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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Subcase No. 37-21974

Case No. 39576

STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSONS OBJECTING

Name: Robert J. Struthers
Address: 762 Robert Street
Picabo Route
Bellevue, Idaho 83313

Daytime Phone: 208-788-4613

Name & Address of Attorney, if any:

Josephine P. Beeman
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, Idaho 83702
(208) 331-0950
(208) 331-0954 (fax)

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Robert J. Struthers
388 Gannett Road
Bellevue, Idaho 83313

I object to the following elements as recommended in the Director's Report.

1. ☒ **Name and Address**
Should be: Robert J. Struthers
762 Robert Street
Picabo Route
Bellevue, Idaho 83313
2. ☒ **Source**
Should be: Ground water
3. ☒ **Quantity**
Should be: 6.34 cfs
4. ☒ **Priority Date**
Should be: April 15, 1981
5. ☒ **Point(s) of Diversion**
Should be: T01N R19E Sec 20 SWNW, Blaine County
6. ☐ **Instream Flow Description**
Should be:
7. ☒ **Purpose(s) of Use**
Should be: Irrigation
8. ☒ **Period of Year**
Should be: Irrigation from April 15 to October 31 for 6.34 cfs
9. ☒ **Place of Use**
Should be: T01N R19E Sec 18 SE ¼, SWNE, and SENE and Sec 19
NENE and NWNE, Blaine County for a total of 320 acres
11. **I object because:**
 - ☐ This water right should not exist.
 - ☒ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S): Enlargement claim 37-21974 should be recommended as claimed as explained in the April 10, 2002 IDWR file memo for water rights 37-2593 and 37-2705. The memo is attached.

37-21974 was filed in accordance with Section 42-1426, Idaho Code, to an enlargement of the use of water under right No. 37-2593. A 20 inch diameter, 170 feet well was constructed and licensed under right No. 37-2593 with a priority date of February 1, 1957. This license allowed 6.34 cfs of ground water to be diverted and used to irrigate 340 acres in T01N R19E Sec 20. A second well was constructed later under right No. 37-2705 to provide additional ground water for irrigation of these lands. In the 1970's the method of irrigation of 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.

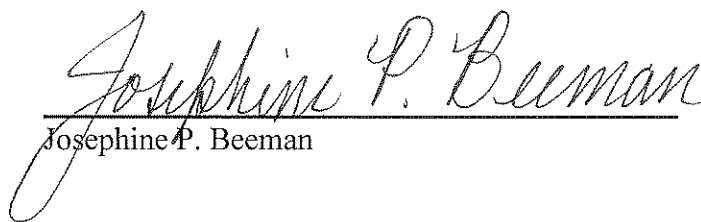
The claimant diverted water from the well licensed under right No. 37-2593 to provide water to irrigate land owned by others in accordance with a lease agreement. The lease agreement is attached. The landowner has released claim of interest in the enlargement right.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

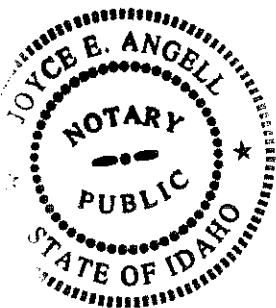
I, Josephine P. Beeman, after being duly sworn, upon oath, depose and say:

That I am the attorney for the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6), and that I have read this objection, know its contents, and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman

Subscribed and sworn to before me on: November 14, 2007





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

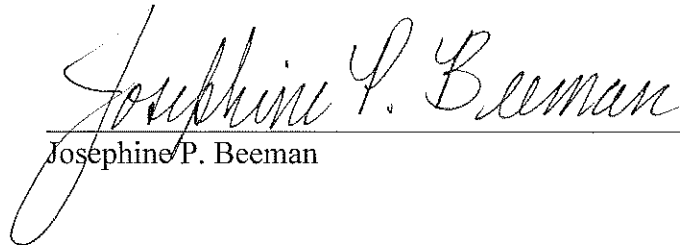
Name: Robert J. Struthers
Address: 762 Robert Street
Picabo Route
Bellevue, Idaho 83313

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

MEMORANDUM

Date: April 10, 2002

To: File

From: Jeff Peppersack

Re: Transfer Nos. 68500, 69287, and 69417
Water Right Nos. 37-2593 and 37-2705

Enlargement issues were identified with these transfers. This memo summarizes the issues, discussions, and potential resolutions.

License 37-2593

This license was issued to R.J. Struthers in 1962 with a priority date of 2/1/1957 for 6.34 cfs for irrigation of 340 acres from ground water. Irrigation use was supplemental to decreed surface water from Big Wood River.

License 37-2705

This license was issued to R.J. Struthers in 1969 with a priority date of 1/29/1965 for 6.7 cfs for irrigation of 335 acres from ground water. Irrigation use was supplemental to decreed surface water and license 37-2593 for same lands (generally) as 37-2593. The license included a condition limiting use to 1005 af/year (3.0 af/acre) when combined with all other rights appurtenant to the same land.

Transfer 68500 (old no. 5817)

This transfer was filed in June 2000 to change the point of diversion for part of license 37-2705 purchased by applicant – Robert Stilo. The warranty deed conveyed surface water rights and 0.78 cfs of license 37-2705 (no mention of 37-2593). The transfer was approved in April 2001 for irrigation of 39 acres with a diversion rate of 0.78 cfs. No enlargement issue was identified, possibly because the purpose of the transfer was simply to change the point of diversion.

Transfer 69287

This transfer was filed in July 2001 to change the point of diversion for part of license 37-2705 purchased by applicant – John Welsh. The quit claim deed provided surface water rights and 2.78 cfs of license 37-2705 (no mention of 37-2593). Enlargement was identified as an issue – see below for explanation. The transfer is pending at S.O.

Transfer 69417

This transfer was filed in Sept 2001 to change the point of diversion for part of license 37-2705 purchased by applicant – The Smet-Pleasant Family Trust. The warranty deed does not mention water rights but includes usual language regarding appurtenances to property. There is also a quit claim deed providing surface surface water rights and 1.10

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cfs of license 37-2705 (no mention of 37-2593). Enlargement was identified as an issue – see below for explanation. The transfer application was amended twice; once in November 2001 to include license 37-2593 and again in January 2002 to exclude license 37-2593. The transfer is pending at S.O

Enlargement Issue

The review files for the two pending transfers include correspondence and memos identifying the enlargement issue. Southern Region met with Struthers (see e-mail in file from Allen Merritt) to determine the status and plans for license 37-2593 and to discuss the enlargement issue. Apparently, the farm converted to sprinkler irrigation in 1974 and since that time license 37-2593 has occasionally been used to supplement other lands (300 acres or so). It is evident from information in the file that Struthers intends to retain ownership of license 37-2593. Jo Beeman, representing Struthers, was part of the enlargement discussion; she indicated that she had discussed the matter with Dave Tuthill and believes there may be a way to resolve the enlargement issue. Jo indicated that they may file a transfer related to license 37-2593 and an extension to avoid forfeiture.

At this point in time, it does not appear that enlargement is occurring except, perhaps, during those occasions when the water is used to supplement other lands (expansion claim may resolve that). It is evident that enlargement would occur if license 37-2593 is transferred to other lands/uses without 37-2705. Mr. Welsh called me on March 20 and his attorney, Jim Speck, called me on the same day to discuss Mr. Welsh's pending transfer. I indicated that the potential enlargement issue needs to be resolved prior to processing the pending transfers. Matt Howard (working with Jo Beeman) called me the same day to discuss the issue and suggested we meet to discuss further.

Meeting of April 9

Jo Beeman and Matt Howard, representing Mr. Struthers, met with Dave Tuthill and myself to discuss the enlargement issue. Matt indicated that Mr. Struthers converted from gravity irrigation to sprinkler irrigation sometime between 1974 and 1976 and was able to utilize water under license 37-2593 on other lands (those other lands also had surface water rights). We discussed the possibility of an enlargement claim for those lands. Matt indicated that Mr. Struthers was interested in moving the enlargement water right, once established, to other lands. The question that arose was: how can Mr. Struthers move the enlargement right and disconnect it from the original system under 37-2593, since 37-2593 could not be moved out from under 37-2705? Since parcels of land have already been sold off (along with parts of right 37-2705), the preferred method of creating a permissible place of use under all three rights and splitting off proportional amounts of all three rights was no longer an option. The resolution appears to be relinquishment of 37-2593 as the enlargement right is transferred away. I had previously discussed this possibility with Glen and he indicated that it would be a reasonable solution. Matt indicated that they would need to file an enlargement claim and show ownership and evidence of the development, and pursue decree of the enlargement claim prior to its transfer. Once decreed, they could file the transfer to move the enlargement right and relinquish 37-2593. The enlargement right would, in effect, be a stand alone

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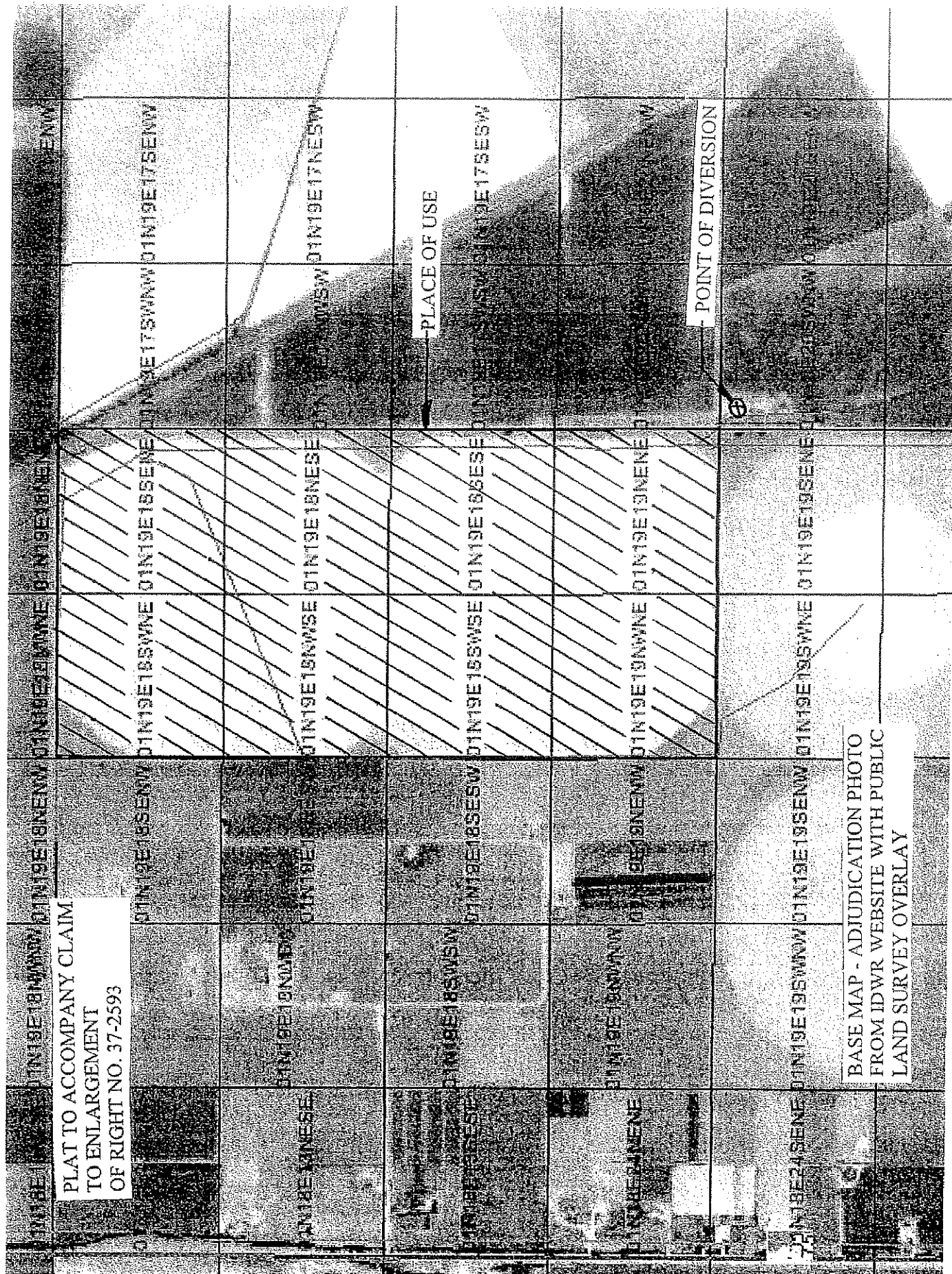
right with a 1970's priority, but would include the standard enlargement conditions regarding the 1994 priority date relative to other rights.

Since the enlargement place of use includes surface water rights, the final discussion item was the transfer of the enlargement right to other lands. I indicated that a supplemental right could be transferred to other lands that include similar primary rights. A supplemental irrigation right cannot become a primary right unless it can be shown that there is no ultimate enlargement of the water rights.

Pending Transfers

Processing can proceed for the pending transfers related to license 37-2705, since they are simply for a change in point of diversion and the enlargement issue does not appear to be a problem at this point.

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JUN 15 2002



Struthers 37-21974

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.

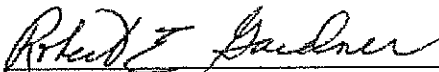
24. ENTIRE AGREEMENT: This instrument contains the entire agreement between the parties as to the terms of this Lease, and no prior agreement, communication, or understanding pertaining to the terms of this Lease shall be effective or used for any purpose whatsoever.

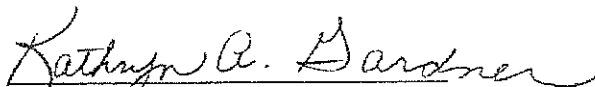
IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed the
24 day of July, 2002.

LESSOR:


ROBERT J. STRUTHERS, JR.

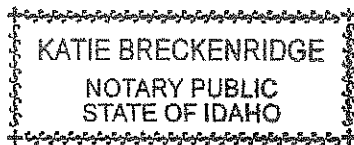
LESSEE:


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
County of BLAINE) ss.

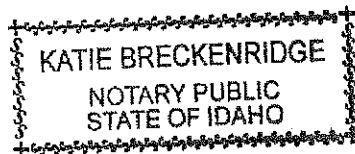
On this 24th day of JULY, 2002, before me, a Notary Public for the State of Idaho, personally appeared ROBERT J. STRUTHERS, JR., known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



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

STATE OF IDAHO)
County of BLAINE) ss.

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.

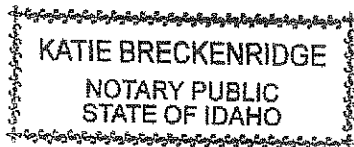


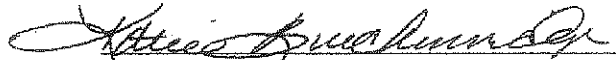
Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1/11/05

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.





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.

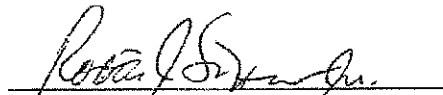
22. TIME FOR PERFORMANCE: Wherever under the terms of this Lease the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

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.

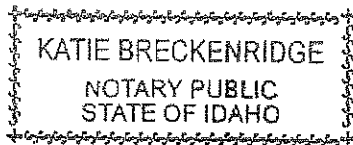
LESSEE:


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
) ss.
County of BLAINE)

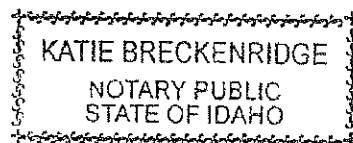
On this 17th day of JULY, 2003, before me, a Notary Public for the State of Idaho, personally appeared ROBERT J. STRUTHERS, JR., known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



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

STATE OF IDAHO)
) ss.
County of BLAINE)

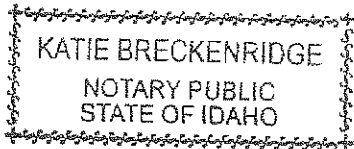
On this 17th day of JULY, 2003, before me, a Notary Public for the State of Idaho, personally appeared ROBERT E. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



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

STATE OF IDAHO)
)ss.
County of Blairstown)

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, NWN

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

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:

(d) 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

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.

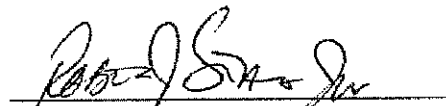
22. **TIME FOR PERFORMANCE:** Wherever under the terms of this Lease the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

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.

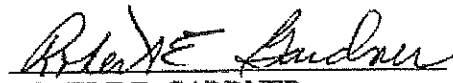
24. **ENTIRE AGREEMENT:** This instrument contains the entire agreement between the parties as to the terms of this Lease, and no prior agreement, communication, or understanding pertaining to the terms of this Lease shall be effective or used for any purpose whatsoever.

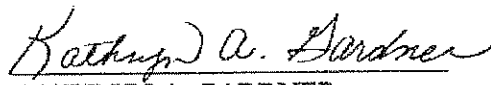
28 IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed the day of July, 2004.

LESSOR:


ROBERT J. STRUTHERS, JR.

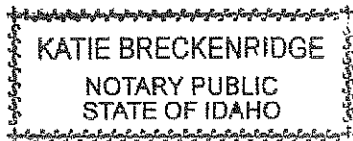
LESSEE:


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
) ss.
County of BLAINE)

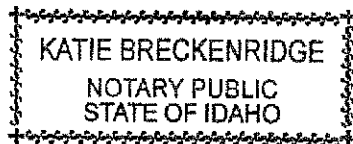
On this 28 day of JULY, 2004, before me, a Notary Public for the State of Idaho, personally appeared ROBERT J. STRUTHERS, JR., known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



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.

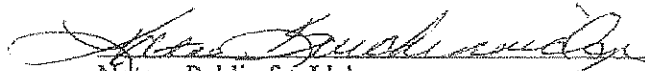


Katie Breckenridge
Notary Public for Idaho
Residing at PICABO, IDAHO
Commission Expires: 1-11-05

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 PICAGO, 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 as repair as needed 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 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.

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.

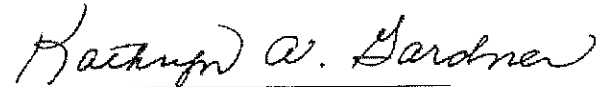
IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed the
11 day of AUGUST, 2005.

LESSOR:


ROBERT J. STRUTHERS, JR.

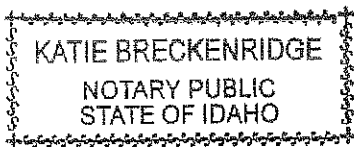
LESSEE:


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
) ss.
County of BLAINE)

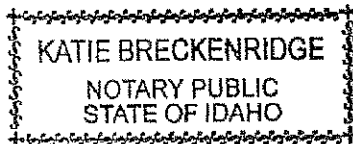
On this 11th day of AUGUST, 2005, before me, a Notary Public for the State of Idaho, personally appeared ROBERT J. STRUTHERS, JR., known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



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

STATE OF IDAHO)
) ss.
County of BLAINE)

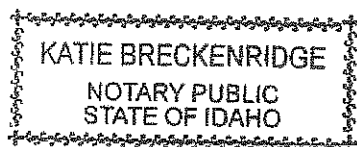
On this 11th day of AUGUST, 2005, before me, a Notary Public for the State of Idaho, personally appeared ROBERT E. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



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 11000 TOANO
Commission Expires: 1/18/11

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~~ ~~Box 1200~~
~~Bellevue, Idaho 83313~~ ~~83333~~
HAILEY (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 \$ 100⁰⁰ per month as payment for use of the ground water expansion right during the term of this Lease. The terms of payment are as follows: Pump, Power and repair as needed

4. **TERM OF THIS LEASE:** The term of this Lease shall commence on July 3, 2007, 2007, and shall automatically and without notice terminate on OCT. 3, 2007. 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.

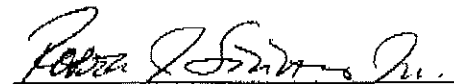
23. **COUNTERPARTS:** This Lease may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Lease.

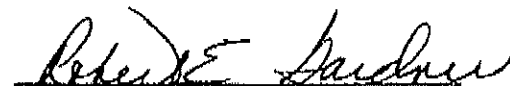
24. **ENTIRE AGREEMENT:** This instrument contains the entire agreement between the parties as to the terms of this Lease, and no prior agreement, communication, or understanding pertaining to the terms of this Lease shall be effective or used for any purpose whatsoever.

IN WITNESS WHEREOF, the undersigned have caused this Lease to be executed the
3 day of July, 2007.

LESSOR:

LESSEE:

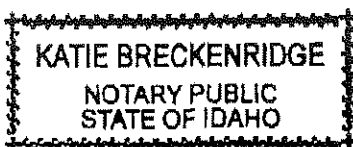

ROBERT J. STRUTHERS, JR.


ROBERT E. GARDNER


KATHRYN A. GARDNER

STATE OF IDAHO)
) ss.
County of BLAINE)

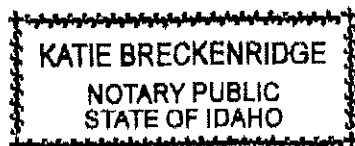
On this 3 day of July, 2007, before me, a Notary Public for the State of Idaho, personally appeared ROBERT J. STRUTHERS, JR., known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICAGO, ID.
Commission Expires: 1.18.11

STATE OF IDAHO)
) ss.
County of _____)

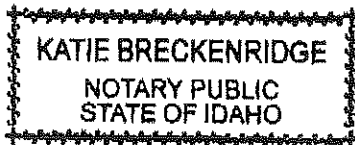
On this 3 day of July, 2007, before me, a Notary Public for the State of Idaho, personally appeared ROBERT E. GARDNER known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he signed the same.



Katie Breckenridge
Notary Public for Idaho
Residing at PICAGO, ID.
Commission Expires: 1.18.11

STATE OF IDAHO)
)ss.
County of BLAINE)

On this 3 day of July, 2007, 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.




Notary Public for Idaho
Residing at PICABO, ID.
Commission Expires: 7.18.11