

79870

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 1**

Name of Applicant(s) Monty and Carolene Funk Phone (208) 226-2267  
Mailing address P.O. Box 360 American Falls, ID 83211 Email monty@countrylifefarms.com

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Jason C. Helms, P.E. Phone (208) 308-2109  
Mailing address 6755 N. Albert Lane Idaho Falls, ID 83401 Email jasoncivil@alumni.nd.edu

- ☐ Send all correspondence for this application to the representative and not to the applicant.  
OR  
☒ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.  
OR  
☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

[Signature]  
Signature of Applicant or Authorized Representative

Monty Funk Partner  
Print Name and Title if applicable

02-25-2015  
Date

Carolene Funk  
Signature of Applicant or Authorized Representative

Carolene Funk Partner  
Print Name and Title if applicable

2/25/15  
Date

**A. PURPOSE OF TRANSFER**

- ☐ Change point of diversion  
☐ Change nature of use  
☐ Add diversion point(s)  
☐ Change period of use  
☒ Change place of use  
☐ Other Create permissible place of use
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**.  
 Authorize existing water right for single irrigation season use of 71 acres within a 160 acre permissible place of use.

RECEIVED

FEB 27 2015

Department of Water Resources  
Eastern Region

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT**  
**PART 1 Continued**

**B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.**

| 1.                                                                          | Right Number | Amount<br>(cfs/ac-ft) | Nature of Use | Period of Use  | Source & Tributary |
|-----------------------------------------------------------------------------|--------------|-----------------------|---------------|----------------|--------------------|
| All or Part<br><input checked="" type="checkbox"/> <input type="checkbox"/> | 35-14395     | 1.20 / 284.0          | Irrigation    | 04/01 to 10/31 | Ground Water       |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |               | to             |                    |

Total authorized under rights 1.20 cfs and/or 284.0 acre-feet.

2. Total amount of water proposed to be transferred or changed 1.20 cubic feet per second and/or 284.0 acre-feet per year.

3. Point(s) of Diversion:

- ☒ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it Attachment #5.

| New ? | Lot | ¼ | ¼ | ¼ | Sec | Twp | Rge | County | Source | Local name or tag # |
|-------|-----|---|---|---|-----|-----|-----|--------|--------|---------------------|
|       |     |   |   |   |     |     |     |        |        |                     |
|       |     |   |   |   |     |     |     |        |        |                     |
|       |     |   |   |   |     |     |     |        |        |                     |
|       |     |   |   |   |     |     |     |        |        |                     |
|       |     |   |   |   |     |     |     |        |        |                     |

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

| Twp                              | Rge | Sec | NE ¼ |    |    |    | NW ¼ |    |    |    | SW ¼ |    |    |    | SE ¼ |    |    |    | Acre Totals |
|----------------------------------|-----|-----|------|----|----|----|------|----|----|----|------|----|----|----|------|----|----|----|-------------|
|                                  |     |     | NE   | NW | SW | SE | NE   | NW | SW | SE | NE   | NW | SW | SE | NE   | NW | SW | SE |             |
| 06S                              | 29E | 9   |      |    |    |    |      |    |    |    |      |    |    |    | 40   |    |    | 40 | 80          |
|                                  |     | 10  |      |    |    |    |      |    |    |    |      | 40 | 40 |    |      |    |    |    | 80          |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |    |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |    |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |    |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |    |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |    |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |    |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |    |    |             |
| Total Acres (for irrigation use) |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |    |    | 160ppu      |

Page \_\_\_\_\_ of \_\_\_\_\_

**IDAHO DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 2A**

**Current Water Right No.: 35-14395**

**Current Owner:** MONTY FUNK  
CAROLENE FUNK

**Priority Date:** 2/12/1975

**Origin:** Water Right

**Status:** Active

**Basis:** Decreed

**Source**

**Tributary**

GROUND WATER

| <b><u>Beneficial Use</u></b> | <b><u>From To</u></b>         | <b><u>Diversion Rate</u></b> | <b><u>Annual Volume</u></b> |
|------------------------------|-------------------------------|------------------------------|-----------------------------|
| IRRIGATION                   | 4/01 to 10/31                 | 1.2 CFS                      | 284 AF                      |
|                              | <b><u>Total Diversion</u></b> | 1.2 CFS                      | 284 AF                      |

**Location of Point(s) of Diversion**

|              |                 |          |          |              |
|--------------|-----------------|----------|----------|--------------|
| GROUND WATER | NW1/4SW1/4NW1/4 | Sec. 15, | Twp 06S, | Rge 29E B.M. |
| POWER County |                 |          |          |              |

**Place of Use**

**IRRIGATION Within POWER County**

|                 |      |       |               |      |       |
|-----------------|------|-------|---------------|------|-------|
| T06S R29E S10   | NWSW | 35.50 | T06S R29E S10 | SWSW | 35.50 |
| Total Acres: 71 |      |       |               |      |       |

**Conditions of Approval:**

1. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
2. 214 Prior to the diversion and use of water under Transfer approval 79463, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
3. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
4. R02 A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
5. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120
6. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
7. 213 Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
8. T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

Decreed Date: 2/19/2002

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT**  
**PART 1 Continued**

## 5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Existing well, piping and measurement system (ref. W.M.I.S. #600331).

- b. Who owns the property at the point(s) of diversion? Applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: \_\_\_\_\_

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

Total irrigation within proposed permissible place of use will be limited to 71 acres under 35-14395.

- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

Water supply bank rental of a portion of 29-2395 for 2015.

- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,  
☐ ☒ currently leased to the Water Supply Bank,  
☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or  
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe:

**A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)**

- If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

### B. CHANGES IN NATURE OF USE (Water Balance)

- ### C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above:

[illegible]

Transfer contains \_\_\_\_\_ pages and \_\_\_\_\_ attachments.

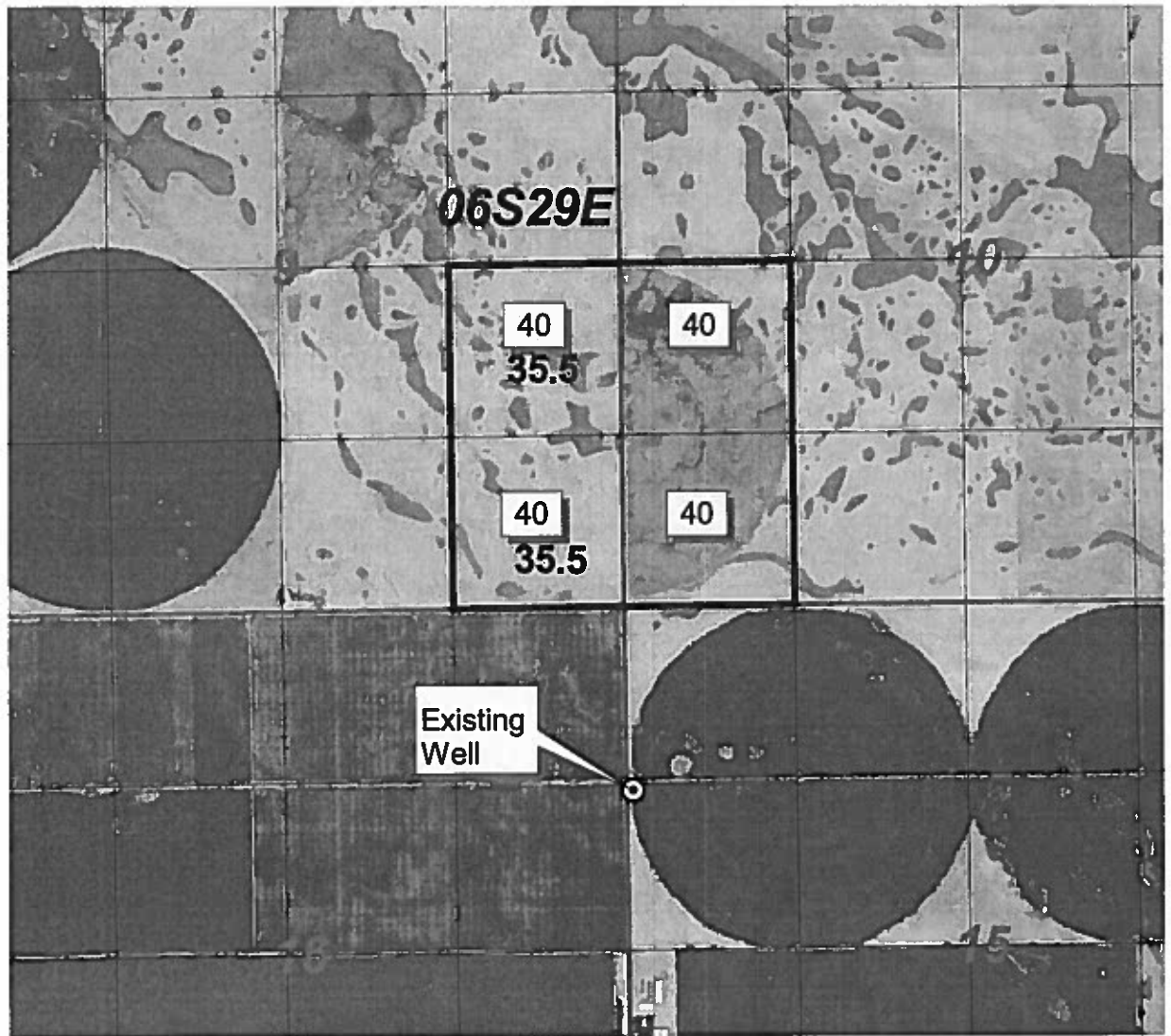
Received by Se Date 2/27/15 Preliminary check by \_\_\_\_\_ Date \_\_\_\_\_

Fee paid 580.00 Date 2/27/15 Received by SL Receipt # E040681

Add'l fee paid \_\_\_\_\_ Date \_\_\_\_\_ Received by \_\_\_\_\_ Receipt # \_\_\_\_\_

Check all that apply: Attachment WSB ☐ (copy sent to state office) Lessor Designation form ☐ &/or W-9 ☐ (originals to state office)

# **Application for Water Right Transfer** **Existing Point of Diversion & Proposed Permissible Place of Use**



JCH - 02/24/2015

2013 NAIP Aerial Photo

0.25      0      0.25      0.5      0.75 Miles

⊙ Existing Point of Diversion

▭ Sections

▭ Proposed New Permissible Place of Use  
 160.0 Total Acres

▭ 40s (Power County)

35.5 Proposed Irrigation (2015) 71.0 Total Acres



Attachment #7a

WATER USE AGREEMENT

TO ALL CONCERNED,:

On this 3<sup>rd</sup> day of March, I/we, Calvin Dyer  
(Grantors)  
do hereby agree to allow Monty & Carolene Funk  
(Grantee)  
to irrigate a portion of the  
Grantor's property as shown on attached Exhibit-A with water properly authorized and  
diverted under Grantee's water rights and through Grantee's existing water delivery  
system.

Subject to the following conditions:

1. Term of Agreement: This Agreement shall become effective on the date signed and the term of this Agreement shall continue indefinitely unless requested in writing by either party.
2. Ownership of the Water Rights & Irrigation System: **Ownership of the Water Rights and irrigation system appurtenances shall at all times remain vested in the Grantee** and this agreement shall not be construed to provide Grantor any claim or interest to the water rights utilized for irrigation of the property associated with this agreement. Any wells, pipelines, or other facilities whether existing, or that have been constructed or installed in connection with the conveyance of water pursuant to this agreement shall remain the property of the Grantee.
3. Maintenance of the Water Rights: Grantee agrees to abide by all necessary rules and regulations promulgated by the State of Idaho related to the use and maintenance of the Water Rights, and to perform at its own expense all filings and other activities required by such rules and regulations as may be necessary associated with this agreement.
4. Payments and Costs: Grantee shall be responsible for and shall bear all direct costs of permitting, operation and maintenance of the wells, water pipelines, pumping stations, and other facilities required to irrigate the described property, including any tests or monitoring necessary.
5. Cooperation. The Grantor hereby agrees to cooperate with the Idaho Department of Water Resources for proper development, permitting and utilization of the Grantees Water Rights for irrigation of the described property. Any such necessary filings shall be in the name of the Grantee.

6. Notices. Any notice provided for in or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered United States mail or by overnight delivery by a nationally recognized carrier to the respective address of the Grantors and Grantee as set forth below

➤ If to the Grantors:

Name: Calvin Dyer  
Street: P.O. Box 162  
City/State: American Falls ID 83211  
Phone: 226-

➤ If to Grantee:

Name: Monty & Carolene Funk  
Street: P.O. Box 360  
City/State: American Falls, ID 83211  
Phone: (208) 226-5207

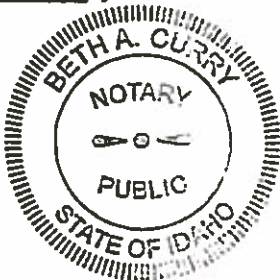
7. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of Idaho.
8. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties and supersedes any prior understanding, representation, or agreement of the Parties regarding the subject matter hereof. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.
9. Authorization. Each individual executing this Agreement does thereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity on behalf of the entities it represents.
10. Execution of Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

Beth A. Curry  
Name  
Grantor

\_\_\_\_\_  
Name  
Grantor

State of Idaho )  
County of Power )

This instrument was acknowledged before me on the 3<sup>rd</sup> day of March,  
20 15 by



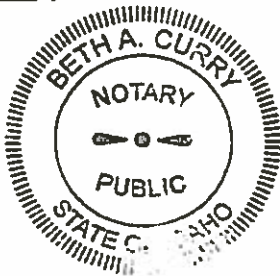
Beth A. Curry  
Notary Public  
My commission expires 8/12/2016

Monte Lee  
Name  
Partner  
Title  
Grantee

Carlene Luk  
Name  
Partner  
Title  
Grantee

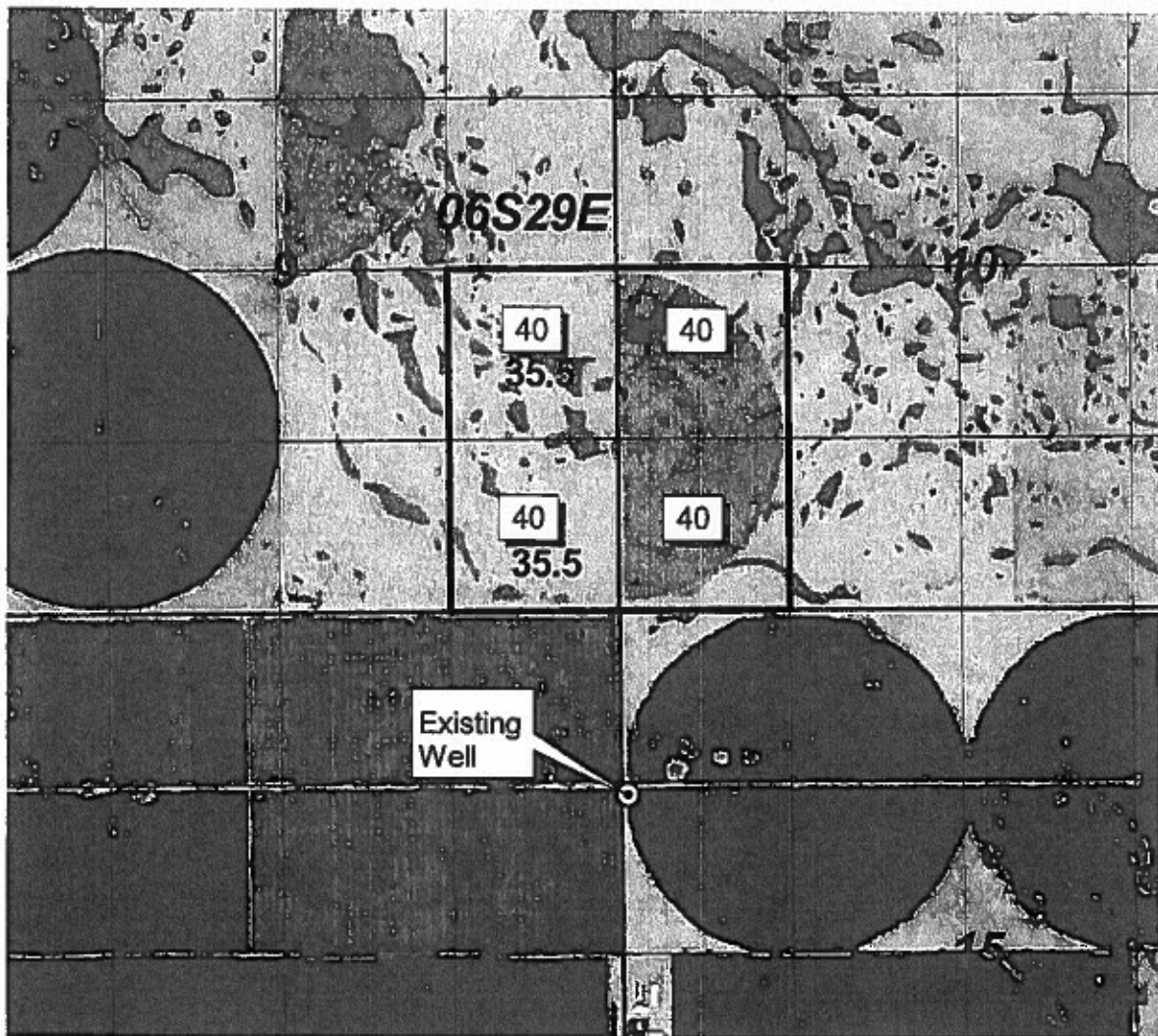
State of Idaho )  
County of Power )

This instrument was acknowledged before me on the 3<sup>rd</sup> day of March,  
20 15 by



Beth A. Curry  
Notary Public  
My commission expires 8/12/2016

Existing Point of Diversion & Proposed Permissible Place of Use



**JCH - 02/24/2015**

2013 NAIP Aerial Photo



- Existing Point of Diversion**

- ## Sections

- Proposed New Permissible Place of Use**  
**160.0 Total Acres**

- ☐
- 40s (Power County)

**35.5 Proposed irrigation (2015) 71.0 Total Acres**

Attachment #7a

**Exhibit-A**

When recorded return to:

Luke H. Marchant  
Holden, Kidwell, Hahn and Crapo, PLLC  
P.O. Box 50130  
Idaho Falls, ID 83405

**Instrument # 203815**

POWER COUNTY, IDAHO

2-22-2013 04:18:52 No. of Pages: 2

Recorded for : HOLDEN/KIDWELL/HAHN & CRAPO

CHRISTINE STEINLICHT Fee: 13.00

Ex-Officio Recorder Deputy

*Maryann Schelke*

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## **SPECIAL WARRANTY DEED FOR WATER RIGHT**

William R. Toevs, a/k/a Ritchey Toevs and Joanne L. Toevs, a/k/a Joanne P. Toevs whose address is 2841 West 1800 South, Aberdeen, ID 83210 ("Grantor") does hereby grant, bargain, sell, assign and convey unto Monty M. Funk and Carolene K. Funk of P.O. Box 360, American Falls, ID 83211 ("Grantee") and to Grantee's heirs and assigns forever, Grantor's right, title and interest in and to two (2) cfs of Water Right No. 35-7477A (the "Water Right").

Grantor covenants and warrants to Grantee as follows:

- A. Grantor is the owner of pursuant to a reservation of the Water Right in the Warranty Deed by and between Grantor and MPH Farms, an Idaho general partnership, dated April 29, 2008 and recorded April 30, 2008, Instrument No. 193824, Power County Records;
- B. Grantor has not previously conveyed the Water Right to any other person or entity; and
- C. The Water Right is being conveyed free from all liens, claims or encumbrances, created, done, executed or authorized by Grantor.

Grantor makes no other covenants, representations or warranties as to the Water Right.

Grantor is conveying the Water Right to Grantee at the request of Grantee and in full satisfaction of Grantor's obligations set forth in the Addendum/Amendment to Purchase Agreement by and between Grantor and Grantee dated April 30, 2008. Grantee agrees to notify MPH Farms of this transfer of the Water Right and that MPH is no longer obligated to appropriate and apply the

Water Right to beneficial use as provided in said Warranty Deed, Instrument No. 193824, Power County Records. Grantee further assumes the sole responsibility to proceed with the steps and procedures before the Idaho Department of Water Resources to transfer the Water Right to Grantees' land.

No land is included or conveyed by this grant.

IN WITNESS WHEREOF, the undersigned authorized officer of Grantor, acting on behalf of Grantor, has caused his name to be hereunto subscribed this 14 day of February, 2013.

William R. Toevs  
William R. Toevs

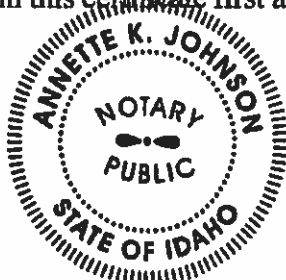
Joanne L. Toevs  
Joanne L. Toevs

STATE OF IDAHO )  
County of Bingham )<sup>SS</sup>

On this 14th day of February, 2013, before me, a Notary Public for said County and State, personally appeared William R. Toevs and Joanne L. Toevs, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me they executed the same.

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

(seal)



Annette K. Johnson  
NOTARY PUBLIC FOR IDAHO  
Residing at: Bingham City  
My Commission Expires: August 31, 2015