

**AGREEMENT BETWEEN
 THE UNITED STATES OF AMERICA
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 AND HAYDEN LAKE IRRIGATION DISTRICT
 TO TRANSFER TITLE TO FEDERALLY OWNED PROJECT FACILITIES,
 INTERESTS, AND LANDS ASSOCIATED WITH THE WATER CONVEYANCE
 SYSTEM WITHIN THE HAYDEN LAKE UNIT OF THE
 RATHDRUM PRAIRIE PROJECT**

TABLE OF CONTENTS

1. Preamble	2
2. Recitals	2
3. Scope of Contract	3
4. Definitions	3
5. Determinations	4
6. Commitments of the Parties	6
7. Compliance with Federal Laws	10
8. Congressional Notice of Title Transfer	11
9. Notices	12
10. Signatures	13
EXHIBIT A – Project Facilities to be Transferred (Project Maps)	
EXHIBIT B – Fee Title Land Descriptions to be Transferred (Kootenai Co, ID)	
EXHIBIT C – Additional Land Interests to be Transferred (includes project areas as shown on the Distribution System Plan Sheets)	
EXHIBIT D – Categorical Exclusion and Board of Director’s Affirmation	
EXHIBIT E – Valuation Memorandum	
EXHIBIT F – Board of Director's Resolution – Approval of Title Transfer Package	
EXHIBIT G – Conveyance Document – Quitclaim Deed (Kootenai County, ID)	
EXHIBIT H – Notice to Congress	

1. PREAMBLE

THIS AGREEMENT is made this _____ day of _____, 20____, pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019, (Pub. Law. 116-9, Title VIII, Subtitle A; 133 Stat. 804; 43 U.S.C. 2902, et seq.) (hereinafter referred to as “Dingell Act”); Act of June 17, 1902 (Ch. 1093, 32 Stat. 388)) and acts supplementary thereto or amendatory thereof (hereinafter referred to as the “Federal Reclamation Laws”) between the UNITED STATES OF AMERICA (hereinafter referred to as the “United States”), acting through the Department of the Interior Bureau of Reclamation (hereinafter referred to as “Reclamation”) and the Hayden Lake Irrigation District (hereinafter referred to as the “District”), organized and existing under the laws of the State of Idaho, with its principal place of business and office in Hayden Lake, Idaho.

2. RECITALS

- a. The Dingell Act provides for the transfer of title to eligible Reclamation project facilities to qualifying entities on the completion of repayment of capital costs without further authorization from Congress; and
- b. The Rathdrum Prairie Project (hereinafter referred to as “Project”) was authorized under the Reclamation Project Act of 1939; the Interior Department Appropriation Act 1948 (61 Stat. 473); First Deficiency Appropriation Act of May 10, 1948 (62 Stat. 221); and Public Works Appropriation Act of July 2, 1956 (Public Law 641; 70 Stat. 474); and for Hayden Lake Unit (hereinafter referred to as “Unit”), the finding of feasibility and authorization was made by the Secretary of the Interior on June 9, 1947, under the provisions of the Reclamation Project Act of August 4 1939.H; and
- c. When the United States constructed the Unit, the United States acquired lands, rights-of-way, and easements under the Federal Reclamation Laws, Revised Code of Idaho, and the Act of August 30, 1890 (hereinafter referred to as the “Canal Act”); and
- d. The District is a recognized irrigation district organized under the laws of the State of Idaho, and responsible for the delivery of irrigation water to approximately 1,050 acres of irrigable land within the Unit; and
- e. In accordance with the authorizing legislation for both the Project and Unit, the District and the United States entered into Contract No. 11r-1527, executed February 16, 1949; Contract No. 14-06-100-1182, executed April 20, 1957; and Contract No. 14-06-100-2395, executed March 19, 1962; and
- f. In addition to repayment matters, Contract No. 11r-1527 and Contract No. 14-06-100-1182 provided for the transfer of operation and maintenance responsibility of the Project Facilities to the District; and

- g. The District passed Resolution 19-15 on November 5, 2019 to begin transfer of title to the Project Facilities associated with the water distribution system for the Division; and
- h. The District and the United States executed Memorandum of Agreement (hereinafter referred to as “MOA”) R20MA13714, on October 21, 2021, defining the roles and responsibilities related to accomplishing title transfer of the Unit; and
- i. The District and the United States executed Agreement for the Contribution of Funds (hereinafter referred to as “CFA”) R21MR13724, on October 21, 2021. This agreement is for the District to provide the funding for title transfer actions described in the MOA; and
- j. The District passed Resolution _____ on _____ to verify and approve for submission to the Commissioner of Reclamation and to Congress the draft final title transfer agreement package which includes the Title Transfer Agreement, Transfer Eligibility Report, and quitclaim deeds (see attached Exhibit F).

NOW THEREFORE, it is hereby mutually agreed as follows:

3. SCOPE OF CONTRACT

- a. This contract is supplemental to the contracts between the District and the United States dated February 16, 1949, Contract No. I1r-1527; April 20, 1957, Contract No. 14-06-100-1182; and March 19, 1962, Contract No. 14-06-100-2395, the provisions of which shall continue in full force and effect until the transfer of title of the Project Facilities.
- b. Upon conveyance of title to the Project Facilities, Contract No. I1r-1527, Contract No. 14-06-100-1182, and Contract No. 14-06-100-2395 are terminated and this contract shall supersede.

4. DEFINITIONS

Unless otherwise noted, the definitions set forth in the Dingell Act at 43 USC § 2902 and the following definitions apply to this Agreement:

- a. “Agreement” means this agreement between the United States and the District.
- b. “Division” means the Hayden Lake Division, located in Kootenai county.
- c. “Parties” means both the United States, acting by and through Reclamation, and the District.
- d. “Project” means the Rathdrum Prairie Project, located in the State of Idaho.
- e. “Project Facilities to be Transferred,” “Project Facilities,” or “Facilities” shall mean

the eligible facilities that are operated and maintained by the District and that were constructed by the United States for the pumping and water conveyance system for the Division, along with certain lands and interests in land, as identified in Exhibit A.

5. DETERMINATIONS

- a. Determinations Required. The Dingell Act requires that the United States, acting through Reclamation, make certain findings and determinations regarding the eligibility of the facilities to be transferred and the qualifications of the District. These findings and determinations are set forth below or otherwise contained in this Agreement.
- b. The District is a Qualifying Entity Under 43 U.S.C. § 2902(5). The District is a lawfully organized political subdivision of the State of Idaho and the current operator of the Project Facilities for the water conveyance system for the Division. The District was created under Idaho Administrative Procedures Act (IDAPA) Title 42-604. The District remains organized in this fashion and operates pursuant to equitable rules and regulations adopted for the distribution of water pursuant to the provisions of IDAPA Title 42. The District is the current operator and has been since 1922, and is responsible for the operation, maintenance, and care of the Project Facilities for the water distribution system for the Division pursuant to Contract 14-06-100-1182 dated April 20, 1957. The District has technical and financial capacity to, and intends to, continue to operate, maintain, and care for the Project Facilities to be Transferred for the same purposes for which the property has been managed under the reclamation laws in conjunction with the water distribution system for the Division.
- c. The Project Facilities to be Transferred are Eligible Facilities Under 43 U.S.C. § 2902(2), (3) and 2903. Reclamation has screened the Project Facilities to be Transferred by an examination in the field and a review of the records of Reclamation and the District, as well as by the historic and current uses, and determined that they are eligible for transfer pursuant to the Pub. L. 116-9. A reservation will be included in the conveyance instruments for public access to be recognized by the District for those identified parcels that are contiguous and provide access to other federal lands. The eligibility requirements for the facilities to be included in a title transfer set forth in the Dingell Act and agency policy are met and reflected as determinations or conditions of this Agreement.
- d. Repayment Obligations. The District has fully repaid its construction cost obligations under Contract No. 11r-1527, Contract No. 14-06-100-1182, and Contract No. 14-06-100-2395. The Bonneville Power Administration has paid off the irrigation assistance required for the Hayden Lake Unit associated with construction work pursuant to Contract No. 14-06-100-2395.
- e. Consultation. This Agreement has been developed in consultation with any existing water and power customers affected by the conveyance of the eligible facility in

- accordance with 43 U.S.C. § 2903(a)(2). The only existing water and power customers affected by the conveyance of the eligible facility are the Project beneficiaries who directly benefit from the Project, and are represented by the elected Hayden Lake Irrigation District Board of Directors who are in support of this transfer as reflected by their 23-01 Resolution dated December 7, 2022.
- f. No Unmitigated Environmental Effect. The environmental review process described below in Section 6 this Agreement confirms there is no unmitigated environmental effect associated with this transfer.
 - g. Trust Responsibilities. This transfer of title does not affect Reclamation trust responsibilities for any federally recognized Indian Tribes. The Division and District are located within the area covered within the traditional and treaty lands of the Confederated Tribes of the Colville Reservation, the Spokane Indian Tribe, the Coeur d'Alene Tribe, the Kalispel Tribe of Indians, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and the Nez Perce Tribe (collectively "Tribes"). Reclamation sent letters to begin early communication with the Tribes about the proposed title transfer process. Reclamation staff collaborated with Tribal staff regarding the Project Facilities to be Transferred to the District and the associated process. The Tribes have not communicated any concerns or disagreements with the transfer of title.
 - h. Financial Interest of the United States The transfer of title is in the financial interest of the United States. Upon review of the Economic Technical Memorandum and associated documentation, Reclamation concludes the transfer is in the financial interest of the United States. In reaching this conclusion, Reclamation considered whether the consideration to be paid to the government plus any additional benefits to the United States equals or exceeds the value of outstanding repayment obligations and revenue streams to the United States. The Economic Technical Memorandum demonstrates the compensation of \$0.00 is equivalent to the net present value of any repayment obligation, including aid to irrigation, to the United States or other income stream that the United States derives from the Project Facilities to be Transferred, as of the date of the transfer. Furthermore, Reclamation anticipates that the United States will receive certain unquantified benefits from the transfer in the form of avoided administrative and oversight costs, reduced federal liability arising from ownership of the Project Facilities to be Transferred, and fulfillment of the self-governance objectives of the Reclamation programs.
 - i. Treaty Compliance. This transfer of title complies with any applicable international and Tribal treaties and agreements and interstate compacts and agreements. Reclamation, in working with the District, beneficiaries, and stakeholders to assess potential adverse impacts to the interests of beneficiaries and stakeholder, have determined no adverse impacts throughout the process and this report.
 - j. Public Interest Protected. This transfer of title protects the public aspects of the

Project Facilities to be Transferred. Reclamation staff have worked with the District, beneficiaries, and stakeholders to assess potential adverse impacts to the interests of beneficiaries and stakeholders. No adverse impacts have been determined as documented throughout the process.

- k. No Adverse Impact on Water Delivery. This transfer of title will not result in an adverse impact on fulfillment of existing water delivery obligations, consistent with historical operations and applicable contracts. The District will continue to fulfill existing water delivery obligations.
- l. ESA Compliance for Dam and Diversion Works. No dam or diversion works are included in the Project Facilities to be Transferred through this action. Therefore, no determination on this point is required for this transfer. Endangered Species Act (ESA) compliance for this transfer is discussed in Section 6.b. below.
- m. Power Uses Not Affected. The transfer will not adversely impact applicable federal power rates, repayment obligations, or other Project power uses.

6. COMMITMENTS OF THE PARTIES

- a. The District shall:
 - i. Acceptance of Title. The District shall accept title to Project Facilities to be Transferred “as is” without warranty.
 - ii. Operation of Transferred Facilities. The District shall manage and use the Project Facilities to be Transferred for substantially the same purposes for which they are being used at the time of this Agreement. The commitment was affirmed on February 1, 2022, when the District Board passed Official Resolution No. 22-02, whereby the District Board resolved to continue to operate and maintain the Project Facilities to be Transferred consistent with current and historical use. The District shall be solely responsible for the care, operation, and maintenance of all the Project Facilities without cost or expense to the United States.
 - iii. Consideration for Title. As detailed in Exhibit E the total compensation to be paid by the District for title transfer is \$ 0.00.
 - iv. Cultural Resource Compliance. The NHPA requirements have been satisfied.
 - v. District Resolution. In a resolution passed February 1, 2022, the District verified and affirmed its commitment to the title transfer, and its eligibility as a qualifying non-federal entity, including the applicability of the Categorical Exclusion (CE) Qualification Factors discussed below and herein as identified in Exhibit D. Specifically, the District affirmed:

1. District must demonstrate the technical capability to maintain and operate the facilities and lands on a permanent basis and an ability to meet financial obligations associated with the transfer assets.
 2. District must affirm that they have no plans to change the maintenance, operations, or use of the lands and water associated with the transferred facilities.
 3. District must ensure that there are no competing demands for use of the transferred facilities.
 4. District must ensure that the facilities proposed for transfer are not hydrologically integrated with other facilities thereby impacting other contractors, stakeholders or activities.
 5. District must assure responsibility for all commitments and agreements into the future.
- vi. Recording. The District, at its own cost, may record a copy of this Agreement including the duly executed deeds with the appropriate local jurisdiction as may be necessary.

b. The United States shall:

- i. Transfer of Title. The United States shall transfer all of its right, title, and interest in and to the Project Facilities to be Transferred associated with the water distribution system for the Division as further described herein and pursuant to the terms and conditions herein. Specifically, Reclamation shall convey to the District by quitclaim deed in the form of attached Exhibit G, all the United States' right, title, and interest in the Project Facilities to be Transferred. This shall include all constructed, operated, and maintained irrigation Facilities, one (1) parcel of acquired land, and all rights-of-way and easements whether directly acquired under the Federal Reclamation Laws, granted and reserved under Idaho Code 58-604, or reserved by the Canal Act and exercised or in use by the United States for the presently constructed irrigation facilities.
- ii. Description of Facilities. The Project Facilities to be Transferred shall include the following, as also depicted in Exhibits A and G:
 1. All Interests. All portions of the constructed, operated, and maintained irrigation facilities of the water distribution system improvements and appurtenances thereunto belonging or in anywise appertaining, including but not limited to buildings and structures, pumps, wells, diversion and control structures, fixtures and improvements thereon

whether or not permanently attached thereto, including all drains, canals/laterals, pipelines, wasteways, ponds, and roads located thereon.

2. One Fee Simple Parcel. One (1) parcel of land, including both the surface and mineral estates, encompassing about 0.26 acres, more or less; together with all improvements and appurtenances thereunto belonging or in anywise appertaining, including but not limited to, pumping plants, tanks, facilities and fixtures, whether or not permanently attached.
 3. Rights-of-Way and Easements. All rights-of-way and easements whether directly acquired under the Federal Reclamation Laws, granted and reserved under Idaho Code 58-604, or reserved by the Canal Act and amendments thereof and supplemental thereto and exercised or in use by the United States for the presently constructed Project Facilities of the water distribution system for the Division, together with the right to enter upon the rights-of-way and easements for the purposes of repairing maintaining, or reconstructing the irrigation, drainage, or other facilities located thereon; together with all and singular the improvements and appurtenances thereunto belonging or in anywise appertaining, including but not limited to all buildings, pumps, diversion and control structures, wells, transmission lines, transformers, fixtures and improvements thereon whether or not permanently attached thereto, including all drains, laterals, pipelines, wasteways, wells, ponds, and roads located thereon.
 4. Additional Interests. The Parties have sought to identify all Project Facilities to be Transferred. To the extent that additional facilities, parts of facilities, and/or associated land interests are subsequently identified that all parties agree should have appropriately been included, such additional facilities, parts of facilities, and/or associated land interests will, subject to necessary regulatory compliance activities (see Section 7 of this Agreement), if any, and in coordination with involved stakeholders, automatically be considered part of this Agreement and an appropriate deed executed by Reclamation if needed.
- iii. Water Rights: Reclamation holds no water rights in the Hayden Lake Irrigation District.
 - iv. Third-Party Authorizations. Following the execution of this Agreement, the District shall coordinate with Reclamation for the transfer and delivery of all third-party authorizations and agreements related to the Project Facilities to be Transferred to which the benefits, payments, and responsibilities of the United States arising after the date of the quitclaim deed shall inure to the benefit of

and be binding upon the District. Reclamation will provide existing electronic records to the District at no charge. The District shall reimburse the United States for all costs of duplication and delivery.

- v. Record Review. Following the execution of this Agreement, Reclamation shall provide the District reasonable access to all non-privileged United States records pertaining to the design, construction, operation, and maintenance of, and specification for, the Project Facilities to be Transferred. The District shall notify Reclamation in writing of the specific records it wishes to have copied. Reclamation shall provide one copy each of all identified records following the receipt of said request from the District. Reclamation will provide existing electronic records to the District at no charge. The District shall reimburse the United States for all costs of any requested duplication and delivery.
- vi. Federal Divestiture. Upon the transfer of the identified Project Facilities, these facilities will no longer be considered part of a Reclamation Project, and Reclamation will be entirely divested of all rights, interest and responsibilities related to the Project Facilities as described in this agreement within the Division. Further, the Project Facilities shall no longer be authorized for federal use and shall no longer be held in federal ownership, control or jurisdiction.
- vii. Liability. Effective on the date and time of title transfer, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the transferred Project Facilities other than damages caused by acts of negligence committed by the United States or by agents or employees of the United States, subject to the provisions of the Federal Tort Claims Act 28 USC §§ 2671 *et. seq.* Nothing in this section increases the liability of the United States beyond that currently provided in the Federal Tort Claims Act.
- viii. Officials not to Benefit. No Member of or Delegate to the Congress, Resident Commissioner, or official of the District will be admitted to any share or part of the Agreement or to any benefit that may arise out of it other than as a water user in the same manner as other water users.
- ix. Freedom of Information Act. Any information furnished to Reclamation under this Agreement is subject to the Freedom of Information Act (5 U.S.C. § 552).
- x. Compliance with Laws and Regulations. Following title transfer, the District shall continue to comply will all applicable federal, state, and local laws and regulations.
- xi. Severability. If any one or more provisions contained in the Agreement is, for

any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement. This Agreement is to be construed as if such invalid, illegal, or unenforceable provisions had never been contained in this Agreement, unless the deletion of such provision or provisions would result in such a material change so as to cause the fundamental benefits afforded the Parties by this Agreement to become unavailable or materially altered.

- xii. Non-Assignability. This Agreement and the rights and obligations hereunder are not assignable without the express written consent of the Parties.

7. COMPLIANCE WITH FEDERAL LAW

The Dingell Act, 43 U.S.C. § 2907, provides that before conveying an eligible facility to a qualifying entity, the Secretary shall comply with applicable federal environmental laws, including the following:

- a. The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.)(NEPA). The NEPA requirements have been satisfied with the issuance of the Hayden Lake Irrigation District Title Transfer Environmental Assessment and the Hayden Lake Irrigation District Finding of No Significant Impact (FONSI). The FONSI was signed on September 30, 2022. A Categorical Exclusion (CE) was not utilized for NEPA compliance for this title transfer because it was determined by Reclamation that CE Qualification Factor #2 was not met, and instead an EA/FONSI was prepared. See Exhibit D.
- b. The Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.)(ESA). Reclamation conducted a review of the Project Facilities and made the determination that the conveyance action, as proposed, will have no effect to species listed as threatened or endangered under the ESA. Further, it was determined there would be no adverse modification to critical habitat. This determination was based on the premise no ESA-listed species or designated critical habitat are known to occur within or immediately adjacent to, the Project Facilities to be Transferred.
- c. The National Historic Preservation Act of 1966 (54 U.S.C. § 300101 et seq.)(NHPA). The NHPA requirements have been satisfied. In accordance with NHPA, Reclamation has worked with the District, the Idaho State Historic Preservation Officer (SHPO), and Tribes to complete consultation on the proposed title transfer. This included field surveys of all above-ground buildings and structures, and an intensive inventory of areas proposed for new pipeline construction. All cultural resources documented during the inventory were determined ineligible for the National Register of Historic Places. The SHPO, the District, the Tribes, and Reclamation agreed the proposed title

transfer actions will have no historic properties affected per 36 CFR 800.4(d)(1). SHPO concurrence with Reclamation's findings was received on August 3, 2022.

- d. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.)(CERCLA). The CERCLA requirements have been satisfied. Reclamation completed a Low-Intensity Real Property Questionnaire Checklist for easements located across ten Sections within Hayden Lake: Township 51 North, Range 04 West, Sections 11, 13, 14, 15, 16, 21, 22, 23, and 27; and Township 51 North, Range 03 West, Section 18. The environmental transaction screenings included site visits on June 21, 22, and 23, 2022, and a search of the Reclamation and District files.
- e. The screenings and completion of the report and checklists were performed in conformance with the scope and limitations of American Society for Testing and Materials (ASTM) Practice E1528-14 and Reclamation Manual Directive and Standards LND 08-02 and other applicable Reclamation standards. Based on the checklists, there was no evidence of recognized environmental conditions in connection with the Project Facilities to be Transferred. In addition, the natural resource specialists completing the checklists determined the risk of contamination was low. On February 1, 2022, the District passed Board Resolution 22-02, releasing the United States from liability for any hazardous materials located on the Project Facilities to be Transferred, agreed that if the transfer is completed that the District is the potentially responsible party, and will accept the premises and appurtenances “as is,” as shown in Exhibit D.

8. CONGRESSIONAL NOTICE OF TITLE TRANSFER

Notice to Congress. Pursuant to 43 U.S.C. § 2903, on _____, Reclamation submitted to Congress the required written notice of this proposed title transfer indicating Reclamation will convey all right, title, and interest of the United States in and to the District subject to the terms and conditions included in this Agreement unless Congress enacts a joint resolution disapproving the conveyance within 90 days of notice. Congress has not passed a joint resolution rejecting this transfer of title to the District. Therefore, Reclamation is authorized to enter into this Agreement.

9. NOTICES

- a. Principal Contacts. The principal contacts for any notice or request authorized or required by this Agreement will be as follows:

Columbia-Cascades Area Office Manager
Bureau of Reclamation
1917 Marsh Road
Yakima, WA 98901
509-573-8000

District Administrator
Hayden Lake Irrigation District
2160 West Dakota Avenue
Haden, ID 83835-5122
208-772-2612

- b. Notices in Writing. All notices given under this Agreement shall be in writing and may be delivered by personal delivery; electronic mail (e-mail); via recognized delivery services such as United Parcel Service (UPS) or Federal Express (FedEx); or by deposit in the United States Postal Service (USPS).
- c. Change of Principal Contact. The designation of the principal contact addressee or the address may be changed by notice given to the other party.

10. SIGNATURES

IN WITNESS THEREOF, the authorized signatures for the United States and the District below signify their acceptance of the terms of this Agreement.

United States of America U.S. Bureau of Reclamation Camille Calimlim Touton, Commissioner	Date
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DISTRICT OF COLUMBIA)
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On the _____ day of _____, 20____, _____,
personally appeared before me, known to me to be the official of the UNITED STATES OF AMERICA that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

(SEAL)

 Notary Public in and for the District of Columbia
 Residing at _____
 My commission expires: _____

IN WITNESS THEREOF, the authorized signatures for the United States and the District below signify their acceptance of the terms of this Agreement.

Hayden Lake Irrigation District
Branden Rose, District Administrator

Date

STATE OF IDAHO)
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County of Kootenai)

On the _____ day of _____, 20_____, _____,
personally appeared before me, known to me to be the official of the HAYDEN LAKE
IRRIGATION DISTRICT that executed the within and foregoing instrument and
acknowledged said instrument to be the free and voluntary act and deed of said Irrigation
District, for the uses and purposes therein mentioned, and on oath stated that he/she is
authorized to execute said instrument.

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

(SEAL)

Notary Public in and for the State of Idaho

Residing at: _____

My commission expires: _____