

**TRANSPORT AGREEMENT  
(9-2017)**

This agreement is for Ground water\_\_\_\_\_

This agreement is for Surface water\_\_\_\_\_

This agreement is for Water Bank water\_\_\_\_\_

**Water Rights #** \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

[Attach copies of water rights or Water Bank lease as Exhibit B]

**Licensed Diversion Rate:**\_\_\_\_\_

**\*Only the licensed diversion rate will be transported under this agreement. Any water over the licensed amount will be treated as natural flow and will not be credited or delivered under this agreement.**

THIS AGREEMENT, made and entered into this \_\_\_\_day of \_\_\_\_\_, 20\_\_,

by and between \_\_\_\_\_, hereinafter referred to as

\_\_\_\_\_“Landowner”, an owner of certain lands and water right(s) within Basin 34 located in portions of Butte and Custer County, State of Idaho, and the Big Lost River Irrigation District, an irrigation district duly organized under the laws of State of Idaho, hereinafter referred to as “District”, with its principal office in Mackay, Custer County, State of Idaho.

**WITNESSETH:**

WHEREAS, Landowner is the owner of certain real property located outside the boundaries of the District, described on **Exhibit A** attached [Attach legal description or Google map indicating property].

WHEREAS, Landowner has certain water rights appurtenant to the described real property or has entered into a Water Bank Lease for irrigation of the above described property. The water rights or Water Bank lease are described on **Exhibit B** attached.

WHEREAS, Landowner desires the District to transport water diverted under the above-described right(s) through the facilities of the District for use on the lands of the Landowner as described above; and,

WHEREAS, the District is the owner of certain canal(s) described on **Exhibit C** attached, hereinafter referred to as canal(s), being a part of the facilities the District owns and operates, for the delivery of surface water rights held by individuals which are diverted from the Big Lost River for the irrigation of their private lands, and for the conveyance of storage water supplies held by the District for the irrigation of lands within the District: and,

WHEREAS, the District is able to accommodate the transportation of the above-described water right(s) under certain conditions set forth hereinafter in said canal(s) being co-mingled with other water right(s) which uses are on lands inside the District; and,

WHEREAS, Landowner desires the District to transport certain water supplies diverted pursuant to the above-described water right(s) which have as their specific place of use lands outside the established boundaries of the District, from the point of diversion to a point of delivery of said canal(s) described above.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other consideration received but not recited, the parties do hereby agree:

1. This Transport Agreement will commence the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and terminate the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. In no event shall this agreement exceed a term of 5 years.
2. District will transport the water according to above described water right(s) of the Landowner through said canal(s) to the above described point of delivery during times and in quantities consistent with the described elements of the water right(s) existing as of the date of this agreement during periods when they are actually diverted into the District's canal, less conveyance losses as hereinafter provided, for the use on Landowners property as described above. Landowner agrees that all water supplies transported by virtue of this agreement shall be limited in their use to those elements and conditions as described herein existing as of the date of this agreement and in compliance with the laws of the State of Idaho, all Idaho Department of Water Resources (IDWR) rules, regulations and policies and all District rules, regulations and policies pertaining to the use of the District's facilities. Conflicts concerning interpretation of this agreement shall be resolved by the decision of the Manager of the District.

If Landowner disputes the Manager's interpretation of this agreement, upon request of Landowner said dispute shall be resolved by the District's Board of Directors at a regularly scheduled meeting of the Board.

3. Landowner shall be responsible at Landowner's own expense for any additional ditches, structures, or facilities necessary for the conveyance of their water supplies beyond the District's canal to the Landowner's place of use that may be required, and District assumes no responsibilities of whatsoever kind or nature for said water after it leaves the District's canal at the point of delivery described above. Landowner further hereby agrees to hold the District harmless from all claims of whatsoever kind or nature arising from the transportation and use of said water by Landowner beyond the point of delivery from the District's canal.

4. The obligations of the District to transport water for Landowner under this agreement and the right of the Landowner to have water transported by the District under this agreement will be consistent with the limitations and conditions described and made part of the respective water right(s), and will be treated similarly in their conveyance as to other ground water rights co-mingled in the District's said canal(s) in one of the following manners. Delivery of said ground water rights may be reduced or interrupted by the District giving (24) hours prior notice to the Landowner, when the relevant canal's total capacity is needed for the conveyance of water for lands inside the District boundaries. If such reduction or interruptions occur, fee(s) and assessment(s) will be pro-rated proportionately for the number of days during the irrigation season the conveyance was reduced or interrupted.

5. Landowner shall construct and maintain at his sole cost and expense, all pipelines, pumps, headgates, control devises, measuring devices or structures, or other improvements necessary for the delivery of Landowner's water from the District's canal(s). Any such pipelines, pumps, headgates, control devises, measuring devices or structures, or other improvements must meet the standards and be in compliance with the established policies and guidelines of the District as determined by the Board of Directors. At all times when diverting ground water into or out of the District's facilities, Landowner shall maintain a measuring device on each pump station that pumps water into the District's facilities and shall maintain a measuring device and lockable control valve on each diversion out of the District's facilities, at a location and as approved by the District Manager. The lock on the control valve shall be under the control of District and its employees. Landowner agrees to calibrate all measuring devices when

requested by the District or the Watermaster. Further, Landowner agrees to calibration by IDWR when requested by District or IDWR. In the event of differing calibration readings, the calibration readings of IDWR shall be used by the parties.

6. Under no condition shall Landowner be entitled to have water quantities delivered which are in excess of the quantity of water actually diverted into said canal, less losses calculated by the District consistent with the District's operation of said canal(s). The parties covenant and agree that the loss of water supplies conveyed pursuant to this agreement will be determined by the District by using reasonable calculations of evaporation, operational losses and conveyance losses as they are similarly applied to other water supplies co-mingled in the same common canal(s). Losses may be adjusted from time to time according to seasonal circumstances that may exist when the District determines that conditions, which cause losses, have changed. The District's methodology of calculating losses, now existing or as hereafter modified, shall be used to calculate the distribution of water. In the event of dispute between the parties concerning the amount of loss, Landowner agrees to provide the District Manager, for his review, all data supporting Landowner's position concerning the amount of loss occurring. If Landowner cannot rectify differences with the Manager, Landowner agrees to present Landowner's data and position at a regularly scheduled meeting of the District's Board of Directors for consideration by the Board.

7. For each pump pumping into and for each diversion out of the District's facilities, Landowner agrees to provide District a minimum of 48 hours prior notice of (1) Landowner's intent to divert into District's facilities, (2) Landowner's intent to reduce, alter or cease diversion into District's facilities, (3) Landowner's intent to divert out of District's facilities and (4) Landowner's intent to reduce, alter or cease diversion out of District's facilities. The District manager or ditch rider shall be present for, or shall otherwise pre-approve, any changes to flows, pumps, equipment, or other items affecting the flow of water into and diversion of water out of the District's facilities.

8. Water supplies transported for the Landowner by the District under this agreement shall be limited to those periods of time in which the District is delivering water through its facilities for the irrigation of lands within the District, unless otherwise approved by the District Manager.

9. For and in consideration of the transportation of Landowner's water supplies by the District under the terms of this agreement, Landowner does hereby agree to pay to the District an annual fee, which will include appropriate operation and maintenance charges. Fees will be calculated in a proportionate manner identical to services rendered for lands inside the District. Charges will be calculated to the maximum amount of water listed in the Landowner's water right(s) of water that is transported through the canal. The charges will be based on calculating one (1) irrigated acre for each 0.02 C.F.S. of the quantity of water listed in the water right. Each irrigated acre will then be assessed as "Class 1" according to the current established class schedule of the District. Other fees may be assessed equal to, but not in excess of those assessed to similar lands inside the District. All fees and charges are due on or before the 1<sup>st</sup> of May of each year. Failure of the Landowner to pay the annual fees and charges under this agreement, when due, whether or not water is delivered or is to be delivered to the Landowner by the District, shall constitute a substantial breach of this agreement and the agreement may be subjected to termination by the District. If the District intends to terminate this agreement for reasons of non-payment, the District shall notify the Landowner in writing by certified mail of those intentions whereby Landowner will have ten (10) days from the mailing date to pay such fees, charges, and reasonable penalty and interest, or respond in writing and/or appear before the District's board at the next regularly scheduled board meeting following the ten (10) days to resolve the matter of unpaid fees and charges. Any transportation fees not paid when due shall bear a penalty of two percent (2%) and interest at the rate of one percent (1%) per month from the due date until paid. Landowner also understands and agrees that no water supply will be transported until all fees which are due and associated penalties are paid in full or as mutually agreed to by both parties are paid in full or as mutually agreed to by both parties.

10. No water rights, transmission rights, or ditch rights in the facilities of the District shall accrue to Landowner by reason of this agreement, the pertinent rights of the Landowner being limited and fully contained herein. It is further understood and agreed that nothing in this agreement shall constitute a dedication or assignment to either party of rights or facilities not expressed in this agreement.

11. It is fully understood and agreed by the parties hereto that under no circumstances of whatsoever kind of nature shall the District at any time agree to the transportation of storage water impounded pursuant to the District's water rights No. 34-00012 and 34-10873 for use by the Landowner on lands which are not within the District.

12. In the event of breach of this agreement by Landowner or District may, at its election:

12.1 provide written notice of breach and cessation to Landowner, specifying the breaches. In the event that written notice of breach and cessation is given, Landowner shall immediately discontinue use of the District's facilities as authorized by this agreement until the breaches are cured. Once the District verifies to Landowner in writing that the breaches are cured, Landowner can resume use of the District's facilities as authorized by this agreement. Should the District serve Landowner with a notice of breach and cessation, performance of this agreement by Landowner shall not be excused, and Landowner shall remain obligated to perform all of Landowner's duties and responsibilities set forth in this agreement.

12.2 The District may deem any breach of any of the covenants or conditions contained herein a material breach of this agreement and a default hereunder. If such a default is determined by the District to exist, the District may terminate this agreement by giving the Landowner ten (10) days written notice of said default and termination of this agreement.

12.3 The rights and remedies of the District as described herein are cumulative and not exclusive. In the event of breach or default by Landowner, District shall be authorized to exercise all remedies authorized by law or in equity.

13. If Landowner desires to renew this agreement; Landowner may request renewal by serving a written request for renewal to the District Office not less than 60 days prior to the termination of the agreement.

14. Landowner agrees that this is a personal agreement between Landowner and District and does not run with the real property described herein. No assignment or other transfer of this agreement by Landowner may be made without the prior consent of the District. In the event that the property is sold, the District will review the status of any Transport Agreement at the request of the new owner.

15. This agreement supersedes and replaces all prior transport agreements entered into between the parties pertaining to the described water rights. This document constitutes the full agreement of the parties hereto, and no amendments or changes hereto may be made unless agreed to in writing and duly signed by each of the parties hereto.

16. This agreement shall be binding on the parties and their heirs, successors in interest, legal representatives and assigns.

17. In the event District is required to obtain legal counsel to enforce this agreement or file or defend a suit alleging a breach of this agreement or seeking to terminate this agreement, Landowner agrees to pay the attorney's fees and costs incurred by District.

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

BIG LOST RIVER IRRIGATION DISTRICT

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

LANDOWNER(S)

\_\_\_\_\_  
\_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the undersigned Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Chairman of the Board and Secretary of Big Lost River Irrigation District, respectively, and acknowledged to me that they executed the same on behalf of said irrigation district.

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

Notary Public of Idaho  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the undersigned Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that (s)he executed the same.

(SEAL)

Notary Public of Idaho  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_