ownership, title or interest in or to the ground water expansion right apart from the leasehold interest created by this Lease.

13. ORDINANCES AND STATUTES: Lessee shall comply with all state statutes and administrative rules now enforced, or which may hereafter be enforced, pertaining to the use of the ground water expansion right by Lessee.

14. INDEMNIFICATION OF LESSOR: Lessor shall not be liable for any damage or injury to Lessee, or to any other person, or to any property occurring as a result of Lessee's use of the ground water expansion right, and Lessee agrees to hold Lessor harmless from any loss, damage, liability or claims for damages of any nature, no matter how caused.

15. GOVERNING LAW: This Lease shall be governed by the laws of the State of Idaho.

16. INTERPRETATION: All parties hereto have either: (i) been represented by separate legal counsel; or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a party, regardless of which party prepared or caused the preparation of this Lease.

17. INVALID PROVISION: The invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions of this Lease, and this Lease shall be construed as if any invalid or unenforceable provision were omitted.

18. SECTION TITLES: The underlined paragraph headings used in this Lease are for convenient reference and shall not be resorted to for the interpretation of this Lease.

19. SUCCESSORS AND ASSIGNS: This Lease shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns.

20. ATTORNEY FEES AND COSTS: In the event either party shall commence an action in any court or administrative tribunal relating to the interpretation or enforcement of any provision of this Lease, the prevailing party to such action shall be entitled to reimbursement of all attorney fees and costs reasonably incurred by such party in defending or prosecuting such action.

21. **NOTICE**: Any notice to be given to either party to this Lease shall be deemed to have been sufficiently given by being personally served or by mailing said notice with postage prepaid thereon by certified mail, return receipt requested, addressed to the party at the address shown on the first page of this Lease or at any other address subsequently designated in writing and served by one party on the other party.

22. **TIME FOR PERFORMANCE**: Wherever under the terms of this Lease the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

23. **COUNTERPARTS**: This Lease may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Lease.

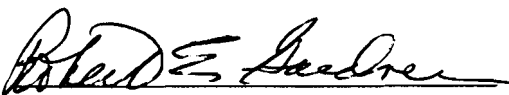
24. **ENTIRE AGREEMENT**: This instrument contains the entire agreement between the parties as to the terms of this Lease, and no prior agreement, communication, or understanding pertaining to the terms of this Lease shall be effective or used for any purpose whatsoever.

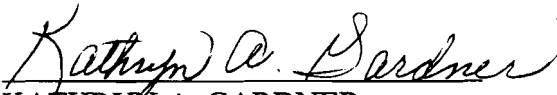
IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed the
17 day of JULY, 2003.

LESSOR:


ROBERT J. STRUTHERS, JR.

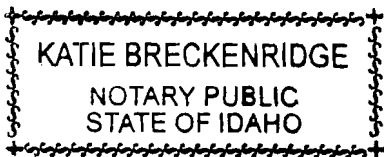
LESSEE:


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
) ss.
County of BLAINE)

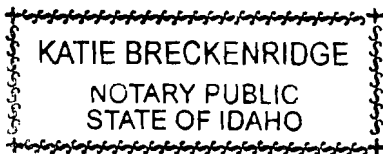
On this 17th day of JULY, 2003, before me, a Notary Public for the State of Idaho, personally appeared ROBERT J. STRUTHERS, JR., known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICAZO, IDAHO
Commission Expires: 1/11/05

STATE OF IDAHO)
) ss.
County of BLAINE)

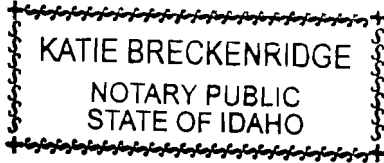
On this 17th day of JULY, 2003, before me, a Notary Public for the State of Idaho, personally appeared ROBERT E. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICAZO, IDAHO
Commission Expires: 1/11/05

STATE OF IDAHO)
)ss.
County of BLAINE)

On this 17th day of July, 2003, before me, a Notary Public for the State of Idaho, personally appeared KATHRYN A. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that she signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1/11/05

WATER RIGHT LEASE

1. **PARTIES:** The names and addresses of the parties to this Lease are:

LESSOR: Robert J. Struthers, Jr.
388 Gannett Road
Bellevue, Idaho 83313
(hereinafter "Lessor")

LESSEE: Robert E. Gardner and Kathryn A. Gardner, husband and wife,
Box 470
Bellevue, Idaho 83313
(hereinafter "Lessee")

2. **DESCRIPTION OF LEASED WATER RIGHT:** Pursuant to the terms of this Lease, Lessor leases to the Lessee that certain ground water expansion right which was developed prior to November 19, 1987, as an expansion of ground water right license no. 37-2593 for beneficial use upon and irrigation of 300 acres of land located within the following place of use situated in Blaine County, Idaho:

T01N R19E § 18 SWNE, SENE, NESE, NWSE, SWSE, SESE
T01N R19E § 19 NENE, NWNE

and with the same point of diversion as ground water right license no. 37-2593 (hereinafter "the ground water expansion right"). This Lease confers no right upon Lessee to use ground water right license no. 37-2593, such right expressly being reserved to Lessor.

3. **RENTAL:** Lessee agrees to pay to Lessor the amount of \$ PUMP POWER BILL AND REPAIR IF NEEDED as payment for use of the ground water expansion right during the term of this Lease. The terms of payment are as follows: AS DUE
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4. **TERM OF THIS LEASE:** The term of this Lease shall commence on July 28, 2004, and shall automatically and without notice terminate on OCTOBER 1, 2004. The term of this Lease may be extended or renewed only upon written agreement of Lessor and Lessee, and neither shall be under any obligation to consent to such extension or renewal.

5. OBLIGATIONS OF THE LESSEE: The Lessee agrees to perform the following obligations at the Lessee's expense:

- (a) To apply the ground water expansion right to beneficial use for the purpose of irrigation during the term of this Lease.
- (b) To indemnify, save and hold harmless the Lessor from and for any and all losses, claims, actions, judgments for damage or injuries to persons or property and losses and expenses caused or incurred by Lessee, its agents, employees, guests and business invitees as a result of or in anyway related to Lessee's diversion of, or application to beneficial use, the ground water expansion right.
- (c) To repair and replace the water distribution systems that may be damaged due to accident or negligence of the Lessee, its agents, employees, guests and business invitees.

6. OBLIGATIONS OF THE LESSOR: The Lessor agrees to perform the following obligations:

- (a) To allow the Lessee the right to the exclusive use of the ground water expansion right during the term of this Lease; provided however, that Lessor shall in no way be liable for, and shall be held harmless by Lessee, from any loss sustained by Lessee as a result of (i) administration of the ground water expansion right, including the curtailment thereof, by the Idaho Department of Water Resources and its agents, including the watermaster, if any (hereinafter collectively referred to as "IDWR"), and (ii) failure of the well and diversion system to produce a sufficient quantity of water to irrigate the place of use of the ground water expansion right. It is expressly acknowledged that Lessee has inspected the well and diversion system and has evaluated the risks associated with the administration of the ground water expansion right by IDWR pursuant to Idaho law and hereby assumes any and all risks of loss associated with the use of the existing well, diversion system, and ground water expansion right.
- (b) To allow Lessee access to the well and diversion system for the ground water expansion right during the term of this Lease.

7. NO PARTNERSHIP BETWEEN LESSOR AND LESSEE: This Lease shall not be construed as creating the relationship of partners, joint venturers, principal and agent, or any other form of joint enterprise between Lessor and Lessee. Neither party shall be liable for any debts or obligations incurred by the other, and neither party shall have authority to bind the other in any contract with third parties.

8. DEFAULT BY THE LESSEE: The happening of any of the following events shall constitute a default by the Lessee under this Lease:

(b) To indemnify, save and hold harmless the Lessor from and for any and all losses, claims, actions, judgments for damage or injuries to persons or property and losses and expenses caused or incurred by Lessee, its agents, employees, guests and business invitees as a result of or in anyway related to Lessee's diversion of, or application to beneficial use, the ground water expansion right.

(c) To repair and replace the water distribution systems that may be damaged due to accident or negligence of the Lessee, its agents, employees, guests and business invitees.

6. **OBLIGATIONS OF THE LESSOR:** The Lessor agrees to perform the following obligations:

(a) To allow the Lessee the right to the exclusive use of the ground water expansion right during the term of this Lease; provided however, that Lessor shall in no way be liable for, and shall be held harmless by Lessee, from any loss sustained by Lessee as a result of (i) administration of the ground water expansion right, including the curtailment thereof, by the Idaho Department of Water Resources and its agents, including the watermaster, if any (hereinafter collectively referred to as "IDWR"), and (ii) failure of the well and diversion system to produce a sufficient quantity of water to irrigate the place of use of the ground water expansion right. It is expressly acknowledged that Lessee has inspected the well and diversion system and has evaluated the risks associated with the administration of the ground water expansion right by IDWR pursuant to Idaho law and hereby assumes any and all risks of loss associated with the use of the existing well, diversion system, and ground water expansion right.

(b) To allow Lessee access to the well and diversion system for the ground water expansion right during the term of this Lease.

7. **NO PARTNERSHIP BETWEEN LESSOR AND LESSEE:** This Lease shall not be construed as creating the relationship of partners, joint venturers, principal and agent, or any other form of joint enterprise between Lessor and Lessee. Neither party shall be liable for any debts or obligations incurred by the other, and neither party shall have authority to bind the other in any contract with third parties.

8. **DEFAULT BY THE LESSEE:** The happening of any of the following events shall constitute a default by the Lessee under this Lease:

WATER RIGHT LEASE -- 2

12. **FURTHER ASSURANCES:** Lessee expressly acknowledges and agrees that Lessee's rights to the ground water expansion right are limited by the terms of this Lease and that Lessee has not heretofore and shall not subsequent to the date of this Lease make any claim in any

WATER RIGHT LEASE -- 3

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administrative or judicial tribunal, including the Snake River Basin Adjudication, of any right of ownership, title or interest in or to the ground water expansion right apart from the leasehold interest created by this Lease.

13. ORDINANCES AND STATUTES: Lessee shall comply with all state statutes and administrative rules now enforced, or which may hereafter be enforced, pertaining to the use of the ground water expansion right by Lessee.

14. INDEMNIFICATION OF LESSOR: Lessor shall not be liable for any damage or injury to Lessee, or to any other person, or to any property occurring as a result of Lessee's use of the ground water expansion right, and Lessee agrees to hold Lessor harmless from any loss, damage, liability or claims for damages of any nature, no matter how caused.

15. GOVERNING LAW: This Lease shall be governed by the laws of the State of Idaho.

16. INTERPRETATION: All parties hereto have either: (i) been represented by separate legal counsel; or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a party, regardless of which party prepared or caused the preparation of this Lease.

17. INVALID PROVISION: The invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions of this Lease, and this Lease shall be construed as if any invalid or unenforceable provision were omitted.

18. SECTION TITLES: The underlined paragraph headings used in this Lease are for convenient reference and shall not be resorted to for the interpretation of this Lease.

19. SUCCESSORS AND ASSIGNS: This Lease shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns.

20. ATTORNEY FEES AND COSTS: In the event either party shall commence an action in any court or administrative tribunal relating to the interpretation or enforcement of any provision of this Lease, the prevailing party to such action shall be entitled to reimbursement of all attorney fees and costs reasonably incurred by such party in defending or prosecuting such action.

21. **NOTICE:** Any notice to be given to either party to this Lease shall be deemed to have been sufficiently given by being personally served or by mailing said notice with postage prepaid thereon by certified mail, return receipt requested, addressed to the party at the address shown on the first page of this Lease or at any other address subsequently designated in writing and served by one party on the other party.

22. **TIME FOR PERFORMANCE:** Wherever under the terms of this Lease the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

23. **COUNTERPARTS:** This Lease may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Lease.

24. **ENTIRE AGREEMENT:** This instrument contains the entire agreement between the parties as to the terms of this Lease, and no prior agreement, communication, or understanding pertaining to the terms of this Lease shall be effective or used for any purpose whatsoever.

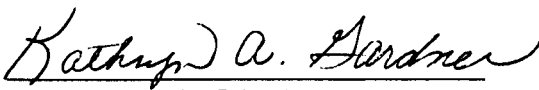
IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed the
28 day of July, 2004.

LESSOR:


ROBERT J. STRUTHERS, JR.

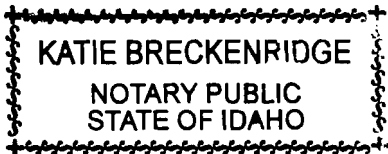
LESSEE:


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
) ss.
County of BLAINE)

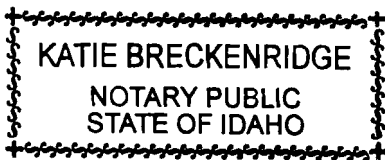
On this 28 day of JULY, 2004, before me, a Notary Public for the State of Idaho, personally appeared **ROBERT J. STRUTHERS, JR.**, known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1-11-05

STATE OF IDAHO)
)ss.
County of BLAINE)

On this 28 day of JULY, 2004, before me, a Notary Public for the State of Idaho, personally appeared **ROBERT E. GARDNER** known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.

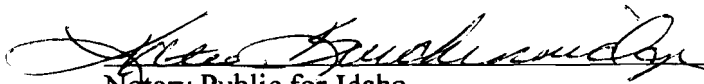


Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1-11-05

STATE OF IDAHO)
)ss.
County of BLAINE)

On this 28 day of July, 2004, before me, a Notary Public for the State of Idaho, personally appeared KATHRYN A. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that she signed the same.

+++++
KATIE BRECKENRIDGE
NOTARY PUBLIC
STATE OF IDAHO
+++++



Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1-11-05

WATER RIGHT LEASE

1. PARTIES: The names and addresses of the parties to this Lease are:

LESSOR: Robert J. Struthers, Jr.
388 Gannett Road
Bellevue, Idaho 83313
(hereinafter "Lessor")

LESSEE: Robert E. Gardner and Kathryn A. Gardner, husband and wife,
Box ~~470~~ 1200
Hailey ~~Bellevue~~, Idaho 83313
(hereinafter "Lessee")

2. DESCRIPTION OF LEASED WATER RIGHT: Pursuant to the terms of this Lease, Lessor leases to the Lessee that certain ground water expansion right which was developed prior to November 19, 1987, as an expansion of ground water right license no. 37-2593 for beneficial use upon and irrigation of 300 acres of land located within the following place of use situated in Blaine County, Idaho:

T01N R19E § 18 SWNE, SENE, NESE, NWSE, SWSE, SESE
T01N R19E § 19 NENE, NWNE

and with the same point of diversion as ground water right license no. 37-2593 (hereinafter "the ground water expansion right"). This Lease confers no right upon Lessee to use ground water right license no. 37-2593, such right expressly being reserved to Lessor.

3. RENTAL: Lessee agrees to pay to Lessor the amount of \$ Pump, power and repair as needed as payment for use of the ground water expansion right during the term of this Lease. The terms of payment are as follows: As due
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4. TERM OF THIS LEASE: The term of this Lease shall commence on AUGUST 11, _____, 2005, and shall automatically and without notice terminate on OCTOBER 1, _____, 2005. The term of this Lease may be extended or renewed only upon written agreement of Lessor and Lessee, and neither shall be under any obligation to consent to such extension or renewal.

5. OBLIGATIONS OF THE LESSEE: The Lessee agrees to perform the following obligations at the Lessee's expense:

- (a) To apply the ground water expansion right to beneficial use for the purpose of irrigation during the term of this Lease.
- (b) To indemnify, save and hold harmless the Lessor from and for any and all losses, claims, actions, judgments for damage or injuries to persons or property and losses and expenses caused or incurred by Lessee, its agents, employees, guests and business invitees as a result of or in anyway related to Lessee's diversion of, or application to beneficial use, the ground water expansion right.
- (c) To repair and replace the water distribution systems that may be damaged due to accident or negligence of the Lessee, its agents, employees, guests and business invitees.

6. OBLIGATIONS OF THE LESSOR: The Lessor agrees to perform the following obligations:

- (a) To allow the Lessee the right to the exclusive use of the ground water expansion right during the term of this Lease; provided however, that Lessor shall in no way be liable for, and shall be held harmless by Lessee, from any loss sustained by Lessee as a result of (i) administration of the ground water expansion right, including the curtailment thereof, by the Idaho Department of Water Resources and its agents, including the watermaster, if any (hereinafter collectively referred to as "IDWR"), and (ii) failure of the well and diversion system to produce a sufficient quantity of water to irrigate the place of use of the ground water expansion right. It is expressly acknowledged that Lessee has inspected the well and diversion system and has evaluated the risks associated with the administration of the ground water expansion right by IDWR pursuant to Idaho law and hereby assumes any and all risks of loss associated with the use of the existing well, diversion system, and ground water expansion right.
- (b) To allow Lessee access to the well and diversion system for the ground water expansion right during the term of this Lease.

7. NO PARTNERSHIP BETWEEN LESSOR AND LESSEE: This Lease shall not be construed as creating the relationship of partners, joint venturers, principal and agent, or any other form of joint enterprise between Lessor and Lessee. Neither party shall be liable for any debts or obligations incurred by the other, and neither party shall have authority to bind the other in any contract with third parties.

8. DEFAULT BY THE LESSEE: The happening of any of the following events shall constitute a default by the Lessee under this Lease:

- (a) Delinquency in the payment of rent or on breach by the Lessee of any of the terms, covenants and conditions of this Lease.
- (b) An attempt by Lessee to sublease the ground water expansion right or any part thereof without the prior written consent of Lessor.
- (c) An attempt by Lessee to assign Lessee's rights under this Lease without the prior written consent of the Lessor.

If a default occurs, Lessor may immediately upon serving Lessee with a notice of default retake the ground water expansion right and prevent further delivery of the ground water expansion right to Lessee.

If within fifteen (15) days from the date of service of the notice of default, Lessee cures the default and provides notice to Lessor of such cure, Lessor shall allow Lessee to receive delivery of the ground water expansion right pursuant to the terms of this Lease.

If within fifteen (15) days from the date of service of the notice of default, Lessee fails to provide Lessor with notice that the default has been cured, this Lease shall automatically and without further notice terminate, and Lessor shall be entitled to keep all rental payments or other proceeds paid by Lessee to Lessor pursuant to this Lease as liquidated damages, which damages shall be deemed in addition to, and not a limitation of, all other remedies at law and equity available to Lessor as a result of Lessee's default under this Lease.

9. TIME IS OF THE ESSENCE: Time is of the essence of this Lease.

10. WAIVER: It is agreed that the waiver by the Lessor of any breach of any covenant, condition or stipulation contained in this Lease shall not be considered to be a waiver of any subsequent breach of the same or any other covenant, condition or stipulation of this Lease nor affect or prejudice any of the rights or remedies of the Lessor under this Lease.

11. ASSIGNMENT: This Lease cannot be assigned, transferred or sublet, either wholly or in part, by the Lessee without the written consent of the Lessor. Lessor specifically retains the right to refuse to allow the assignment, transfer or sublease of the obligations under this Lease for sound business reasons. Lessor further retains the right to hold Lessee responsible should any subtenant or sublessee fail to perform under the terms of this Lease. Any assignment, transfer or sublease shall be void if the Lessor does not consent in advance. The Lessor may assign any or all rights of the Lessor under this Lease.

12. FURTHER ASSURANCES: Lessee expressly acknowledges and agrees that Lessee's rights to the ground water expansion right are limited by the terms of this Lease and that Lessee has not heretofore and shall not subsequent to the date of this Lease make any claim in any

administrative or judicial tribunal, including the Snake River Basin Adjudication, of any right of ownership, title or interest in or to the ground water expansion right apart from the leasehold interest created by this Lease.

13. ORDINANCES AND STATUTES: Lessee shall comply with all state statutes and administrative rules now enforced, or which may hereafter be enforced, pertaining to the use of the ground water expansion right by Lessee.

14. INDEMNIFICATION OF LESSOR: Lessor shall not be liable for any damage or injury to Lessee, or to any other person, or to any property occurring as a result of Lessee's use of the ground water expansion right, and Lessee agrees to hold Lessor harmless from any loss, damage, liability or claims for damages of any nature, no matter how caused.

15. GOVERNING LAW: This Lease shall be governed by the laws of the State of Idaho.

16. INTERPRETATION: All parties hereto have either: (i) been represented by separate legal counsel; or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a party, regardless of which party prepared or caused the preparation of this Lease.

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18. SECTION TITLES: The underlined paragraph headings used in this Lease are for convenient reference and shall not be resorted to for the interpretation of this Lease.

19. SUCCESSORS AND ASSIGNS: This Lease shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns.

20. ATTORNEY FEES AND COSTS: In the event either party shall commence an action in any court or administrative tribunal relating to the interpretation or enforcement of any provision of this Lease, the prevailing party to such action shall be entitled to reimbursement of all attorney fees and costs reasonably incurred by such party in defending or prosecuting such action.

21. **NOTICE:** Any notice to be given to either party to this Lease shall be deemed to have been sufficiently given by being personally served or by mailing said notice with postage prepaid thereon by certified mail, return receipt requested, addressed to the party at the address shown on the first page of this Lease or at any other address subsequently designated in writing and served by one party on the other party.

22. **TIME FOR PERFORMANCE:** Wherever under the terms of this Lease the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

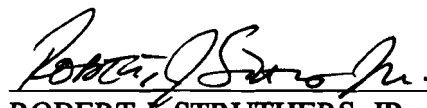
23. **COUNTERPARTS:** This Lease may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Lease.

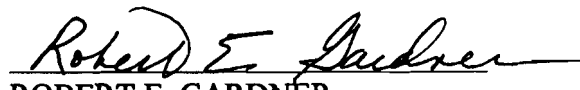
24. **ENTIRE AGREEMENT:** This instrument contains the entire agreement between the parties as to the terms of this Lease, and no prior agreement, communication, or understanding pertaining to the terms of this Lease shall be effective or used for any purpose whatsoever.

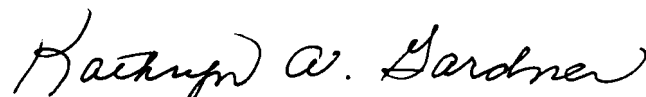
IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed the 11 day of AUGUST, 2005.

LESSOR:

LESSEE:

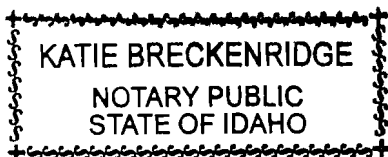

ROBERT J. STRUTHERS, JR.


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
) ss.
County of Blairstown)

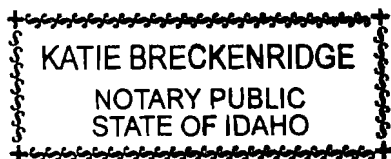
On this 11th day of August, 2005, before me, a Notary Public for the State of Idaho, personally appeared **ROBERT J. STRUTHERS, JR.**, known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1/18/11

STATE OF IDAHO)
) ss.
County of Blairstown)

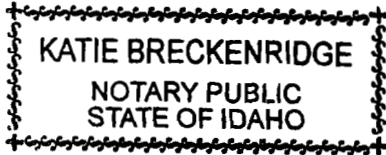
On this 11th day of August, 2005, before me, a Notary Public for the State of Idaho, personally appeared **ROBERT E. GARDNER** known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1/18/11

STATE OF IDAHO)
)ss.
County of BLAINE

On this 11th day of AUGUST, 2005, before me, a Notary Public for the State of Idaho, personally appeared KATHRYN A. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that she signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICARD, TOANO
Commission Expires: 1/18/11