

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement ("Agreement") is made by and between James F. Hagenbarth, David J. Hagenbarth, and the Hagenbarth Land Idaho Limited Partnership (collectively "Hagenbarth") and Bunts & Singles, LLC ("B&S"). B&S and Hagenbarth hereinafter may collectively be referred to as the "Parties." This Agreement replaces and supersedes the Settlement Agreement between the Parties dated August 15, 2019, which the parties amended to incorporate comments provided by the Idaho Department of Water Resources.

B&S and Hagenbarth own adjacent property located in Clark County, Idaho and certain appurtenant water rights. B&S desires to construct a new recreational pond on its property in the approximate location depicted on Exhibit A. The proposed pond would be located in an area through which an existing water conveyance ditch owned and maintained by Hagenbarth (the "Hagenbarth Ditch") is located, also shown on Exhibit A. In furtherance of its plan, B&S filed two applications with the Idaho Department of Water Resources ("IDWR") relating to certain water rights:

1) Application for Transfer of a Water Right no. 81352 that requests transfer water right 21-4071A from a place of use on federal land to B&S land located in the NENW and the NWNW of Section 7 of T13N R41E (the "Transfer Application"); and

2) Application for Permit no. 21-13254 to divert 4.0 cfs and store 8AF of surface water from a spring into the proposed pond (the "Permit Application").

Together, if approved, the Transfer Application and the Permit Application would allow B&S to divert water from two springs located on federal land managed by the Forest Service to the proposed pond on the B&S property via the Hagenbarth Ditch.

Hagenbarth filed protests to both applications asserting enlargement, speculation, and injury to Hagenbarth's water rights. Specifically, Hagenbarth asserted that the applications required permission from both himself and the Forest Service, neither of which were likely to be obtained. The Parties have reached a mutually agreeable resolution that will resolve Hagenbarth's protests. Accordingly, the Parties agree as follows:

1. *Terms of Settlement.*

a. Within 10 days following the execution of this Agreement, B&S shall amend the Permit Application to change the the season of use for the Diversion to Storage purpose of use to 11/1 to 5/1, and to add a Recreation purpose of use for 4.0 cfs with a season of use from 11/1 to 5/1.

b. Within 10 days after B&S has amended the Permit Application as described above, Hagenbarth will conditionally withdraw his protest to the Transfer Application, conditioned upon i) the reduction of right 21-4071A from an allowable 13,000 gallons per day to 6,500 gpd; ii) agreement by the Forest Service to having a condition added to its rights 21-4071 and 21-11478 that limit them to a combined diversion volume of 6,500 gallons per day; and iii)

conveyance of ownership of water right 21-4071A from B&S to Hagenbarth upon the final approval of the Transfer Application by IDWR. B&S shall convey water right 21-4071A to Hagenbarth via a water right grant deed to be delivered within 3 days after IDWR's final approval of the Transfer Application.

c. Within 10 days after B&S has amended the Permit Application as described above, Hagenbarth will conditionally withdraw his protest to the Permit Application, conditioned upon conveyance of ownership of permit 21-13254 from B&S to Hagenbarth upon the final approval of the Permit Application by IDWR and an amendment to the application to edit the end date of the season of use from 4/15 to 5/1. B&S shall convey permit 21-13254 to Hagenbarth via an assignment of the permit to be delivered within 3 days after IDWR's final approval of the Transfer Application.

d. B&S shall construct the following in strict accordance with the plans attached as Exhibit B (collectively the "Pond Diversion System") during times and in a manner that will not impair Hagenbarth's ability to convey irrigation water to its properties served by the Hagenbarth Ditch:

i. A culvert in the Hagenbarth Ditch, shown on Detail 1 in Exhibit B, that diverts the full flow of water in the Hagenbarth Ditch to Weir 1;

ii. Weir 1, details shown on page 1 and on Details 1 and 3 in Exhibit B, that will measure the water delivered through the culvert and split the flow to the New Ditch and the Pond, and that will include lockable screw gates on the outflows from weir into the Pond;

iii. The Pond, which shall be constructed and lined in accordance with the recommendations described for a synthetic liner in Exhibit C;

iv. The New Ditch, which shall be lined with a synthetic liner in accordance with the recommendations described in Exhibit C, from the Diversion Box to the location where it intercepts the Hagenbarth Ditch, in the location depicted on Exhibit B;

v. The Outlet Pipe and Pond Outlet Structure as shown on page 1 and Detail 4 of Exhibit B that returns the flow diverted into the Pond back to the New Ditch (less evaporation);

vi. Weir 2 in the New Ditch as depicted on page 1 and Detail 2 and 3 of Exhibit B, for the purpose of measuring the flow in the New Ditch below the Outlet Pipe.;

e. Upon conveyance of ownership of the water right 21-4071A and permit 21-13254 to Hagenbarth, the Parties shall execute a lease agreement, the form of which is attached as Exhibit D, that will provide for the perpetual lease of the recreational use of water rights 21-4071A, 21-13226 and permit 21-13254 on an annual basis with the following terms (the "Lease").

i. B&S may divert the entire flow from the Hagenbarth Ditch to the Pond, less approximately 1 cfs to be left in the New Ditch to maintain the integrity of the liner in the ditch.

ii. Hagenbarth shall have exclusive control over the diversion controls in Weir 1 and the Diversion Box (depicted in Detail 3 on Exhibit B) and shall be granted an easement to enter the B&S property for the purpose of inspecting, maintaining and controlling the Pond Diversion System. In the event adjustments are needed to the diversion controls to provide for the diversions allowed by the Lease, and B&S has made a good faith effort to contact Hagenbarth and has not received a response within three days, B&S may adjust the diversion controls to provide for diversions in accordance with the Lease.

iii. B&S is solely and exclusively responsible for the maintenance and all related costs of the Pond Diversion System. If the Pond Diversion system falls into disrepair, Hagenbarth may, after failure by B&S to correct within 10 days of notice from Hagenbarth, perform the maintenance and charge the cost to B&S, which B&S shall pay within 30 days after receiving an invoice from Hagenbarth. Hagenbarth will continue to maintain the Hagenbarth Ditch.

iv. B&S shall pay Hagenbarth in advance on or before January 10 each year the lease rate of \$7,500 per year, which amount shall increase at the rate of 3% per year, for the lease of water in that year. In the event of non-payment, Hagenbarth, in his sole discretion, may curtail the diversion of water from the Hagenbarth Ditch to the Pond after failure by B&S to cure within three days after notice of nonpayment from Hagenbarth. B&S may elect to suspend payment and diversions to the Pond on an annual basis. It is understood and agreed that the Lease payment due for the year 2020 shall be due and owing only upon the fulfillment of the conditions being fulfilled herein, including the granting of the required permits and transfers as well as the successful construction of the Pond, New Ditch and the required diversionary works.

v. In the event the B&S does not fulfill its obligations under the Lease, including the obligation to construct and maintain the Pond so that it does not leak, as measured by the Pond Diversion System weirs, Hagenbarth may divert the flows around the Pond in the New Ditch until such time as B&S fulfills its obligations under the lease.

vi. Payment of the lease rate is no guaranty that water will be available due to either reduction in flows from the springs, administrative curtailment, a decision by the federal government to reduce the flows of water entering the Hagenbarth Ditch, or any other reason not controlled by Hagenbarth.

vii. B&S may terminate the Lease upon written notice to Hagenbarth upon which all diversions of water into the Pond shall cease immediately and permanently, the Pond Diversion System shall be set to direct the entire flow of water entering it into the New Ditch, all maintenance rights for the Pond Diversion System except for the Pond shall transfer to Hagenbarth, and B&S shall have no further right to adjust the Pond Diversion System or deliver any water through the Pond Diversion System.

viii. B&S may elect to temporarily suspend diversions to the Pond for any given year as provided in the Lease.

f. B&S shall reimburse Hagenbarth for his expenses incurred by Hagenbarth associated with all of the above.

2. **Mutual Consideration.** The Parties agree that this Settlement is beneficial to them, and that litigation of the water rights could be detrimental to their interests.

3. **Voluntary Agreement.** The Parties hereto acknowledge and agree that the terms to this Agreement have been read by them or reviewed with legal counsel, or that they had the opportunity to have the agreement reviewed with legal counsel and that the terms are fully understood and voluntarily accepted for the purpose of making a full, final and complete compromise, settlement and release as set forth herein.

4. **No Admissions.** Neither this Agreement nor the execution or performance hereof shall be deemed to constitute an admission directly or indirectly by any party of the truth of, or any liability responsibility on account of or with respect to, any matters referred to in this Agreement, but is for the sole and exclusive purpose of compromising and settling claims and the complete resolution of the claims between the Parties.

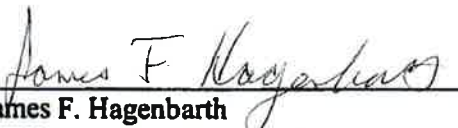
5. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, heirs, devisees, executors, issue, administrators, personal representatives, and, if applicable, upon and to each Parties' respective partners, associates, shareholders, directors, employees and their heirs, devisees, executors, issue, administrators, personal representatives, successors and assigns.

6. **Enforcement - Attorneys' Fees.** If any legal action, arbitration or legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in the action or proceeding in addition to any other relief of which they may be entitled.

7. **Governing Law.** This Agreement shall be interpreted, applied and enforced in accordance with the laws of the State of Idaho. Venue for any lawsuit filed concerning the Agreement shall be in either Clark County, Idaho, or the federal court in Boise, Idaho.

8. **Headings.** The bolded paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in interpreting or construing this Agreement.

9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be original, but all of which shall be deemed the same document.


James F. Hagenbarth

Date 07/05/2020

Bunts & Singles, LLC


David J. Hagenbarth

Date 08/05/2020

Hagenbarth Land Idaho Limited Partnership


Barrett Peterson, manager

Date 2/13/20


James F. Hagenbarth, general partner

Date 03/05/2020

Dr. Robert E. King (President of the American Psychological Association) - "The American Psychological Association is deeply committed to the advancement of the science of psychology and to the promotion of the highest standards of ethical conduct. We are pleased to have Dr. King as a member of the Board of Directors and to have him represent the Association at the 1998 Annual Meeting of the American Psychological Association in San Francisco, California." (American Psychological Association, 1998, p. 1)



Proposed improvements as shown in these details represent intended installation but specific details may be modified at time of construction to better fit field conditions. Changes may include minor reconfiguration of pond shape; ditch alignment, section, or profile; and position of Weir 1 and 2 structures. Any changes will not materially alter the proposed improvements or the ability to deliver, control and measure water as required by legal agreements. Diversion, measurement, and ditch conveyance capacity will not be reduced. Weir 1 culvert will divert from the existing ditch upstream of the proposed pond and ditch and the Weir 2 diversion box will discharge to the existing ditch downstream of the proposed pond and ditch. The new ditch and pond will be lined to control seepage losses.

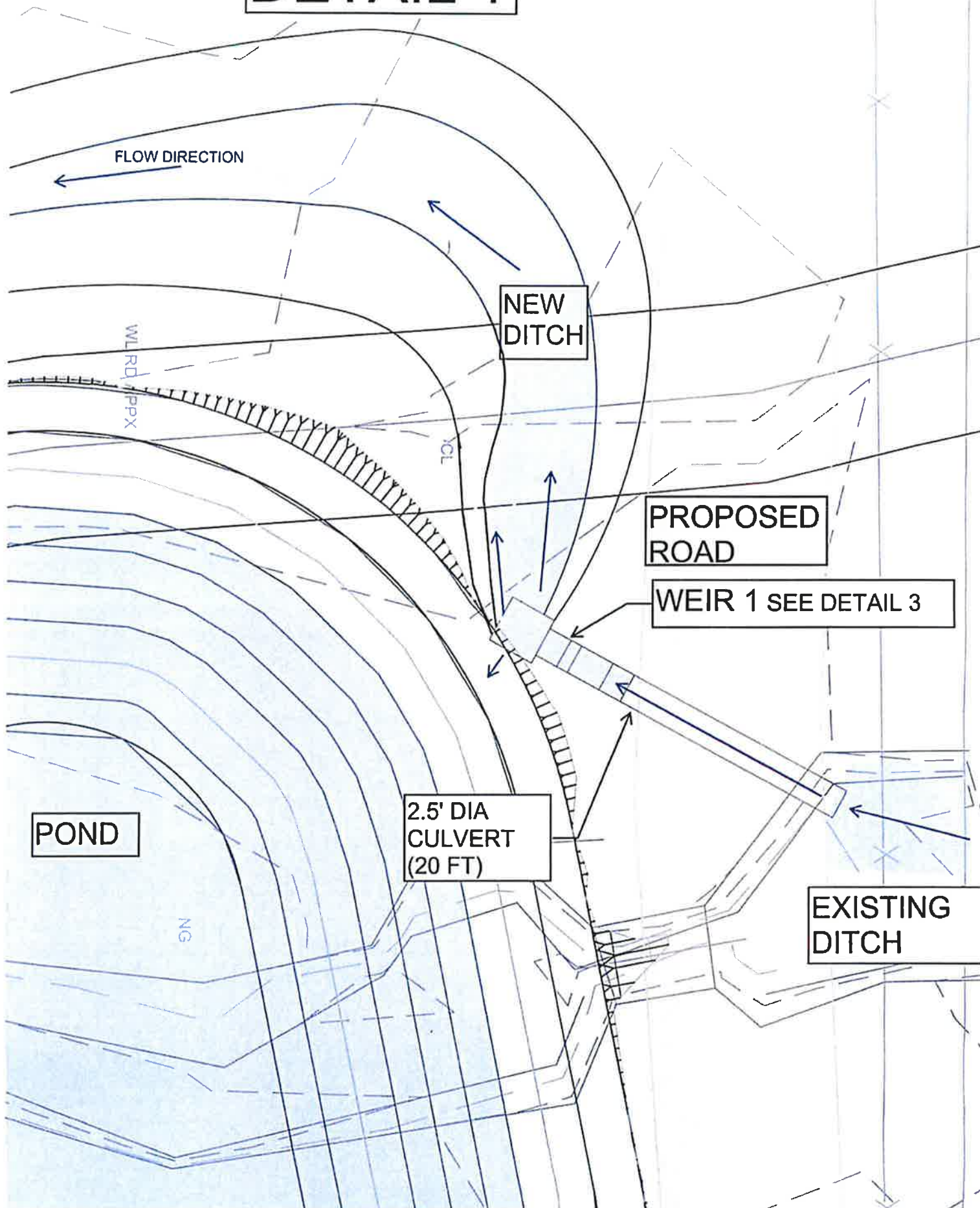
ATTENTION

[illegible]

PRELIMINARY

SHEET NO. 1 DATE 2-12-2016 PROJECT WATER TREATMENT PLANT		PETERSON LODGE POND AND DITCH LAYOUT		PETERSON LODGE PLAN VIEW		PROJECT NO. 15-0000000000 DRAWING NO. 15-0000000000 SCALE 1"=100' DATE 2-12-2016		FORSYTH ASSOCIATES, INC. 1111 NORTH JEFFERSON AVENUE, SUITE 100 FORT WORTH, TEXAS 76102 TEL: (817) 339-1111 FAX: (817) 339-1112 WWW.FORSYTHASSOCIATES.COM	
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DETAIL 1



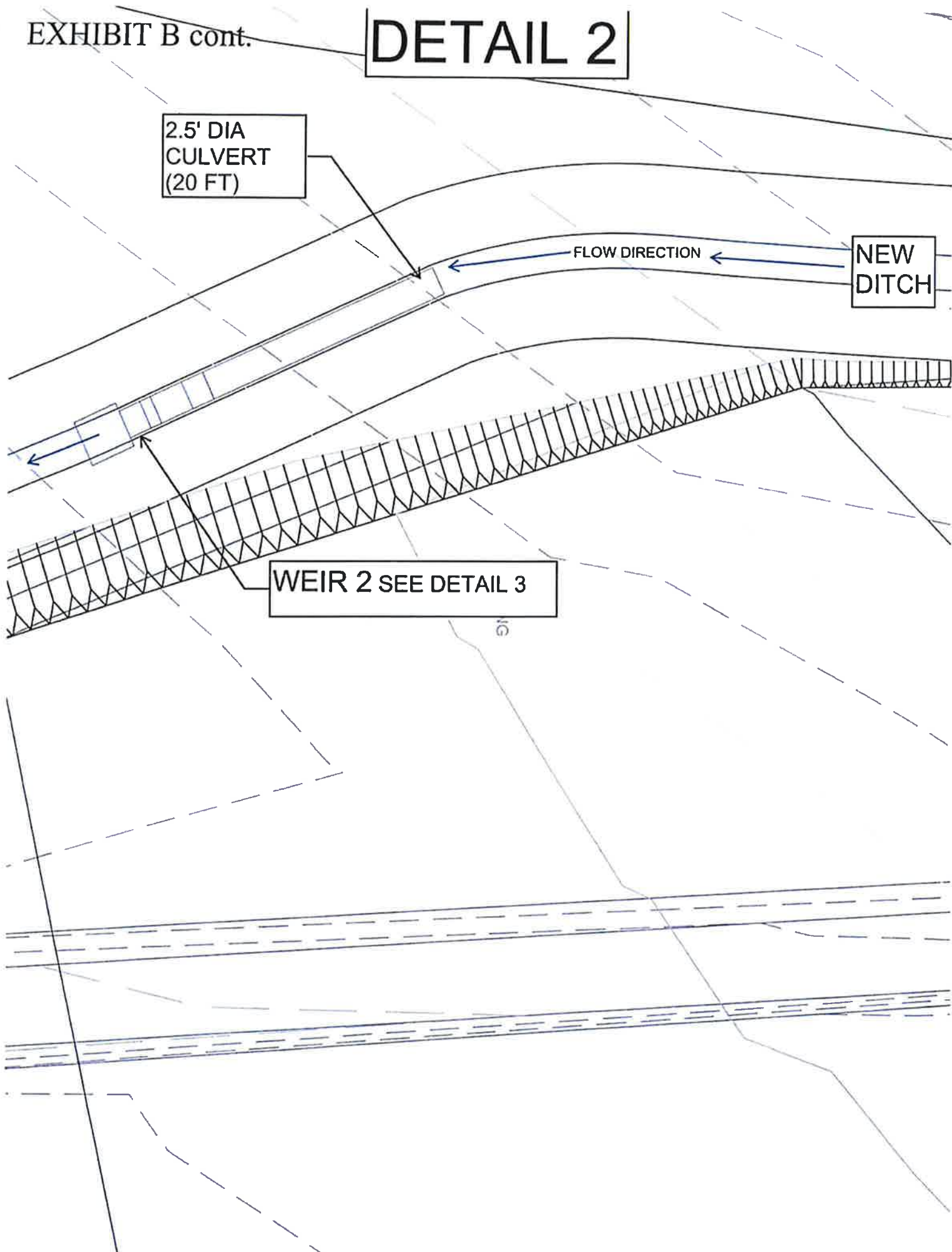
DETAIL 2

2.5' DIA
CULVERT
(20 FT)

FLOW DIRECTION

NEW
DITCH

WEIR 2 SEE DETAIL 3



DETAIL 3

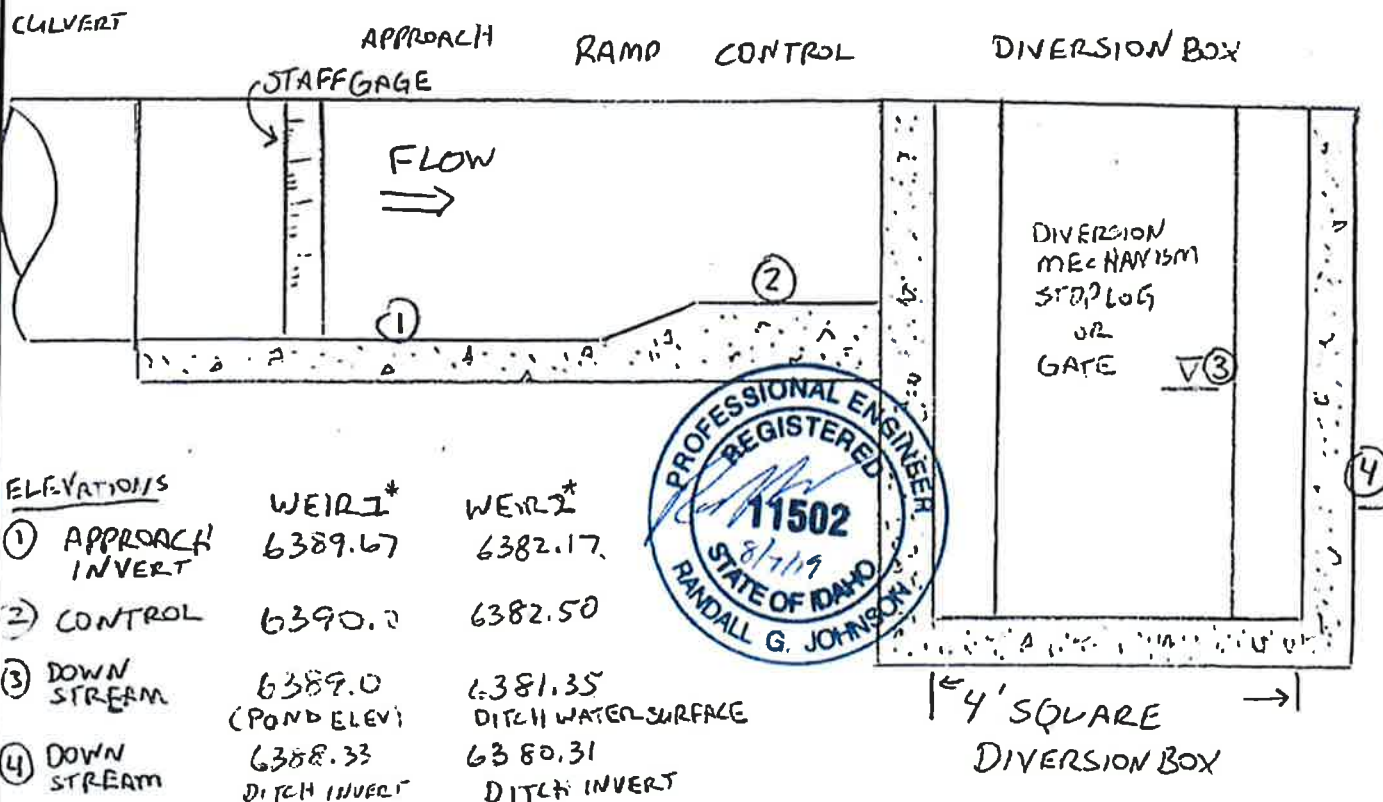
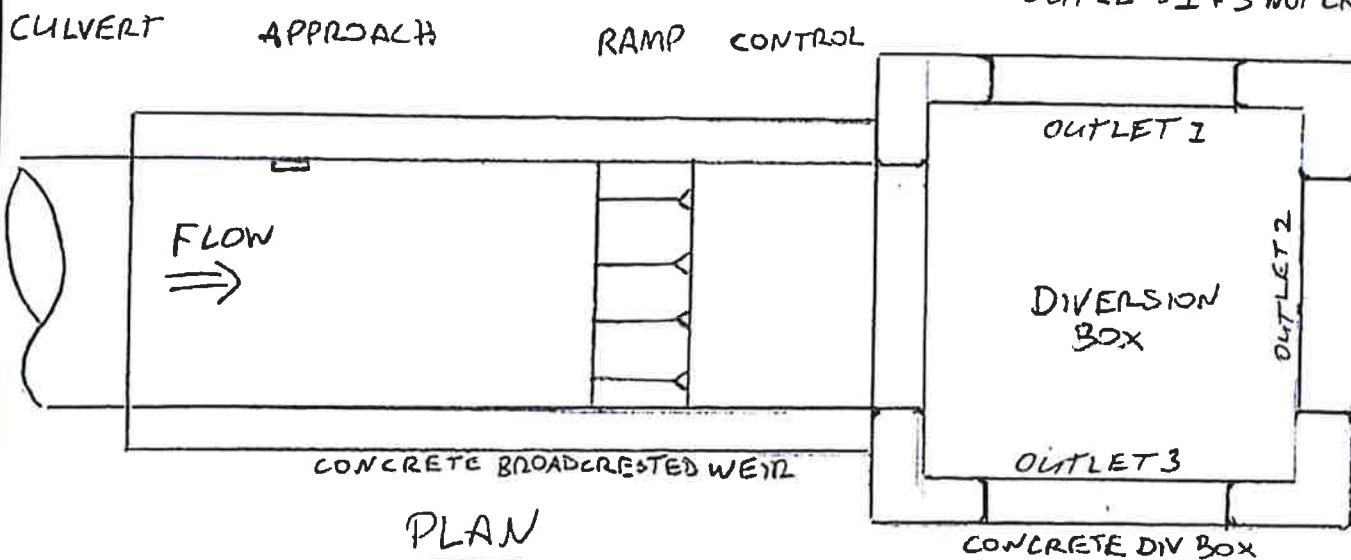
FORSGREN

Associates Inc.

Owner / Project PETERSON'S LODGE	By RGJ	Date 12/12/18	Project No. 01-18-0945
Feature MEASUREMENT WEIR	Chk'd By	Date	Sht 1 of 1

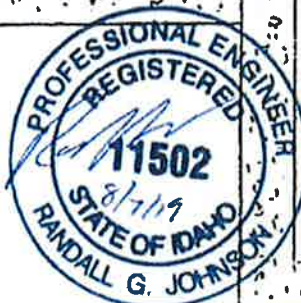
MEASUREMENT + DIVERSION

- OUTLETS:
- ALL OUTLETS CONTROLLED BY LOCKABLE SCREW GATES
 - WEIR 1 OUTLETS 1 + 2 TO POND, OUTLET 3 TO DITCH
 - WEIR 2 OUTLET 2 TO DITCH OUTLETS 1 + 3 NOT CRST

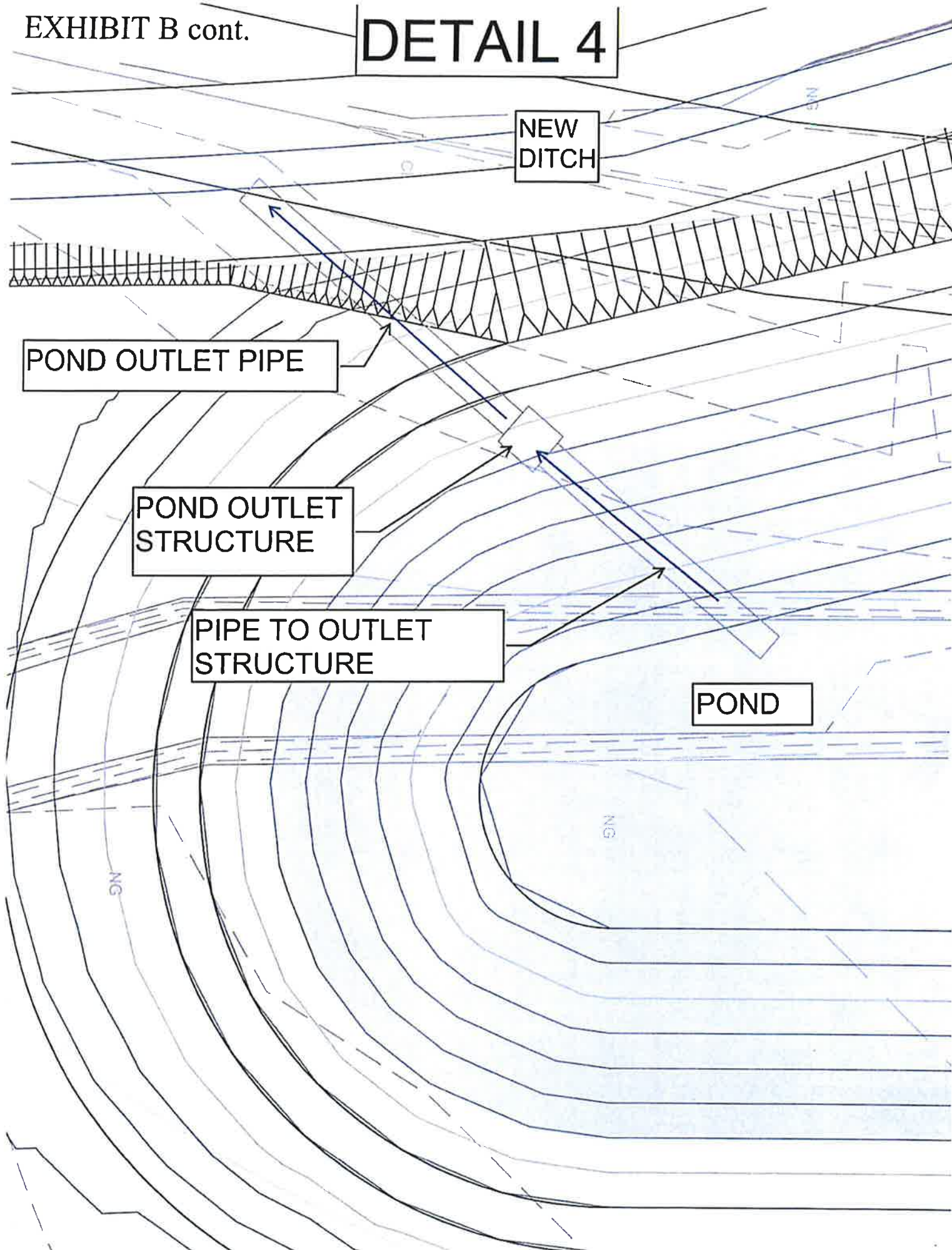


ELEVATIONS

	WEIR 1*	WEIR 2*
① APPROACH INVERT	6389.67	6382.17
② CONTROL	6390.0	6382.50
③ DOWN STREAM (POND ELEV)	6389.0	6381.35
④ DOWN STREAM DITCH INVERT	6388.33	6380.31
		DITCH WATER SURFACE
		DITCH INVERT



* "WEIR" USED TO REFER TO ENTIRE STRUCTURE



Manufactured by:

Agri Drain
CORPORATION

Box 458 • 1462 340th Street • Adair, Iowa 50002

Phone: 1-800-232-4742 • Fax: 1-800-282-3353

www.agridrain.com • email: info@agridrain.com

Inline Water Level Control Structure™

- Available in manual or automatic.
- Constructed of rugged ½" PVC with lockable plastic lid.
- Stainless steel screws and custom anodized aluminum corner extrusions used for strength and durability.*
- Flexible couplers allow PVC, plastic pipe, or other materials to be easily attached. *(Please specify type of pipe when ordering.)*
- Stoplogs made of PVC in 5" and 7" heights for adjustability. (Maintenance recommended: Remove stoplogs and grease seal with included Lubriplate Grease. Ensure there is no debris in the tracks or along the bottom of the structure. Replace stoplogs after greasing.)
- **Important!** To minimize seepage, align stoplogs firmly against one side of the stoplog track.
- Stoplogs must remain in track during structure installation.
- Structures are not pressure rated.
- Structures are intended for gravity flow: Low pressure and some seepage may occur.
- 5-year warranty on all standard structures.
- Customized or special orders will carry a 1-year warranty on workmanship and material and are nonreturnable.

*For water that is caustic, acid, corrosive, salt, or pH below 5 pH or above 9 pH, please notify us of your requirements to ensure structures are built with compatible hardware. For these applications, Agri Drain recommends stainless steel.



Comes with a handle to install and remove stoplogs.

Stoplog seal ensures a tight fit to prevent leakage.



Inline Water Level Control Structure™

Pipe Size	Available Heights	Width	Depth
4"	2' - 12'	8"	10"
6"	2' - 12'	8"	10"
8"	2' - 12'	11 5/8"	12"
10"	2' - 12'	14"	16"
12"	2' - 12'	16"	20"
15"	2' - 12'	20"	24"
18"	2' - 12'	24"	28"
24"	3' - 10'	31"	39"

Lubriplate Grease

- Recommended for lubricating the seal on the stoplogs in our Water Level Control Structures. (One 10-oz. tube is included with each structure purchased.)
- Available in a 10-oz. tube.



Rugged injection molded stoplogs used in structures with 4", 6", 8", 10", and 12" pipe sizes.



PVC stoplogs with stainless steel lifting hooks used in structures with 15", 18", and 24" pipe sizes.

Stoplog Retainer

Hold extra stoplogs up & out of the way!

- Stainless steel retainer hooks to lowest stoplog that you want to hold up within your Inline Water Level Control Structure™.
- 10' of 3/16" nylon rope (included) attaches to the retainer and secures to the inner brace bar near the top of the structure.

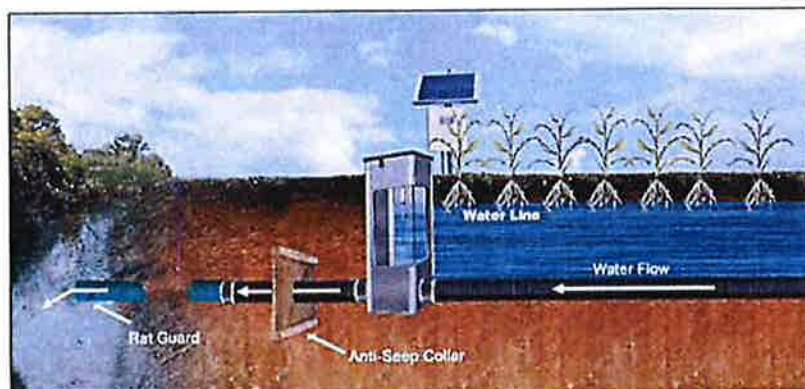
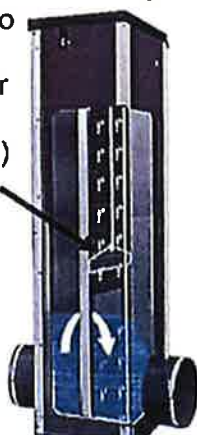


EXHIBIT C

Geotech Report Specifications for Synthetic Liner



**EARTH STABILIZATION &
ENGINEERING, LLC**

October 29, 2018

Intermountain Aquatics, Inc.
116 Mustang Drive
P.O. Box 1115
Driggs, ID 83422

Attn: Mr. Jeff Klausmann

RE: Peterson Property

Peter:

This letter is a summary of my observations concerning the proposed new pond at the Peterson Property located along the Kilgore Road on the south flank of the Centennial Mountains in Idaho. I was tasked with investigating site soil conditions for the ultimate goal of constructing a pond at this location. The pond was to be located in the area to the east of the current home between the existing ditch and Sheridan Creek. The creek originates in a broad basin just to the north of the proposed home location on the south facing slopes of the Centennial Mountains. However, much of the water in the spring creek appear to originate in springs just upstream of the proposed pond location.

The owners are proposing a pond just to the south of the Forest Service property boundary in the area between the existing ditch and Sheridan Creek. The ditch will have to be removed and replaced in a location between the new pond and the house. The relocated ditch would be a diversion around the pond in case the pond was losing water. At most times the water from the ditch will flow into the north side of the pond and will flow out the south side. The diversion ditch around the pond will maintain minimal flows while most of the water is run through the pond. The owner of the water rights on the ditch emphasized that there be no loss of water through the pond system. The pond is slated to have an average depth of approximately 4-feet but will contain a limited deeper area for swimming that is approximately 8 feet in depth. Flow monitoring structures will be necessary in the ditch upstream and downstream of the pond to verify that no water loss is occurring.

Test pits were excavated on September 27, 2018. The stratigraphic logs and the locations for these test pits are included. In general the site soils consist of 6" to 9" of dark topsoil and then low to medium plasticity clays and silts to a bottom depth that varies between 1.5 to 3.5 feet below existing ground across the site. They are a maximum of 5.25 feet thick in TP-1 on the east side of the existing excavated pond as measured below the road elevation and not the existing pond bottom elevation. These soils are generally low to medium plasticity and are variable across the site. There is a layer of high plasticity clay in TP-4 that was not observed in other test pits. The silts and clays are generally hard with random gravels, cobbles, and boulders.

Below the upper silts and clays a relatively consistent layer consisting of mixed Clayey Sand with Gravel, SC to Clayey Gravel with Sand, GC was observed. It was generally saturated or

the bentonite that you will be using. I recommend specific testing for the soils that will be used for the liner.

This method will produce a quality liner but is very sensitive to the experience of the installer. Missing small areas of the liner with bentonite, cracking of the liner if it dries out, or poor compaction can lead to leakage that is difficult to find later. It also requires work during the dry season since precipitation on a partially completed liner can fill up the pond and delay work until it can be dried out again. The placed liner will swell when submerged and must dry out and be re-compacted at just over optimum water content.

Geosynthetic Clay Liners (GCL) or Synthetic Liners

These are constructed similar to the bentonite amended clay liners but the compacted clay is used as a base on which to install a GCL or Plastic liner. These offer the greatest assurance that pond seepage will be almost eliminated. But they require that the installer follow the instructions explicitly. Plastic liners usually require a specialty installer adept at using solvent or heated welds at overlaps on individual sheets of liner. They usually require a specific soil treatment under and over the liner to protect it.

The primary driver for which liner to use is how much water loss can be assumed. Synthetic liners, if installed properly, involve the least risk but are also the most costly from a materials standpoint. If no loss of water can be accepted this is the preferred method. Either GCL or synthetic liners will produce similar results. The GCL requires bentonite placement between ALL SEAMS EVEN IF THEY OVERLAP PREVIOUSLY PLACED SEAMS. I usually double the recommended placement rate of bentonite in seams. If it rains it will hydrate the seams so care must be taken to work quickly but with quality placements and a large crew is usually necessary to move the individual sheets into place. Both GCL and synthetic liners require anchor trenches.

Given the remoteness of the site, and provided no leakage can be allowed, I would recommend that a synthetic liner be installed. These can sometimes be pre-made for a specific site if the excavated and prepared ground surface is accurately mapped beforehand. This must be arranged with the manufacturer. Alternately, site clays can be compacted and the performance monitored. If the pond leaks a synthetic liner could be placed over it. However, the depth of the pond should be deep enough to place the synthetic liner and a cover soil.

The gravels at depth will be saturated and will come out as a slurry unless the site is dewatered prior to excavation. Dewatering of the clayey Gravels will have mixed success since some locations may produce little water and others may produce significant water due to variations in the clay content and the condition of the gravel layers. The gravels are embedded with clay and are not suitable for other commercial uses but might work as farm roads or fills if they are dried out. They are not suitable for crushing. They will be difficult to screen unless they are dried out and aerated to keep the clays from forming hard clumps.

In all cases the new ditch alignment must be lined to prevent losses. Old ditches and ponds tend to seal themselves with organics and clay over the long term. However, this takes time and is not foolproof. Therefore the new ditch alignment must be lined. In any case I usually recommend that a set of design drawings and specifications be prepared to be certain the contractor understands what is required of them. It is almost impossible to find a leak once the pond is constructed and it can be very expensive to repair a liner. Additionally, liners can be

damaged by construction equipment while placing covers or placing liners so extreme care must be exercised during construction.

I trust that these initial recommendations are helpful in deciding your next course of action. If you have questions, or are in need of further assistance, please contact Earth Stabilization and Engineering, LLC at 406-209-2054.

Sincerely,

A handwritten signature in black ink that reads "Patrick L. Redmond". The signature is written in a cursive style with a large initial 'P' and 'R'.

Patrick L. Redmond, PE
Geotechnical Engineer

EXHIBIT C – Synthetic Pond Liner Detail

45 MIL EPDM POND LINER

- Adapts readily to a variety of applications
- Remains flexible in extreme temperatures
- Contains no plasticizers that can crack & split
- Readily accepts pipe and hose penetrations
- Certified fish & wildlife safe



EXHIBIT D (attached)

Form of Water Lease

WATER LEASE

This Water Lease ("Lease") is entered into effective the date last signed below by James F. Hagenbarth, David J. Hagenbarth, and the Hagenbarth Land Idaho Limited Partnership (collectively "Hagenbarth") and Bunts & Singles, LLC ("B&S"), hereinafter collectively referred to as the "Parties."

Recitals

- a. Hagenbarth and B&S are parties to a Settlement Agreement, dated _____, 2020 (the "Agreement"), that contemplates this Lease. This Lease is made pursuant to the terms of Agreement and incorporates by this reference the terms of the Agreement, a copy of which is attached as Exhibit A. Defined terms in this Lease that are not specifically defined herein shall have the meanings assigned to them in the Agreement.
- b. Pursuant to the terms of the Agreement, B&S has constructed the Pond Diversion System on land that it owns in Clark County, Idaho, legally described on Exhibit A.
- c. In accordance with the Agreement, the Parties enter into this Lease whereby Hagenbarth leases the water diverted pursuant to its water rights 21-4071A and 21-13226, and permit 21-13254 (collectively the "Water Rights"), to B&S for use in the Pond using the Pond Diversion System on the terms set forth below.

Terms of Lease

1. **Lease.** Hagenbarth hereby leases to B&S the water diverted pursuant to the Water Rights exclusively for use by B&S in the Pond using the Pond Diversion System as contemplated in the Agreement. The water leased hereby shall be conveyed via the Hagenbarth Ditch. B&S may divert the entire flow from the Hagenbarth Ditch to the Pond, less approximately 1 cfs to be left in the New Ditch to maintain the integrity of the liner in the ditch. The term of this Lease is perpetual, subject to the rights of Hagenbarth to suspend diversions pursuant to the terms of Section 4 of this Lease and subject to B&S's right to terminate pursuant to the terms of Section 7.
2. **Annual Payment Terms.** B&S shall pay Hagenbarth an annual lease payment in advance on or before January 10 each year. The lease rate during the first year of this Lease shall be \$7,500.00 without any proration. The amount of the lease payment shall increase at the rate of 3% per year for the term of the Lease. (So, for example, the lease rate for year 2 shall be \$7,725.00, and the lease rate for year 3 shall be \$7,956.75 and so on).

B&S may elect to temporarily suspend diversions to the Pond for any given year by providing written notice to Hagenbarth of B&S's election to suspend prior to January 10 of that year, in which case the annual payment for that year shall be waived and Hagenbarth will lock the gates that provide for diversion of water from the Pond Diversion System into the Pond. In a year where B&S has elected to suspend diversions, it may revoke its election by providing written notice to Hagenbarth of revocation of the election and the full annual payment for that year that would have been due on January 10 but for the election to suspend. Hagenbarth will

unlock the gates allowing diversions into the Pond within three days after receipt of full payment. A suspension election does not affect the 3% escalator in price, which shall apply regardless of any suspensions.

3. Maintenance. B&S is solely and exclusively responsible for the maintenance and all related costs of the Pond Diversion System. If the Pond Diversion system is not functioning properly, Hagenbarth may, after failure by B&S to correct within 10 days of notice from Hagenbarth, perform the maintenance and charge the cost to B&S, which B&S shall pay within 30 days after receiving an invoice from Hagenbarth. Hagenbarth will continue to maintain the Hagenbarth Ditch (but not that portion that is the New Ditch, which B&S shall maintain).

4. Hagenbarth Right to Suspend. Hagenbarth may suspend the diversions to the Pond contemplated by this Lease, and direct the full flow of the Hagenbarth Ditch around the Pond via the New Ditch under the following circumstances:

- a. In the event B&S fails to make an annual payment and then has not remedied the nonpayment within 10 days after notice of nonpayment from Hagenbarth.
- b. In the event that the Pond develops a measurable leak, as detected by the difference in flows measured by Weir 1 and Weir 2, and B&S has not repaired the leak within 10 days after notice of the leak from Hagenbarth.
- c. In the event B&S fails to make a reimbursement payment to Hagenbarth for repairs as contemplated in Section 3, and then has not remedied the nonpayment within 10 days after notice of nonpayment from Hagenbarth.

Upon any suspension of the diversions as contemplated above, Hagenbarth shall promptly adjust the Diversion System to return flows to the Pond after the issue has been remedied. In the event right 21-4071A is curtailed in any year when B&S is otherwise entitled to be diverting water into the Pond, Hagenbarth shall continue to divert right 21-13226 into the Pond even though right 21-4071A has been curtailed.

5. No Guarantee of Availability of Water. Hagenbarth makes no guaranty that water will be available due to either reduction in flows from the springs, administrative curtailment, a decision by the federal government to reduce the flows of water entering the Hagenbarth Ditch, or any other reason not controlled by Hagenbarth. Any such reduction is not grounds for abatement of the payments due under this Lease.

6. Easement Related to Pond Diversion System. B&S hereby grants to Hagenbarth a perpetual, nonexclusive easement to enter the B&S property for the purpose of inspecting, maintaining and controlling the Pond Diversion System. B&S hereby affirms the historic, prescriptive easement for the same rights of access concerning the Hagenbarth Ditch. Hagenbarth shall have exclusive control over the diversion controls in Weir 1 and the Diversion Box. However, in the event adjustments are needed to the diversion controls to provide for the diversions allowed by this Lease, and B&S has made a good faith effort to contact Hagenbarth and has not received a response within three days, B&S may adjust the diversion controls to provide for diversions in accordance with the Lease.

7. Termination. B&S may terminate this Lease by providing written notice of termination to Hagenbarth. Upon termination, there shall be no proration of any amounts paid for the current lease year, all diversions of water into the Pond shall cease immediately and permanently, the Pond Diversion System shall be set to direct the entire flow of water entering it into the New Ditch, all maintenance rights for the Pond Diversion System except for the Pond shall transfer to Hagenbarth, and B&S shall have no further right to adjust the Pond Diversion System or deliver any water through the Pond Diversion System.

8. Additional documentation; cooperation during term. The Parties acknowledge that implementing this Lease may require submission of additional documentation to each other or to government agencies. The Parties shall cooperate in efforts to implement this Lease, and also shall cooperate with regard to producing any such additional documentation.

9. Notices. Any notice provided for or concerning this Lease shall be in writing, and may be delivered by hand delivery, fax, or email, but in any event shall be confirmed by sending such notice by registered or certified mail, first class postage prepaid, return receipt requested, addressed to the respective address of the Parties as set forth below:

Bunts & Singles, LLC

Barrett Peterson
225 S 200 E, Ste 300
Salt Lake City, UT 84111

Hagenbarth Land Idaho Limited Partnership

James F. Hagenbarth
P.O Box 1128
Dillon, MT 59725

10. Binding effect. This Lease shall bind the Parties hereto, their employees, agents, heirs, successors, and assigns. The obligations and benefits of this Lease shall run with the land. This Lease shall be recorded against the land.

11. Severability. If any of the provisions of this Lease are deemed invalid by any court or agency, the remaining provisions shall remain in effect.

12. No Waiver. A Party's election not to enforce any right under this Lease shall not constitute a waiver of the Party's entitlement to enforce such right in the future.

13. Authority. The Parties each represent and warrant that they have authority to enter into this Lease.

14. Interpretation. The Parties hereto acknowledge that this Lease has been prepared after extensive discussions between the Parties and the opportunity for each Party to review the Lease with and obtain advice from their respective legal counsel. In construing this Lease, the fact that one Party or the other may have drafted its various provisions shall not affect the interpretation of such provisions.

15. Governing Law. This Agreement shall be interpreted, applied and enforced in accordance with the laws of the State of Idaho. Venue for any lawsuit filed concerning the Agreement shall be in either Clark County, Idaho, or the federal court in Boise, Idaho.

16. Relationship of Parties. Nothing set forth herein shall be deemed to create the relationship of partners, principal and agent, master and servant, employer and employee, or joint venturers between the Parties hereto. None of the Parties shall have the authority to bind another Party. Nothing contained in this Lease shall create a contractual relationship with, or a cause of action in favor of, a third party against a Party or the Parties to this Lease.

17. Separate counterparts. This Lease may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

18. Attorney fees. In any action or proceeding brought by any Party hereto against the other in any way arising out of this Lease, the prevailing Party shall be entitled to its reasonable costs and expenses of such action, including attorneys' fees, from the other Party.

19. Entire Agreement. This Lease and the Agreement constitutes the entire understanding and agreement between the Parties concerning the matters covered in these documents.

James F. Hagenbarth

David J. Hagenbarth

Date: _____

Date: _____

Bunts & Singles, LLC

Hagenbarth Land Idaho Limited Partnership



Barrett Peterson, Manager

James F. Hagenbarth, general partner

Date: 2/13/20

Date: _____

STATE OF Utah)
:SS.
COUNTY OF Salt Lake)

I certify that I know or have satisfactory evidence that Barrett Peterson is the person who appeared before me, and said person acknowledged that he signed this instrument and that he was authorized to execute the instrument and acknowledged it as the manager of Bunts & Singles, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: February 13, 2020.

Lori Johnston



NOTARY PUBLIC
in and for the State of Utah
Residing at: SLC
Commission expires: 705527

STATE OF _____)
:SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that James F. Hagenbarth is the person who appeared before me, and said person acknowledged that he signed this instrument and stated that he was authorized to execute the instrument and acknowledged it as the general partner of Hagenbarth Land Idaho Limited Partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2020.

NOTARY PUBLIC
in and for the State of _____
Residing at: _____
Commission expires: _____

State of _____)
) ss.
County of _____)

On this ____ day of _____, 2020, before me, a Notary Public in and for said State, personally appeared James F. Hagenbarth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

NOTARY PUBLIC
in and for the State of _____
Residing at: _____
Commission expires: _____

State of _____)
) ss.
County of _____)

On this ____ day of _____, 2020, before me, a Notary Public in and for said State, personally appeared David J. Hagenbarth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

NOTARY PUBLIC
in and for the State of _____
Residing at: _____
Commission expires: _____

EXHIBIT A – Legal Description of B&S Parcel

Beginning at a point that is East along the section line 1132.0 feet from the Northwest corner of section seven (7), Township Thirteen (13) North, Range Forty-one (41) East Boise Meridian; running thence East 528.0 feet; thence South 1,056.0 feet; thence West 528.0 feet; thence North 1,056.0 feet to the point of beginning, containing 12.8 acres more or less.

SUBJECT TO:

1. All 1984 real property taxes and assessments.
2. A 33-foot wide road easement in favor of the United States of America and Grantees herein and the conditions, restrictions and reservations set forth in that certain Easement Deed in favor of the United States of America dated February 5, 1970 and recorded February 9, 1970 in the records of Clark County, Idaho, as Instrument No. 27272.
3. An easement for the operation and maintenance of a ditch as the same now exists upon the demised premises.
4. Reservations and exceptions contained in that certain Deed from the State of Idaho, dated April 21, 1942 recorded on November 22, 1963, in Book 215 of Deeds at page 243, records of Clark County, Idaho, and any reservations or rights granted or retained pursuant to Idaho Code §58-603 through §58-604.