

Jordan, Blake

From: delkohtzidwc [delkohtzidwc@mindspring.com]
Sent: Tuesday, February 12, 2013 4:02 PM
To: Jordan, Blake
Subject: Fw: Emailing: Agreement for Purchase and Sale of Water Rights Corrected 2013Feb12.pdf
Attachments: Agreement for Purchase and Sale of Water Rights Corrected 2013Feb12.pdf

----- Original Message -----

From: "Steve Smart" <ssmart@cityofchubbuck.us>
To: "Del Kohtz" <delkohtzidwc@mindspring.com>
Sent: Tuesday, February 12, 2013 3:18 PM
Subject: Emailing: Agreement for Purchase and Sale of Water Rights Corrected 2013Feb12.pdf

Del,
Correction initialed and back to you.
Steve

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, the sums to be paid by Buyer to Seller, and the covenants and conditions set forth below, the parties hereby agree as follows:

1. Water Right Subject to Purchase and Sale. *Mike DK*
0-05 Seller agrees to sell and Buyer agrees to purchase up to ~~0.5~~ cubic-feet-per-second/16.0 acre-feet-per-annum of ground water authorized for diversion under Water Right No. 25-14346 (priority date August 19, 1952) for irrigation of up to 4.0 acres, and hereinafter referred to as the "Water Right," to be transferred by Buyer to Buyer's purpose and place of use.
2. Purchase and Sale. Seller, in consideration of the terms contained herein, agrees to sell and convey to Buyer and Buyer does hereby agree to buy from Seller the Water Right.
3. Purchase Price. The purchase price for the Water Right is Fourteen Thousand Dollars (\$14,000.00) ("Purchase Price"), which is based on a unit value Eight Hundred Seventy Five Dollars (\$875.00) per each acre-foot of authorized annual volume of water to be conveyed to Buyer. The Purchase Price shall be payable as follows:
 - a. Earnest Money Deposit. Upon execution of this Agreement by Seller and Buyer, Buyer shall deliver to Seller the sum of Four Thousand Two Hundred Dollars (\$4,200.00) as earnest money ("Earnest Money"). The Earnest Money shall be applied towards the Purchase Price at Closing.
 - b. Balance of Purchase Price. The balance of the Purchase Price, being Nine Thousand Eight Hundred Dollars (\$9,800.00) ("Purchase Price Balance"), shall be due and payable to Seller at Closing as provided herein.
 - c. Adjustment to Purchase Price and Water Right to be Purchased Due to Transfer Conditions. Seller and Buyer acknowledge that the Purchase Price is based upon a unit

value of \$875.00 per each acre-foot-per-annum of water authorized by the Transfer to be available for Buyer's intended use. If due to acknowledged uncertainties in the final ESPA model configurations or otherwise, the Department approves the Transfer but with conditions limiting the total annual diversion volume for irrigation to less than proposed in the Transfer, and provided Buyer has waived the conditions precedent herein and elected to close on the purchase of the lesser quantity of the Water Right approved under the Transfer, then the parties agree that the Purchase Price will be adjusted based on the annual diversion volume in acre-feet that have been approved by the Transfer to Buyer's use for irrigation multiplied by \$875.00.

d. Pre-Closing Obligations. Seller and Buyer agree to cooperate in obtaining Department approval of the Transfer. Within thirty (30) days following the Effective Date of this Agreement, Seller shall file with the Department an application to transfer the Water Right in Seller's name using Buyer's place of use and point of diversion; provided however, that Buyer shall be responsible for the costs to prepare, file and prosecute the Transfer application with the Department, including all consultant fees for preparation of the Transfer application, calculation of mitigation, and Buyer's attorney fees in the case of protests and hearings on the Transfer. Buyer and Seller shall use best efforts to obtain timely Transfer approval. Buyer authorizes Seller to make needed changes to the Transfer application to facilitate the process of transferring the water provided such changes made will not materially change the amount of money Buyer has to pay, or the amount of water Buyer receives.

4. Condition Precedent. Buyer's obligation to close the purchase of the Water Right is expressly subject to and conditioned upon Department approval of the Transfer. If the Department does not approve the Transfer for the reasons that the Water Right are abandoned or forfeited in whole or in part, or have not been fully beneficially used, Buyer agrees that Seller may have thirty (30) days after the Department's determination in which to identify other water

rights of equal or earlier priority and equal source to substitute for the Water Right and to refile a Transfer application with the Department.

5. Termination: If the foregoing condition precedent is neither satisfied nor waived by Buyer, or in the event of any default by Seller, and provided Buyer is not in default hereunder, Buyer may terminate this Agreement by giving written notice of termination to Seller, and Buyer shall be entitled to return of the Earnest Money.

6. Closing. Closing shall occur within thirty (30) days following Department approval of the Transfer. Possession and use of the Water Right passes to Buyer on Closing. At Closing, Buyer shall deliver the Purchase Price Balance to Seller, less any permitted adjustments, and Seller shall provide Buyer with a fully-executed Special Warranty Deed substantially in the form attached hereto as Exhibit A conveying the Water Right to Seller.

7. Attorney Fees. In the event of any suit or proceeding by either party against the other party, in any way arising out of this Agreement, the prevailing party shall be awarded their reasonable attorney fees and costs.

8. Binding. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, representatives, successors and assigns.

9. Authority. Each party represents and warrants to the other that they have full power and authority to enter into this Agreement.

10. As-Is. Except as to the warranties contained in the Special Warranty Deed to be delivered by Seller at Closing, Seller has not made and does not hereby make, any representations, warranties or guaranty of any kind concerning the Water Right or its fitness for Buyer's intended purposes, or any purpose. Buyer acknowledges that Buyer is relying solely on its own investigation of the Water Right.

Metal Tag Number	Twp	Rge	Sec	1/4	1/4	1/4	Northing [m]	Easting [m]	2002 [af]	2003 [af]	2004 [af]	2005 [af]	2006 [af]	2007 [af]	2008 [af]	2009 [af]	2010 [af]	2011 [af]	Total [af]	AVERAGE [afa]	North Weight	East Weight
E0007396	05S	34E	34	SE	NW	SW	1305479.6	2624572.0	1009.3	519.9	1049.5	850.6	889.8	809.8	846.8	923.2	748.6	956.2	8603.6	860.4	11231837513.4	22580793560.8
E0007395	06S	34E	3	NW	NW	SW	1303960.3	2624467.4	0.0	0.0	215.8	411.4	500.4	634.8	898.1	744.0	0.9	664.2	4069.5	407.0	5306479439.8	10680296125.5
E0007397	06S	34E	4	SW	SE	SW	1303347.7	2623182.2	0.0	0.0	215.8	411.4	500.4	634.8	898.1	744.0	0.9	664.2	4069.5	407.0	5303986457.9	10675066357.5
E0007398	06S	34E	10		SW	SW	1301913.7	2624415.3	0.0	901.3	298.2	620.1	482.6	570.4	644.4	683.8	723.5	1057.8	5982.0	598.2	7787982418.4	15699121343.1
E0007394	06S	34E	11	NE	NW	NW	1303344.0	2626311.4	0.0	0.0	441.7	455.8	503.3	417.7	468.1	376.5	9.3	0.1	2672.5	267.2	3483121619.4	7018685820.8
CENTROID	06S	34E	3	SW	NW	SW	1303829.9	2624478.7	1009.3	1421.2	2220.9	2749.3	2876.5	3067.4	3755.5	3471.5	1483.1	3342.5	25397.0	2539.7	33113407448.9	66653963207.6

Calculated Centroid

1303829.9 2624478.7

ESPA Cell 96,122

Table 1: City of Ammon
Calculated Centroid of Diversions