

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective November 18, 2013, between the Idaho Water Resource Board ("**Board**"), and

Lessor: RAYOLA R BIRCH
395 N 2200 E
ST ANTHONY ID 83445
(208) 624-3051

RECEIVED
JAN 27 2014
DEPARTMENT OF
WATER RESOURCES

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

Summary of Water Rights or Portions Leased to the Bank

<u>Water Right</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
22-2033A	0.2 CFS	NA	NA	9.6 AC
Combined Lease Totals:	0.2 CFS	NA	NA	9.6 AC

The water rights described herein shall be available for rental from the Bank as follows:
Authorized Period of Use under Lease: April 1 to October 31

2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** This Lease shall take effect when both parties have signed it and shall continue in effect until December 31, 2018.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

RAYOLA R BIRCH

395 N 2200 E
ST ANTHONY ID 83445

By Rayola R. Birch
Printed Name Rayola R. Birch

Date 1-23-14
Title owner

IDAHO WATER RESOURCE BOARD

322 East Front Street
P.O. Box 83720
Boise, ID 83720-9098

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 1/27/2014

Lease approved by IDWR 

Date 1/27/2014



ATTACHMENT A
WATER RIGHT NO. 22-2033A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

The water right or portion thereof leased to the bank is described as follows:

Lessor: RAYOLA R BIRCH
 395 N 2200 E
 ST ANTHONY ID 83445
 (208) 624-3051

Priority Date: 06/08/1908

Source: UNNAMED STREAM **Tributary to:** HENRYS FORK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 10/31	0.2 CFS	NA
	Total:		0.2 CFS	NA

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM NW¼NW¼SW¼ Sec. 11, Twp 07N, Rge 40E, FREMONT County

PLACE OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

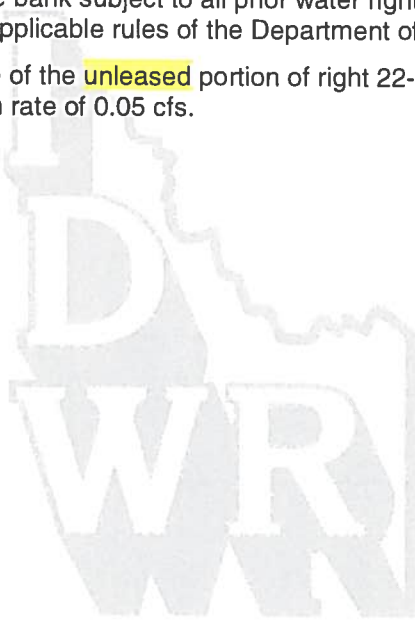
Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	40E	15		8.2			1.4												9.6

Total Acres: 9.6

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
4. A right accepted into the bank stays in the bank until the Board releases it, the lease term expires, or upon request from the lessor to change the term of the lease, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.
5. While a water right is in the bank, forfeiture provisions are stayed.
6. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
7. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.

8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.
9. In accordance with Idaho Code §§ 42-248 and 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
 - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season.
 - b. If a change in ownership is processed by the Department during a rental season, rental payment will be made to the person or entity who is the lessor of record at the beginning of that rental season.
 - c. New lessor(s) of record will receive payment after the following rental season.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. During the term of this lease, use of the **unleased** portion of right 22-2033A for irrigation is limited to a total of 2.8 acres, and a diversion rate of 0.05 cfs.



RECEIVED

NOV 18 2013

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
WATER RESOURCE BOARDReceipt No. 1097978
Fee Amount \$ 250.00
Date/by 11-18-13 HP
(For Department Use Only)APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKName of Seller/Lessor Rayola R Birch Phone 208-624-3051
Mailing address 395 N 2200 E Email _____

A. DESCRIPTION OF WATER RIGHT, OR PORTION THEREOF, OFFERED TO THE BANK

If the entire right is for sale or lease, check here ☒, list the water right number, and skip to Part B.

1. <u>Water Right Number</u>	<u>Amount (cfs/ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>22-2033A</u>	<u>.250 cfs</u>	<u>Irrigation</u>	<u>04/01</u> to <u>10/31</u>
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____
Total Amount: <u>.250 cfs</u>			

2. Source of water Unnamed Stream tributary to Henrys Fork

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
07N	40E	11					Fremont

4. Lands irrigated or place of use: *See Part D for additional information regarding place of use.

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	40E	15		11			1.4												12.4
							L3												

If the right is for irrigation, show total number of acres offered to the bank. Total Acres 12.4

B. OWNERSHIP

1. Are you currently listed in IDWR's records as the owner of the water right being offered to the bank? Yes ☒ No ☐
If no, provide documentation of your authority to sign on behalf of the right holder OR attach a Notice of Change in Water Right Ownership form along with the required documentation and fee.
2. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district to the proposed sale or lease and list name of entity:

C. GENERAL INFORMATION

1. Please provide a description of the current diversion system.

Unnamed spring, dikes, ditch, and flood irrigation

2. Describe any other water rights used for the same purpose or at the same place of use as described above.

Shares in the Twin Groves canal company and storage water in the Island Park reservoir

3. Will the present place of use continue to receive water from any source?

Yes ☒ No ☐If yes, describe. Water in the Twin Groves canal company and storage water in the Island Park reservoir

4. Has any portion of this water right undergone a period of five or more consecutive years of non-use?

Yes ☐ No ☒

If yes, describe and attach watermaster records or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code. _____

5. Is this water right involved in any other Department process such as an application for transfer or a mitigation plan? Yes
- ☐
- No
- ☒

If yes, describe. _____

D. REQUIRED ITEMS

This form must be signed and submitted with the following REQUIRED items:

1. Plat map, survey map or aerial photograph clearly showing the specific acres proposed to be idled by this lease application.
2. Filing fee of \$250.00. If you are submitting more than one lease application and the rights have a common place of use or common diversion rate or common diversion volume, the combined maximum fee is \$500.00.
3. A completed Internal Revenue Service (IRS) Form W-9 (attached). If your water right is rented, we will be unable to issue payment to you without a current W-9 form.

E. SALE/LEASE AGREEMENT

1. Is the water right, or portion thereof, described above offered to the Idaho Water Resource Board (IWRB) for sale
- ☐
- or lease
- ☒
- .

If lease, for a period from 04/01/2014 to 10/31/2018 (not to exceed 5 years).
(Month / Day / Year) (Month / Day / Year)

2. Show the minimum payment acceptable to the Seller/Lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

Current rental rate

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this right for sale or lease to the Idaho Water Resource Board.

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner/lessor of the right may not use the right even if the right is not rented from the bank.
3. A right accepted into the bank stays in the bank until the Board releases it or the lease term expires.
4. While a right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.

Rayola Birch
Signature of Applicant

Owner
Printed Name and Title*

11/14/2013
Date

Signature of Applicant

Printed Name and Title*

Date

*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney

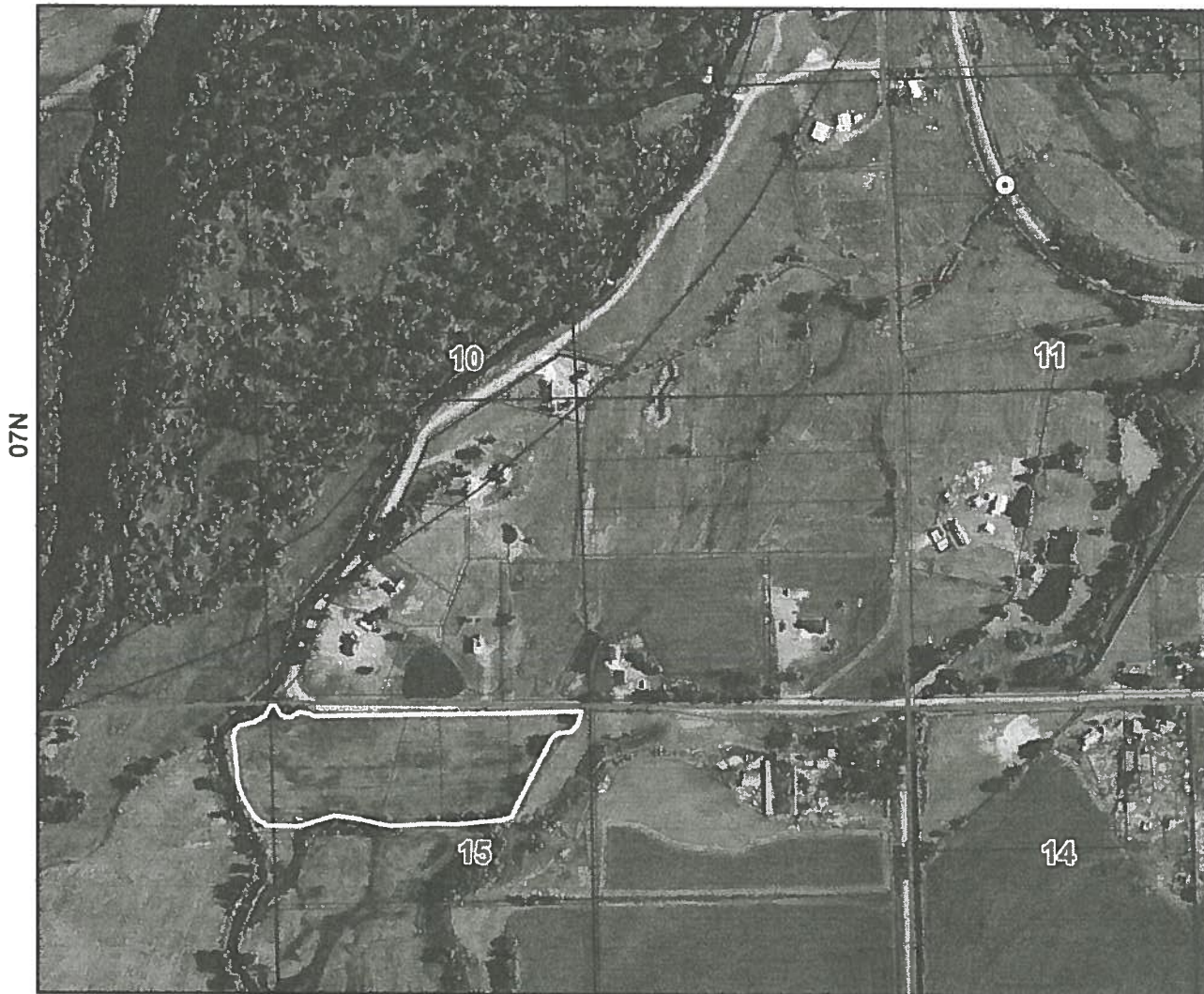
State of Idaho
Department of Water Resources

Water Right
22-2033A

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

40E



⊙ Point of Diversion

□ Place Of Use Boundary

▬ Townships

▬ PLS Sections

▬ Quarter Quarters

▬ Taxlots

0 0.075 0.15 0.3 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

January 16, 2014

RAYOLA BIRCH
395 N 2200 E
ST ANTHONY ID 83445

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 22-2033A TO THE WATER SUPPLY BANK

******TIME SENSITIVE RESPONSE REQUIRED******

Dear Applicant:

The Department of Water Resources has completed its review of your application to lease the above-mentioned water right to the Water Supply Bank. **I have enclosed two original Water Supply Bank Lease Contracts for your review and signature. Please sign and return BOTH Lease Contracts within 14 days.** Upon signature and return of the contracts, the Department will also sign the original contracts and return an executed copy to you. The Lease Contract is not considered final until you and the Department have both signed.

Please note the leased acres have been reduced due to the portion of property you sold to Jason and Shawna Morris. It is the opinion of the Department's legal staff that the warranty deed supersedes the Agreement for Purchase and Sale of Real Property and the water right was not excluded on the warranty deed. Therefore, your Bank lease will include 9.6 acres and 0.2 cfs. ^{applicant to be} Justin E Miller and Jennie S Miller ~~are~~ the current owners of the 2.8 acres in question. ~~They will be informed they have a right to a portion of this water right.~~ *According to documents reviewed by IDWR*

The right will automatically be released from the Bank on **December 31, 2018**, unless the rights are released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. This form is available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your rights may not be available for immediate release if they have been rented.

Please review the conditions of acceptance listed on the Lease Contract, including #3 which says:

"While a right is in the bank, **the lessor may not use the right** without approval of the department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B."

If you have questions regarding this matter, please contact me at 287-4944.

Sincerely,



for Cherie Palmer
Senior Water Resource Agent
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts

MEMORANDUM

To: Water Right No(s). 22-2033A
From: Jean Hersley
Date: December 12, 2013
Re: Review of Application to Lease Water Right to the State Water Supply Bank

PURPOSE/NARRATIVE: On November 18, 2013, the Department received this application to lease all of the above mentioned water right to the Water Supply Bank until 2018. A portion of the land does not belong to the applicant. When the land was sold, the water rights were excluded in the sale. Attached is the Agreement for Purchase and Sale of Real Property. After contacting our legal staff, it was determined the warranty deed superceded the Agreement for Purchase and Sale of Real Property and the water rights were not excluded from the sale. This lease will be for the property Ms. Birch owns, which is 9.6 and .2 cfs. The place of use will continue to receive water from the Twin Groves Canal Co and storage water in the Island Park Reservoir.

AUTHORITY TO FILE: The application was signed by the current water right holder.

WATER RIGHT VALIDITY: The water rights have been used in the last 5 years, although it doesn't appear consistently.

INJURY TO OTHER WATER RIGHTS: No injury is apparent.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. Proper rental review should protect against enlargement.

LOCAL PUBLIC INTEREST: Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The lease appears consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The leased right(s) are subject to Water District #100. Watermaster has been contacted.

*Rayola's***AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

This Agreement for Purchase and Sale of Real Property ("Agreement") is made and entered into this 14 day of May, 2007, by and between Rayola R. Birch of 395 North 2200 East, St. Anthony, Idaho 83445 (hereinafter referred to as "Seller"), and Jason and Shawna Morris of 310 West 9th South, St. Anthony, Idaho 83445 (hereinafter referred to as "Buyer").

WHEREAS, the Seller owns a parcel of real property located in St. Anthony, Fremont County, State of Idaho, more particularly described as follows:

See description attached as Exhibit A to this Agreement

WHEREAS, the Buyer desires to purchase a parcel of three (3) acres out of or from said real property from Seller in accordance with the terms herein below set forth;

NOW THEREFORE, in consideration of the mutual covenants, promises and conditions set forth herein, it is agreed as follows:

**ARTICLE I
Sale of Premises**

1.1 The Seller agrees to sell and convey and the Buyer agrees to purchase a parcel of three (3) acres out of or from the real property located in the County of Fremont, State of Idaho, more particularly described in Exhibit A. It is mutually agreed that Seller and Buyer shall have the real property surveyed at Buyer's expense to determine the exact parcel to be purchased by Buyer and to compute the actual acreage to be purchased by Buyer.

1.2 The Seller agrees to sell and convey all of her right, title and interest to the land or real property as described in Exhibit A.

1.3 It is expressly agreed by and between the Seller and Buyer that no water shares are part of this Agreement.

**ARTICLE II
Purchase Price**

2.1. The purchase price shall be \$60,000.

2.2 Buyer agrees to pay the aforesaid purchase price of \$60,000 as follows:

- (a) \$5,000 upon the execution of this agreement, which sum is nonrefundable.
- (b) \$5,000 on June 1, 2007, which sum is nonrefundable.
- (c) The balance then due and owing payable on or before the earlier of (i) September 1, 2007 or (ii) upon the Buyer obtaining a loan with certified

and verified funds. Of the \$10,000 nonrefundable funds previously paid before September 1, 2007, \$8,500 will be credited toward the purchase price of \$60,000.

ARTICLE III

Liens, Encumbrances and Title Policy

3.1 The Buyer acknowledges that an independent search and inspection of the property is made a subject of this Agreement and Buyer relies solely upon such inspection.

3.2 Upon full compliance with all the terms and conditions of this Agreement, the Seller shall deliver to Buyer a deed conveying title to the property identified here and above, free and clear of all liens and encumbrances, except those which might attach to said property by reason of the acts of the Buyer.

3.3 Seller shall furnish Buyer with a Purchaser's Title Insurance Policy reflecting merchantable title to the property sold hereinafter.

ARTICLE IV

Warranties

4.1 Seller represents and warrants that upon full compliance with the terms hereof, said property shall be transferred to the Buyer free and clear of all liens or encumbrances.

4.2 Buyer acknowledges their personal inspection of such property and expressly rely on their independent inspection and not upon any representations of Seller not herein set forth; further, that the Buyer accepts such property in whereas and as is condition.

ARTICLE V

Deed

5.1 Title shall be conveyed by Warranty Deed as above provided for upon full compliance with the terms and conditions of this Agreement and such deed shall convey to Buyer the fee simple of the premises free from all encumbrances except those included by the acts of the Buyer.

ARTICLE VI

Closing Adjustments/Taxes and Insurance

6.1 Real property taxes and assessments related to such real property shall be prorated as of the day of possession.

6.2 Buyer acknowledges and recognizes that they will be required to obtained any and all

comprehensive, fire and extended coverage on said premises from and after possession date.

6.3 Buyer recognizes that this Agreement was prepared by Seller's attorney; Buyer further acknowledges that they have been advised to consult independently with their own legal counsel relative to the terms and conditions of said Agreement.

ARTICLE VII Possession

7.1 The parties agree that Buyer shall have possession of the property described herein at the time of closing.

ARTICLE VIII Condition Precedent

8.1 This Agreement is conditioned upon the completion and closing of a loan in favor of the Morrisses to obtain the purchase price for the sale of the land herein described.

ARTICLE IX Obligations of Buyer/Release of Seller

9.1 Buyer shall be responsible for erecting a five-strand "hog proof" barbed wire fence around the real property described in Exhibit A. The Buyers agree that they understand and assume the risk of damage by livestock as described in Section 9.2 of this Agreement to the real property described in Exhibit A.

9.2 Buyer agrees to release Rayola Birch and/or Hillcrest Ranch and/or Hillcrest Ranch, LLC, from any liability or responsibility for any injuries or damages caused by Rayola Birch or Hillcrest Ranch livestock in regard to the property being purchased herein and described herein. This covenant and obligation to release Rayola Birch and the Hillcrest Ranch or Hillcrest Ranch, LLC, from any liability or responsibility for injuries or damages is perpetual.

9.3 The Buyer agrees that they shall plant and cultivate at least ten (10) additional trees, numerous shrubs and native grasses on and in the three (3) acres to be purchased out of or from the real property described in Exhibit A that are beneficial to the indigenous wildlife habitat that presently exist in, around and about the real property being purchased.

9.4 The Buyer agrees not to allow any form of hunting in or on the real property described in Exhibit A.

9.5 The Buyer agrees that in the development of the real property, all utility lines and conduits shall be buried consistent with industry and government regulations and rules.

ARTICLE X

Water

10.1 It is understood and agreed by and between the Buyer and Seller that no water right or water share or conveyance of water is being transferred with this Agreement.

10.2 It is understood and agreed by the Buyer that water that is attached to the property of the Seller will be provided for the use and benefit of Seller's property before any usage of said water may be used and applied by the Buyer to the property described in Exhibit A.

10.3 In the event that Seller's water needs are satisfied, then, and only then, will Seller allow use of her water right for the benefit of Buyer and the property described in Exhibit A.

10.4 Seller agrees that after the demands and usages of Seller's property are met that Seller will convey water to the Buyer for irrigation purposes on Buyer's property.

ARTICLE XI

Miscellaneous Provisions

11.1 Survival of All Representations and Warranties. The representations, warranties, covenants and agreements of the Seller and the Buyer contained in this Agreement shall survive the closing hereunder.

11.2 Applicable Law. This Agreement is being executed and delivered within the State of Idaho and shall be construed and enforced in all respect in accordance with the laws of the State of Idaho.

11.3 Number and Gender of Person. The terms Buyer and Seller are used herein without regard to the number or gender of persons constituting such parties. If the Seller and/or Buyer consists of two or more persons, including, but not limited to, individuals, partnerships, associations or other entities, such persons shall be jointly and severally liable hereunder. Whenever any other neuter or singular term is used herein, such terms shall be construed to include the masculine or feminine gender or plural, and shall include any party, whether male, female or partnership or other entity as may be appropriate.

11.4 Captions. The captions of this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part hereof.

11.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, administrators, successors and assigns of the parties hereto. In the event of Buyer's death or disability, Buyer's personal representative is designated as Buyer's legal representative to complete all matters pertaining to this sale.

11.6 Attorney's Fees. In the event that either party hereto retains an attorney to enforce any right or duty arising out of this Agreement, the prevailing party in such dispute shall be entitled to be paid reasonable attorney's fees by the non-prevailing party, whether or not litigation is actually instituted. This section shall also apply to any mediation, arbitration or appeal procedure.

11.7 Entire Agreement. The Seller and Buyer acknowledge that the terms of this Agreement may vary from the terms contained in any other preliminary agreements, written or oral, made prior to the execution of this Agreement and may vary from any negotiations between the parties prior to the execution of this Agreement. The Seller and Buyer agree that the terms, covenants and conditions of this Agreement shall supercede all such prior negotiations and agreements, and that there are no other agreements of the parties, and this Agreement shall control. No modification of this Agreement shall be valid unless in writing and executed by the parties to this Agreement.

11.8 Severance and Validity. In the event any provision of the Agreement or any part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect and shall in no way be affect, impaired or invalidated thereby, it being agreed that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void or unenforceable provision or part thereof.

11.9 No Assignment. No assignment of the sale of this Agreement or interest therein shall be binding and valid unless it is by the consent of the Seller. Such consent shall not be unreasonably denied.

ARTICLE XII

Default

12.1 This Agreement is made upon the express condition that time and puncturability of payments and performance of conditions are of the essence and a material part of this Agreement, and if default should be made in the payment of these sums or any part thereof, a principal and interest for a period of ten (10) days after notice in writing is given or mailed to the Buyer or a default in the performance of any of the covenants contained herein or the part of the Buyer remains for a period of ten (10) days after notice in writing is provided herein, then, at the option of the Seller, Seller may terminate this Agreement. Upon any default of the Buyer as herein before provided at the option of the Seller, the Seller may take any action as allowed by the laws of the State of Idaho.

ARTICLE XIII

Notices

13.1 Any notice under this Agreement shall be in writing and it shall be effective when actually delivered in person or three (3) days after being deposited in the U.S. Mail, registered or certified, postage prepaid, and addressed to the party at the address stated in this Agreement, or

such other address as either party may designate by written notice to the other.

IN WITNESS THEREOF, the parties have executed this Agreement for the purchase and sale of real property the day and year first above written.

SELLER:

Rayola R. Birch 5/14/07
Rayola R. Birch

BUYERS:

Jason Morris 5/14/07
Jason Morris

Shawna Morris 5/14/07
Shawna Morris

Cashier's Check # 031978 5/14/07 \$ 5,000⁰⁰
Cashier's Check # 29404 5/31/07 5,000⁰⁰

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
535 First American Circle
Rexburg, ID 83440

Microfilm No. 512337
Day Sept 20 07
At 4:53 O'Clock P M
ABBIE MACE
FREMONT CO RECORDER
Fee \$ 9- CM Deputy
Recorded at Request of
First American Title Company

First American Title Company

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: **222318-RX (mh)**

Date: **July 24, 2007**

For Value Received, **Rayola Rudd Birch, a unmarried woman**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Jason Morris and Shawna Morris, husband and wife**, hereinafter called the Grantee, whose current address is **310 West 9th South, St. Anthony, ID 83445**, the following described premises, situated in **Fremont County, Idaho**, to-wit:

TOWNSHIP 7 NORTH, RANGE 40 E.B.M, FREMONT COUNTY, IDAHO.

SECTION 15: THAT PORTION OF THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SAID SECTION 15, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID SECTION 15, TOWNSHIP 7 NORTH, RANGE 40 E.B.M., FREMONT COUNTY, IDAHO WHICH BEARS 1676.0 FEET WEST OF THE NE CORNER OF SAID SECTION; THENCE SOUTH 466.1 FEET; THENCE WEST 280.4 FEET; THENCE NORTH 466.1 FEET TO SAID LINE; THENCE EAST ALONG SAID LINE 280.4 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF THE FOLLOWING DESCRIBED LEGAL LYING WITHIN ABOVE DESCRIBED PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND CONTIGUOUS TO AND LYING SOUTH OF AN EXISTING COUNTY ROADWAY IN THE NE $\frac{1}{4}$ OF SECTION 15, TOWNSHIP; 7 NORTH, RANGE 40 E.B.M., FREMONT COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS BEGINNING AT THE NE CORNER OF SAID SECTION 15 AND RUNNING THENCE SOUTHERLY ALONG THE EAST SECTION LINE OF SAID SECTION 15 TO A POINT 42 FEET SOUTH OF THE NE CORNER OF SAID SECTION 15; THENCE WESTERLY TO A POINT THAT IS 42 FEET SOUTH AND 70 FEET WEST OF THE NE CORNER OF SAID SECTION 15; THENCE SWLY TO A POINT THAT IS 80 FEET SOUTH AND 420 FEET WEST OF THE NE CORNER OF SAID SECTION 15; THENCE SWLY TO A POINT THAT IS 80 FEET SOUTH AND 770 FEET WEST OF THE NE CORNER OF SAID SECTION 15; THENCE NWLY TO A POINT THAT IS 33 FEET SOUTH AND 1020 FEET WEST OF THE NE CORNER OF SAID SECTION 15; THENCE WESTERLY TO A POINT THAT IS 33 FEET SOUTH AND 2470 FEET WEST ALONG THE NORTH SECTION LINE FROM THE NE CORNER OF SAID SECTION 15; THENCE NORTHERLY 33 FEET, MORE OR LESS, TO THE NORTH SECTION LINE OF SAID SECTION 15; THENCE EASTERLY 2470 FEET, MORE OR LESS, ALONG THE NORTH SECTION LINE OF SAID SECTION 15 TO THE POINT OF BEGINNING.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

Date: 07/24/2007

Warranty Deed
- continued

File No.: 222318-RX (mh)

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

512337

Date: 07/24/2007

Warranty Deed
- continued

File No.: 222318-RX (mh)

Rayola Rudd Birch
Rayola Rudd Birch

STATE OF Idaho)
COUNTY OF Madison)
SS.

On this 31st day of ^{Aug} ~~July~~, 2007, before me, a Notary Public in and for said State, personally appeared **Rayola Rudd Birch**, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



Maura

Notary Public for the State of Idaho
Residing at: Rexburg, ID
My Commission Expires: 02/09/2012

State of Idaho
Department of Water Resources
Water Right License
22-2033A



● Point of Diversion

□ Place Of Use Boundary

□ Townships

□ PLS Sections

□ Quarter Quarters

Taxlots

0 0.075 0.15 0.3 Miles





ALLIANCE
TITLE & ESCROW CORP.

ELECTRONICALLY RECORDED - DO NOT
REMOVE THE COUNTY STAMPED FIRST
PAGE AS IT IS NOW INCORPORATED AS
PART OF THE ORIGINAL DOCUMENT.

Trustee's Deed

ATF4991007143-MAA
Title No: 4991007143-MAA

Alliance Title & Escrow Corp., (herein called Trustee) as Trustee under the Deed of Trust hereinafter particularly described, does hereby BARGAIN, SELL and CONVEY, WITHOUT WARRANTY, to BEEHIVE FEDERAL CREDIT UNION (herein called GRANTEE) whose address is: PO BOX 40, REXBURG, ID 83440-0040 all of the real property situated in the County of Fremont, State of Idaho described as follows:

Township 7 North, Range 40 E. B.M., Fremont County, Idaho.

Section 15: That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 15, more particularly described as follows:

Beginning at a point on the North line of said Section 15, Township 7 North, Range 40 E. B.M., Fremont County, Idaho which bears 1676.0 feet West of the NE Corner of said section; thence South 466.1 feet; thence West 280.4 feet; thence North 466.1 feet to said line; thence East along said line 280.4 feet to the point of beginning.

Excepting therefrom that portion of the following described legal lying within above described parcel more particularly described as follows:

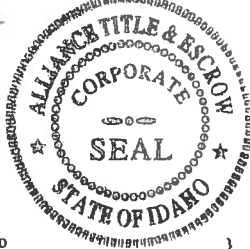
A tract of land contiguous to and lying South of an existing county roadway in the NE $\frac{1}{4}$ of Section 15, Township 7 North, Range 40 E. B.M., Fremont County, Idaho, more particularly described as beginning at the NE corner of said Section 15 and running thence Southerly along the East section line of said Section 15 to a point 42 feet South of the NE corner of said Section 15; thence Westerly to a point that is 42 feet South and 70 feet West of the NE corner of said Section 15; thence SWly to a point that is 80 feet South and 420 feet West of the NE corner of said Section 15; thence SWly to a point that is 80 feet South and 770 feet West of the NE corner of said Section 15; thence NWly to a point that is 33 feet South and 1020 feet West of the NE corner of said Section 15; thence Westerly to a point that is 33 feet South and 2470 feet West along the North section line from the NE corner of said Section 15; thence Northerly 33 feet, more or less, to the North section line of said Section 15; thence Easterly 2470 feet, more or less, along the North section line of said Section 15 to the POINT OF BEGINNING.

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust between Jason Morris and Shawna Morris, Husband and Wife as Grantor, the Alliance Title & Escrow Corp., Successor Trustee herein, and Beehive Federal Credit Union as Beneficiary, recorded September 4, 2007, as Instrument No. 512338, records of Fremont County, Idaho, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

- (a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust. Notice of default was recorded as Instrument No. 527810, Fremont County Mortgage Records and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being as set forth in said notice of Default. Such default still existed at the time of sale.

- (b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, by posting in a conspicuous place on said property and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appears in affidavits recorded at least 20 days prior to date of sale as Instrument No.(s): 528284, 528285, 528286, Fremont County, Idaho Mortgage Records.
- (c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) supra and of the Affidavits referred to in paragraph (b) supra shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.
- (d) Not less than 120 days elapsed between the giving of notice of sale by registered or certified mail and the sale of said property.
- (e) Trustee, at the time and place of sale fixed by said notice, at public auction, in one parcel, struck off to the Grantee, being the highest bidder therefore, the property herein described, for the sum of \$52,854.37, subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

IN WITNESS WHEREOF, The Trustee, pursuant a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Vice President and its corporate seal to be affixed by its Assistant Secretary dated August 24, 2010.



Alliance Title & Escrow Corp.

By: [Signature]

Attest: Bobbi Oldfield

State of Idaho

County of Ada

} ss.

On August 24, 2010, before me, a Notary Public in and for said state, personally appeared Kurtis Funke known to me to be the Vice President and Bobbi Oldfield, known to me to be the Assistant Secretary of the Corporation, and acknowledged to me that pursuant to a Resolution of the Board of Directors, they executed the foregoing in said Corporation name.

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



[Signature]
Notary Public for the State of Idaho
Residing at: Meridian, ID
Commission Expires: 3/2/2013



Beehive Federal Credit Union
P.O. Box 40 / 65 South Center St.
Rexburg, ID 83440-0040

Microfilm No. **530455**
At 3:55 Day SEP 2010
O'Clock PM
ABBIE MACE
FREMONT CO RECORDER
Fee \$ 13 Deputy
Recorded at Request of
Beehive Federal Credit Union

WARRANTY DEED

For Value Received, **Beehive Federal Credit Union**, the grantor, do hereby grant, bargain, sell and convey unto **Justin E. Miller and Jennie S. Miller**, the grantee(s),

whose current address is

the following described premises, in Fremont County of Idaho, to wit:

see attached legal description

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, the heirs and assigns forever. And the said Grantor do hereby covenant to and with the said Grantee, that he the owner in fee simple of said premises; that they are free from all incumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: September 7, 2010

Beehive Federal Credit Union

Craig E. Gummow

	CORPORATION ACKNOWLEDGMENT State of Idaho, County of <u>Madison</u>
	On this <u>7th</u> day of <u>September</u>, in the year of <u>2010</u>, before me <u>Jeff England</u>, personally appeared <u>Craig E. Gummow</u>, known to me to be the president, or vice-president, or secretary or assistant secretary, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same. <u>Jeffery T. England</u> Notary Public Residing at Rexburg, Idaho Comm. Expires <u>11-17-2014</u>

530455

512338

Date: September 04, 2007

File No.: 222318-RX (mh)

EXHIBIT 'A'

LEGAL DESCRIPTION:

TOWNSHIP 7 NORTH, RANGE 40 E.B.M, FREMONT COUNTY, IDAHO.

SECTION 15: THAT PORTION OF THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SAID SECTION 15, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID SECTION 15, TOWNSHIP 7 NORTH, RANGE 40 E.B.M., FREMONT COUNTY, IDAHO WHICH BEARS 1676.0 FEET WEST OF THE NE CORNER OF SAID SECTION; THENCE SOUTH 466.1 FEET; THENCE WEST 280.4 FEET; THENCE NORTH 466.1 FEET TO SAID LINE; THENCE EAST ALONG SAID LINE 280.4 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF THE FOLLOWING DESCRIBED LEGAL LYING WITHIN ABOVE DESCRIBED PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND CONTIGUOUS TO AND LYING SOUTH OF AN EXISTING COUNTY ROADWAY IN THE NE $\frac{1}{4}$ OF SECTION 15, TOWNSHIP; 7 NORTH, RANGE 40 E.B.M., FREMONT COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS BEGINNING AT THE NE CORNER OF SAID SECTION 15 AND RUNNING THENCE SOUTHERLY ALONG THE EAST SECTION LINE OF SAID SECTION 15 TO A POINT 42 FEET SOUTH OF THE NE CORNER OF SAID SECTION 15; THENCE WESTERLY TO A POINT THAT IS 42 FEET SOUTH AND 70 FEET WEST OF THE NE CORNER OF SAID SECTION 15; THENCE SWLY TO A POINT THAT IS 80 FEET SOUTH AND 420 FEET WEST OF THE NE CORNER OF SAID SECTION 15; THENCE SWLY TO A POINT THAT IS 80 FEET SOUTH AND 770 FEET WEST OF THE NE CORNER OF SAID SECTION 15; THENCE NWLY TO A POINT THAT IS 33 FEET SOUTH AND 1020 FEET WEST OF THE NE CORNER OF SAID SECTION 15; THENCE WESTERLY TO A POINT THAT IS 33 FEET SOUTH AND 2470 FEET WEST ALONG THE NORTH SECTION LINE FROM THE NE CORNER OF SAID SECTION 15; THENCE NORTHERLY 33 FEET, MORE OR LESS, TO THE NORTH SECTION LINE OF SAID SECTION 15; THENCE EASTERLY 2470 FEET, MORE OR LESS, ALONG THE NORTH SECTION LINE OF SAID SECTION 15 TO THE POINT OF BEGINNING.

FAX COVER SHEET

Date: December 12, 2013

Page 1 of 7

To: Jean Hersley, Technical Records Specialist II

Company: State of Idaho Department of Water Resources

Fax: (208) 287-6700

Phone:

Sender: Rayola Birch/Celinda Birch

Phone: (208) 624-3051

☐ Urgent ☐ For Review ☐ Please Comment/Reply ☐ For your files

Original documents will ☐ follow by regular mail; ☐ follow by express mail; ☐ will not be sent

Comments: This is the Sales Agreement between my mother, Rayola Birch, and Jason and Shawna Morris. My mother is not very well and I deal with most of her legal issues. I have highlighted the first couple of lines on page four that specifies that there was no water sold with this parcel of land. When the Morris' walked away from their loan for the land, Beehive Credit Union foreclosed on them. Beehive Credit Union then sold the parcel to Justin Miller. There was not water sold at that time either. If you need me to go to the Court house and get a certified copy of the land being sold without water, I will be happy to. Hopefully the sales agreement will be enough verification. Thanks for your help with this. Celinda Birch



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

December 3, 2013

RAYOLA R BIRCH
395 N 2200 E
ST ANTHONY ID 83445

RE: Application to Sell or Lease a Water Right to the Water Supply Bank 22-2033A

Dear Water Right Holder:

The Department of Water Resources received your application to lease your water right to the water supply bank. However, after further review, additional information is needed to process this application.

I have enclosed a map showing the outline of the water right. The section, 2.8 acres, on the east side of the water right is owned by Justin and Jennie Miller. The Department needs to know if the water right was included in the sale of this portion of land. If this is the case, the Miller's will need to submit an ownership change with proper documentation to split the right and use the water equivalent to 2.8 acres appurtenant to their land to irrigate.

If the water was not included in the sale of the land, we will need documentation that states that fact. The Department cannot process the Application to Sell or Lease a Water Right to the Water Supply Bank until proper documentation regarding the ownership of the property is corrected.

Please respond within 15 days so your water right will be available to rent for the coming irrigation season.

If you have any questions, please contact me at (208) 287-4942.

Sincerely,

Jean Hersley
Technical Records Specialist II

Enclosure