

Recording Requested By and
When Recorded Return to:

TWIN FALLS COUNTY

Recorded for:

TWIN FALLS CANAL COMPA
9:42:29 AM 08-31-2016

2016-015271

No. Pages:10 Fee: \$ 37.00

KRISTINA GLASCOCK

County Clerk

Deputy: BHUNTER

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM ENVIRONMENTAL COVENANTS ACT, IDAHO CODE § 55-3001, et seq.

ENVIRONMENTAL COVENANT

This instrument is an Environmental Covenant ("Environmental Covenant") executed by The Twin Falls Canal Company and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. This Environmental Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. The Twin Falls Canal Company is a "holder" as defined in Idaho Code § 55-3002(6). The Twin Falls Canal Company, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located at 401 6th Avenue West, Twin Falls, Idaho in Twin Falls County and legally described in the deed attached hereto and marked as Attachment A (hereafter referred to as "the Property"). The Restricted Area of the Property is illustrated on the map attached hereto and marked as Attachment B.

Property Ownership. The Twin Falls Canal Company hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the property, holds fee simple title to the property and The Twin Falls Canal Company has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above operated petroleum underground storage tanks that were removed between 1989 and 1993. During this period the property was identified to have been contaminated with petroleum contamination (Benzene, Toluene, Ethylbenzene, and Xylenes) in soil and groundwater. On July 7, 1993 a Schedule and Criteria was issued by the Department that required The Twin Falls Canal Company to remediate the Property. Beginning in 1994, The Twin Falls Canal Company implemented a corrective action plan ("CAP") on the Property. This Environmental Covenant is required because after implementation of the CAP residual concentrations of Benzene remain in the groundwater underlying the Restricted Area. These groundwater concentrations are above allowable risk-based concentrations as determined by the Department therefore future use of the Property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of the Twin Falls Canal Company (Facility Identification Number 4-420176) administrative record can be found at the DEQ Twin Falls Regional Office 650 Addison Avenue West, Suite 110, Twin Falls, ID 83301

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, The Twin Falls Canal Company, and any successors in interest, are hereby limited from using the Restricted Areas of the Property, now or at any time in the future, as specifically set forth below:

There shall be no extraction of groundwater under the Restricted Area of the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use. Ground water may be extracted as part of an environmental investigation or remediation project.

Breach and Cure of Activity and Use Limitations The Twin Falls Canal Company, or its successors in interest, shall be responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the activity and use limitations, the Owner or any successors in interest, shall notify the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or any successors in interest, and the Department.

Amendment by Consent. The Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

Duration and Termination. The Activity and Use Limitations shall apply to the Restricted Area of the Property, or any subdivided portion thereof, in perpetuity unless terminated by court action as provided in Idaho Code § 55-3009 or by consent pursuant to Idaho Code § 55-3010. The Twin Falls Canal Company, or its successors in interest, may seek consent to terminate the Activity and Use Limitations that apply to the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that:

Contaminated groundwater is at levels the Department deems in writing to be adequate for the Restricted Area of the Property to be developed for unrestricted use.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Activity and Use Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

Recording/Filing of Environmental Covenant. This Environmental Covenant and any amendment or termination of this Environmental Covenant shall be recorded in the County Recorder's Office of the county in which the Property subject to this Environmental Covenant is located. The owner of the Property shall record this Environmental Covenant, and any amendment or termination thereof, within ten (10) days following receipt of the Department's signature hereon. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, the owner of the Property shall provide to the Department a copy of this recorded Environmental Covenant, or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination thereof, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by the owner of the Property to the following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other local government in which the Property is located; and (e) any other person the Department requires. The validity of this Environmental Covenant is not affected by failure to provide a copy of this Environmental Covenant as required under this section.

Compliance Reporting. The Twin Falls Canal Company, and/or any successors in interest, shall submit to the Department on an annual basis written documentation verifying that the activity and use limitations remain in place and their compliance with the activity and use limitations.

Enforcement. The Department and any party to the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against the owner of the Property and any other person using the Property. Failure of the owner or any other user of the Property to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the Department, or its successor, and/or any party to this Environmental Covenant to require that the owner or user of the Property correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for the Department, or its successor, and/or any persons identified in Idaho Code § 55-3011 to file civil actions against the owner or user of the Property as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011

Non-Waiver. No failure on the part of the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's or any holder's rights to enforce such term.

Property Access. The Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

Notice of Conveyance of Property. Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the Conveyer of the Property, shall provide written notice to the Department and each municipality or other local government in which the Property is located, the name and address of all the then Owners and/or Occupants of the Property, or part thereof, conveyed. The Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as either The Twin Falls Canal Company or its successors, or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the other. Notices which are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

OWNER: Twin Falls Canal Co.
ATTN: Mr. Jay Barlogi
357 6th Ave West
P.O. Box 326
Twin Falls, ID 83303

THE DEPARTMENT:
Idaho Department of Environmental Quality
ATTN: State Response Program Manager
1410 N. Hilton
Boise, ID 83706

Costs and Expenses. All costs of terminating this Environmental Covenant, including the cost of any remediation or abatement of any environmental condition related to Activity and Use Limitations pertaining to the Property, shall be borne by the party seeking such termination.

Partial Invalidity. If any portion of the Environmental Covenant or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Environmental Covenant are solely for the convenience of the parties and are not a part of the Environmental Covenant.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the Department's ability to enforce the terms of any voluntary consent order or other agreement relating to remediation of the Property entered into between the Department and The Twin Falls Canal Company or any other responsible party.

Nothing in this Environmental Covenant shall affect the obligations of The Twin Falls Canal Company or any other responsible party under such voluntary consent order or other agreement. The Department's acceptance hereunder is based upon the information presently known or available to the Department with respect to the environmental condition of the Property, and the Department reserves the right to take appropriate action under applicable authorities in the event the Department determines new information warrants such action.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

Signature and Acknowledgments
Accepted:

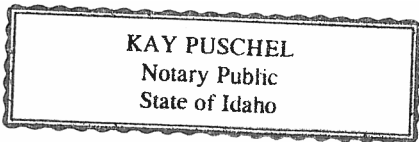
Property Owner Twin Falls Canal Company

Signature: Jay Barlogi
Printed Name: Mr. Jay Barlogi
Title: Field Supervisor
Date: August 16, 2016

State of Idaho, county of Twin Falls, ss.

On this 16 day of Aug, in the year 2016, before me, a Notary Public in and for said County and State, personally appeared Jay Barlogi, known or identified to me to be the JAY BARLOGI of the Twin Falls Canal Company that executed this Environmental Covenant, and acknowledged to me that the Twin Falls Canal Company 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.



Notary Public for Idaho: Kay Fuschel
Residing at: Twin Falls
Commission Expires: 4-28-2018

Attachment A Legal Description and Deed of Property

QUITCLAIM DEED

QD-104

For Value Received

THE CITY OF TWIN FALLS, a municipal corporation,

does hereby convey, release, remise and forever quit claim unto THE TWIN FALLS CANAL COMPANY

whose address is: 163 Second Avenue West, Twin Falls, Idaho 83301

the following described premises, to-wit:

A portion of Block 158 Twin Falls Original Townsite, more particularly described as follows:

BEGINNING at the southeast corner of Lot 8, Block 158 of said subdivision; THENCE North 45°23' west 287.40 feet along the south boundary of Lots 3, 4, 5, 6, 7 and 8 of Block 158 of said subdivision; THENCE South 01°34' east 42.71 feet to the extended north line of Lot 13, Block 158 of said subdivision; THENCE South 45°23' east 49.15 feet to the northwest corner of Lot 13, Block 158, said point being 57.85 feet west of the northeast corner of Lot 13, Block 158 of said subdivision; THENCE Continuing south 45°23' east 207.85 feet along the north boundaries of Lots 13, 14, 15 and 16 of Block 158 of said subdivision to the northeast corner of Lot 16 of Block 158 of said subdivision; THENCE North 44°37' east 30.00 feet to the southeast corner of Lot 8, Block 158 of said subdivision, also the Point of Beginning, containing 8055.30 square feet or 0.185 acres, retaining therefrom utility and drainage easements.

together with their appurtenances.

Dated: January 2, 1990

[Signature]

STATE OF IDAHO }
County of Twin Falls } ss.

On this 2nd day of January, 1990, before me, a notary public in and for said State, personally appeared THOMAS G. CONDIE, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that (s)he executed the same for and on behalf of THE CITY OF TWIN FALLS, IDAHO, having lawful authority so to do.

[Signature]
NOTARY PUBLIC
Residing at Twin Falls, Idaho

STATE OF IDAHO }
County of Twin Falls } ss.

I hereby certify that this instrument was filed for record at the request of City of Twin Falls, minutes past 31 o'clock, PM, of this 2nd day of JAN 18 1990, 19, in my office, and duly recorded in Book of Deeds at page

RICHARD A. PENCE
Ex-Officio Recorder
By [Signature]
Deputy

Fees \$ 300

Mail to:

001-8135A

*34888



RECORDED

Attachment B Map of Restricted Area

