

WITHDRAWN

Transfer No. 74413

RECEIVED

NOV 19 2007

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCESAPPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of Applicant Mayfield Townsite, LLC Phone (208) 388-0189Post Office address 4487 North Dresden Place, Suite 102, Boise ID 83714

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use☐ Change nature of use☐ Change period of use☐ Other _____2. Describe the reason for the proposed changes Applicant seeks to divert the ground water for irrigation use. A water company or district will be formed to own and operate the system.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount (cfs/ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>61-7208</u>	<u>11/18/1974</u>	<u>2.56 cfs/1170.0 afa</u>	<u>Irrigation</u>	<u>3/15</u> to <u>11/15</u>
<u>61-7312</u>	<u>3/8/1977</u>	<u>0.59 cfs/135.0 afa</u>	<u>Irrigation</u>	<u>3/15</u> to <u>11/15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 3.15 cubic feet per second and/or 1,305.0 acre-feet per annum.3. Source of water Ground Water tributary to _____

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		NW	NW	25	1N	4E	Elmore	Proposed Well
		NE	NE	26				" "
		NW	NE	26				" "
		SW	NE	26				" "
		NE	NW	26				" "
		SE	NW	26				" "
		NE	SW	26				" "
		NW	SE	26				" "

5. Lands irrigated or 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	
1N	4E	12													40			39	79
		13	18															4	22
		14									40	40	40	40					160
		15																40	40
		22	40	40	40	40	40	40	40	40	40	40			40	40			480
		23		40	33		40	40	40	40	40	40	40	40	22	18	40	40	513
		24	39	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	639
		25		40	40	40	40	40	40	40	40	40	40	40		40	40		520
		26	40	40	40	40	40	40	20	40	40				40	40	40	40	500
		27				39									6				45
1N	5E	5	41 Lt 1	41 Lt 2	40	40			40	40	40	40	40	40	40	40	40	40	562
		7									40	41 Lt 3	41 Lt 4	40		40			202
		8	40	40	40	40	40			40	40	40	40	40	40	40	40	40	560
		17	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	640
		18		40			40	41 Lt 1	37 Lt 2	40	40	15 Lt 3	36 Lt 4	40	40	40	40	40	489
		19	40	40	40	40	40	42 Lt 1	42 Lt 2	40	40	42 Lt 3	43 Lt 4	40		40	40		569
		20	40	40	40	40	40			40									240
		21						40	40										80

(290 acres irrigation within PPU)

Total Acres 6,340 PPU

PART 1**6. General Information:**

- a. Description of diversion system We anticipate up to four wells with electric pumps. Eight potential points of diversion are listed to provide flexibility in siting the four anticipated wells.

- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
☒ X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

Current place of use will be no longer irrigated.

- d. Remarks:

Diversions are proposed in basin 61. Place of use is proposed in basins 61 and 63. Applicant has entered into the attached agreement to purchase the property.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And the said application is hereby _____, subject to the following conditions:

Witness my hand this _____ day of _____, 20_____.

 For the Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED (See Attached Partial Decree for 61-7312)

1. Right as evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☐ Warranty Deed

☒ Other Attached purchase agreement

3. Source of water _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purposes:

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

8. Lands irrigated or 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	

Total Acres _____

9. Describe any other water rights used for the same purpose as described above 63-2100, 63-2143, 63-2654, 63-2690, 63-12447, and 63-32499

PART 2

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or 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	

Total Acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or 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	

Total Acres _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

(Attach one copy for each right)

D. DESCRIPTION OF RIGHT AS RECORDED (See Attached Partial Decree for 61-7208)

1. Right as evidenced by:

- e. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- f. License No. _____ issued by the Idaho Department of Water Resources.
- g. Claim No. _____ on file with the Idaho Department of Water Resources.
- h. Transfer No. _____ which produced this right.

2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☐ Warranty Deed

☒ Other Attached purchase agreement

3. Source of water _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purposes:

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

8. Lands irrigated or 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	

Total Acres _____

9. Describe any other water rights used for the same purpose as described above 63-2100, 63-2143, 63-2654, 63-2690, 63-12447, and 63-32499

PART 2

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No _____

If yes, describe _____

E. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or 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	

Total Acres _____

F. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or 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	

Total Acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3**

(See attached Aerial Photo and Topo maps)

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.**

Scale: 2 inches equal 1 mile. Draw plan in ink.

PART 3**B. CHANGES IN NATURE OF USE**

1. New Nature of Use Amount(cfs/af-ft) Hours/days/year Period of Use
 _____ to _____
 _____ to _____

Quantity and quality of return flows and location of discharge: _____

2. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

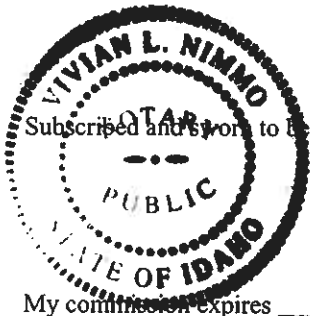
I understand that any willful misrepresentations made in this application may result in voiding its approval.

MAYFIELD TOWNSITE, LLC

By: Marty Johnson Member
 (Signature of Applicant)

Subscribed and sworn to before me this 6 day of November, 20 07.

Vivian L. Nimmo
 (Notary Public)



My commission expires 4/10/2012

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by DB Date 11-19-07 Protest filed by _____

Prelim. Check by _____ Fee \$370-

Received by DB / W035993 Date 11-19-07

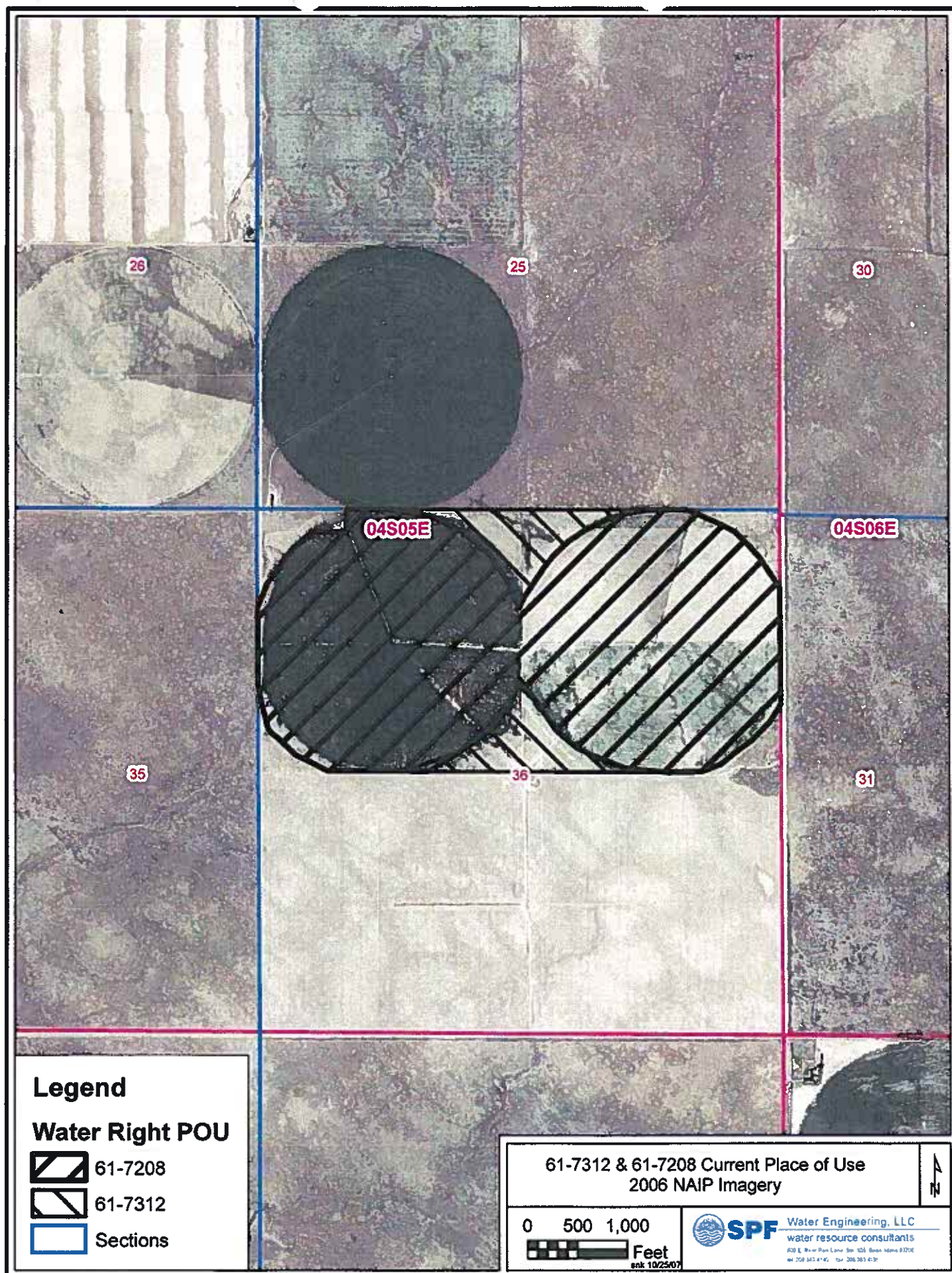
Published in _____ Copies of protest forwarded by _____

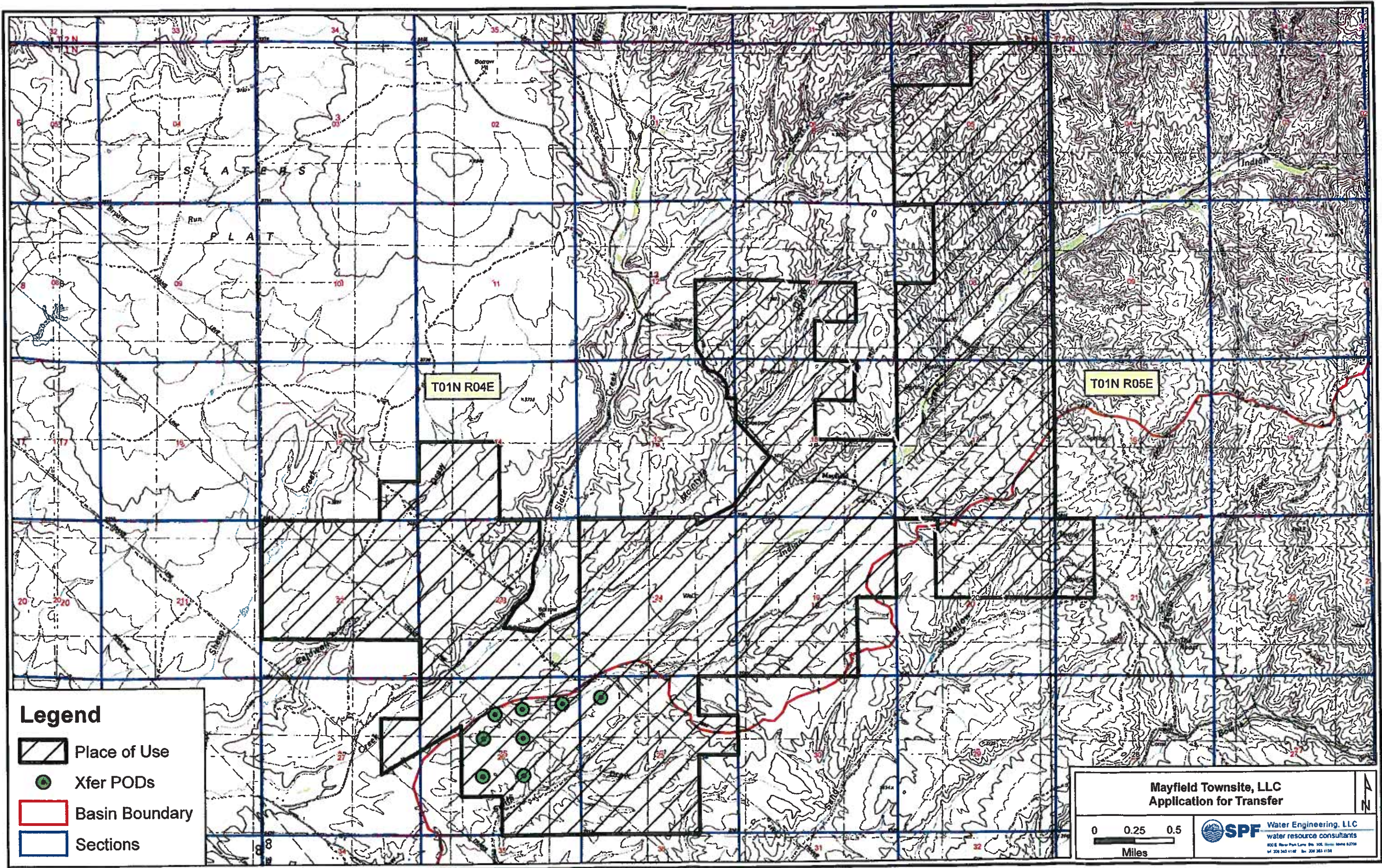
Pub. Dates _____ Hearing held by _____ Date _____

Watermaster recommendations requested on _____ Recommended for ☐ approval ☐ denial

_____ received _____ by _____

Copy of transfer sent to lien holder _____





Legend

- Place of Use
- Xfer PODs
- Basin Boundary
- Sections

Mayfield Townsite, LLC
Application for Transfer

0 0.25 0.5
Miles

SPF Water Engineering, LLC
water resource consultants
800 E. River Park Lane, Ste. 100, Sioux Falls, SD 57105
tel 605 343 4148 fax 605 343 4150

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 61-07208

NAME AND ADDRESS: JAMES F BLACK
 PO BOX 217
 BRUNEAU, ID 83604

SOURCE: GROUNDWATER

QUANTITY: 2.56 CFS
 1170.00 AFY

PRIORITY DATE: 11/18/1974

POINT OF DIVERSION: T04S R05E S36 SWNE Within Elmore County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	2.56 CFS 1170.00 AFY

PLACE OF USE:	Irrigation		Within Elmore County
	T04S R05E S36	NENE 32.5	NWNE 32.5
		SWNE 32.5	SENE 32.5
		NENW 32.5	NWNW 32.5
		SWNW 32.5	SENW 32.5
	260.0 Acres Total		

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 61-07312

NAME AND ADDRESS: JAMES F BLACK
PO BOX 217
BRUNEAU, ID 83604

SOURCE: GROUNDWATER

QUANTITY: 0.59 CFS
135.00 AFY

PRIORITY DATE: 03/08/1977

POINT OF DIVERSION: T04S ROSE S36 SWNE Within Elmore County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.59 CFS 135.00 AFY

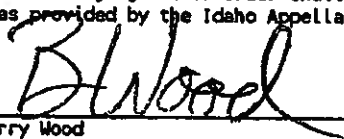
PLACE OF USE:	Irrigation		Within Elmore County
	T04S ROSE S36	NWNE 7.5	SWNE 7.5
		NENW 7.5	SENE 7.5
	30.0 Acres Total		

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

AFFIDAVIT OF LANCE D. FUNK

I, Lance D. Funk, being first duly sworn on oath, depose and hereby affirm as follows:

1. I am over the age of 18 and hereby make this affidavit based upon my own knowledge and experience.

2. I am the owner of real property, which property is more particularly described as the North Half of Section 36, Township 4 South, Range 5 East, Boise Meridian, Elmore County, Idaho. During the period from 2006 to 2007, I planted crops on said property and irrigated to meet the full demand of the crops. I produced, harvested and sold marketable crops with the following crop rotation:

Crop Year 2006 – Sugar beets 123.6 acres; Spring wheat 190.7 acres
Crop Year 2007 – Spring wheat 152.8 acres; Potatoes 125 acres

DATED this 13 day of November, 2007.

Signed: _____

Lance D. Funk

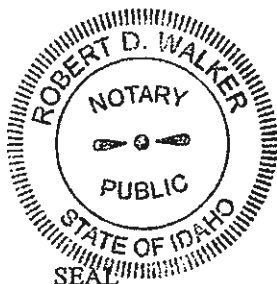
STATE OF IDAHO)

) ss.

County of Power)

SUBSCRIBED AND AFFIRMED before me by Lance D. Funk on this 13TH day of November, 2007.

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



Robert D. Walker
Notary Public for Idaho
Residing at Idaho Falls
Commission expires: 10-29-2011

CONSENT TO TRANSFER

TO: Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83702

Marty Goldsmith
4487 N. Dresden Pl., Ste. 102
Boise, Idaho 83714

The undersigned is an officer of Rabo AgriFinance, Inc. (the "**Bank**") and is authorized to execute this Consent to Transfer on behalf of the Bank. The Bank is a lien holder, as mortgagee under that certain Mortgage dated May 17, 2006, executed by Lance D. Funk and Lisa I. Funk, as mortgagor, recorded May 24, 2006, as Instrument No. 376233, records of Elmore County, Idaho (the "**Mortgage**"). The referenced Mortgage encumbers certain real property located in Elmore County, including the north half of Section 36, Township 4 South, Range 5 East, Boise Meridian, Elmore County, Idaho (the "**Real Property**"). As lien holder, the Bank consents to transfer to Marty Goldsmith the points of diversion and places of use from the Real Property of those two partially decreed water rights identified as Idaho Right No. 61-7208 and 61-7312, which are appurtenant to the Real Property to the Goldsmith Property (the "**Transfer Property**") described in the Exhibit "A" attached hereto, and further consents to the filing with the Idaho Department of Water Resources an application seeking approval of such transfer.

Further, a satisfaction of mortgage, with respect to the Real Property, shall be executed releasing the Mortgage from the Real Property when the purchase price set forth in that certain Real Property Option Agreement dated August 24, 2007 between Lance D. Funk and Lisa I. Funk, as Seller, and Marty Goldsmith, as Buyer, is paid at closing and such funds or portion thereof are remitted to the Bank sufficient to satisfy the Mortgage.

Dated this 5th day of November, 2007.

RABO AGRIFINANCE, INC.

By: 
Charles T. McElligott
Managing Director and Senior Vice President

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN JOAQUIN)

On November 1, 2007, before me, Anita M. Kopico, a Notary Public personally appeared Charles T. McElligott, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the within instrument in his authorized capacity and that, by his signature on the within instrument, the person or entity upon behalf of which he acted executed the within instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My commission expires: March 14, 2008

Exhibit "A" Legal Description

Township 1 North, Range 4 East, Boise Meridian, Elmore County, Idaho

Section 12: The E1/2SE1/4, lying North and East of Yates Center Highway District rights-of-way.

Section 13: The NE1/4NE1/4, lying North and East of Yates
Center Highway District rights-of-way,

AND

A parcel of land in the NW1/4SW1/4 lying North and West of the following parcel of land:

A tract of land in the W1/2SW1/4 of Section 13 in T1N, R4E, B.M., Elmore County, Idaho being more particularly described as follows: Commencing at the one-quarter corner common to Sections 13 and 14, T1N, R4E, B.M., from which the section corner common to Sections 13, 14, 23, and 24, T1N, R4E, B.M. all in Elmore County, Idaho, bears S.0°12'W. 2631.13 feet, thence N.89°07'17"E. along the east-west mid-section line of said section 13, 376.29 feet to a steel pin, the REAL POINT OF BEGINNING; thence N.89°07'17"E. along said mid-section line, 943.67 feet to a steel pin marking the northeast corner of the W1/2SW1/4 of said Section 13; thence S.0°07'21"W. along the east boundary line of said W1/2SW1/4 of section 13, 1869.86 feet to a steel pin; thence S.89°07'17"W. 1322.49 feet to a point on the section line common to said Sections 13 and 14; thence N.0°, 1400 feet more or less; thence N.35°48'06"E. 646.27 feet to the REAL POINT OF BEGINNING;

AND that portion of the SE1/4SE1/4 lying South and East of the centerline of the Boise-Mayfield and Regina Roads.

Section 14: SW1/4

Section 15: SE1/4SE1/4

Section 22: N1/2 and N1/2S1/2

Section 23: All Save and Except the following two parcels of land:

Parcel 1; Beginning at the Northeast corner of said Section 23 a point marked by a Brass Cap; thence along the North line of said Section 23 North 89°51'41" West 1061.92 feet on the Easterly Right-of-Way line of Slater Creek Road said line lying 30.00 feet from the physical centerline as surveyed said point marked by a 5/8" iron pin; thence along said Right-of-way South 10°22'00" West 222.45 feet to a point; thence South 5°33'00" West 331.60 feet to a point; thence along a curve to the right whose central angle is 22°00'00" whose radius is 450.00 feet, whose length is 172.79 feet and whose long chord bears South 16°33'00" West 171.73 feet to a point; thence South 27°33'00" West 379.71 feet to a point; thence South 34°58'00" West 145.82 feet to a point; thence along a curve to the left whose central angle is 27°49'00", whose radius is 315.00 feet, whose length is 152.93 feet and whose long chord bears South 21°03'30" West 151.43 feet to a point; thence South 7°09'00" West 376.25 feet to a point; thence along a curve to the left whose central angle is 13°41'00", whose radius is 595.00 feet, whose length is 142.10

feet and whose long chord bears South 0°18'30" West 141.76 feet to a point; thence South 6°32'00" East 197.33 feet to a point; thence along a curve to the right whose central angle is 37°15'00", whose radius is 355.00 feet, whose length is 230.80 feet and whose long chord bears South 12°05'30" West 226.75 feet to a point thence South 30°43'00" West 191.95 feet to a point; thence along a curve to the right whose central angle is 23°06'00", whose radius is 495.00 feet, whose length is 199.57 feet and whose long chord bears South 42°16'00" West 198.22 feet to a point; thence South 53°49'00" West 160.75 feet to a point; thence South 49°05'00" West 203.86 feet to a point; thence along a curve to the left whose central angle is 18°38'00", whose radius is 460.00 feet, whose length is 149.60 feet and whose long chord bears South 39°46'00" West 148.94 feet to a point; thence South 30°27'00" West 187.59 feet to a point; thence South 35°31'00" West 132.24 feet to a point; thence along a curve to the left whose central angle is 14°46'00" whose radius is 470.00 feet, whose length is 121.13 feet and whose long chord bears South 28°08'00" West 120.80 feet to a point; thence South 20°45'00" West 61.46 feet to a point; thence along a curve to the right whose central angle is 22°10'00", whose radius is 360.00 feet, whose length is 139.28 feet and whose long chord bears South 31°50'00" West 133.41 feet to a point; thence South 42°55'00" West 19.03 feet to a point on the Northerly Right-of-Way line of Indian Creek Rd., said line lying 30.00 feet from the physical centerline as surveyed; thence along said Northerly Right-of-way line South 54°55'00" East 486.50 feet to a point; thence along a curve to the right whose central angle is 15°47'00", whose radius is 570.00 feet, whose length is 157.02 feet and whose long chord bears South 77°01'30" East 156.52 feet to a point; thence South 69°08'00" East 45.33 feet to a point; thence along a curve to the left whose central angle is 36°25'00", whose radius is 530.00 feet, whose length is 336.86 feet and whose long chord bears South 87°20'30" East 331.22 feet to a point; thence North 74°27'00" East 133.26 feet to a point; thence along a curve to the left whose central angle is 29°32'00", whose radius is 275.00 feet, whose length is 141.75 feet and whose long chord bears North 59°41'00" East 140.19 feet to a point; thence North 44°55'00" East 92.20 feet to a point; thence along a curve to the right whose central angle is 16°02'00", whose radius is 490.00 feet, whose length is 137.12 feet and whose long chord bears North 51°56'00" East 136.67 feet to a point; thence North 60°57'00" East 162.67 feet to a point; thence along a curve to the right whose central angle is 13°15'00", whose radius is 675.00 feet, whose length is 156.10 and whose long chord bears North 67°34'30" East 155.75 feet to a point; thence North 74°12'00" East 47.70 feet to a point; thence along a curve to the left whose central angle is 9°30'00", whose radius is 750.00 feet, whose length is 124.35 feet and whose long chord bears North 69°27'00" East 124.21 feet to a point; thence North 64°42'00" East 474.31 feet to a point; thence along a curve to the left whose central angle is 25°13'17", whose radius is 395.00 feet, whose length is 173.88 feet and whose long chord bears North 52°05'22" East 172.48 feet to a point; thence North 39°28'43" East 97.62 feet to a 5/8" iron pin on the East line of said Section 23; thence along said East line North 00°08'37" East 124.09 feet to the East 1/4 Corner of said Section 23; thence continuing along said East line North 0°08'46" East 2615.09 feet to THE POINT OF BEGINNING.

Parcel 2: That portion of the NE1/4NE1/4 North and West of Slater Creek Road.

Section 24: W1/2NE1/4, NW1/4, S1/2

Section 25: W1/2, W1/2E1/2, SE1/4NE1/4

Section 26: N1/2NW1/4, SE1/4NW1/4, NE1/4SW1/4, E1/2 and the following described parcel of land:

Beginning at the quarter section corner common to Sections 26 and 27, and running thence North on the Section line 250.0 feet to a point being the REAL POINT OF BEGINNING; thence running North 58°10' East along a fence 1554.3 feet to the 1/16 line; thence North 243.0 feet to the 1/16 corner; thence West 1320 feet to the 1/16 corner; thence South 1070 feet to the REAL POINT OF BEGINNING.

Section 27: That portion of the SE1/4NE1/4, described as follows:

Beginning at a point which is 1320 feet South of the section corner common to Sections 22, 23, 26 and 27, T1N, R4E, B.M., said point being the REAL POINT OF BEGINNING; running thence South on the Section line 1070 feet to a fence; thence South S58°10' West 488.6 feet to the 1/16 line; thence West 905.0 feet to the 1/16 line; thence North 1320 feet to the 1/16 corner; thence East 1320 feet to the REAL POINT OF BEGINNING.

And also

That portion of the NE1/4SE1/4 of Section 27, T1N, R4E, B.M., described as follows:

Beginning at a point 415.0 feet West of the Quarter corner common to Sections 26 and 27, T1N, R4E, B.M., said point being the REAL POINT OF BEGINNING; running thence West 905.0 feet to the 1/16 corner; thence South on the 1/16 line 561.8 feet to a point; thence North 58°10' East 1065.6 feet to the REAL POINT OF BEGINNING.

Township 1 North, Range 5 East, Boise Meridian, Elmore County, Idaho.

Section 1: U.S. Government Lots 3 and 4, S1/2NW1/4, SW1/4, W1/2SE1/4

Section 2: All

Section 3: All

Section 4: U.S. Government Lots 1 and 2, S1/2NE1/4, SE1/4, E1/2SW1/4

Section 5: U.S. Government Lots 1 and 2, S1/2N1/2 and S1/2

Section 7: U.S. Government Lots 3 and 4, E1/2SW1/4, NW1/4SE1/4

Section 8: NE1/4, E1/2NW1/4, S1/2

Section 9: NE1/4, E1/2NW1/4, NW1/4NW1/4, S1/2

Section 10: N1/2, SW1/4, W1/2SE1/4

Section 11: N1/2

Section 12: NW1/4, W1/2NE1/4, SE1/4NE1/4, N1/2S1/2, SE1/4SE1/4

Section 15: N1/2NW1/4

Section 17: All

Section 18: U.S. Government Lot 1 and U.S. Government Lots 2, 3, and 4 lying East of Boise-Mayfield Road, E1/2NW1/4, NW1/4NE1/4, E1/2SW1/4 and SE1/4

Section 19: U.S. Government Lots 1, 2, 3 and 4, E1/2W1/2, NE1/4, W1/2SE1/4

Section 20: E1/2NW1/4, NE1/4

Section 21: W1/2NW1/4

Township 1 North Range 6 East, Boise Meridian, Elmore County, Idaho.

Section 7: U.S. Government Lots 3 and 4
Township 2 North, Range 5 East, Boise Meridian, Elmore County, Idaho
Section 26: S1/2SW1/4
Section 27: S1/2S1/2
Section 33: E1/2, E1/2W1/2
Section 34: E1/2, W1/2NW1/4, SW1/4
Section 35: E1/2W1/2, SW1/4NW1/4, W1/2SW1/4

MEMORANDUM OF OPTION

The undersigned, Marty Goldsmith, is the "Buyer" under that certain Real Property Option Agreement dated August 24, 2007, and hereby gives notice that he has entered into said agreement wherein Lance D. Funk and Lisa I. Funk, as the "Seller" have granted to Buyer the right to purchase certain real property described as the North ½ of Section 36, Township 4 S, Range 5 East, Boise Meridian, in Elmore County, Idaho.

IN WITNESS WHEREOF, the undersigned has caused the Memorandum of Option to be executed as of the 28 day of September 2007.

Marty Goldsmith
Marty Goldsmith

STATE OF IDAHO,)
) ss.
County of Ada)

On this 28 day of September 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Marty Goldsmith, known and identified 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.



Vivian L. Nimmo
Notary Public for Idaho
Residing at Messidee, Idaho
Commission expires: 4/10/2012

Instrument # 391588
Elmore County, Idaho
10:34am Oct. 01, 2007
For: KEVIN NEWBERRY
No. of Pages: 1 Fee: \$3.00
MARSA GRIMMETT, Recorder
Deputy: DLE

COPY

REAL PROPERTY OPTION AGREEMENT

This Agreement (the "**Option**") is made and entered into this 24th day of August 2007 (the "**Effective Date**"), by and between Lance D. Funk and Lisa I. Funk, husband and wife (hereinafter "**Seller**"), and Marty Goldsmith (hereinafter "**Buyer**").

WITNESSETH

Seller is the owner of certain real property located in the Elmore County, Idaho, which real property is more particularly described as the North Half of Section 36, Township 4 South, Range 5 East, Boise Meridian, together with all rights and appurtenances thereto, including without limitation those certain Water Rights (defined below) relating or pertaining to the said real property (hereinafter collectively referred to as the "**Optioned Property**").

Buyer desires to purchase the Optioned Property from Seller at a future date and the parties agree that their mutual goals can best be accomplished with the grant of an Option from Seller to Buyer, and want to reduce the terms and conditions of this Option to a written agreement.

Therefore, in consideration for the terms and promises made herein, the parties agree as follows:

1. **Grant of Option.** For the sum of One Hundred Thousand (\$100,000.00) (the "**Initial Option Money**"), Seller grants to Buyer the exclusive right to purchase the Optioned Property from Seller subject to the terms and conditions of this Agreement.

2. **Term of Option.**

(a) **Initial Expiration Date.** The term of the Option shall be from the Effective Date until the one year anniversary of the Effective Date (the "**Expiration Date**"), subject to Buyer's right to extend the Expiration Date as set forth in Section 2 (b) below.

(b) **Buyer's Right to Extend the Option.** Buyer may elect to extend the Expiration Date to on or before the second year anniversary of the Effective Date by remitting to Seller written notice, at least ten (10) days prior to the Expiration Date, of its election to extend the Expiration Date for a period of one (1) additional year, together with additional option money in the sum of One Hundred Thousand Dollars (\$100,000.00) ("**Second Option Money**"). If Buyer has timely extended the Expiration Date, Buyer may elect to further extend the Expiration Date to on or before the thirty month anniversary of the Effective Date by remitting to Seller written notice of its election to further extend the Expiration Date for up to an additional six (6) month period together with additional option money in the sum of Sixty Thousand Dollars (\$60,000.00) ("**Third Option Money**"). In no event shall the option extend beyond December 31, 2009.

3. Exercise of Option. Buyer shall be entitled to exercise the option and proceed to a Closing if, and only if, Buyer serves Seller with a written notice of intent ("Notice of Intent") to exercise during the term of the option. Service shall be made in the manner indicated in Section 15. In the event the Option is properly exercised and the sale culminated, all option money paid by Buyer to Seller (collectively the "Option Money") shall be credited toward the Purchase Price (defined in Section 9 below) of the Optioned Property.

4. Failure of Option. If Buyer fails to timely deliver its exercise notice or otherwise terminates the Option for any reason other than Seller's failure to be able to deliver marketable title, or Seller's breach of its representations and warranties set forth in Section 8, Buyer shall have forfeited its Option Money and shall have no further right to purchase the Optioned Property and Seller shall retain the Option Money as its sole remedy subject to the exception set forth in Section 5 (d) herein, and have no further obligation to sell the Optioned Property to Buyer. In the event the Seller is in breach of the representations and warranties as set out in Section 8 or is unable to deliver marketable title to Buyer, the Seller shall return the Option Money to Buyer within thirty (30) days of Buyer's written notice the ("Refund Notice") notifying Seller of Buyer's right to the return of its Option Money subject to the terms of this agreement. During the period the Option Money is held by Seller, Buyer is not entitled to any interest thereon.

5. Transfer of Water Rights. Seller is the owner of those certain partially decreed water rights identified as Water Right No. 61-7208 and Water Right No. 61-7312 (collectively the "Water Rights") issued by the Idaho Department of Water Resources ("IDWR"), which Water Rights are appurtenant to the Optioned Property.

(a) Application for Transfer. Upon the execution of this agreement and payment of the Initial Option Money to the Closing Agent (defined below), Seller grants to Buyer the right to apply to IDWR to transfer the Water Rights in an Application for Transfer of Water Rights, which application shall be prepared by the Buyer requesting the transfer of the Water Rights to certain real property either owned by or under option to the Buyer in the vicinity of Mayfield, Elmore County, Idaho, changing the point of diversion, place of use, and nature of use (the "Application"). The Buyer shall seek approval of the Application from IDWR and shall bear all costs associated with the processing of the Application (including any judicial appeal thereof). The Seller shall cooperate with Buyer's Application, including executing a consent ("Consent") in the form attached hereto as Exhibit A, or other documentation reasonably requested by Buyer to authorize Buyer to make and process the Application of the Water Rights. The Buyer shall provide the Seller with a copy of the Application, as well as any amendment thereto, or other dispositive filing or order.

(b) Cooperation with Transfer. The Seller shall cooperate fully with the Buyer throughout the processing of the Application and any judicial review thereof. At the Buyer's request and direction, the Seller shall take whatever steps are reasonable and appropriate to support and assist in securing the approval of the Water Rights Transfer, including obtaining the written consent to the transfer from any lien holder encumbering the Optioned Property

and signing and notarizing applications, authorizations, documents relating to the Snake River Basin Adjudication, and other documents consistent with the Buyer's rights under this Agreement. Any costs incurred by the Seller in this regard, if pre-approved by Buyer in writing, shall be reimbursed by the Buyer. Such approval by Buyer shall not be unreasonably withheld.

(c) **Actual Transfer of Water Rights.** In the event the transfer of Water Rights is approved by IDWR prior to the Expiration Date, such Expiration Date shall be amended to be the earlier of the Expiration Date or one hundred (180) days after the IDWR approval. Buyer agrees that notwithstanding the Application neither the transfer contemplated by the Application nor any change of ownership of the Water Right shall become effective until the Closing (as defined in Section 11 below) has been consummated. **Buyer shall have the right to actually transfer the Water rights and acquire ownership of the Water Rights only upon completion of the purchase and sale of the Optioned Property.** Upon Seller's receipt of the Notice of Intent Seller shall deposit with the Closing Agent a completed Notice of Change in Water Right Ownership, in the form required by IDWR, executed by the Seller showing that the ownership has been changed from the Seller to the Buyer sufficient to comply with the requirements of Section 42-248 and 42-1409(6) Idaho Code ("**Change in Ownership Document**") which Change in Ownership Document shall only be released by the Closing Agent to Buyer upon the consummation of the Closing of the Optioned Property.

(d) **The Exception.** In the event that the Water Rights are transferred from the Optioned Property but the real estate purchase of the Optioned Property is not consummated, for any reason including, but not limited to, Buyer's election not to exercise its Option herein, both parties agree to take any and all action required to cause IDWR to rescind or reverse the transfer of the Water Rights to the end that the Water Rights are returned to, and become an appurtenance to Seller's real property (the "**Transfer Unwind**"). In the event IDWR is unwilling to approve the Transfer Unwind, or otherwise takes the position that the Water Right has become appurtenant to any real property other than the Seller's real property subject of this Agreement, Buyer shall be deemed to have exercised his Option and shall be required to proceed to a Closing, which Closing shall occur no later than one hundred eighty (180) days following any writing, action, or position taken by IDWR denying the Transfer Unwind. At such Closing, Seller shall be entitled to receive from Buyer the balance of the Purchase Price, after crediting any Option Money paid. Buyer and Seller agree that the loss of the Water Rights appurtenant to the property will cause damage in the nature of changing the characteristic of the property, its use and will result in lost profits and income from irrigated farming. Buyer and Seller further agree that the Water Rights are an integral part of the Optioned Property and that the value of the real property without the restoration of the Water Rights would be substantially diminished. Accordingly, Buyer's rights herein to not exercise its Option, or to otherwise terminate the Agreement for any reason other than the Seller's default, shall be waived in the event IDWR is unwilling to effect the Transfer Unwind.

(e) **Termination.** In the event (a) IDWR or a reviewing court finally denies the Application, (b) IDWR or a reviewing court fails to finally approve the Application on or before the term of the Option (unless the Buyer elects to proceed to Closing nonetheless), (c) IDWR or a reviewing court finally approves the Application subject to terms, conditions, or limitations unacceptable to the Buyer, or (d) the Buyer elects to withdraw the Application, this Option shall terminate. In the event the Buyer determines that terms of approval of the Application are unacceptable, the Buyer shall so notify the Seller no later than ten (10) days following the approval becoming final; otherwise the Buyer shall be deemed to have found the terms of approval acceptable. In the event the Buyer withdraws its Application, it shall so notify the Seller within ten (10) days thereof. In the event of termination for any of the reasons listed in this section, (1) the Buyer and Seller shall take all reasonably necessary action to effect the Transfer Unwind and return the Seller to its prior position with respect to the Water Rights, and (2) the Closing Agent shall terminate the escrow and remit to the Seller all documents and instruments in its possession including the Change in Ownership Document. In the event of any such termination, the Seller shall retain the Option Money and all right, title and interest in the Option Property and the Water Right as its sole consideration for Buyer's election to not exercise the Option and/or to withdraw his Application, unless the Seller is in breach of the representations and warranties as set forth in Section 8. In the event the Seller is in breach of the representations and warranties as set forth in Section 8, the Seller shall return the Option Money to Buyer within thirty (30) days of Buyer's written notice to Seller of Seller's breach unless Seller can and does cure said breach within the thirty (30) day period following the written notice, which payment shall constitute Buyer's sole remedy and damages for the breach. If the Seller is obligated to return the Option Money to Buyer and fails to timely do so, Buyer shall be entitled to all legal and equitable remedies for such breach.

6. **Due Diligence.** No later than ten (10) days after the execution of this Agreement, the Seller shall provide the Buyer with any and all documentation reasonably available demonstrating consumptive use of Water Rights, including, without limitation, crop records from any federal, state or county agency, other crop yield records maintained by the original owners, electrical power records and the like. The Buyer shall have fifteen (15) days from Buyer's receipt of such documentation to conduct an investigation and examination of the historical consumptive use of the Water Rights (the "**Due Diligence Period**"). On or before the expiration of the Due Diligence Period, Buyer shall deliver to the Seller, with a copy to the Closing Agent either a notice stating that Buyer is satisfied with its due diligence and is waiving any further due diligence (the "**Due Diligence Notice**"); or a notice electing to terminate this Agreement ("**Termination Notice**"). In the event the Due Diligence Notice is not received by the Seller during the Due Diligence Period, this Option shall be terminated.

7. **Option Money Disbursement.** The Buyer shall, upon the execution of this Agreement, deposit the Initial Option Money with Guaranty Title Company, 206 S. 3rd E., Mountain Home, Idaho 83647, telephone: 208-587-9091 ("**Closing Agent**"). The Closing Agent is hereby instructed to return the Initial Option Money to the Buyer upon the earlier of the receipt of the Termination Notice or the expiration of the Due Diligence Period without receipt of either

Termination Notice or the Due Diligence Notice. If the Buyer is not entitled to the return of the Initial Option Money, the Closing Agent is instructed to disburse the Initial Option Money to the Seller upon Closing Agent's receipt of the (i) the Due Diligence Notice, and (ii) the Consent. If Buyer elects to extend the Expiration Date in accordance with Section 2 of this Agreement, Buyer's payment of any additional Option Money shall be made directly to the Seller, with a copy thereof to the Closing Agent.

8. Seller's Warranties. As a material inducement to Buyer to enter into this Agreement, Seller represents and warrants to Buyer the following: that there is no agreement known to Seller that Seller is a party to, that is in conflict with this Agreement; that there is no action or proceeding pending, to Seller's knowledge, against or relating to the Optioned Property or which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement. The Seller represents and warrants to the Buyer that, to the best of Seller's knowledge, the Water Rights have been beneficially used to irrigate crops on the 320 acres of the Optioned Property to which it is appurtenant, on an annual basis from the date IDWR issued the Water Right License through the Closing; and have not been forfeited in whole or in part (the "Non-Forfeiture Warranty").. The Seller makes no representation or warranty that IDWR will approve the transfer or as to the quantification of the transferable consumptive use or diversion rate of the Water Rights upon transfer; or what conditions or limitations (including mitigation requirements) may be imposed by IDWR or a reviewing court on the Water Right Transfer. Seller's representations and warranties set forth above shall be remade as of the Closing. At Buyer's option, Buyer may elect to waive any breach of representation or warranty and proceed to Closing.

9. Purchase Price. The purchase price for the Optioned Property shall be the sum of [REDACTED]. In the event the Buyer timely exercises its Option in accordance with Section 3 and timely schedules a Closing in accordance with Section 11 below, the Buyer shall pay the remaining balance of the purchase price after crediting all Option Money previously paid.

(a) Retention of Irrigation Equipment. It is expressly agreed between Buyer and Seller that the irrigation equipment on the Optioned Property is not included in the purchase and sale or the Option. Seller will retain all irrigation equipment, regardless of its potential status as a fixture(s), and may remove the same from the Optioned Property at any time without notice to Buyer. The irrigation equipment consists of not less than two (2) 8-tower Zimmatic circular pivots together with the pumps, panels and attachments, as more particularly described in Exhibit "D", attached hereto and incorporated by this reference.

10. Title Insurance. At the Closing, Seller, at Seller's expense, shall furnish to Buyer a standard ALTA Owner's Policy of Title Insurance (the "Policy") in the amount of the purchase price insuring that fee title to the Optioned Property is vested in Buyer. The Policy shall be issued by Guaranty Title Company of Mountain Home (the "Title Company"). The Policy shall be subject to only (i) the standard printed form exceptions contained in the form of title insurance normally issued by the Title Company, (ii) taxes and assessments for the current year and all subsequent years, and

(iii) those other exceptions accepted by Buyer in writing (the "Permitted Exceptions"). Within ten (10) days of the execution of this Option, Seller shall, at Seller's expense, order a commitment for title insurance covering the Optioned Property and issued by the Title Company, together with legible and complete copies of all documents referenced as title exceptions in the title insurance commitment (the "Commitment"). Buyer shall have fifteen (15) business days from receipt of the Commitment or from receipt at any time prior to Closing of a revised Commitment, to notify Seller in writing of its objections to any matters shown on the Commitment or a revised Commitment. Seller shall have a period of thirty (30) days from the date of Buyer's written notice of objections to either remove the objections, or if the objected to exceptions are monetary liens that can be satisfied at Closing, to indicate in writing that Seller shall pay such monetary liens prior to Closing. If Seller does not cure all of Buyer's objections or otherwise agrees to do so within Seller's cure period, Buyer may (i) terminate this Agreement by notice to Seller in which event all Option Money shall be promptly refunded to the Buyer and the parties thereafter shall have no further rights, liabilities or obligations under this Agreement; or (ii) waive its objections to the Commitment and accept Seller's title as shown on the Commitment or the revised Commitment.

11. Closing. Upon Buyer's timely exercise of its Option granted herein, Buyer shall schedule a closing ("Closing") with the Closing Agent no more than twenty (20) days following the Expiration Date. At such Closing the Buyer shall pay to the Seller the balance of the Purchase Price provided Seller can convey marketable title to the Optioned Property by executing a Warranty Deed in the form attached here as **Exhibit B** and convey marketable title to the Water Rights by executing a Special Warranty Deed for Water Rights in the form attached hereto as **Exhibit C**. The actual Closing shall be selected by Buyer in its Closing notice, a copy of which notice the Buyer shall provide to the Closing Agent. The Closing shall take place at the offices of the Closing Agent in Mountain Home, Idaho. The parties shall equally share the fees of the Closing Agent. All other Closing costs shall be paid by the parties according to other terms of this Agreement.

At Closing, the Closing Agent shall undertake the following duties:

(a) Cause all documents and instruments contemplated by this Agreement, or otherwise required by law, or as required by joint instruction letters from the parties, or those reasonably required by the Closing Agent, to be duly executed and where necessary for recording, to be duly acknowledged.

(b) Cause the Warranty Deed and the Special Warranty Deed for the Water Rights to be duly recorded, and to deliver the recorded Warranty Deed and the Special Warranty Deed for Water Rights along with the Change in Ownership Document to Buyer.

(c) Make the proper pro-rations of the real estate taxes and assessments affecting the Optioned Property to the Closing.

(d) Prepare Closing statements for delivery to each of the parties to account for the Closing Agent's receipt and disbursement of Closing monies.

(e) Undertake all other duties as jointly instructed by the parties.

(f) Issue Buyer the Title Policy as detailed in **Section 10**.

12. **Seller's Use of the Property.** Pending the exercise of the Option and the conclusion of the real estate purchase and sale, Seller shall be permitted to continue to use the Optioned Property and the water rights.

13. **Default and Remedies.**

(a) **Default by Buyer.** If Buyer should default in the performance of any of the terms and conditions of this Agreement, or if Buyer fails to consummate the Closing of the transaction contemplated herein for any reason other than default by Seller, Seller's sole remedy shall be retention of the Option Money then paid by Buyer as liquidated damages, Seller's retention of all right, title and interest in the Optioned Property, including the Water Rights, and termination of this Agreement, in which case this Agreement shall be canceled, terminated and of no further legally or equitably binding force or effect and neither party shall have any further obligation to the other except as expressly set forth in this Agreement; provided however such limitation of Seller's remedy shall not apply under the circumstances of the Exception described in **Section 5 (d)** above, in which case Buyer's failure to consummate the Closing shall constitute a breach of Buyer's obligation to purchase the property under the Exception, and Seller shall be entitled to any and all remedies at law, including without limitation a suit seeking recovery of damages or a suit seeking specific performance of the purchase and sale of the Optioned Property contemplated by this Agreement. The parties acknowledge that: (i) it would be impracticable to fix the actual damages suffered by Seller as a result of such default; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Seller for such default and in satisfaction of any other claims or damages under law or in equity arising out of such default, and Seller hereby specifically waives and releases Buyer from any remedy or claim of specific performance against Buyer. No delay or omission in the exercise of any right or remedy accruing to Seller upon the breach by Buyer under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring.

(b) **Default by Seller.** If Seller should default in the performance of any of the terms and conditions of this Agreement, or if Seller fails to consummate the Closing of the transaction contemplated herein for any reason other than default by Buyer, Buyer may elect one of the following as its sole remedy: (i) rescission of this Agreement and refund by Seller of all Option Money then paid to the Buyer as liquidated damages, in which case the parties acknowledge that it would be impracticable to fix the actual damages suffered by Buyer as a result of such default, and that the amount of the liquidated damages represents a fair and reasonable compensation to Buyer for such default and in satisfaction of any other claims or damages under law or in equity arising out of such default; or (ii) pursue a suit for specific performance, damages, and an award for all costs incurred in enforcing such specific performance, together with all other rights and remedies available to Buyer under law or in equity. No delay or omission in the exercise of any right or remedy accruing to Buyer upon the breach by Seller under this Agreement shall impair such right or remedy

or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Buyer of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

14. Brokerage.

(a) No Brokers. Each of the parties represents and warrants to the other that it has not engaged the services of any broker and has not incurred and will not incur any liability for finder's or brokerage fees or commissions in connection with this Agreement other than Buyer's agreement to pay real estate broker, Daryl Rhead, a real estate commission equal to two percent (2%) of the purchase price at the Closing. It is agreed that if any claims for finder's or brokerage fees or commissions are ever made against Seller or Buyer in connection with this transaction, all such claims shall be handled and paid by the party whose actions or alleged commitments form the basis of such claim (the "Committing Party"). The Committing Party further agrees to indemnify and hold the other harmless from and against any and all claims or demands with respect to any finder's or brokerage fees or commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transaction contemplated hereby. This representation shall survive the Closing indefinitely.

15. Notices. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, three (3) days after deposit in the U. S. Mail, postage prepaid, certified mail, return receipt requested, or one (1) day after deposit with a nationally recognized air carrier providing next day delivery, or if sent via facsimile transmission, when received as determined by the written facsimile transmission report generated by the sending party's facsimile machine confirming successful delivery, addressed as follows:

If to Seller:

Lance D. Funk and Lisa I. Funk
PO Box 310
American Falls, Idaho 83211
(208) 226-5553 (facsimile)

If to Buyer:

Marty Goldsmith
4487 N. Dresden Pl., Ste. 102
Boise, Idaho 83714
(208) 376-2041 (facsimile)

Either party may change its address for notice purposes by delivering written notice to the other party, pursuant to the terms set forth in this Section 15.

16. Memorandum of Option. Upon the execution of this Agreement, Buyer shall be entitled to record a Memorandum of Option reciting that the Optioned Property is subject to this Agreement; provided however, buyer shall release any and all affect of the Memorandum when the Option is terminated in accordance with this Agreement.

Real Estate Option Agreement - 8

Final Funk Contract.082007.DOC

17. Miscellaneous.

(a) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, personal representatives, successors and assigns. Buyer may assign its interest in and to this Agreement to an entity related to or affiliated with Buyer, or to a third party, without Seller's prior consent.

(b) **Business Days.** Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

(c) **Counterparts.** This Agreement may be executed via facsimile (original to be promptly delivered by U. S. Mail or overnight carrier) in counterparts, each of which shall constitute an original, but all together shall constitute one and the same agreement.

(d) **Survival.** The terms, provisions, and covenants (to the extent applicable) and indemnities shall survive Closing and delivery of the deeds, and this Agreement shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

(e) **Entire Agreement.** This Agreement embodies the entire contract between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, whether written or oral, between the parties. No extension, change, modification or amendment to or of this Agreement of any kind whatsoever shall be made or claimed by Seller or Buyer, and no notice of any extension, change, modification or amendment made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall be endorsed in writing and be signed by the party against which the enforcement of such extension, change, modification or amendment is sought, and then only to the extent set forth in such instrument. Nothing herein is intended, nor shall it be construed, as obligating either party to agree to any modification if this Agreement.

(f) **Representation by Counsel.** All parties hereto have either: (i) been represented by separate legal counsel; or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a party, regardless of which party prepared or caused the preparation of this Agreement.

(g) **Captions.** The captions at the beginning of the several paragraphs, respectively, are for convenience in locating the context, but are not part of the text.

(h) **Severability.** In the event any term or provisions of this Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

(i) **Governing Law.** This Agreement shall be governed by the laws of the State of Idaho.

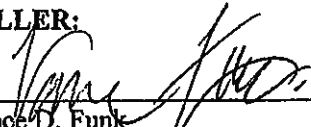
(j) **Attorneys' Fees.** If either party shall default in the full and timely performance of this Agreement and said default is cured with the assistance of an attorney for the other party and before the commencement of a suit thereon, as a part of curing said default, the reasonable attorneys' fees incurred by the other party shall be reimbursed to the other party upon demand. In the event that either party to this Agreement shall file suit or action at law or equity to interpret or enforce this Agreement, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party, including the same with respect to an appeal.

(k) **Time of Essence.** All times provided for in this Agreement or in any other instrument or document referred to herein or contemplated hereby, for the performance of any act will be strictly construed, it being agreed that time is of the essence of this Agreement.

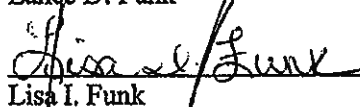
(l) **Recitals and Exhibits.** The recitals and exhibits attached to this Agreement are incorporated into this Agreement as if set forth in full herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

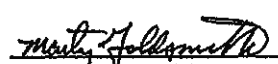


Lance D. Funk



Lisa I. Funk

BUYER:



Marty Goldsmith

List of Exhibits:

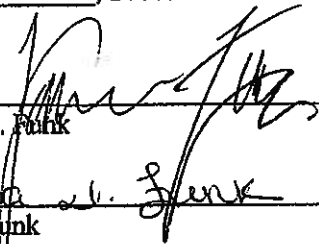
Exhibit A: Form Consent
Exhibit B: Warranty Deed
Exhibit C: Special Warranty Deed for Water Rights
Exhibit D: Irrigation Equipment

EXHIBIT A

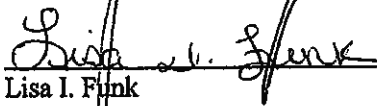
FORM CONSENT

The undersigned, Lance D. Funk and Lisa I. Funk, as the owners of Water Right No. 61-7208 and Water Right No. 61-7312, that are appurtenant to the North Half of Section 36, Township 4 South, Range 5 East, Boise Meridian, Elmore County, Idaho (the "Water Rights"), has granted to Marty Goldsmith the option to purchase said Water Rights, a copy of which option, with the purchase price redacted, is attached hereto, and pursuant to the option and this Consent, the undersigned, Lance D. Funk and Lisa I. Funk, hereby authorize Marty Goldsmith, and his agents, to file with the Idaho Department of Water Resources and Application for Transfer of Water Right and to process and prosecute said application to the fullest extent permitted by law as the undersigned owner be permitted to do so.

Dated this 24TH day of AUGUST, 2007.



Lance D. Funk



Lisa I. Funk

WARRANTY DEED

Notary Public for Idaho
Residing at IDAHO FALLS, Idaho
Commission expires: 10-29-2011

EXHIBIT C
FORM OF WATER RIGHTS DEED

Note:

This form of deed should not be executed at the time of the Agreement is executed. Instead, a deed should be drafted based on this form and executed at the Closing, pursuant to paragraph 11 of the Agreement.

When Recorded Return To:

Marty Goldsmith
4487 N. Dresden Pl., Ste. 102
Boise, Idaho 83714

SPECIAL WARRANTY DEED FOR WATER RIGHTS

Lance D. Funk and Lisa I. Funk, husband and wife, whose address is: _____
_____ (collectively "Grantor"), does hereby grant, bargain, sell, assign
and convey unto Marty Goldsmith, whose address is 4487 N. Dresden Pl., Ste. 102, Boise, Idaho
83714 ("Grantee"), and to Grantee's heirs, successors and assigns forever, Water Right No. 61-7208
and Water Right No. 61-7312 that is appurtenant to the North Half of Section 36, Township 4 South,
Range 5 East, Boise Meridian, Elmore County, Idaho ("Water Rights").

Grantor assigns to Seller any other interest it may have in the Water Rights including any
claim, permit, or license evidencing, claiming, or representing such Water Rights.

Grantor retains no residual or reversionary interest in any of the Water Rights.

Grantor hereby covenants and warrants to Grantee as follows:

- (A) That Grantor is the owner in fee simple of the Water Rights;
- (B) That Grantor has not conveyed any of the Water Rights to anyone other than the
Grantee;
- (C) That each of the Water Rights is free from all liens, claims, or encumbrances;
- (D) That Grantor has the authority to convey the Water Rights to Grantee;

(E) The Grantor has disclosed to Grantee in good faith all relevant information known to Grantor bearing on the validity and extent of the Water Rights.

Grantor makes no other covenants or warranties as to the Water Rights.

IN WITNESS WHEREOF, the Grantor has caused their names to be hereunto subscribed on the date shown by each name.

~~\This is a form document, do not sign\~~

Lance D. Funk

\This is a form document, do not sign\

Lisa I. Funk
Lisa I. Funk

STATE OF IDAHO,)
) ss.
County of Ada, Power)

On this 24th day of August, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Lance D. Funk and Lisa I. Funk, known and identified 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.

Rev. D. Waller

Notary Public for Idaho
Residing at IDAHO FALLS, Idaho
Commission expires: 10-29-2011

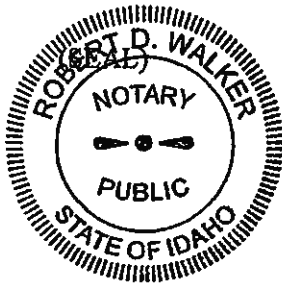


EXHIBIT D
IRRIGATION EQUIPMENT



IDAHO SECRETARY OF STATE

Viewing Business Entity

Ben Ysursa, Secretary of State

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MAYFIELD TOWNSITE, LLC

4487 N DRESDEN PL STE 102
BOISE, ID 83714

Type of Business: LIMITED LIABILITY COMPANY

Status: EXISTING 09 Jul 2007

State of Origin: IDAHO

Date of 09 Jul 2007

Origination/Authorization:

Current Registered Agent: BRIAN F MCCOLL
420 W WASHINGTON ST
BOISE, ID 83702

File Number: W64501

Date of Last Annual Report:

Amendments:

Amendment filed 09 Jul 2007 ARTICLES OF
ORGANIZATION

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[View Image \(TIFF
format\)](#)

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[State of Idaho Home Page](#)

Comments, questions or suggestions can be emailed to: sosinfo@sos.idaho.gov