

WSB No. _____
 Receipt No. 0094533
 Date/by S.B.T. 1-6-2011
 (For Department Use Only)

RECEIVED
 JAN 06 2012

STATE OF IDAHO
 WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
 TO THE WATER SUPPLY BANK

Name of Seller/Lessor Mitchell Sorensen Phone (208) 221-3293
 Mailing address 3871 W. 2500 N., Moore, ID 83213 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>34-7110</u>	_____	_____	_____ to _____
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____

Total Amount: _____

2. Source of water _____ tributary to _____

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	1/4	1/4	1/4	County

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

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

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

B. OWNERSHIP

- 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.
- 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:
Big Lost River Irrigation District

C. GENERAL INFORMATION

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

Water is diverted at the Arco diversion and delivered through the Arco Canal.

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

Water Right No. 34-7052 is used in conjunction with this water right.

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

Yes ☐ No ☒

If yes, describe.

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. This water right was not used due to circumstances beyond the water right owner's control. See the memo attached to this application for further explanation.

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.

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 01/01/2012 to 12/31/2012 (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.

Signature of Applicant

Printed Name and Title*

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

Mail to: Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098

ATTACHMENT 1

C4. Defense to Forfeiture

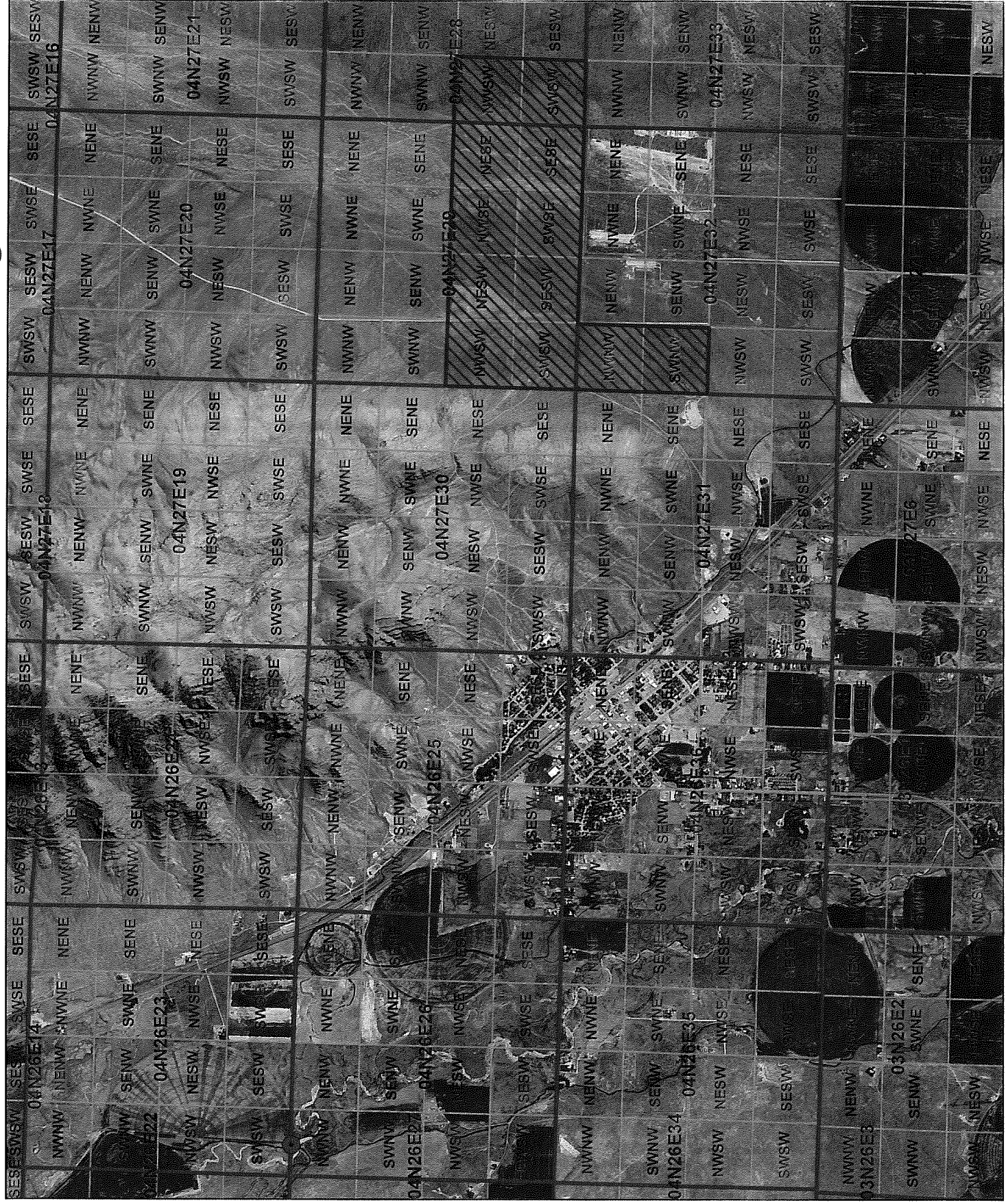
Idaho Code § 42-223 provides that “[a] right to the use of water shall not be lost by forfeiture pursuant to the provisions of section 42-222, Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section.” Part 6 of §42-223 states that “[n]o portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control.” Water Right Nos. 34-7052 and 34-7110 have not been used for more than five years due to circumstances over which the water right owner had no control.

Richard Potter, the current owner of Water Right Nos. 34-7052 and 34-7110, purchased his property and the two water rights above in June of 1998 from Eldon Jacobsen. Prior to this, Eldon Jacobsen had entered into a lease agreement with Alvin and Gay Wheeler for the use of an irrigation well located on Alvin and Gay Wheeler’s property. The irrigation well that was the subject of this lease serves as the point of diversion for Water Right No. 34-7052. The lease provided for use of the well and also for ingress and egress to the well from the public road. That lease terminated on December 31, 2002, and for reasons not known, Mr. Potter was not able to renew or renegotiate an acceptable agreement with Alvin and Gay Wheeler for the use of the well.

Mr. Potter’s other water right, 34-7110, is out of the Big Lost River and has a 1975 priority date. Water rights with this late of a priority on the Big Lost River typically only receive water during high spring flows, if at all. Without the use of the ground water right, Mr. Potter did not have an adequate supply of water and was forced to cease irrigation of his property.

A copy of the expired lease between Wheelers and Jacobsens is attached along with a signed statement from Alvin Wheeler indicating that Mr. Potter does not have a right of access to the well that serves as the point of diversion for Water Right No. 34-7052. Given that the nonuse of the Potter water rights has occurred due to circumstances over which he had no control, these water rights have not been lost or forfeited.

ATTACHMENT 2



Prepared by:
Luke H. Marchant
12/29/2011

ATTACHMENT 3

FARM LEASE AND OPTION TO PURCHASE WATER RIGHTS AGREEMENT

THIS FARM LEASE AND OPTION TO PURCHASE WATER RIGHTS AGREEMENT (this "Agreement") is made and entered into this 17th day, of June, 2011, by and between POTTER RANCHES, a Utah General Partnership ("Lessor"), and MITCHELL D. SORENSEN and ELAINE R. SORENSEN, husband and wife (collectively, "Lessee").

In consideration of the mutual promises and covenants contained herein, the parties agree to the terms and provisions of this Agreement.

1. PROPERTY. Lessor leases to Lessee and Lessee leases from Lessor for the term of this Agreement the real property located in Butte County, Idaho, more particularly described as:

A.) The S $\frac{1}{2}$, Section 29, W1/2 SW $\frac{1}{4}$ Section 28, W1/2 NW $\frac{1}{4}$ Section 32, T4N, 27 E.B.M. consisting of approximately 472 irrigable acres, together with all water rights appurtenant thereto including ground water right 34-7052, diverted from a well located within NWSWSW Section 27, T5N, 26 E.B.M., and surface water right 34-7052 diverted from the Big Lost River, with all attendant irrigation equipment including but not limited to the above described deep well pump, conveyance rights, and pumping facilities located adjacent to the Arco Canal in NW $\frac{1}{4}$ Section 31, T4N, 27 E.B.M., buried and portable mainline, and wheel lines.

B.) WATER RIGHT 34-7110 8.07 CFS 05/15/1975 SURFACE WATER
WATER RIGHT 34-7052 6.00 CFS 11/13/1973 GROUND WATER

2. TERM. The term of this Lease shall be annual beginning on the date first above written and shall end on December 31, 2011 (the Term.). Lessee may renewed the Term for up to four (4) additional years, the last year to end on December 31, 2015 by providing Lessor written notice prior to January 31 of each subsequent year.

3. OPTION TO PURCHASE. Lessor grants and conveys to Lessee the right to purchase the water rights described in provision 1.B. at any time during the Term, or any renewal of the same. The purchase price for the above described water rights shall be [REDACTED] dollars.

4. RENT. Lessee agrees to pay Lessor [REDACTED] dollars annually for each year this agreement is exercised and/or renewed. Such payment shall be due at the commencement of this agreement and on January 31 of any year the Term is renewed.

5. EXPENSES. Lessor and Lessee understand and agree there may be substantial operational, administrative, and legal costs and expenses associated with the water bank lease(s), transfer(s), exercise, and use of these water rights. Lessee agrees to pay all of these incurred expenses, and Lessor agrees all such expenses will be deducted from the purchase price described in provision (3. Option to Purchase) at the time the option is executed.

Lessee also agrees to pay the related water district taxes and irrigation district assessments when the water supplies are actually diverted and applied to the beneficial use on the Lessor's property during the Term.

6. IRRIGATION EQUIPMENT. Lessor grants to Lessee the right to use, alter, modify, and replace all existing irrigation equipment in any manner the Lessee determines is necessary. Lessee agrees to use such equipment in a reasonable manner and is responsible for the costs of repairing, replacing, and operating the same.

Lessee also has the right to install and use any other irrigation equipment Lessee deems necessary for the purposes of irrigating the above described Property (A) and using Water Rights (B). Lessor agrees and consents such equipment may also be used, financed, and subsequently removed from the property at the Lessee's discretion.

Lessor agrees the existing wheel lines may be used by the Lessee or sold and/or consigned to be sold. It is understood Golden West Irrigation has offered \$2000.00 per ¼ mile line with mover and may enter the property for purposes of gathering and removing the same. All proceeds from such sale(s) shall be remitted to Lessor.

7. COOPERATION. Lessor also understands and agrees to consent and cooperate with Lessee in all efforts to comply with State of Idaho laws regarding the anticipated water banking and/or transferring of these water rights as deemed necessary by the Lessee. Lessee shall have the sole discretion to determine when and how these water rights are to be used and exercised so long as such use and exercise is lawful.

8. LIENS. Lessee shall neither place any lien on the Property nor permit any other person or entity to place any lien on the Property prior to the exercise of the purchase option without written Lessor's authorization. Lessor agrees not to withhold such authorization unreasonably.

9. COMPLIANCE WITH LAW. Lessee and Lessor shall comply with all requirements of municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Property.

10. NO PARTNERSHIP. Nothing contained in this Agreement shall be deemed to create a partnership, joint venture, or employment relationship between Lessor and Lessee. Neither Lessor nor Lessee shall be liable, except as otherwise expressly provided in this Agreement, for any obligations or liabilities incurred by the other.

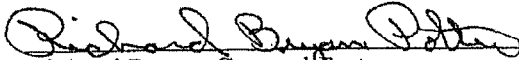
11. WAIVER OF COVENANTS. The waiving of any covenant or provision of this Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breach of such covenant or any other provision hereof.

12. NOTICES. For all purposes of this Agreement, notice shall be deemed to have been given to Lessor by Lessee upon deposit of a copy of said notice by Lessee in the United States Mail, postage prepaid, certified with return receipt requested, addressed to Lessor at 80 North 300 East, Malad, Idaho 83252, or to such other address as Lessor shall direct in writing. For all purposes of this Lease, notice shall be deemed to have been given to Lessee by Lessor upon deposit of a copy of said notice by Lessor in the United States Mail, postage prepaid, certified with return receipt requested, addressed to Lessee at 3871 West 2500 North, Moore, Idaho 83255, or to such other address as Lessee shall direct in writing.

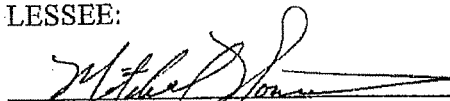
13. GOVERNING LAW. This Agreement shall be governed, construed, interpreted and enforced in accordance with the laws of the State of Idaho.

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

LESSOR:


Richard Potter, General Partner

LESSEE:


Mitchell D. Sorensen


Elaine R. Sorensen

NOTICE OF FARM LEASE RENEWAL

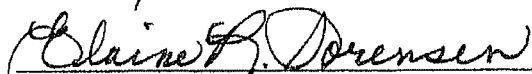
Notice of the renewal of the certain FARM LEASE AND OPTION TO PURCHASE WATER RIGHTS AGREEMENT entered into on June 17, 2011 by and between POTTER RANCHES, a Utah General Partnership ("Lessor"), and MITCHELL D. SORENSEN and ELAINE R. SORENSEN, husband and wife (collectively, "Lessee") is hereby given with the accompanying rental payment for the 2012 year.

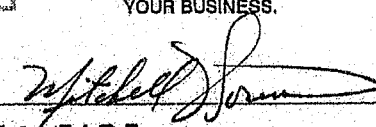
The real property relating to this Farm Lease Renewal is described as follows:

A.) The S $\frac{1}{2}$, Section 29, W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 28, W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 32, T4N, 27 E.B.M. consisting of approximately 472 irrigable acres, together with all water rights appurtenant thereto including ground water right 34-7052, diverted from a well located within NWSWSW Section 27, T5N, 26 E.B.M., and surface water right 34-7052 diverted from the Big Lost River, with all attendant irrigation equipment including but not limited to the above described deep well pump, conveyance rights, and pumping facilities located adjacent to the Arco Canal in NW $\frac{1}{4}$ Section 31, T4N, 27 E.B.M., buried and portable mainline, and wheel lines.

LESSEE:

, dated the 3rd of November, 2011
Mitchell D. Sorensen

, dated the 3rd of November, 2011
Elaine R. Sorensen

SORENSEN CROP AND LIVESTOCK MITCHELL D. SORENSEN (208) 827-3271 3871 W 2500 N MOORE, ID 83265		5107 92-41/1241 09
Pay to the Order of <u>Richard Potter</u>		Date <u>Nov. 3, 2011</u>
<u></u>		\$ <u>5107</u>
For <u>2012 Rent</u>		MY BUSINESS SUPPORTING YOUR BUSINESS.
ARCO OFFICE P.O. BOX 9 ARCO, IDAHO 83213		<u></u>
12241004171 17 0901597 51 5107		

ATTACHMENT 4

NO. 33182
RECORDED

JUN 15 1998

A.M. 4:33 P.M.
BUTTE COUNTY RECORDER
Carole Morgan

LEASE OF IRRIGATION WELL

Five Year Term

This Agreement, made this 15th day of June, 1998, by and between
ALVIN WHEELER and GAY WHEELER, Husband and Wife, of Butte County, Idaho,
hereinafter called "Grantors", and ELDON W, JACOBSEN, hereinafter call "Grantee:

WITNESSETH:

For value received, Grantors hereby lease to Grantee a certain irrigation well, together
with a right-of-way for ingress and egress to such well, from a public road to said well.

The description of the location of the well is as follows:

A 50' x 50' square parcel, the center point of which is an
existing irrigation well, located in the West side of the Island Canal,
near the intersection of the West Bank of the said canal and the South
right-of-way of a county road, which parcel is in the SW1/4SW1/4,
Section 27, Township 5 North, Range 26 East Boise Meridian, Butte
County, Idaho, which parcel is approximately 600 feet East of the
Northwest corner of said SW1/4SW1/4.

It is understood and agreed that the Grantee is the owner of a certain water license and ditch
asement for conveyance of the water from the well to land to be irrigated by the Grantee with the
roduction of the well. It is further understood and agreed that only the well is hereby leased and that
quipping of the well and all costs of production shall be the obligation and responsibility of the
rantee.

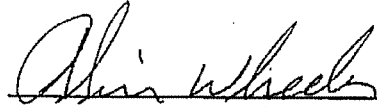
Consideration:

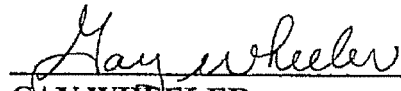
The consideration for this lease is the sum of SEVEN THOUSAND DOLLARS (\$7,000.00), payable upon execution of this lease, or at such other time as the Grantors shall direct.

Terms of Lease:

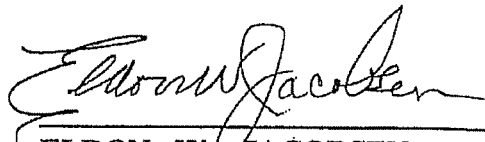
The lease of the irrigation well and water production therefrom shall begin on the date of this lease, and shall terminate on December 31, 2002.

INWITNESS WHEREOF, the parties have set their hands and seals this 15th day of June 1998.


ALVIN WHEELER


GAY WHEELER

“GRANTORS”

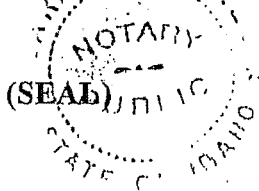

ELDON W. JACOBSEN

“GRANTEE”

STATE OF IDAHO)
 : ss.
County of Butte)

On this 15 day of JUNE, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared ALVIN WHEELER and GAY WHEELER, 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 in this certificate first above written.



[Signature]
Notary Public for Idaho,
Residing at Arco, Idaho
Commission expires: 6-20-2003

STATE OF IDAHO)
 : ss.
County of BUTTE)

On this 15 day of JUNE, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared ELDON W. JACOBSEN, 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 my official seal, the day and year in this certificate first above written.



[Signature]
Notary Public for: IDAHO
Residing at: ARCO, IDAHO
Commission expires: 6-20-2003

ATTACHMENT 5

STATEMENT

I, Alvin Wheeler, of 3327 West 3120 North, Moore, Idaho, 83255, in Butte County, do make the following true and correct statement.

I am the owner of the real property which the irrigation well located within NWSWSW Section 27, T5N, 26 E.B.M. (commonly known as the "Potter Well") exists.

Mr. Potter does not own, nor has ever held, any interest in this real property and has no right of access to the well located on this property.

Alvin Wheeler
Alvin Wheeler

Dated the 20 day of, August 2011