

RECEIVED
DEC 24 2009
DEPARTMENT OF
WATER RESOURCES

Water Supply Bank No. _____

Water Right No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 08 2008

DEPARTMENT OF
WATER RESOURCES

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

Name of Seller/Lessor Franklin Cub River Pumping Company, Inc. Phone _____

Post office address P.O. Box 311, Preston, Idaho 83263

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

- a. Decree No. _____ Decreed to _____
(Name)
in case of _____ vs _____
dated _____ in _____ county of _____
(Name of court)
- b. License No. 14447 (WR13-2092) issued by the Idaho Department of Water
Resources.
- c. Permit No. _____ issued by the Idaho Department of Water
Resources.

2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (If the entire right is for sale or lease,
show "all" on line a. below and skip the remainder of part 2.)

- a. Amount of water under right: _____ cubic feet per second &/or
4.93 acre-feet per annum
- b. Point of diversion: SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 30 Township 16S Range
40E, B.M. in Franklin County.
Additional points _____

c. Place of use:

TWP	RGE	SEC	N E				N W				S W				S E				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S	40E	29						X	X	X	X			X	X	X	X	X	29

If the right is for irrigation, show the number of acres for the part of the right to be put into the bank.

Total number of acres 29*

*See water management plan and figure 3 attached

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

- a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of a change of ownership form as required by Section 42-248 or 42-1409(6), Idaho Code, together with required documentation.

See license identified in section 1.

- b. Describe the frequency of water use under the right, or portion thereof, during the past five (5) years of use. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years).

Water used annually by Lessor.

- c. If the right is from a surface water source, describe the period of the year that water is typically available to satisfy the right.

April 1 - November 1

- d. Describe any other water rights with the same purpose and place of use as the right, or portion thereof, offered for lease. Will the present place of use continue to receive water from any source? If so, describe.

WR 13-2179 also offered for Lease. Twenty-nine (29) acres to be dried up (see

Water Management Plan enclosed herewith and figure 3 attached depicting roads & lots).

- e. If the water right is a permit, describe the work accomplished toward developing the right.

- f. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached.

4. REMARKS:

See Lease of Water Right attached.

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale;

X For lease for a period from April 1, 2008 to March 30, 2009
(Day, month, year) (Day, month, year)

(The lease period may be shown as "indefinite", if the total duration of lease is unknown); or

_____ As a gift to the state of Idaho.

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

See Lease of Water Right attached.

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 of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water 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.

April 1 08 by: Franklin Cab River pumping Co.
Date Signature President

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Preliminary check by _____

Watermaster recommendation requested on _____ Received _____

Recommended for _____ approval _____ denial by _____

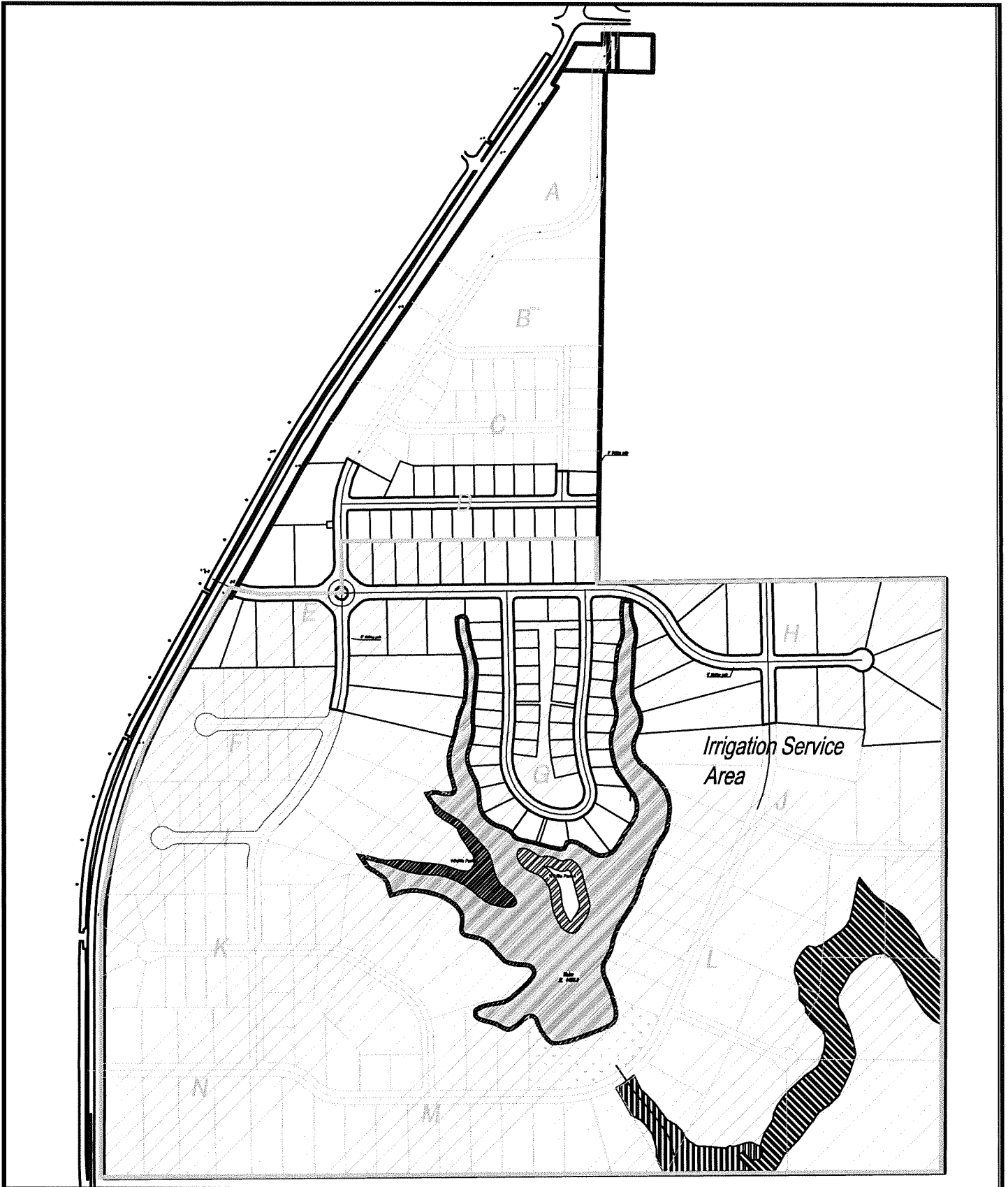


Figure 3
Legacy Ranch Development
Proposed Layout

-  Riparian Wetland
-  Existing Wetland - Spring Creek
-  Mitigation Wetland

200 0 200 400
SCALE - FEET

DEC 24 2009

APR 08 2008

LEASE OF WATER RIGHTS
DEPARTMENT OF
WATER RESOURCESDEPARTMENT OF
WATER RESOURCES

This Water Rights Lease Agreement ("Lease") is entered into between FRANKLIN CUB RIVER PUMPING COMPANY, INC., an Idaho corporation whose corporate address is P.O. Box 311, Preston, Idaho 83263 ("Lessor") and MAPLE LEAF INVESTMENTS, LLC, an Idaho limited liability corporation whose corporate address is 1111 High Pine Circle, Riverton, Utah 84065 ("Lessee").

AGREEMENT

1. **Leased Property.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Water Rights or portions thereof identified by the records of the Idaho Department of Water Resources ("IDWR") as follows:

<u>Water Right No.</u>	<u>Priority</u>	<u>Quantity</u>	<u>Purpose</u>
13-2092	11-28-1919	4.93 AF	Recreation Storage
13-2179	06-01-1954	4.92 AF	Recreation Storage
Total		9.85 AF	

2. **Term.** The initial term of this Lease shall be one (1) year (the "Lease Term"), commencing April 1, 2008, and ending March 30, 2009, after which this Lease shall automatically renew for successive one year terms until such time as either party provides written notice of termination at least sixty (60) days prior to the March 30 end of the then-current term.

3. **Rent.** For the use of the Water Rights Lessee shall pay to Lessor on or before April 15 of each Lease Term (the "Rent Due Date") at the address set forth below, Rent in the total amount of \$9.85, which amount is based on a price of \$1 per acre-foot of divertible quantity under the Water Rights as described in Section 1 of this Lease.

4. **Delivery.** Lessor agrees to deliver the described Water Rights through Lessor's delivery system to Lessee's property located in the SE ¼ of Section 29, Township 16 South, Range 40 East, Boise Meridian, Franklin County, Idaho.

5. **Non-Use by Lessor.** Lessor covenants that it will not utilize the described Water Rights during the Lease Term.

6. **Use by Lessee.** During the Lease Term Lessee shall place the Water Rights to beneficial use by placing same in the Idaho Water Resource Board ("TWRB") Water Bank, and shall comply with all applicable federal, state and local laws and all rules and regulations of any agency, including the Idaho Department of Water Resources ("IDWR"), applicable to such Water Rights, together with all state and federal environmental and water quality laws. It is the parties' express understanding and intent that it is Lessee's duty under this Lease to do all things necessary to ensure that the Water Rights are not subject at any time to any claim or determination of forfeiture, abandonment or reduction in transferable quantity based in whole or in part on Lessee's use or non-use of the Water Rights during such Lease Term or renewal thereof. Lessee's use of the leased property shall be in place of and not in addition to water

Lessee is entitled to receive under Lessee's stock ownership in Franklin Cub River Pumping Company, Inc.

7. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owner of the Water Rights, that the Water Rights have not lapsed, been abandoned, or forfeited, either in whole or in part as a result of any action or inaction of Lessor, that nothing restricts or precludes Lessor from entering into this Lease, and Lessor has no knowledge of any reason why Lessee may not use the described Water Rights for the purposes contemplated by this Lease.

8. **Applications and Approvals.** The parties acknowledge and agree that it will be necessary to submit this Lease to the IWRB and IDWR and obtain IWRB acceptance of the Water Rights into the Water Bank and IDWR approval of the use of said Water Rights by Lessee for recreation storage purposes.

8.1. Lessee and Lessor will jointly seek approval of this Lease from IWRB and IDWR, and will cooperate with each other in securing such approvals. The foregoing notwithstanding, Lessee shall be responsible for preparing and filing all necessary IWRB Water Bank rental and lease applications, and for all costs associated with accomplishing the approval of this Lease by IDWR and IWRB, including but not limited to paying all applicable Water Bank and other administrative fees owing to IWRB and IDWR in a timely manner so as to obtain all such approvals prior to the April 15 Rent Due Date.

8.2. Lessee agrees to provide Lessor with copies of all applications or submittals to, correspondence with, and decisions of, the IWRB and IDWR regarding Lessee's use of the Water Rights.

8.3. This Lease is conditioned upon IWRB's acceptance of the Water Rights into the Water Bank and IDWR's approval of the use of the Water Rights by Lessee for recreation storage purposes, and acknowledgment by IDWR that Lessee's use of the Water Rights under the Lease and/or placement of the Water Rights in the IWRB Water Bank constitutes beneficial use of the water and will not subject any portion of the Water Rights to forfeiture. In the event such approvals are not obtained, the Lease may be terminated by either party.

9. **Indemnification of Lessor.** Lessee agrees to indemnify and hold harmless Lessor from any and all claims and demands, including legal attorney fees and costs, which may arise directly or indirectly as a result of this Lease or the transfer or use of the Water Rights by Lessee pursuant to this Lease.

10. **Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect to terminate this Lease and recover any damages or pursue any other remedy available under Idaho law by reason of such breach.

11. **Assignment.** This Agreement may be assigned by Lessor but may not be assigned by Lessee without the express written consent of Lessor.

12. **Attorney Fees.** In the event either party brings an action to enforce this Lease, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.

13. **Binding Effect.** This Lease shall be binding upon the parties and their respective heirs, successors and assigns

14. **Notices.** Any notice required to be given hereunder by either party to the other shall be given in writing by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of personal delivery or three (3) days after the date of mailing. Notices shall be addressed as set forth below, but each party may change the address set forth below by written notice to the other party in accordance with this paragraph.

To Lessor: Franklin Cub River Pumping Company
Larrell G. Hobbs, Registered Agent
3384 South Parkinson Road
Franklin, Idaho 83237

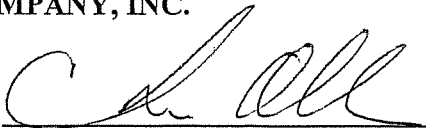
With copy to: Steven R. Fuller
P.O. Box 191
Preston, Idaho 83263

To Lessee: Maple Leaf Investments, LLC
Brandon Porter, Registered Agent
3040 E. 17th St, Ste 2
Idaho Falls, Idaho 83406

With copy to: Thomas J. Budge
Racine, Olson, Nye, Budge & Bailey
201 East Center, Suite A2
P.O. Box 1391
Pocatello, Idaho 83204-1391

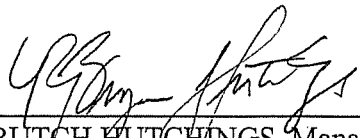
15. **Assignment.** This Lease may be assigned by Lessee to its successor(s) in interest to the property to which the water rights leased hereby are delivered in the SE ¼ of Section 29, Township 16 South, Range 40 East, Boise Meridian, Franklin County, Idaho. Any such assignment shall be evidenced by written notice to Lessor as provided in section 14.

LESSOR:
FRANKLIN CUB RIVER PUMPING
COMPANY, INC.

By: 
CHRIS ALLEN, President

Date: April 1 08

LESSEE:
MAPLE LEAF INVESTMENTS, LLC

By: 
BUTCH HUTCHINGS, Manager

Date: Apr 1 2008