

208 852 2683

STEVEN R FULLER

CANAL LEASE

This Lease Agreement made and entered into this 26th day of September, 1996, between PRESTON WHITNEY IRRIGATION COMPANY, an Idaho Corporation, (hereinafter LESSOR), and CUB RIVER IRRIGATION COMPANY, an Idaho Corporation, (hereinafter LESSEE).

WHEREAS, the LESSEE is in need of a method of conveying irrigation water to some of its shareholders, which shareholders can be serviced by an existing canal or ditch (hereinafter "Middle Ditch") owned by LESSOR; and

WHEREAS, the number of shareholders of LESSOR using the Middle Ditch are insufficient to make efficient use of its capacity; and

WHEREAS, the cost of maintenance of the Middle Ditch by the LESSOR could be borne by the LESSEE.

NOW, THEREFORE, for and in exchange of the mutual covenants, promises and conditions set forth herein, the parties hereto agree as follows:

1. LEASED PREMISES. LESSOR agrees to lease to LESSEE the diversion works and that portion of the canal known as the Middle Ditch, from the diversion works on Cub River to a point located in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5, Township 16 South, Range 40 East of the Boise Meridian, more particularly described and marked in green on the map attached hereto and incorporated herein by reference as Exhibit "A".

2. TERM. The term of this lease shall be without time limitation unless terminated by mutual agreement of the parties or by breach of any of the covenants contained herein.

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3. CONSIDERATION. LESSEE agrees as consideration for the lease of the diversion works and Middle Ditch to do all maintenance and repairs to said the diversion works and the Middle Ditch in order to maintain the free flow of water in a reasonable and efficient fashion. Further, the LESSEE agrees to convey water to the stockholders of LESSOR who currently use said Middle Ditch in the amounts and in the manner prescribed by LESSOR. LESSEE shall provide the services of LESSEE'S water master to regulate and provide said irrigation water to the LESSOR'S stockholders using the Middle Ditch.

4. EMERGENCY USE BY LESSOR. Should an emergency arise, including but not limited to a canal rupture or an inability to deliver water from LaMont Reservoir to the LESSOR'S stockholders currently using water from the LaMont Reservoir, which circumstances are outside the control of LESSOR, the LESSOR may declare such condition an emergency and shall have the right to the use of the Middle Ditch up to whatever amount is needed in order to convey water to LESSOR'S stockholders who have been deprived of their irrigation water by such emergency until such emergency no longer exists.

5. RIGHT OF ACCESS. LESSEE shall have those same rights of access and use of easements (whether created by use or conveyance) to the Middle Ditch which LESSOR enjoys, in order to regulate water usage, make repairs, maintenance and whatever other tasks necessary to keep the irrigation system of the Middle Ditch operating properly.

6. DECREED WATER RIGHTS. It is understood between the parties that there exists certain users of the Middle Ditch who have decreed water rights but whom are not stockholders of either LESSOR or LESSEE. The LESSEE agrees not to interfere with their continued use of the Middle Ditch for their decreed water rights

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and shall assist in servicing said users of the Middle Ditch in the same fashion as the LESSOR has done in the past.

7. CLEANING AND ENLARGEMENT. Should the Middle Ditch or the diversion works require repair, cleaning out or enlargement, in order to efficiently and properly convey irrigation water, LESSEE shall be responsible for the costs and expense of such projects.

8. INDEMNITY. LESSEE agrees to indemnify and hold harmless the LESSOR from any accidents, damages, claims or other liability which may arise from the LESSEE'S use and maintenance of the Middle Ditch and diversion works.

9. DEFAULT. Should LESSEE breach any of the terms of this agreement, LESSOR may declare the LESSEE to be in default and LESSOR shall give LESSEE written notice of term of this lease which has been breached by LESSEE and LESSEE shall have sixty (60) days from the date said notice is received to correct said default or breach and if such correction is made, the lease shall continue. In the event a default or breach is declared and notice is given but no correction is made by LESSEE within sixty (60) days from the receipt of said notice by LESSEE, LESSOR may declare this lease to be forfeited and retake possession of the property leased hereunder together with any improvements and additions made by LESSEE to the leased premises.

10. ATTORNEYS FEES. Should either party be required to engage the services of an attorney in order to enforce the provisions of this lease, with or without suit, in bankruptcy or appellate courts, the prevailing party shall be entitled to a reasonable attorneys fee for having to enforce the terms of this agreement.

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11. MISCELLANEOUS.

(a) The LESSEE may not sublet the leased premises or any part thereof, without the express written consent of LESSOR.

(b) This agreement shall be binding upon the successors and assigns of each of the parties hereto.

(c) Each of the parties represent that each of their respective Board of Directors have passed the necessary approvals, resolutions or other agreements to authorize the execution of this agreement by their representatives who have affixed their signatures hereto.

DATED this 26th day of September, 1996.

PRESTON WHITNEY IRRIGATION COMPANY

By: R. Carl Swannick

President

By: Martine Stoddards

Secretary

CUB RIVER IRRIGATION COMPANY

By: Edie C. Maer

President

By: May M. Gilbert

Secretary

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JUN R FULLER

STATE OF IDAHO)

County of Franklin)

On this 26th day of September, 1996, before me, a Notary Public in and for said State, personally appeared R. Carl Suzainston and Maxine Waddoups known or identified to me to be the President and Secretary of the PRESTON WHITNEY IRRIGATION COMPANY that executed the instrument or the persons who executed the instrument on behalf of said PRESTON WHITNEY IRRIGATION COMPANY, and acknowledged to me that such PRESTON WHITNEY IRRIGATION COMPANY executed the same.

Steven R. Fuller
 NOTARY PUBLIC for State of Idaho
 Residing at: Preston, ID
 Comm. Expires: 2/19/99

STATE OF IDAHO)

County of Franklin)

On this 26th day of September, 1996, before me, a Notary Public in and for said State, personally appeared R. Carl Suzainston and Max M. Gilbert, known or identified to me to be the President and Secretary of the CUB RIVER IRRIGATION COMPANY that executed the instrument or the persons who executed the instrument on behalf of said CUB RIVER IRRIGATION COMPANY, and acknowledged to me that such CUB RIVER IRRIGATION COMPANY executed the same.

Steven R. Fuller
 NOTARY PUBLIC for State of Idaho
 Residing at: Preston, ID
 Comm. Expires: 2/19/99

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upper ditch
dropping into
lower ditch





