

MEMORANDUM

Date: January 23, 2019
To: Transfer 82896
From: Jeff Nield
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to rearrange and combine the places of use of rights 33-2040, 33-14904, 33-14929, 33-14931, 33-14949, and 33-14950 to reflect a common irrigation system and represent the current irrigation practices. This transfer also proposes to include the three interconnected wells on all the rights. Two of these points are existing wells. The other point of diversion is a new well to be constructed in the NWSE of Section 27.

Authority to File:

Applicant is the current owner of record for all of the water rights. Butte County taxlot data also shows the applicant as the owner of both the current and proposed places of use. One of the points of diversion is on property not owned by the applicant. Legal access to this point of diversion was demonstrated through a Warranty Deed from Christopher Canfield (property owner) to Merlin Smith, Sr. (original water right owner), and a Buy/Sell Agreement and Warranty Deed from Merlin Smith, Sr. to Pancheri Brothers, LLC (current water right owners). Warranty Deeds and Buy/Sell Agreement are included as an attachment to this memo. The transfer application was signed by Rod Pancheri, who is a registered agent and authorized to sign on behalf of the LLC.

Water Right Validity:

The rights proposed to be transferred were decreed in the SRBA in 2000. Rights 33-14929 and 33-14931 were leased to the water supply bank in 2014. For the rest of the rights, the number of irrigated acres found during review of 2017 and 2015 aerial photography was about the same as the number of acres authorized to be irrigated by these rights within the place of use. Forfeiture does not appear to be an issue.

Injury to Other Water Rights:

The rights in this transfer are being combined into a single place of use and will include three interconnected wells to reflect the current irrigation system and practices. No ESPA analysis is required as the proposed points of diversion are all within adjacent ESPA Model cells. The quantity authorized to be diverted will not change as a result of the transfer. The transfer was advertised and no protests were received. It does not appear that other rights will be injured by the proposed change. Ground water rights in Basin 33 are now regulated by WD33. However, a measuring device order has not yet been issued by the Department.

Enlargement of Use:

The proposed change will not result in enlargement because neither rate, nor volume, nor irrigated acres will increase as a result of the transfer. No issues identified.

Local Public interest:

No issues identified.

Beneficial Use/Conservation of Water Resources:

No issues identified.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

NO. 0048647
RECORDED

MAY 26 2011

RECORDING REQUESTED BY:

Baker & Harris
266 W Bridge
Blackfoot, ID 8322111:45 A.M.
BUTTE COUNTY RECORDER
R. L. Beckwith

space above this line for Recorder's use only

373788-B

WARRANTY DEED

For Value Received, Christopher D. Canfield and Christina E. Canfield, husband and wife, the Grantors, do hereby grant, bargain, sell, and convey unto Merlin Smith, Sr., a married man dealing with his sole and separate property, of 833 S. Stout Avenue, Blackfoot, Idaho 83221, the Grantee, the following-described premises, to-wit:

A portion of the Southwest 1/4 of Section 26, Township 6 North, Range 29 East, Boise Meridian, Butte County, Idaho, as shown on a Record of Survey, and more particularly described as follows:

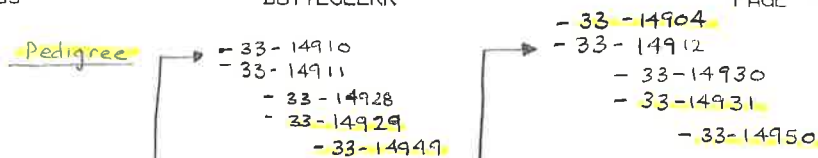
Commencing at the Southwest corner of Section 26, said corner also being the POINT OF BEGINNING; thence along the Westerly boundary of the Southwest 1/4 of said section, North 00°28'53" West, 2233.30 feet; thence North 89°55'52" East, 990.21 feet; thence North 00°28'53" West, 440.09 feet, to the North boundary of the Southwest 1/4; thence North 89°55'52" East, 1630.25 feet, to the Northeast corner of the Southwest 1/4; thence along the Easterly boundary of the Southwest 1/4, South 00°21'59" East, 2,687.14 feet; thence along the Southerly boundary of the Southwest 1/4, North 89°46'01" West, 2615.21 feet, to the POINT OF BEGINNING.

EASEMENT

Together with and easement for installation, operation and maintenance of an irrigation system across a portion of the Northwest 1/4 of the Southwest 1/4 of Section 26, Township 6 North, Range 29 East, Boise Meridian, Butte County, Idaho as shown on a Record of Survey, and more particularly described as follows:

Commencing at the Southwest corner of Section 26; thence along the Westerly boundary of the Southwest 1/4, North 00°28'53" West, 2,233.30 feet, to the POINT OF BEGINNING; thence continuing North 00°28'53" West, 440.09 feet; thence along the Northerly boundary of the Southwest 1/4, North 89°55'52" East, 63.00 feet; thence South 00°28'53" East, 30.00 feet; thence South 89°55'52" West, 20.00 feet; thence South 00°28'53" East, 410.09 feet; thence South 89°55'52" West, 43.00 feet, to the POINT OF BEGINNING. Such easement shall be for the benefit of the above described property.

Any damages to the easement by Grantee will be restored by Grantee to the reasonable satisfaction of Grantor. Grantee will not unreasonably interfere with Grantor's access. Grantor may require reasonable alternate access during periods of interruption.



Together with IDWR Nos. 33-7016 and 33-14903; except reserving to the Vendor 0.072309647 cfs to irrigate approximately five acres.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Subject to all existing rights-of-ways for public highways, protective covenants, utility lines, existing roadways, irrigation ditches and all building, zoning and other restrictions of use and all encumbrances of record.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances except as hereinabove set forth and that they will warrant and defend the same from all lawful claims whatsoever.

Dated this 23rd day of May, 2011.

Christopher D. Canfield
Christopher D. Canfield

Christina E. Canfield
Christina E. Canfield

STATE OF IDAHO)

: ss.

County of Ada)

On this 23rd day of May, 2011, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Christopher D. Canfield and Christina E. Canfield, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.



Deanne L. Spencer
Notary Public for Idaho
Residing at Blackfoot Boise, Id
My Commission Expires: 03/02/17

BUY/SELL AGREEMENT

1. PARTIES:

THIS AGREEMENT, made and entered into this 9th day of December, 2016, by and between **MERLIN SMITH, SR.**, a married man as his sole and separate property, **MAKE AND BREAK CONSTRUCTION AND DEMOLITION, LLC**, an Idaho Limited Liability Company, hereinafter referred to as Vendors, and **PANCHERI BROTHERS, LLC**, an Idaho Limited Liability Company, hereinafter referred to as Purchaser.

WITNESSETH:

That the said Vendors, in consideration of the covenants and agreements on the part of the said Purchaser, hereinafter contained, agree to sell and convey unto the said Purchaser, and the Purchaser agrees to buy certain real property particularly described as follows, to-wit:

2. PROPERTY DESCRIPTION:

PARCEL 1:

A PORTION OF THE SW¼ OF SECTION 26, TOWNSHIP 6 NORTH, RANGE 29 EAST, BOISE MERIDIAN, BUTTE COUNTY, IDAHO, AS SHOWN ON A RECORD OF SURVEY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 26, SAID CORNER ALSO BEING THE POINT OF BEGINNING; THENCE ALONG THE WESTERLY BOUNDARY OF THE SW¼ OF SAID SECTION, N. 00°28'53" W. 2,233.30 FEET; THENCE N. 89°55'52" E. 990.21 FEET; THENCE N. 00°28'53" W. 440.09 FEET, TO THE NORTH BOUNDARY OF THE SW¼; THENCE N. 89°55'52" E. 1,630.25 FEET TO THE NORTHEAST CORNER OF THE SW¼; THENCE ALONG THE EASTERLY BOUNDARY OF THE SW¼, S. 00°21'59" E. 2,687.14 FEET; THENCE ALONG THE SOUTHERLY BOUNDARY OF THE SW¼, N. 89°46'01" W. 2,615.21 FEET TO THE POINT OF BEGINNING.

LESS and EXCEPTING:

TOWNSHIP 6 NORTH, RANGE 29 EAST, B.M., BUTTE COUNTY, IDAHO
SECTION 26: E½SW¼

ALSO LESS and EXCEPTING:

PART OF THE SOUTHWEST ¼ SECTION 26, TOWNSHIP 6 NORTH, RANGE 29 EAST B.M. BUTTE COUNTY, IDAHO DESCRIBED AS:
BEGINNING AT THE SOUTHWEST CORNER OF SECTION 26; THENCE N 00°28'53" W 1030.64 FEET ALONG THE SECTION LINE; THENCE N 89°31'07"

E 33.00 FEET TO A POINT ON A CURVE TO THE LEFT WHOSE CENTER BEARS N 76°18'05" E 1325.00 FEET; THENCE SOUTHEASTERLY 1753.46 FEET ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 75°49'24" AND A LONG CHORD WHICH BEARS S 51°36'37" E 1628.28 FEET; THENCE LEAVING SAID CURVE S 00°13'59" W 25.00 FEET TO A POINT ON THE SOUTH LINE OF SECTION 26; THENCE N 89°46'01" W 1300.51 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

AND ALSO LESS AND EXCEPTING:

PART OF THE SOUTHWEST ¼ SECTION 26, TOWNSHIP 6 NORTH, RANGE 29 EAST B.M. BUTTE COUNTY, IDAHO DESCRIBED AS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 26; THENCE N 00°28'53" W 1636.55 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING; THENCE N 00°28'53" W 596.75 FEET CONTINUING ALONG SAID SECTION LINE; THENCE N 89°55'52" E 347.89 FEET TO A POINT ON A CURVE TO THE LEFT WHOSE CENTER BEARS S 47°51'41" E 1325.00 FEET; THENCE SOUTHWESTERLY 679.95 FEET ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 29°24'09" AND A LONG CHORD WHICH BEARS S 27°26'14" W 672.52 FEET; THENCE S 89°31'07" W 33.00 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

TOGETHER WITH AN IRRIGATION EASEMENT DESCRIBED AS:

A PORTION OF THE NW¼SW¼ OF SECTION 26, TOWNSHIP 6 NORTH, RANGE 29 EAST, BOISE MERIDIAN, BUTTE COUNTY, IDAHO, AS SHOWN ON A RECORD OF SURVEY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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THENCE CONTINUING N. 00°28'53" W. 440.09 FEET;

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THENCE S. 00°28'53" E. 30.00 FEET;

THENCE S. 89°55'52" W. 20.00 FEET;

THENCE S. 00°28'53" E. 410.09 FEET;

THENCE S. 89°55'52" W. 43.00 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

PART OF THE SOUTHWEST ¼ SECTION 26, TOWNSHIP 6 NORTH, RANGE 29 EAST B.M. BUTTE COUNTY, IDAHO DESCRIBED AS:

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TOGETHER WITH any and all estate, right, title, interest, appurtenances, tenements, hereditaments, reversions, remainders, easements, rents, issues, profits, rights-of-way and water rights, including but not limited to, Water Right Nos. 33-14929 and 33-14931, in anywise appertaining to the property herein described as well in law as in equity. PROVIDED HOWEVER, that Water Right Nos. 33-14930 and 33-14928 are excepted therefrom and are expressly reserved unto Vendors.

3. FIXTURES OR PERSONAL PROPERTY:

Pump, panel, and mainline located on the above-described property.

4. PURCHASE PRICE AND METHOD OF PAYMENT:

Purchaser agrees to purchase said property for the sum of Seventy Thousand Dollars (\$70,000) Dollars in lawful money of the United States; and the Purchaser, in consideration of the premises, agree to pay to Vendors the said sum of \$70,000 in cash at closing.

5. CLOSING:

Purchaser shall have ninety (90) days following the date of this Agreement to take all action necessary to change the designated place of use for Water Right Nos. 33-14929 and 33-14931 to be

all or some portion of the above-described property or adjoining property now owned by Purchaser and to verify that such water rights have not been forfeited and are in good standing . Such action shall include obtaining IDWR approval for such place of use. Vendors hereby grant to Purchaser authority to file with IDWR any and all documents and take any other action required to complete such change in the designated place of use for such water rights. Vendors shall cooperate with Purchaser to achieve such change in the place of use for Water Right Nos. 33-14929 and 33-14931. If Purchaser is not able within said ninety-day period to verify to Purchaser's satisfaction that all of the above described water rights have not been forfeited and are in good standing and to obtain IDWR approval for the above described change in designated place of use, and the parties cannot agree on an extension of such period, either Vendors or Purchaser may terminate this Agreement by giving written notice of termination to the other. The closing shall be contingent upon, and occur no later than ten (10) days after Purchaser has verified that all of the above described water rights have not been forfeited and are in good standing and such change in the place of use is approved by IDWR and finalized. The closing shall be performed by the execution, delivery, and recording as appropriate of the following documents:

- a. Warranty Deed, in the form attached as Exhibit A to this Agreement, from Vendors to Purchaser for the real property described above.
- b. Statement of Settlement.

The parties acknowledge that to the extent that the above identified documents satisfy the obligations set forth in this agreement, this agreement will become merged in the above documents. This agreement will otherwise remain in full force and effect.

The parties acknowledge and agree that, contingent upon the occurrence of the closing contemplated herein, the separate agreement between Vendors and Purchaser, dated January 21, 2015, entitled "Agreement For Division of Point of Diversion For Water Rights" shall automatically terminate, effective as of the recording of the Warranty Deed described above. If the closing contemplated herein does not occur for any reason, the Agreement For Division of Point of Diversion For Water Rights will continue in full force and effect, unaffected by this agreement.

6. CLOSING COSTS:

The closing fee and the standard premium for a title insurance policy will be split equally between Vendors and Purchaser. Each party must bear its own costs (including attorneys' fees) in

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

VENDORS


Merlin Smith, Sr.

The undersigned spouse of Merlin Smith, Sr., acknowledges and agrees that the property described in the foregoing Buy/Sell Agreement is the sole and separate property of Merlin Smith, Sr., and the undersigned has no community property interest in such property.

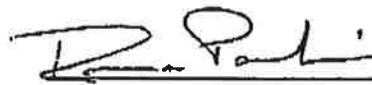

Signe Rutherford Smith

Make and Break Construction and Demolition, LLC


By: Merlin Smith, Jr.
Its: Member

PURCHASER

PANCHERI BROTHERS, LLC


By: Roman Pancheri
It's: Member

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connection with its negotiation, document preparation, due diligence investigation, and conduct of the transaction.

7. PRORATION OF TAXES:

Vendors agree to pay all real estate taxes and assessments (including any assessments from the Big Lost River Irrigation District) levied upon said premises up to closing. All taxes and assessments thereafter shall be paid by the Purchaser. Any items that have been prorated based on the latest available figures shall be reconciled after the Closing Date when actual figures are available, with an appropriate adjustment to be made between Vendors and Purchaser.

8. POSSESSION.

Purchaser will be entitled to possession of the Property on the Closing Date.

9. NO WARRANTY EXCEPT AS TO TITLE:

The Purchaser declares that it is buying the property "as is" and on its own examination and judgment and not through any representation made to it by the Vendors, or any agent for the Vendors, as to its location, value, future value, income therefrom or its production. This paragraph shall not apply to warranty of title.

10. TITLE:

The property herein agreed to be sold shall be conveyed free and clear of all encumbrances, easements, restrictions, taxes, except covenants, restrictions, and easements of record, and taxes not due or delinquent.

At the closing, the Vendors shall execute and deliver to the Purchaser a Warranty Deed in recordable form, in the form attached as Exhibit A to this Agreement.

11. COUNTERPARTS/FACSIMILE:

This Agreement may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument. This Agreement may be signed and delivered by facsimile (fax or email) which shall be effective as an original.

EXHIBIT A

RECORDING REQUESTED BY:

Baker & Harris
266 W Bridge
Blackfoot, ID 83221

space above this line for Recording use only

WARRANTY DEED

THIS INDENTURE is made this ____ day of _____, 2017, by **MERLIN SMITH, SR.**, a married man as his sole and separate property, and **MAKE AND BREAK CONSTRUCTION AND DEMOLITION, LLC**, an Idaho Limited Liability Company (collectively the "Grantor"), to **PANCHERI BROTHERS, LLC**, an Idaho Limited Liability Company, whose mailing address is 1460 Highway 33, Howe, Idaho, 83244 (the "Grantee").

WITNESSETH:

That the Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) lawful money of the United States of America, and other good and valuable consideration, to the Grantor in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee, and to the Grantee's successors and assigns forever, all of the following described real property in the County of Butte, State of Idaho, to-wit:

PARCEL 1:

A PORTION OF THE SW¼ OF SECTION 26, TOWNSHIP 6 NORTH, RANGE 29 EAST, BOISE MERIDIAN, BUTTE COUNTY, IDAHO, AS SHOWN ON A RECORD OF SURVEY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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LESS and EXCEPTING:

TOWNSHIP 6 NORTH, RANGE 29 EAST, B.M., BUTTE COUNTY, IDAHO
SECTION 26: E½SW¼

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Together with all pumps, panels, mainline, and all other irrigation equipment of any nature owned by Grantor and located on the above-described property.

Subject to all existing rights-of-ways for public highways, protective covenants, utility lines, existing roadways, irrigation ditches and all building, zoning and other restrictions of use and all encumbrances of record.

TO HAVE AND TO HOLD the property and the appurtenances unto the Grantee, and to the Grantee's successors and assigns forever. The Grantor and the Grantor's successors shall warrant and defend the property in the quiet and peaceable possession of the Grantee and the Grantee's successors and assigns, against the Grantor and the Grantor's successors, and against every person whomsoever who lawfully holds (or who later lawfully claims to have held) rights in the property as of the date hereof, subject to the matters set forth above.

In construing this Warranty Deed and where the context so requires, the singular includes the plural.

DATED this ____ day of _____, 2017.

Merlin Smith, Sr.

The undersigned spouse of Merlin Smith, Sr., acknowledges and agrees that the property described in the foregoing Warranty Deed is the sole and separate property of Merlin Smith, Sr. In the event the undersigned has any community property interest or other interest in such property, such interest shall be subject to the terms of the foregoing Warranty Deed and shall be transferred and conveyed to the above named Grantee in accordance with the terms and conditions of the foregoing Warranty Deed.

Signe Rutherford Smith

Make and Break Construction and Demolition, LLC

By: Merlin Smith, Jr.
Its: *Member*

STATE OF IDAHO)

: ss.

County of Bingham)

On this ____ day of _____, 2017, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared MERLIN SMITH, SR., a married man as his sole and separate property, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal, the day and year first above written.

(SEAL)

Notary Public for Idaho

Residing at: _____

My Commission Expires: _____

STATE OF IDAHO)

: ss.

County of Bingham)

On this ____ day of _____, 2017, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared SIGNE RUTHERFORD SMITH, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal, the day and year first above written.

(SEAL)

Notary Public for Idaho

Residing at: _____

My Commission Expires: _____

STATE OF IDAHO)
) ss
County of Bingham)

I, a notary public, do hereby certify that on this ____ day of _____, 2017, personally appeared before me MERLIN SMITH, JR., who, being by me first duly sworn, declared that he is a Member of MAKE AND BREAK CONSTRUCTION AND DEMOLITION, LLC, an Idaho Limited Liability Company, and the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

(SEAL)

Notary Public for Idaho
Residing at Blackfoot
My Commission Expires:_____