

RECEIVED

MAY 31 2022

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No.

86396

MINIMUM REQUIREMENTS CHECKLIST

Department of Water Resources
Eastern Region

TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at idwr.idaho.gov.

Name of Applicant(s) Charles G. Gaudet

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☒ ☐ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☐ * Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). **
** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☒ ☐ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at <https://idwr.idaho.gov/water-rights/transfers/resources/>.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☒ ☐ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see fee schedule.
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☒ ☐ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. (Attachment WSB)
- ☒ ☐ #10 Other. Please describe: Attached deed shows seller of WR is its owner. Attached to the deed is a screenshot of the Teton County parcel-viewer map showing that the deed relates to the part of the POU proposed for transfer.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Charles G. Gaudet Phone 307-413-2353
Mailing address PO Box 788, Victor, ID 83455 Email _____

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☒ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

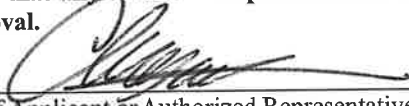
Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Rocky Mountain Environmental Associates, Inc. Phone 208-524-2353
Mailing address 482 Constitution Way Ste 303, Idaho Falls, ID 83402 Email kristin.rmea@gmail.com

- ☒ Send all correspondence for this application to the representative and not to the applicant.
OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- ☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). 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 rejection of the application or cancellation of an approval.


Signature of Applicant or Authorized Representative

Charles G. Gaudet
Print Name and Title if applicable

5/20/2022
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

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. Is this a transfer for changes pursuant to Idaho Code §42-221.0.8?
If yes, ☐ attach an explanation and any supporting documentation labeled as **Part1A.2**.

3. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part1A.3**.

Applicant is contracted to purchase 1 acre of water right 22-14026 (irrigation) to use for evaporation from new ponds to be constructed for aesthetic, fish propagation and wildlife purposes. See Part 1A.3.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

I.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☒ ☒	22-14026	0.01 cfs	Diversion to Storage	4/15 to 10/15	Groundwater
☐ ☐		2.0 afa	Aesthetic Storage	1/01 to 12/31	Groundwater
☐ ☐		2.0 afa	Wildlife Storage	1/01 to 12/31	Groundwater
☐ ☐		2.0 afa	Fish Prop. Storage	1/01 to 12/31	Groundwater
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.01 cfs and/or 2.0 acre-feet.

2. Total amount of water proposed to be transferred or changed 0.01 cubic feet per second and/or 2.0 acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
Y			SW	NW	11	4N	45E	Teton	Groundwater	Trout Pond
Y			SW	NW	11	4N	45E	Teton	Groundwater	Hemi Marsh Pond
Y			SW	NW	11	4N	45E	Teton	Groundwater	Well

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	45E	11							J										
4N	45E	11							H										
4N	45E	11							W										
Total Acres (for irrigation use)																			

STATE OF IDAHO
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APPLICATION FOR TRANSFER OF WATER RIGHT PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:
Ponds will be constructed in communication with groundwater. The purpose for the transfer is to offset the consumptive use from groundwater. A small well will also be installed to allow for maintenance in times of low ground water.
- b. Who owns the property at the point(s) of diversion? Applicant
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? **If yes,** ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: None
- It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.
- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?
If yes, ☒ complete Attachment WSB.
- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:
Irrigation under this water right will cease.
- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:
There are no other water rights at the proposed new POU. Nominal IDWR GIS polygons for domestic rights 22-11634 and 22-12500 overlap the existing portion to be moved, but do not describe water use on the existing portion. Service-area polygons of Grand Teton Canal Co Ltd also overlap existing portion but canal water is not used and shares are not held for this property.
- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:
Yes No
- | | | |
|-------------------------------------|-------------------------------------|---|
| ☒ | ☒ | undergone a period of five or more consecutive years of non-use, |
| ☒ | ☒ | currently leased to the Water Supply Bank, |
| ☒ | ☒ | currently used in a mitigation plan limiting the use of water under the right, or |
| ☒ | ☒ | currently enrolled in a Federal set-aside program limiting the use of water under the rights? |
- If yes,** describe:
2022 Water Supply Bank application 2277 is indicated to be "ready for review" per 5/11/2022 version of water-supply-bank-processing.xlsx. Since the application has not yet been processed, water right owner will pursue an amendment to remove the 1.0 acre proposed to be transferred from the WSB Lease application. Please see "Attachment WSB."

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT REPORT

5/11/2022

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 22-14026

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	GARY SUMMERS
Current Owner	SHANNON SUMMERS
	1177 E 9TH N
	REXBURG, ID 83440
	2083510077

Priority Date: 06/19/1961

Basis: Decreed

Status: Active

Water Supply Bank Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/15	1.79 CFS	442.8 AFA
Total Diversion			1.79 CFS	442.8 AFA

Location of Point(s) of Diversion:

GROUND WATER|NENE|Sec. 12|Township 05N|Range 45E|TETON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05N	45E	11		SWNE	26.5		SENE	12.4						
		12		NENE	35		NWNE	27.8						
				SWNW	16.4		SENW	29.5						

Total Acres: 147.6

Conditions of Approval:

1. S37 The use of water for irrigation under this right may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than November 24, 2008.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Dates:

Licensed Date:

Decreed Date: 11/24/2008

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number: EXC

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): GARY SUMMERS
SHANNON SUMMERS

Lease Status: Active

Lease Amount: 1.58cfs

Rental Availability: 1.58cfs

Date Received: 7/18/2016

Lease Begin Date: 1/1/2016

Expiration Date: 12/31/2020

8 6 3 9 6

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT (this "Agreement") is made and entered to be effective as of the 20 day of May, 2022 (the "Effective Date"), by and between the following entities:

1. **Rocky Mountain Water Exchange, LLC**, an Idaho limited liability company, whose address is 482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402 (hereinafter "Seller"); and
2. Acting on behalf of Seller, **Keller Williams Realty East Idaho**, an Idaho limited liability limited partnership whose address is 3525 Merlin Dr., Idaho Falls, Idaho 83404, with **D'Wayne Coburn** as Broker and **Reed D. Nord** acting as Agent for the Broker (hereinafter "Broker").
3. **Charles G. Gaudet**, whose address is PO Box 788, Victor, ID 83455 (hereinafter "Buyer");

Buyer, Seller, and Broker are individually a "Party" and together the "Parties".

RECITALS:

- A. Seller currently has the legal right and option to sell Water Right No. 22-14026 (the "Water Right"), which was decreed on November 24, 2008 for irrigation purposes with a priority date of June 19, 1961. The current description of the Water Right is more fully set forth in the report obtained from the Idaho Department of Water Resources ("IDWR" or the "Department") attached hereto as **Exhibit 1**.
- B. Seller desires to sell, and Buyer desires to buy 1.0 acre of the Water Right. Buyer has agreed to purchase 1.0 acre of the Water Right from Seller as set forth in the terms and provisions of this Agreement.

AGREEMENT:

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, the following-described portion of the Water Right:

Purpose:	Irrigation
Priority:	<u>June 19, 1961</u>
Quantity (Diversion Rate):	<u>0.012</u> cfs of the total authorized <u>1.79</u> cfs
Quantity (Volume):	<u>3.0</u> acre-feet per annum

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: cgg/KRL DATE: 5/20/2022 PAGE 1 OF 14

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Place of Use (Acreage):

1.0 acre of the 147.6 authorized acres
identified on **Exhibit 2**.

The above-described portion of the Water Right is referred to hereafter as the "Purchased Water Right."

2. Property Retained. Other than the Purchased Water Right, Seller reserves and retains unto Seller any other water rights that may be appurtenant to the authorized place of use for the Water Right. No land, easements, or other property interests, other than the Purchased Water Right, are included in this Agreement.
3. Purchase Price. The purchase price for the Purchased Water Right is [REDACTED] (the "Purchase Price").
4. Earnest Money Deposit. Contemporaneous with the execution of this Agreement, Buyer shall deliver to Seller earnest money in the amount of [REDACTED] (the "Earnest Money"). The Earnest Money shall be applied towards the Purchase Price at closing, or otherwise disposed of as provided herein. The check should be written out to "Pioneer Title."
5. Transfer Application. Within 30 days after both Parties sign this Agreement, Buyer will file with IDWR an *Application for Transfer of Water Right* (the "Transfer") to amend and move the Purchased Water Right to Buyer's desired location(s) at the buyers designated place of use. The Parties will cooperate in obtaining IDWR approval of the Transfer and will provide and execute any necessary documents requested by IDWR. Buyer will be responsible for the costs to file the Transfer, including all attorney fees, consultant fees, and filing fees associated with preparation of the Transfer. In the event this Agreement is terminated pursuant to paragraph 6 of this Agreement, Buyer shall at its sole expense take such action as may be required to void or reverse the Transfer in order to return the Purchased Water Right to the condition it existed on the Effective Date, upon completion of which the Earnest Money will be returned by Buyer within 14 days of such completion.
6. Transfer Contingencies.
 - (a) [IF APPLICABLE] Unstacking of Water Rights. While the elements of the Water Right and an associated water right, Water Right No. _____, are sufficiently described to allow IDWR to "unstack" these water rights, this Agreement shall be null and void and of no further effect if IDWR does not unstack the Purchased Water Right from Water Right No. _____.
 - (b) [IF APPLICABLE] Lien Release. If, after exercising commercially reasonable efforts, Seller is unable to obtain a lien release on the Water Right, this Agreement shall be null and void and of no further effect, and Buyer shall return the Earnest Money to Buyer.
 - (c) No Protests. If no protests or other objections to the Transfer are filed with

Austin
#1107
5/20/2022

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: DATE: 5/20/2022 PAGE 2 OF 14

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IDWR, but the Transfer is (i) denied, (ii) approved by IDWR for less than 1.0 acre worth of water right or (iii) approved by IDWR with conditions that materially devalue the Purchased Water Right for Buyer's intended use thereof; then Buyer may terminate this Agreement within 14 days after the date of the IDWR approval notice by providing written notice of termination to Seller. Within 14 days of receipt of the notice of termination, Seller shall refund the Earnest Money to Buyer. If Buyer does not terminate this Agreement as provided herein, the Parties shall proceed to Closing as set forth in paragraph 7.

- (d) Protest Filed. If a protest or other objection to the Transfer is filed with IDWR, then Buyer may terminate this Agreement within 180 days after the protest is filed with IDWR. If Buyer does elect to terminate this Agreement, Seller shall refund the Earnest Money to Buyer within 14 days of receipt of the notice of termination.
- (e) Option Agreement. If Seller is unable to obtain title to the Water Right through the exercise of Seller's option to purchase the Water Right because of a breach by the other party to the Option Agreement, Seller may elect to terminate this Agreement within 180 days of the breach. In such event, Closing on this Agreement shall be stayed for said 180 days pending resolution of the dispute over the Option Agreement or termination by Seller.

7. Closing.

- (a) Closing Date. If (1) the Water Right is unstacked as provided in paragraph 6(a); and (2) no protest to the Transfer is filed with IDWR; or (3) IDWR issues a transfer approval acceptable to Buyer without the conditions of paragraph 6(c) present, then Closing on the Purchased Water Right shall occur within 30 days after the date all the above items are satisfied. If a protest or other objection to the Transfer is filed with IDWR, or there is a dispute over the Option Agreement, and Buyer does not elect to terminate the Agreement as set forth in paragraph 6(d) of this Agreement, the Closing shall occur within 14 days after the 180-day termination period expires. Notwithstanding the above, the Parties may mutually agree to another date for the Closing.
- (b) Closing Location. The Closing shall occur at the offices of Pioneer Title Co., 1655 Elk Creek Dr #100, Idaho Falls, ID 83401, or at another location mutually agreed by the Parties.
- (c) Documents to be Delivered at Closing.
 - (1) At Closing, Buyer shall deliver the Purchase Price plus Buyer's Premium less the Earnest Money (\$10,000 + \$1,000 - \$1,000 = \$10,000)
 - (2) At Closing, Seller shall deliver to Buyer the Special Warranty Deed (the "Deed") substantially in the form attached to this Agreement as Exhibit 3 for the Purchased Water Right, and any lien release or other documents reasonably requested to confirm

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: GA/KV DATE: 5/28/2022 PAGE 3 OF 14

the conveyance of the Purchased Water Right free and clear of encumbrances.

- (d) Fees and Costs of Closing. The fees and costs of processing the closing including recording the deed after closing and preparation and fee for Change of Ownership application shall be paid by Buyer. All other expenses not specifically referenced in this Agreement but related to the Transfer and incurred by Seller or Buyer with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.
8. Default. In addition to either Party's failure to perform any material term or condition of this Agreement or a Party's breach of any of such Party's representations or warranties (in which event the non-defaulting party may pursue any available remedy, including equitable relief), Buyer shall be deemed in default hereof if Buyer files a petition in bankruptcy or is adjudicated bankrupt or insolvent, Buyer makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization, in which case, in addition to any other remedies or rights Seller might have, Seller shall have the power and authority to notify the Department that the Application for Transfer has been withdrawn.
9. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the Effective Date and again as of the Closing as follows:
- (a) Authority. Seller has the full legal right, power and authority to enter into and perform this Agreement, and will obtain good marketable title to the Purchased Water Right in fee simple, and Seller (at its expense) shall remove, or shall exercise commercially reasonable efforts to cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased Water Right on or before Closing. If, after exercising commercially reasonable efforts, the liens, claims, or encumbrances are not removed by Closing, Seller may terminate this Agreement.
- (b) Conveyance. Seller shall then convey the Purchased Water Right free and clear of all liens, encumbrances and restrictions, except such restrictions on the use of water as may appear on the Water Right Report contained at Exhibit 1.
- (c) Appurtenance. The Purchased Water Right is appurtenant to and has been beneficially used as the water source to irrigate its place of use and/or been properly preserved for future use consistent with Idaho law.
- (d) Not Forfeited. No portion of the Purchased Water Right has been forfeited or abandoned in whole or in part.
- (e) No Representation or Warranty Concerning Suitability for Buyer's Intended Use. Seller has not made, and hereby makes, no representation or warranty to Buyer except as expressly contained in this Agreement.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: CGH/KRK DATE: 5/20/2022 PAGE 4 OF 14

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10. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and again as of the Closing for the Purchased Water Right, as follows:
- (a) Authority. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder.
 - (b) Buyer's Due Diligence. Buyer and Buyer's consultants and counsel have had a full opportunity to review all documents, records and other information made available to Buyer by Seller and/or otherwise reasonably available to Buyer through public or other sources, related to the nature and extent of the Purchased Water Right, the laws and rules affecting their transfer and use by Buyer, and the suitability or fitness of the Purchased Water Right for Buyer's intended purposes.
11. Warranties to Survive Closing. All representations and warranties made by the Parties herein are also covenants, and each Party shall take all such actions as may be required to satisfy said covenants and to cause the representations and warranties to be true on and as of the Closing. The Parties' respective obligations to close and consummate the transaction contemplated herein are contingent upon the representations, warranties and covenants contained in this Agreement being true, valid and satisfied on and as of the Closing. All such representations and warranties shall survive the Closing.
12. Broker.
- (a) The Broker represents Buyer under this Agreement and Buyer shall pay a Buyer's Premium of 10% of the sale price or One Thousand Dollars (\$1,000.00) at closing.
 - (b) Consent To Limited Dual Representation And Assigned Agency. The undersigned Buyer has received, read and understand the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned Buyer understands that the brokerage involved in this transaction may be providing agency representation to both the Buyer and the Seller. The undersigned Buyer understands that, as an agent for both Buyer/client and Seller/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms, or factors motivating the Buyer/client to buy or the Seller/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations, and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by § 54-2085, Idaho Code. The undersigned Buyer understands that a limited dual agent does not have a duty of undivided loyalty to either client. The undersigned Buyer further acknowledges that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in § 54-2087, Idaho Code. In an

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ggk RL DATE: 5/20/2023 PAGE 5 OF 14

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assigned agency situation, the designated Broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

- (c) Buyer Notification and Consent to Release from Conflicting Agency Duties. Buyer acknowledges that Broker as named above has disclosed the fact that at times Broker acts as agent(s) for other buyers and for sellers in the sale of the property. Buyer has been advised and understands that it may create a conflict of interest for Broker to introduce Buyer to a Seller client's property because Broker could not satisfy all of its client duties to both Buyer client and Seller client in connection with such a showing or any transaction which resulted. **Based on the understandings acknowledged, Buyer makes the following election.** (Make one election only.)

_____/_____
Initials

Limited Dual Agency
and / or
Assigned Agency

Buyer DOES want to be introduced to Seller client's property and hereby agrees to relieve Broker of conflicting agency duties, including the duty to disclose confidential information known to the Broker at the time and the duty of loyalty to either party. Relieved of all conflicting agency duties, Broker will act in an unbiased manner to assist the Buyer and Seller in the introduction of Buyer to such Seller client's property and in the preparation of any contract of sale which may result. Buyer authorizes Broker to act in a limited dual agency capacity. Further, Buyer agrees that Broker may offer, but is not obligated to offer, assigned agency representation, and if offered by the Broker, Buyer authorizes Broker to act in such capacity.

OR

cgj_____
Initials

Single Agency

Buyer DOES NOT want to be introduced to Seller client's property and hereby releases Broker from any responsibility or duty under the agency agreement. Broker shall be under no obligation or duty to introduce the Buyer to any Seller client's property.

13. Miscellaneous.

- (a) Attorneys' Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages because of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: cgj / LR DATE: 5/20/2022 PAGE 6 OF 14

- (b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

<u>Seller</u>	<u>Buyer</u>
Rocky Mountain Water Exchange, LLC 482 Constitution Way Suite 303 Idaho Falls, ID 83402 Email: rog.rmea@gmail.com	Charles G. Gaudet PO Box 788 Victor, ID 83455 Email: none
<u>Seller's Representative</u>	<u>Buyer's Representative</u>
Reed Nord 3525 Merlin Dr. Idaho Falls, ID 83404 Email: rgnord@ida.net	

- (c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Purchased Water Right. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.
- (d) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.
- (e) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.
- (f) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

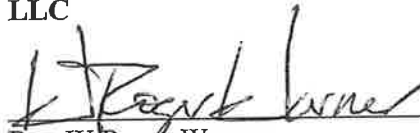
BUYER AND SELLER'S INITIALS: gg / ksk DATE: 5/20/2022 PAGE 7 OF 14

- (g) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.
- (h) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- (i) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.
- (j) Essence of Time. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SELLER"

**ROCKY MOUNTAIN WATER EXCHANGE,
LLC**

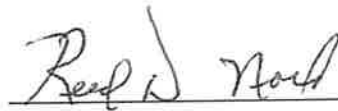


By: W Roger Warner

Its: Partner

"BROKER"

KELLER WILLIAMS EAST IDAHO



D'Wayne Coburn

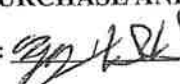
By: Reed D. Nord, Agent for Broker

"BUYER"

CHARLES G. GAUDET



AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS:  DATE: 5/20/2022 PAGE 8 OF 14

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Exhibit 1

The "Water Right"

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT REPORT

5/11/2022

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 22-14026

Owner Type	Name and Address
Current Owner	GARY SUMMERS
Current Owner	SHANNON SUMMERS
	1177 E 9TH N
	REXBURG, ID 83440
	2083510077

Priority Date: 06/19/1961

Basis: Decreed

Status: Active

Water Supply Bank Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/15	1.79 CFS	442.8 AFA
Total Diversion			1.79 CFS	442.8 AFA

Location of Point(s) of Diversion:

GROUND WATER | NENE | Sec. 12 | Township 05N | Range 45E | TETON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
05N	45E	11		SWNE	26.5		SENE	12.4						
				NENE	35		NWNE	27.8						
				SWNW	16.4		SENE	29.5						

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: DATE: 5/24/2022 PAGE 9 OF 14

Total Acres: 147.6

Conditions of Approval:

1. S37 The use of water for irrigation under this right may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than November 24, 2008.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Dates:

Licensed Date:

Decreed Date: 11/24/2008

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number: EXC

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

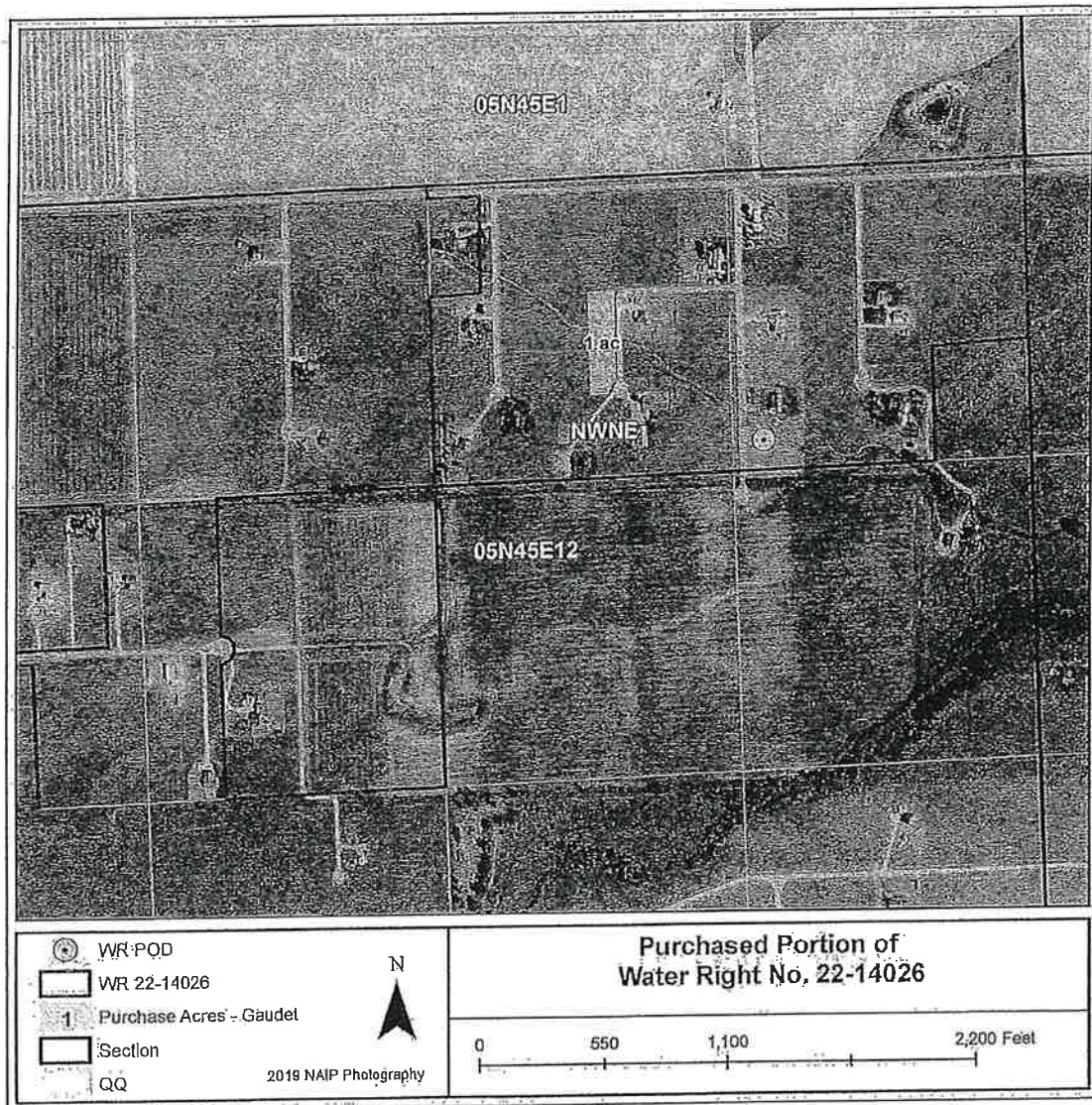
Water Supply Bank:

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: egg LR DATE: 5/20/2022 PAGE 10 OF 14

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Exhibit 2
Map of 1.0 Acre—the “Purchased Water Right”



AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: Coy/LW DATE: 5/20/2022 PAGE 11 OF 14

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**Exhibit 3
Form of the Deed**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Kristin Moore
Rocky Mountain Environmental Associates, Inc.
482 Constitution Way, Suite 303
Idaho Falls, ID 83402

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHTS

GARY SUMMERS AND SHANNON SUMMERS, husband and wife, whose address is 1177 E 9th N, Rexburg, ID, 83440 (hereinafter "Grantor") does hereby grant, bargain, sell, assign, and convey unto **Charles G. Gaudet**, whose address is PO Box 788, Victor, ID 83455 (hereinafter "Grantee") and to Grantee's heirs and assigns forever, all of Grantor's right, title, and interest in water right described on Exhibit A attached hereto (hereinafter the "Water Right").

Grantor hereby covenants and warrants to Grantee as follows:

- (A) Grantor is the owner of the Water Right;
- (B) Grantor has not conveyed any of the Water Right to anyone other than Grantee;
- (C) The Water Right is free from all liens, claims, or encumbrances; and
- (D) Grantor has the authority to convey the Water Right to Grantee.

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

IN WITNESS WHEREOF, the undersigned authorized officer of Grantor, acting on behalf of Grantor, has caused his name to be hereunto subscribed.

DATED this _____ day of _____, 2022.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SGJ/LJK DATE: 5/24/2022 PAGE 12 OF 14

"GRANTOR"

Gary Summers

Shannon Summers

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2022, by **Gary Summers**.

Notary Public for Idaho
My Commission Expires: _____

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2021, by **Shannon Summers**.

Notary Public for Idaho
My Commission Expires: _____

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ggg / kll DATE: 5/20/2022 PAGE 13 OF 14

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EXHIBIT A
WATER RIGHT DESCRIPTION
(TO BE COMPLETED AFTER APPROVED TRANSFER)

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: agj 1/2/22 DATE: 5/20/2022 PAGE 14 OF 14

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OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT ("Option Agreement") is made and entered to be effective as of the 11 day of December 2021 (the "Effective Date"), by and between the following entities:

1. **Gary Summers and Shannon Summers**, husband and wife, whose address is 1177 E 9th N, Rexburg, ID 83440, (hereinafter "Seller");
2. **Rocky Mountain Water Exchange, LLC**, an Idaho limited liability company, whose address is 482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402 (hereinafter "Buyer"); and
3. Acting on behalf of Buyer, **Keller Williams Realty East Idaho**, an Idaho limited liability limited partnership whose address is 3525 Merlin Dr., Idaho Falls, Idaho 83404, with **Michael James Johnston** as Broker and **Reed D. Nord** acting as Agent for the Broker (hereinafter "Broker").

Buyer, Seller, and Broker are individually a "Party" and together the "Parties".

RECITALS:

- A. Seller owns **Water Right No. 22-14026** (the "Water Right"), which was decreed on **November 24, 2008** in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of Idaho for irrigation purposes with a priority date of **June 19, 1961**. The current description of the Water Right is more fully set forth in the report obtained from the Idaho Department of Water Resources ("IDWR" or the "Department") attached hereto as **Exhibit 1**.
- B. Buyer has inspected government records and reviewed other information pertaining to the Water Right. Seller desires to grant, and Buyer desires to obtain, an option to purchase the Water Right as set forth in the terms and provisions of this Agreement.

AGREEMENT:

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

1. Option Granted. Seller hereby grants and sells to Buyer the exclusive option and right ("Option") to purchase, at Seller's discretion, the Water Right or any portion thereof at any

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: [Signature] DATE: 12/11/21 PAGE 1 OF 13

time on or before January 1, 2024 (the "Option Period") if Buyer is not then in default of any provision of this Agreement.

2. Payment for Option. Upon execution of the Option Agreement, Buyer shall pay to Seller a fee in the amount of \$ [REDACTED] as payment for the Option. This payment is nonrefundable, except in the case of Seller's default.
3. Transfer Application. During the Option Period, Buyer, in its sole discretion may elect to file with IDWR one or more applications for transfer ("Transfer" or "Transfer Application") for the Water Right. Seller hereby consents to such transfers. Buyer shall bear all costs associated with each Transfer and shall have the ability to file a Transfer as to any of the Water Rights. The Transfer applications may entail a change in any element or condition of the Water Rights or may entail use of the Water Rights for mitigation or some other similar purpose. Buyer shall be entitled to any mitigation credits resulting from the Transfer.
4. Cooperation with Transfer Efforts. Seller shall cooperate fully with Buyer throughout with each Transfer. At Buyer's request and direction, Seller shall take whatever steps are reasonable and appropriate to support and assist in securing approval of the Transfer, including signing and notarizing Transfer Applications, authorizations, and other documents consistent with Buyer's rights under this Option Agreement, or ceasing irrigation of portions of the Water Right place of use if necessary. Any costs incurred by Seller at Buyer's direction in this regard shall be reimbursed by Buyer. In the event that it is necessary to dry up acres in order to obtain transfer approval, Buyer will inform Seller of the need to dry up acres and shall identify which acres need to be dried up. Buyer shall not have the ability to require acres to be dried up if notice to dry up acres is provided to Seller after Seller has planted crops for the upcoming growing season, unless Buyer and Seller agree otherwise. Additionally, to the extent crop reports are available, Seller agrees to secure and provide to Buyer (or to assist Buyer to obtain) Farm Service Agency crop reports for the Water Right place of use.
5. Withdrawal of Transfer Application. At any time and in its sole discretion Buyer may withdraw, amend, or suspend any pending Transfer Application or file a new or revised Transfer Application.
6. Use and Protection of Water Rights. Prior to their conveyance to Buyer at Closing if the Option is exercised, Seller is authorized to continue to use any portion of the place of use of the Water Right that is not the subject of a Transfer. Seller shall keep Buyer fully advised of the status and use of the Water Rights during the Option Period. At no time during which this Option Agreement is in effect shall Seller take any action that diminishes the value or utility of the Water Right.
7. Exercise of Option. Buyer shall exercise the Option by providing notice consistent with paragraph 11 of this Option Agreement. If Buyer exercises the option to purchase, the

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS [Signature] DATE: 12/11/24 PAGE 2 OF 13

purchase price for each given acre or fraction of an acre of the Water Right shall be [REDACTED]

8. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the Effective Date as follows:
- (a) Authority. Seller has the full legal right, power and authority to enter into and perform this Option Agreement, and shall remove, or shall exercise commercially reasonable efforts to cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Water Right on or before Closing if the Option is exercised and the Water Right is purchased by Buyer.
 - (b) Appurtenance. The Water Right is appurtenant to and has been beneficially used as the water source to irrigate its place of use and/or been properly preserved for future use consistent with Idaho law.
 - (c) Not Forfeited. No portion of the Water Right has not been forfeited or abandoned in whole or in part.
 - (d) No Representation or Warranty Concerning Suitability for Buyer's Intended Use. Seller has not made, and hereby makes, no representation or warranty to Buyer except as expressly contained in this Agreement.
9. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and again as of the Closing for the Water Right, as follows:
- (a) Authority. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder.
 - (b) Buyer's Due Diligence. Buyer and Buyer's consultants and counsel have had a full opportunity to review all documents, records and other information made available to Buyer by Seller and/or otherwise reasonably available to Buyer through public or other sources, related to the nature and extent of the Water Right, the laws and rules affecting their transfer and use by Buyer, and the suitability or fitness of the Water Right for Buyer's intended purposes.
10. Broker.
- (a) The Broker represents Buyer under this Option Agreement and Buyer shall pay Broker a fee of [REDACTED].

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: [Signature] DATE: 12/14/21 PAGE 3 OF 13

- (b) Consent To Limited Dual Representation And Assigned Agency. The undersigned Buyer has received, read and understand the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned Buyer understands that the brokerage involved in this transaction may be providing agency representation to both the Buyer and the Seller. The undersigned Buyer understands that, as an agent for both Buyer/client and Seller/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms, or factors motivating the Buyer/client to buy or the Seller/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations, and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by § 54-2085, Idaho Code. The undersigned Buyer understands that a limited dual agent does not have a duty of undivided loyalty to either client. The undersigned Buyer further acknowledges that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in § 54-2087, Idaho Code. In an assigned agency situation, the designated Broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.
- (c) Buyer Notification and Consent to Release from Conflicting Agency Duties. Buyer acknowledges that Broker as named above has disclosed the fact that at times Broker acts as agent(s) for other buyers and for sellers in the sale of the property. Buyer has been advised and understands that it may create a conflict of interest for Broker to introduce Buyer to a Seller client's property because Broker could not satisfy all of its client duties to both Buyer client and Seller client in connection with such a showing or any transaction which resulted. **Based on the understandings acknowledged, Buyer makes the following election.** (Make one election only.)

Buyer DOES want to be introduced to Seller client's property and hereby agrees to relieve Broker of conflicting agency duties, including the duty to disclose confidential information known to the Broker at the time and the duty of loyalty to either party. Relieved of all conflicting agency duties, Broker will act in an unbiased manner to assist the Buyer and

_____/_____
Initials

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: MDL DATE: 12/11/21 PAGE 4 OF 13

Limited Dual Agency
and / or
Assigned Agency

Seller in the introduction of Buyer to such Seller client's property and in the preparation of any contract of sale which may result. Buyer authorizes Broker to act in a limited dual agency capacity. Further, Buyer agrees that Broker may offer, but is not obligated to offer, assigned agency representation, and if offered by the Broker, Buyer authorizes Broker to act in such capacity.

OR


Initials

Buyer DOES NOT want to be introduced to Seller client's property and hereby releases Broker from any responsibility or duty under the agency agreement. Broker shall be under no obligation or duty to introduce the Buyer to any Seller client's property.

Single Agency

11. Miscellaneous.

- (a) Attorneys' Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages because of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.
- (b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, by facsimile, or by email to the listed email address below. Notice shall be provided to the following:

<u>Seller</u>	<u>Buyer</u>
Gary Summers and Shannon Summers 1177 E 9 th N Rexburg, ID 83440 shansummers@gmail.com	Rocky Mountain Water Exchange LLC 482 Constitution Way, Ste. 303 Idaho Falls, ID 83402 rog.rmea@gmail.com
<u>Seller's Representative</u>	<u>Buyer's Representative</u>
Same	W Roger Warner, Partner

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS:  DATE: 12/11/21 PAGE 5 OF 13

- (c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding this Option Agreement. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.
- (d) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.
- (e) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.
- (f) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.
- (g) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.
- (h) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- (i) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.
- (j) Essence of Time. Time is of the essence in this Option Agreement.
- (k) Recording. The Parties shall record a notice of this Option Agreement in the records of Teton County, Idaho, in a form substantially like the form attached hereto as **Exhibit 2**.

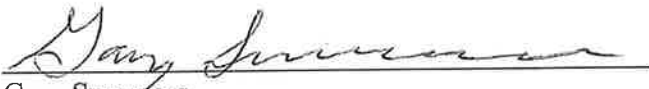
[SIGNATURES ON FOLLOWING PAGE]

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: DATE: 12/11/21 PAGE 6 OF 13

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SELLER"



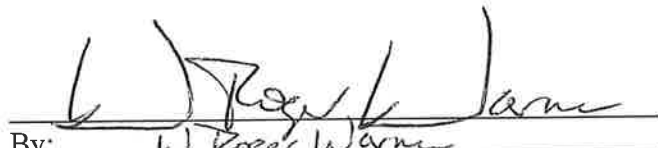
Gary Summers



Shannon Summers

"BUYER"

**ROCKY MOUNTAIN WATER EXCHANGE,
LLC**



By: W. Roger Warner
Its: Managing member

"BROKER"

KELLER WILLIAMS EAST IDAHO



Michael James Johnston
By: Reed D. Nord, Agent for Broker

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: GS/WS DATE: 12/11/21 PAGE 7 OF 13

**Exhibit 1
The "Water Right"**

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT REPORT

11/23/2021

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 22-14026

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	GARY SUMMERS
Current Owner	SHANNON SUMMERS
	1177 E 9TH N
	REXBURG, ID 83440
	2083510077

Priority Date: 06/19/1961

Basis: Decreed

Status: Active

Water Supply Bank Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/15	1.91 CFS	472.8 AFA
Total Diversion			1.91 CFS	472.8 AFA

Location of Point(s) of Diversion:

GROUND WATER | NENE | Sec. 12 | Township 05N | Range 45E | TETON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05N	45E	11		SWNE	26.5		SENE	12.4						
		12		NENE	35		NWNE	37.8						
				SWNW	16.4		SENE	29.5						

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ME LRL DATE: 12/14/21 PAGE 8 OF 13

Total Acres: 157.6

Conditions of Approval:

1. S37 The use of water for irrigation under this right may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than November 24, 2008.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Dates:

Licensed Date:

Decreed Date: 11/24/2008

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number: EXC

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: AKG LSP DATE: 12/11/21 PAGE 9 OF 13

Lessor Name(s): GARY SUMMERS
SHANNON SUMMERS

Lease Status: Active

Lease Amount: 1.58cfs

Rental Availability: 1.58cfs

Date Received: 7/18/2016

Lease Begin Date: 1/1/2016

Expiration Date: 12/31/2020

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: MS / LSR DATE: 12/11/21 PAGE 10 OF 13

Exhibit 2
MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT is entered into this _____ day of December, 2021, (the "Effective Date") by and between the following parties:

1. **Gary Summers and Shannon Summers**, husband and wife, whose address is 1177 E 9th N, Rexburg, ID 83440 (hereinafter "Seller"); and
 2. **Rocky Mountain Water Exchange, LLC**, an Idaho limited liability company, whose address is 482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402 (hereinafter "Buyer")
- A. Seller owns **Water Right No. 22-14026** (the "Water Right"), which was decreed on **November 24, 2008** in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of Idaho for irrigation purposes with a priority date of **June 19, 1961**.
- B. Pursuant to a certain Option Agreement for Purchase and Sale of Water Right ("Option Agreement"), Seller has granted Buyer an exclusive option and right to purchase the Water Right.

NOW, THEREFORE, in order to provide public notice thereof, Seller and Buyer recite as follows:

1. Buyer and Seller acknowledge and agree that the Water Right is subject to Buyer's exclusive right to purchase under the terms and conditions of the Option Agreement.
2. Buyer and Seller acknowledge and agree that the Water Right is subject to Buyer's exclusive right to purchase under the terms and conditions of the Option Agreement.
3. Buyer and Seller agree that this Memorandum of Option Agreement may be recorded.
4. Buyer shall execute and record a release of this Memorandum of Option Agreement upon the expiration of the Option Period or termination of the Option Agreement in the event that Buyer does not exercise the option under the Option Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Memorandum of Option Agreement effective as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ASL DATE: 12/11/21 PAGE 11 OF 13

"SELLER"

Gary Summers

Shannon Summers

"BUYER"

**ROCKY MOUNTAIN WATER EXCHANGE,
LLC**

By: _____
Its: _____

Exhibit 3

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: MS RL **DATE:** 12/11/21 **PAGE 12 OF 13**

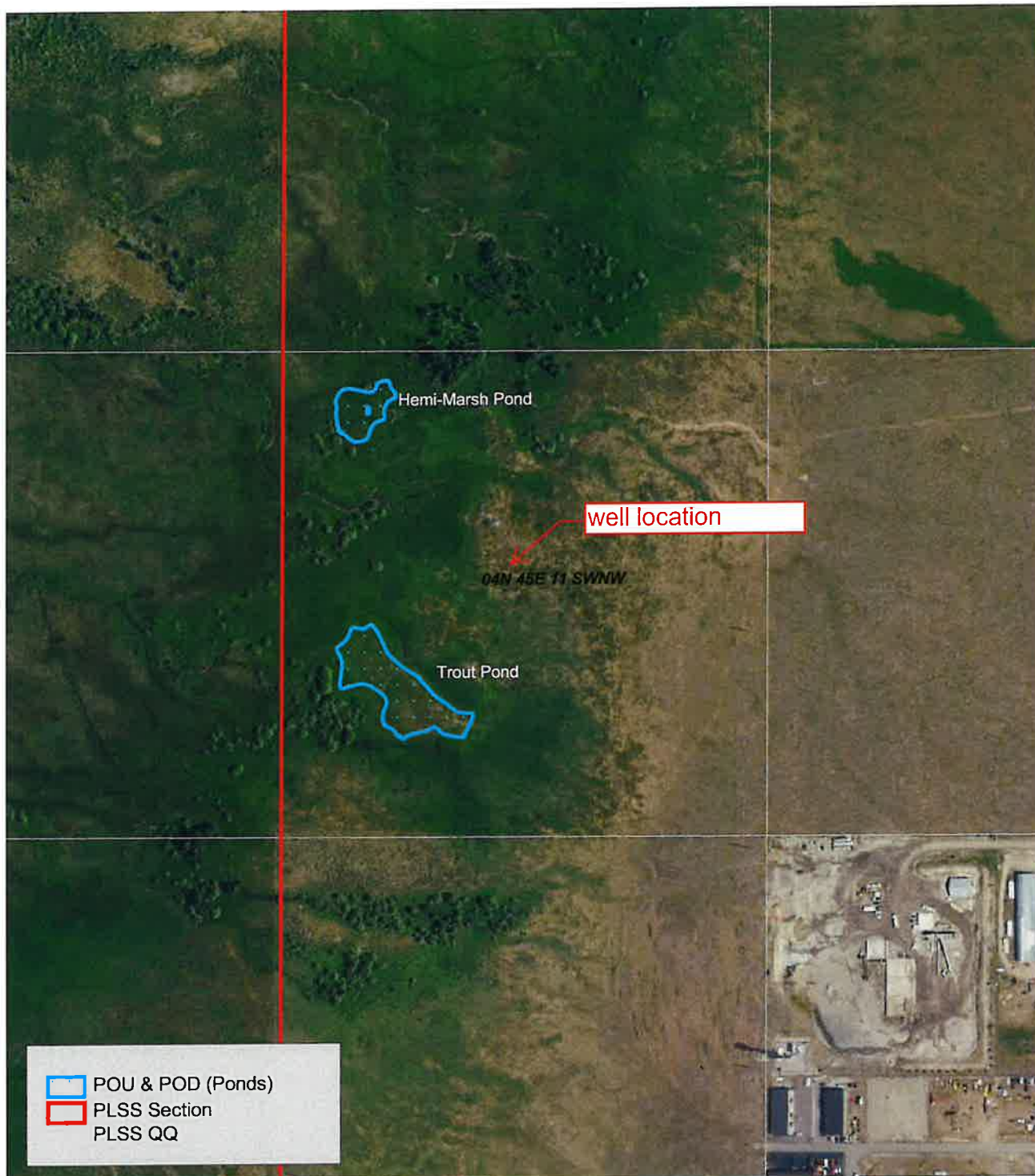
AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

(Attached)

G:\WPDATA\RLH_RME WATER EXCHANGE\20181024 OPTION AGREEMENT.DOCX:cdv

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: RLH RLH **DATE:** 12/16/21 **PAGE 13 OF 13**



2021 USDA NAIP Image

1320

0

1320 Feet



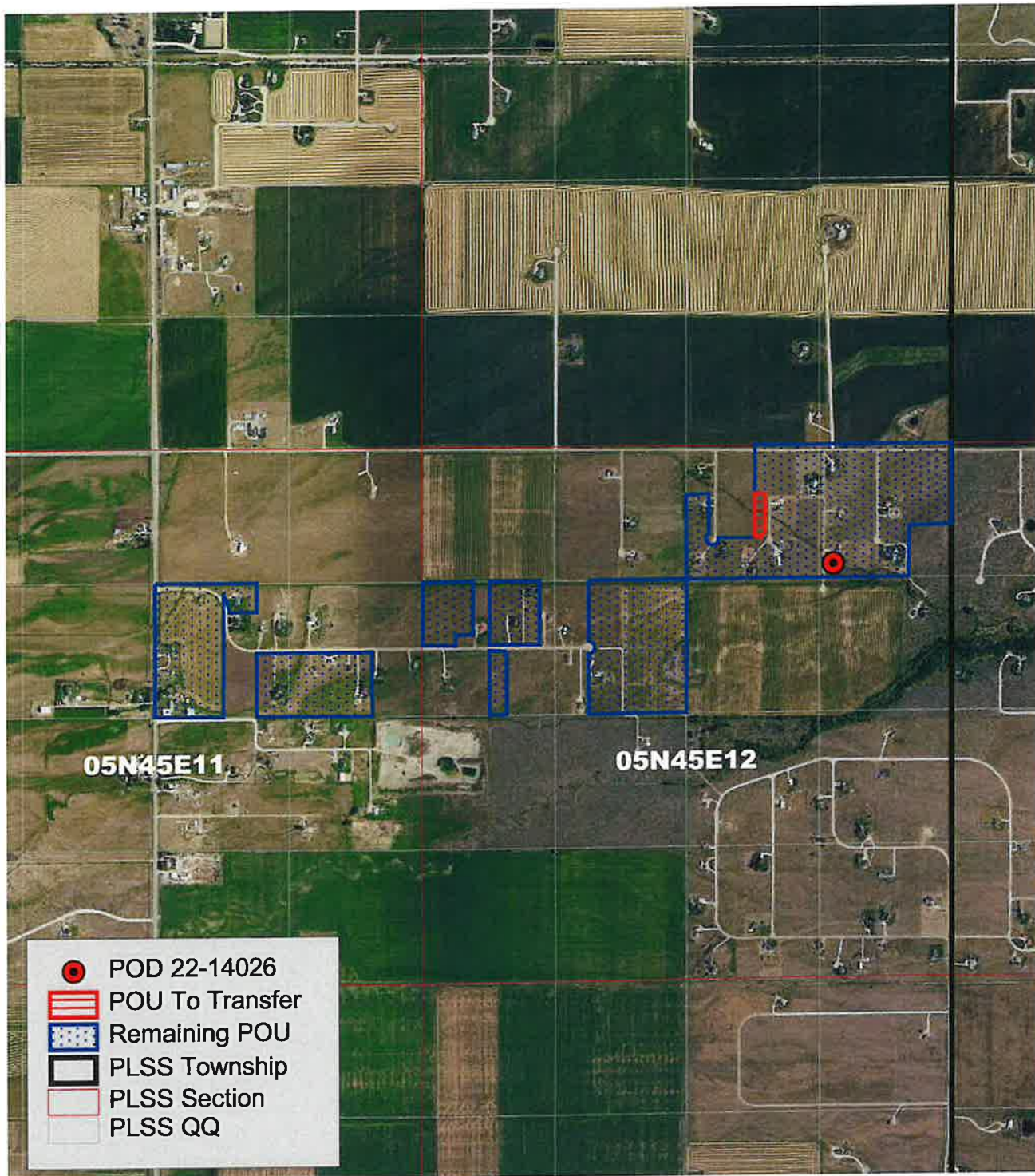
Rocky Mountain
ENVIRONMENTAL
ASSOCIATES, INC.

482 Constitution Way, Suite 303
Idaho Falls, ID 83402
208-524-2353

Attachment #7a: New Place of Use & POD

Gaudet Ponds

Project 13-0019



2021 USDA NAIP Image

1320 0 1320 Feet



482 Constitution Way, Suite 303
Idaho Falls, ID 83402
208-524-2353

Attachment #7b: Original POU & POD

Gaudet Ponds

Project 13-0019

86396

Attachment #8a

Conversion of Nature of Use - Charles Gaudet Proposed Transfer

The applicant proposes to develop two new ponds, as illustrated in maps also attached to the Transfer Application:

1. Trout pond, 1.09 acres surface area, 3.18 acre feet volume, approximately 2.9 feet mean depth;
2. Hemi-marsh pond, 0.39 acres surface area, 0.55 acre feet volume, approximately 1.4 feet mean depth.

Both ponds will be constructed in areas with shallow groundwater and are anticipated to intercept groundwater year-round. The trout pond will be constructed in a non-irrigated upland area and the hemi-marsh pond will be constructed within an existing wetland. A small well will be installed to provide makeup water if needed in times of low water table.

Volume for first fill will be obtained via a water-supply bank rental.

The application proposes to transfer part of an existing, nearby groundwater right to authorize the consumptive use of evaporation of groundwater from the pond surfaces.

First-fill Volume

First-fill calculations are based on attached plans provided by Intermountain Aquatics, who have designed and will install the ponds. Table 1 and Table 2 detail the volume calculations for the ponds. Table 3 provides the total storage volume for which first-fill authorization is needed.

Table 1: Trout Pond Volume Calculations				
Contour Label	Acres at Contour	Mean Acres for Increment	Contour Interval for Increment	Acre Feet for Increment
C1	1.09			
C1.5	0.40	0.75	0.50	0.37
C2	0.42	0.41	1.00	0.41
C3	0.33	0.38	1.00	0.38
C4	0.35	0.34	1.00	0.34
C5	0.26	0.31	1.00	0.31
C6	0.28	0.27	1.00	0.27
C7	0.19	0.24	1.00	0.24
C8	0.22	0.20	1.00	0.20
C9	0.12	0.17	1.00	0.17
C10	0.16	0.14	1.00	0.14
C11	0.07	0.12	1.00	0.12
C12	0.12	0.09	1.00	0.09
C13	0.02	0.07	1.00	0.07
C14	0.02	0.02	1.00	0.02
C15	0.02	0.02	1.00	0.02
C16	0.01	0.01	1.00	0.01
C17	0.01	0.01	1.00	0.01
C20	0.00	0.01	1.00	0.01
Total Volume				3.18

Table 2: Hemi-Marsh Pond Volume Calculations				
Contour Label	Acres at Contour	Mean Acres for Increment	Contour Interval for Increment	Acre Feet for Increment
C1	0.39			
C2	0.22	0.30	1.00	0.30
C3	0.04	0.13	1.00	0.13
C4	0.19	0.11	1.00	0.11
Total Volume				0.55

Table 3: Total Volume	
Pond	Acre Feet
Trout Pond	3.18
Hemi-Marsh Pond	0.55
Total	3.73

The proposed mitigation for first fill of these ponds is a Water Supply Bank rental of a portion of the banked part of right 22-14026, per the attached copy of the Water Supply Bank application. The lands under this right historically produced alfalfa. The ET_{Idaho} precipitation-deficit parameter has been used to estimate historic consumptive use, for alfalfa hay with less-frequent cuttings. The Driggs, Idaho National Weather Service data (NWS - USCO0102676) were used, with URL <http://data.kimberly.uidaho.edu/ETIdaho/stcivrstats.py?station=32&cover=3&stats=Deficit>. The indicated annual precipitation deficit is 617 mm, or 2.02 feet. The proposed rental is for 1.85 acres, calculated as:

(3.73 acre feet required / 2.02 acre feet per acre).

Evaporation

Each of the ponds has a different conceptual approach, though the calculations are similar.

- The trout pond is in an upland area that appears greener than surrounding uplands in the 2021 image, indicating that currently there is some contribution to ET from aquifer depletion. The calculation for consumptive use was based on months when the ET_{Idaho} precipitation deficit for the Driggs weather station (NWS USCO0102676) was positive. The URL for these data is <http://data.kimberly.uidaho.edu/ETIdaho/stcivrstats.py?station=32&cover=55&stats=Deficit>. This calculation is conservative in that it neglects benefit to the aquifer that occurs in months when precipitation exceeds evapotranspiration (ET), resulting in movement of water from the pond into the aquifer or reduction in movement of water from the aquifer to the pond. It additionally is conservative in ignoring the fact that absent the transfer there still would be natural aquifer depletion.
- The hemi-marsh pond will be constructed in an area that already is wetland. Per Intermountain Aquatics' input, the post-change consumptive use is based on the same ET_{Idaho} pond data as the trout ponds. The pre-change consumptive use evaluation uses large-stand wetlands data, also from the Driggs weather station, with URL

(<http://data.kimberly.uidaho.edu/ETIdaho/stevrstats.py?station=32&cover=51&stats=Deficit>). The attached drawings and plans suggest that the post-change condition also could have been considered a large-stand wetland, in which case there would be no indicated change in consumptive use. Using pond data instead is an additional conservative adaptation.

Tables 4 and 5 describe the consumptive use calculations and Table 6 summarizes the calculated acreage and consumptive use volume. Due to the factors discussed above, this volume necessarily over-estimates the actual effect on the aquifer of the proposed action.

Table 4. Consumptive Use Calculations for Trout Pond					
Month	No. Days	Precip. Deficit, mm/day	Precip. Deficit, mm	Precip. Deficit, ft.	Ft. C.U. for Mitigation
January	31	-0.58	-17.98	-0.06	0.00
February	28	-0.06	-1.68	-0.01	0.00
March	31	0.48	14.88	0.05	0.05
April	30	1.27	38.1	0.13	0.13
May	31	1.7	52.7	0.17	0.17
June	31	3.19	98.89	0.32	0.32
July	31	3.3	102.3	0.34	0.34
August	31	3.1	96.1	0.32	0.32
September	30	2.05	61.5	0.2	0.20
October	31	0.71	22.01	0.07	0.07
November	30	-0.29	-8.7	-0.03	0.00
December	31	-0.76	-23.56	-0.08	0.00
				Sum	1.60
				Acres	1.09
				Acre Ft./Year	1.75

Table 5. Consumptive Use Calculations for Hemi-Mars Pond							
Month	No. Days	After-Change Deficit, mm/day	After-Change Deficit, No Negatives, mm/day	Before-Change Precip. Deficit, mm/day	Increase in Precip. Deficit, mm	Increase in Precip. Deficit, ft.	Ft. C.U. for Mitigation
Jan	31	-0.58	0	-0.71	0.00	0.00	0.00
Feb	28.25	-0.06	0	-0.32	0.00	0.00	0.00
Mar	31	0.48	0.48	-0.18	0.66	0.07	0.07
Apr	30	1.27	1.27	-0.06	1.33	0.13	0.13
May	31	1.7	1.7	-0.26	1.96	0.20	0.20
Jun	31	3.19	3.19	1.43	1.76	0.18	0.18
Jul	31	3.3	3.3	4.65	-1.35	-0.14	0.00
Aug	31	3.1	3.1	5.77	-2.67	-0.27	0.00
Sep	30	2.05	2.05	1.83	0.22	0.02	0.02
Oct	31	0.71	0.71	-0.34	1.05	0.11	0.11
Nov	30	-0.29	0	-0.62	0.00	0.00	0.00
Dec	31	-0.76	0	-0.85	0.00	0.00	0.00
						Sum	0.71

Table 5. Consumptive Use Calculations for Hemi-Mars Pond							
Month	No. Days	After-Change Deficit, mm/day	After-Change Deficit, No Negatives, mm/day	Before-Change Precip. Deficit, mm/day	Increase in Precip. Deficit, mm	Increase in Precip. Deficit, ft.	Ft. C.U. for Mitigation
						Acres	0.39
						Acre Ft./Year	0.27

Table 6: Surface Area and Total Annual Consumptive-use Volume		
Pond	Acres	Acre Feet/Year
Trout Pond	1.09	1.75
Hemi-Marsh Pond	0.39	0.27
Total	1.48	2.02

It is proposed that to mitigate for the increase in consumption, a portion of water right 22-14026 will be transferred to the pond location, with a change in nature of use from "Irrigation" to "Diversion to Storage, Aesthetic Storage, Wildlife Storage and Fish Propagation Storage." This is the same right as the source for water to be rented for first-time fill, so the acreage calculation for the transfer to satisfy consumptive use by evaporation uses the same rate per acre and indicates a one-acre transfer:

(2.02 acre feet required / 2.02 acre feet per acre).

The entire right currently is authorized for diversion of 1.79 cfs on 147.6 acres, or 0.0121 cfs per acre. Rounding to the nearest 0.01 cfs, the transferred portion will be 0.01 cfs on one acre.

Summary of Proposal

Two new ponds are proposed, with a total surface area of 1.48 acres and total volume of 3.73 acre feet. Natural interaction with groundwater will fill and maintain the ponds, with a small well to provide makeup water in times of low water table.

Water volume for first-time fill of the pond will be mitigated through groundwater right(s) rented from the Water Supply Bank.

A conservative calculation of the net change in consumptive use from groundwater indicates a need to transfer existing groundwater rights to authorize an increase in consumptive use from groundwater of 2.02 acre feet per year.

APPLICATION FOR TRANSFER OF WATER RIGHT ATTACHMENT WSB: TRANSFERRING WATER RIGHTS LEASED TO THE WATER SUPPLY BANK

Approval of a transfer application will not impact the terms of a Water Supply Bank Lease Contract. Any transferred water right or portion of a water right that is leased to the Water Supply Bank (Bank) shall remain unused while the lease is active.

If the transfer proposes to relocate the place of use of an irrigation water right, and the relocated acres include land currently idled due to a Bank lease contract, the applicant is required to identify the areas that will be idled at the new place of use for the duration of the lease contract. The acres to be idled should be clearly identified on the map created for Attachment 7B of the transfer application. The applicant should confirm the map is attached when completing the table below. If the leased portion of the place of use is not proposed to be relocated, a map is not required.

A Bank lease contract shall remain in effect until it expires, a new lease proposal is processed to replace it, or the water right is released from the Bank through written confirmation issued by the Water Resource Board. If the proposed transfer is approved, the water right owner will be provided sufficient time to allow the lease contract to expire before beneficial use of water at the new place of use will be expected. Meanwhile, water rights leased to the Bank are protected from forfeiture for the duration of the lease contract.

Water right owners who would like to adjust the terms of their lease contracts can either submit a new lease proposal on an Application to Lease a Water Right to the Water Supply Bank form, or they can request early termination of their lease contracts by completing a Request to Release a Water Right from the Water Supply Bank form. If a water right is leased to the Bank, and it is currently being rented from the Bank, the lease cannot be reduced or terminated until the rental agreement concludes. A request to release a water right or to submit a new lease application should be sent to the Department's state office. To find out if there are any rentals associated with a leased water right, please call a Bank representative at the Department at 208-287-4800.

In the table below, please provide the requested information for any water right that is both proposed for transfer and leased to the Bank. The information needed to complete this table can be found in your Bank lease contract. A copy of your lease contract can be obtained using the 'Search Water Rights' option on the Department's internet page at www.idwr.idaho.gov or by contacting any Department office.

Water Right Number	Lease Contract Expiration Date	Water Right Quantities Leased to the Bank			Map Attachment 7B Clearly Identifies Idled Place of Use at New Location
		Rate (cfs)	Volume (AF)	Acres	
22-14026	(ready for review)	1.76	442.8	147.6	Attached? ☐ or No Change ☒
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐

Is the ownership of the water right(s) leased to the Bank being changed? ☐ Yes ☒ No

- ☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.

Additional Information:

Attached is an Application to Rent Water from the Board's Water Supply Bank for initial fill of the ponds proposed by the Transfer Application.

Agency Use Only: Personnel processing transfer applications should forward a copy of this attachment, the original Lessor Designation form and/or IRS Form W-9, if received, to the State Office.

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO RENT WATER FROM THE BOARD'S WATER SUPPLY BANK

Applicant Name: Charles G. Gaudet

Is this application being submitted with a lease application as a lease/rental package?

Yes ☐ No ☒

If yes, specify companion water rights in Section 4

This application must be completed according to the minimum requirement checklist below. This checklist is part of the rental application and must be included with the rental application. **Applications that do not meet the minimum requirements will not be placed in the processing queue and may be returned until all minimum requirements have been met.**

Rental applications should be submitted well in advance of the desired start date for the use of rental water. Rental applications may be processed as early as November 1 of the year prior to the intended use of rental water. Any rental application received on or before November 1 for use in the next year will be assigned a received date of November 1. Rental applications submitted more than one year in advance of the proposed start date for the use of rental water will not be accepted and will be returned to applicants. Rental applications may be returned to applicants if the desired start date for the use of rental water cannot be accommodated by the Water Supply Bank. Rental requests will not be accepted once the rental season of use period has concluded.

One rental application per beneficial use of water. For multiple beneficial uses of water, separate rental requests should be submitted for each unique beneficial use of water. One rental application can be submitted if you propose to rent water from multiple sources.

For additional instructions on completing a rental application, visit the Bank's website at http://idwr.idaho.gov/water_supply_bank.

MINIMUM REQUIREMENT CHECKLIST

Check All Items as Either Attached (Yes) or Not Applicable (N/A)

Yes

- ☒ Completed *Application to Rent Water from the Board's Water Supply Bank*
- ☒ Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank

Attachment N/A Yes

- | | | |
|-----------|--|--|
| 2 | ☒ | A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request |
| 3A | ☐ ☒ | Detailed information on a proposed use of rental water |
| 3F | ☒ ☐ | Authorization from the owner/operator of the rental point(s) of diversion |
| 3H | ☒ ☐ | Water modeling to account for the impacts of the rental request |
| 3J | ☒ ☐ | Documents justifying a rate of flow greater than 0.02 cfs/acre |
| 3K | ☒ ☐ | Authorization from the owner/operator of the property at the proposed rental place(s) of use |
| 4B | ☐ ☒ | Explanation of how the rental water will sufficiently accomplish your rental purposes |
| 4C | ☐ ☒ | Explanation of consumptive use amounts for water rights experiencing a change in nature of use |

Department Use Only – Proposed Water Right(s)

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

1. CONTACT INFORMATION

- A. Applicant Charles G. Gaudet
- Mailing Address PO Box 788, Victor, ID 83455
- Street City State Zip Code
- Email Address _____ Phone Number 307-413-2353
- B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☒ No ☐
- If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.
- Representative Bryce A. Contor Professional Title Principal Hydrologist
- Organization Rocky Mtn Environmental Assoc. Inc. Relationship to Applicant Consultant
- Mailing Address 482 Constitution Way, Ste 303, Idaho Falls, ID 83402
- Email Address c/o Kristin.rmea@gmail.com Phone Number 208-524-2353

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to irrigate. Attach the map to this application and label it **Attachment 2**.

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

- A. Describe why you desire to rent water and provide a detailed description of your proposed use. If the proposed use is not for irrigation, describe in detail how you determined the amount of rental water required. If the space below is insufficient, attach additional sheets as required and label them **Attachment 3A**:

Attached

- B. Enter the desired and/or minimum rates of flow, volume, or irrigable acres requested for your rental purposes:

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
0.02. CFS	AF	CFS	AF	1.85 AC

* Sometimes water rights provide an exceptionally low rate per acre and/or low volume per acre. This section is meant to establish an acceptable range of water sufficient for your proposed water use. Please see question 4B and complete if necessary.

- C. This section must be completed in full. Enter the proposed start date and latest possible start date for using rental water as well as the number of years you would like to rent water. The latest possible start is the latest possible date by which you would be willing to pay for a rental and be able to benefit from utilizing rental water.

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
6/1/2022	9/1/2022	☒	☐	☐	☐	☐	☒ Process application as soon as possible	☐ Return application to applicant
		1	2	3	4	5		

* The number of years permissible for a rental is subject to the lease contract duration for the water right(s) being rented.

** Per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right. Water Supply Bank rental applicants are not authorized to utilize rental water prior to the execution of an approved rental agreement. Rental requests may be returned to applicants if no water is available from the Bank to fulfill a rental request.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

- D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):

Excavation of ponds will intercept natural groundwater.

- E. Describe the physical type (pump, headgate, etc.) and location of the POD from which rental water is proposed to be diverted:

POD Description	Water Source	Other Water Rights Diverted from this POD
Proposed ponds will		(none current)
serve as POD for pond fill		

If the POD(s) above are located where water is turned into a canal, lateral or ditch, or if they are located on your property but are serviced by water that is delivered via a canal, lateral or ditch, your rental request must include documented authorization from all relevant canal companies, irrigation districts and/or water delivery entities, confirming that they consent to your diversion of water from their system.

- F. Has documented consent from all relevant water delivery entities been obtained? Yes ☐ N/A ☒
If yes, include documented consent as **Attachment 3F**.

- G. Do any POD(s) identified in Question 3E divert from a water source that may require water modeling? Yes ☐ No ☒
Refer to the Water Modeling Requirements Information Sheet to determine if a rental POD may require water modeling.

- H. Has water modeling been provided with your rental request? Yes ☐ N/A ☒
If yes, label modeling Attachment 3 H.
Rental applications that require modeling will be returned if modeling is not provided.

- I. Specify the desired beneficial use of water and the requested season of use or number of acres required:

- ☐ Irrigation _____ (number of acres) Duration: Subject to IDWR standard seasons of use
- ☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)
- ☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)
- ☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)
- ☒ Other: Aesthetics, Fish Propagation, Wildlife from: 06/01 (mm/dd) to: 10/31 (mm/dd)

- J. For irrigation uses, do you propose to divert water at a rate greater than 0.02 cfs/acre? N/A ☒ Yes ☐ No ☐
If yes, justify the rate of flow and attach any supporting documents as **Attachment 3J**. Justification may include information on soil composition, conveyance losses, crop type, irrigation systems, public access areas, etc. A rate of 0.03 cfs/acre is permissible for irrigation of 5 acres or less.

- K. Do you own the land at the proposed rental place of use (POU)? Yes ☒ No ☐
If no, attach documentation from the POU owner/operator confirming your authorization to use the POU and label it **Attachment 3K**.

- L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:

A transfer application is being prepared for ponds. This rental is for one-time first fill.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights?

Yes ☒ No ☐

If yes, specify below the elements of the water rights you are requesting to rent. If no, continue to Question 4B.

Important Information: Diversion rates and volumes sought for rent must be proportionate to the per acre diversion rates and per acre volume limits of the water right under lease contract to the Water Supply Bank. Prior to completing this section, applicants should review all water right lease contracts and any active rental agreements to determine which elements of a water right are available to satisfy a rental request. Lease and rental documents are searchable via [IDWR's website](#).

Water rights identified below must either already be leased to the Bank or a lease proposal should accompany this rental request. **Rental requests for water rights not yet leased to the Bank will be returned if companion lease applications are not provided with the rental request.** For leased rights featuring combined limits, rentals must be consistent with combined diversion rate, volume or acre limits. Combined limits should be listed on a row below water right numbers.

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
22-14026	Irrigation	0.86	213.3	71.1		0.02	5.7	1.9
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL	0.02	3.7	1.9
						CFS	AF	AC

*Attach multiple copies of this page if space above is insufficient to list all water rights requested to be rented on this application.

B. If water right conditions, combined limits, or the sum of all water right elements being requested provide an unconventional duty of water (e.g., an unusually low rate per acre or volume per acre for irrigation use), explain how your proposed rental will sufficiently accomplish your intended purposes. Attach a separate page if space is insufficient and label it **Attachment 4B**:

N/A

C. Does your rental request propose to change the nature of use for any water right(s) being rented?

Yes ☒ No ☐

If yes, explain how the water right(s) will be converted to new uses. Include the historic, consumptive use amounts for the water right being rented if you have it, as well as the new consumptive use amount for your proposed beneficial use. If space below is insufficient, attach a separate page and label it **Attachment 4C**:

Attached

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

- A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☒ No ☐
If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:

- B. Have you or do you intend to submit an application for permit or transfer proposing a similar use as this rental? Yes ☒ No ☐
If yes, describe:

~~Transfer application will be submitted for ongoing consumptive use. This application is only for the first time fill.~~

- C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☐ No ☒
If yes, describe the date and location of the NOV.

- D. Additional Information

~~The Water Supply Bank lease for the water right is listed as "Ready for Review" on IDWR's website. An amendment is prepared for submittal that will match the description of the lease in Part 4 above.~~

DECLARATION

I hereby assert that 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 rejection of the application or cancellation of an approval. I understand that if this rental application is approved, it will be subject to the provisions of Section 42-1766, Idaho Code and all applicable state and federal laws. I understand that the submission of a rental application provides no guarantee for approval of a rental agreement. I also understand that, per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right and that I am not authorized to utilize water as proposed in this application prior to the execution of an approved rental agreement.



Signature of Applicant

Charles G. Gaudet

Printed Name of Applicant

5/20/2022

Date

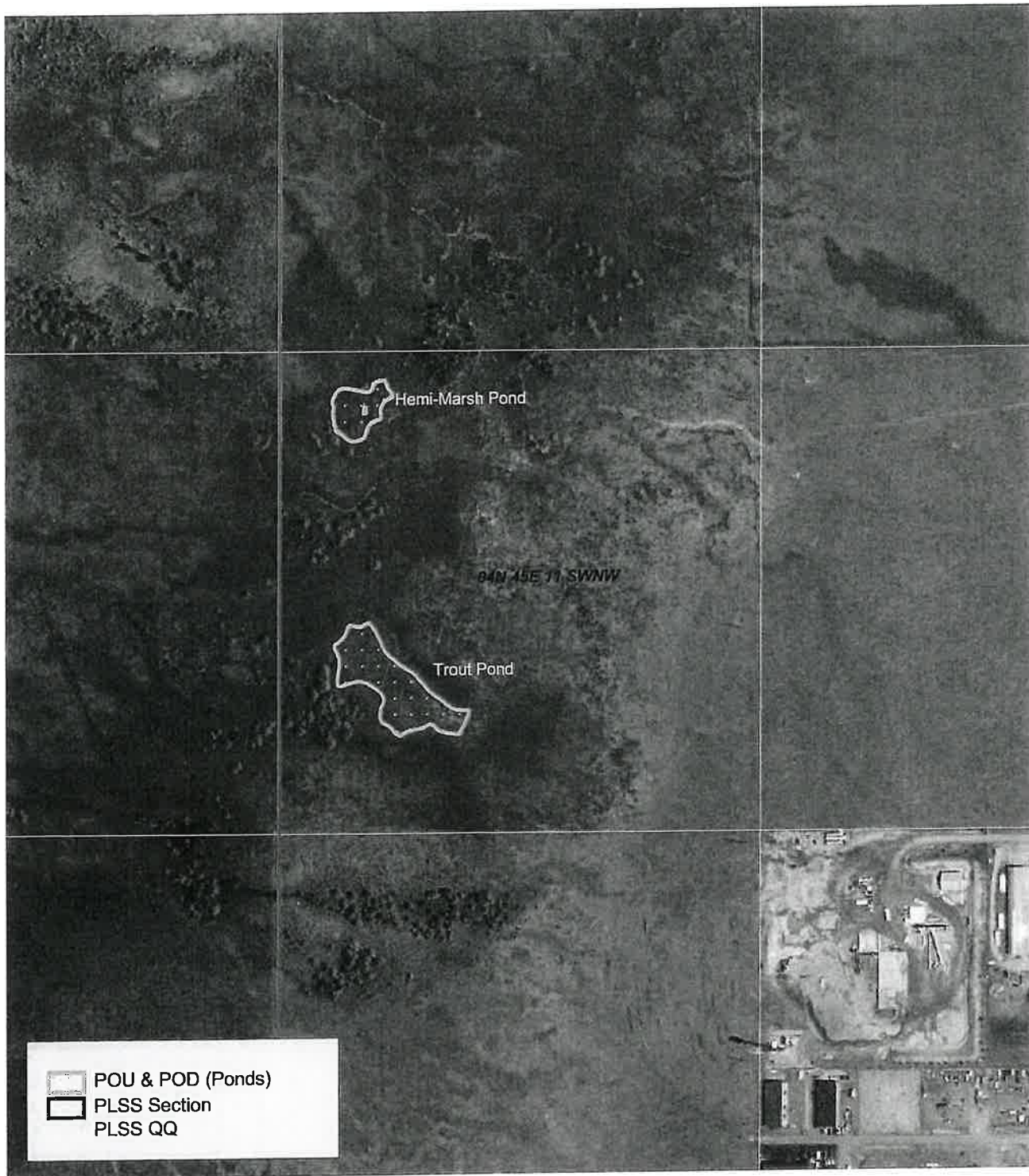
Signature of Representative

Printed Name of Representative

Date

Mail to:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098



2021 USDA NAIP Image



Rocky Mountain
ENVIRONMENTAL
 ASSOCIATES, INC.

482 Constitution Way, Suite 303
 Idaho Falls, ID 83402
 208-524-2353

Attachment 2: Proposed Location

Gaudet Ponds

Project 13-0019

86396

Attachment 3A

Detail of Proposed Use of Rental Water

This Water Supply Bank rental application is part of a project to develop two new ponds, as illustrated in Attachment 2:

1. Trout pond, 1.09 acres surface area, 3.18 acre feet volume, approximately 2.9 feet mean depth;
2. Hemi-marsh pond, 0.39 acres surface area, 0.55 acre feet volume, approximately 1.4 feet mean depth.

Both ponds will be constructed in areas with shallow groundwater and are anticipated to intercept groundwater year-round. The trout pond will be constructed in a non-irrigated upland area and the hemi-marsh pond will be constructed within an existing wetland. A Water Right Transfer Application is prepared to mitigate for ongoing evaporation from the ponds. This Water Supply Bank rental application is for one-time fill of the ponds.

The volume and acreage calculations are provided in Attachment 4B and Attachment 4C, indicating the need to rent 1.85 acres. The right is authorized for 1.79 cfs on 147.6 acres, or 0.0121 cfs per acre. Multiplying 1.85 acres by 0.0121 cfs per acre and rounding to the nearest 0.01 cfs gives the 0.02 cfs rate requested in Part 3B.

Attachment 4B

Description of How Proposed Rental Satisfies Purposes

The proposed ponds will be built in communication with groundwater and will naturally fill from groundwater. The purpose of the rental is to provide authorization for extraction of groundwater for the first-time fill.

These storage-volume calculations are based on construction plans provided by Intermountain Aquatics, who have designed and will install the ponds. The plans are included in Attachment 3A. Table 1 and Table 2 and Table 3 detail the volume calculations for the ponds. Table 3 provides the total storage volume for which first-fill authorization is needed.

Table 1: Trout Pond Volume Calculations

Contour Label	Acres at Contour	Mean Acres for Increment	Contour Interval for Increment	Acre Feet for Increment
C1	1.09			
C1.5	0.40	0.75	0.50	0.37
C2	0.42	0.41	1.00	0.41
C3	0.33	0.38	1.00	0.38
C4	0.35	0.34	1.00	0.34
C5	0.26	0.31	1.00	0.31
C6	0.28	0.27	1.00	0.27
C7	0.19	0.24	1.00	0.24
C8	0.22	0.20	1.00	0.20
C9	0.12	0.17	1.00	0.17
C10	0.16	0.14	1.00	0.14
C11	0.07	0.12	1.00	0.12
C12	0.12	0.09	1.00	0.09
C13	0.02	0.07	1.00	0.07
C14	0.02	0.02	1.00	0.02
C15	0.02	0.02	1.00	0.02
C16	0.01	0.01	1.00	0.01
C17	0.01	0.01	1.00	0.01
C20	0.00	0.01	1.00	0.01
Total Volume				3.18

Table 2: Hemi-Marsh Pond Volume Calculations

Contour Label	Acres at Contour	Mean Acres for Increment	Contour Interval for Increment	Acre Feet for Increment
C1	0.39			
C2	0.22	0.30	1.00	0.30
C3	0.04	0.13	1.00	0.13
C4	0.19	0.11	1.00	0.11
Total Volume				0.55

Table 4: Total Volume	
Pond	Acre Feet
Trout Pond	3.18
Hemi-Marsh Pond	0.55
Total	3.73

These calculations are conservative in that they neglect the groundwater already present in the matrix of geological materials to be excavated to form the ponds. The net new withdrawal from groundwater will be less than indicated above, by the amount of this groundwater storage.

The copy to be submitted with the Water Supply Bank Rental application will include the same Intermountain Aquatics drawings that are attached to Transfer Application Attachment #8a.

Attachment 4C

Rental Quantity Calculation

As described in Attachment 4B, the required volume for rental purposes is 3.73 acre feet.

The proposed mitigation for first fill of these ponds is a Water Supply Bank rental of a portion of the banked part of right 22-14026. The lands under this right historically produced alfalfa. The ET_{Idaho} precipitation-deficit parameter has been used to estimate historic consumptive use, for alfalfa hay with less-frequent cuttings. The Driggs, Idaho National Weather Service data (NWS - USCo0102676) were used, with URL

<http://data.kimberly.uidaho.edu/ETIdaho/stcврstats.py?station=32&cover=3&stats=Deficit>.

The indicated annual precipitation deficit is 617 mm, or 2.02 feet. The propose rental is for 1.85 acres, calculated as:

(3.73 acre feet required / 2.02 acre feet per acre).

First American Title Company

T-2067

WARRANTY DEED

For Value Received, GARY SUMMERS and SHANNON SUMMERS, husband and wife, the grantors, do hereby grant, bargain, sell and convey unto DOROTHY M. ROBERSON, a single person, whose current address is 3581 Rhodes Road, Memphis, Tennessee 38111, the grantee, the following described premises, in Teton County, Idaho, to wit:

All of Lots 18 and 19, Block 1, Four Peaks Estates Subdivision, Division No. I, according to the official plat thereof, records of Teton County, Idaho.

Subject to easements, rights-of-way, restrictive covenants and conditions, roadways, powerlines, water pipes, irrigation canals, other utility easements, and oil and gas leases of record.

Grantors reserve all existing licensed water rights including existing water rights as evidenced by shares of stock in Grand Teton Canal Company.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, her heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all incumbrances, and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: July 28, 1983.


D. GARY PETERSON,
Attorney in fact for
GARY SUMMERS


D. GARY PETERSON,
Attorney in fact for
SHANNON SUMMERS

STATE OF IDAHO)
County of Teton) ss

On this 28 day of Aug, 1983, before me the undersigned, a Notary Public in and for said State, personally appeared D. GARY PETERSON as attorney-in-fact for GARY SUMMERS and SHANNON SUMMERS, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that he executed the same in their behalf as their attorney-in-fact.

91123

FILED
AT 25 MINUTES PAST 4 P.M.
DATE Aug 15 1983
BY B. Wagner
TETON COUNTY, IDAHO


Dorothy C. Daughlass
Notary Public
Residing at Teton
Commission expires: 9-28-83

FILMED
INDEXED ✓
PLATTED ✓

[illegible][illegible]



IDAHO DEPARTMENT OF
WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: 208-525-7161 • Fax: 208-525-7177 • Email: easterninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

June 29, 2022

CHARLES G. GAUDET
PO BOX 788
VICTOR, ID 83455-0788

RE: Transfer No. 86396
Water Right No(s). 22-14026

Dear Applicant:

The Department of Water Resources has received your water right transfer application. Please refer to the transfer number referenced above in all future correspondence regarding this transfer.

A legal notice of the application has been prepared and is scheduled for publication in the TETON VALLEY NEWS on 7/6/2022 and 7/13/2022. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the approval document.

Please contact this office if you have any questions regarding the application.

Sincerely,

Christina Henman
Administrative Assistant

CC:
ROCKY MOUNTAIN ENVIRONMENTAL ASSOC INC
482 CONSTITUTION WAY STE 303
IDAHO FALLS, ID 83402-3552

Henman, Christina

From: Henman, Christina
Sent: Wednesday, June 29, 2022 11:53 AM
To: legalnotices@postregister.com
Subject: Legal Notice for Teton Valley News
Attachments: 86355, 86396 Teton Valley News.docx

LEGAL NOTICE DEPARTMENT
TETON VALLEY NEWS
80 E LITTLE AVE
DRIGGS, ID 83422

RE: Transfer No. 86355, 86396
Water Right No(s). 22-14026, 22-14026

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 7/25/2022. Your cooperation is appreciated.

Thank You,



Christina Henman
Administrative Assistant
IDWR, Eastern Region
900 N Skyline Ste. A
Idaho Falls, ID 83402
Phone: (208) 525-7161

**NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 86355**

EARTHFIRE INSTITUTE, INC, PO BOX 368, DRIGGS, ID 83422 has filed Application No. 86355 for changes to the following water rights within TETON County(s): Right No(s). 22-14026; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows: change point of diversion, add point of diversion, change place of use, change period of use, and change nature of use. The two proposed points of diversion are in NWSW Sec 36 T06N R45E for 0.05 cfs from ground water. The proposed place of use is in NWSW Sec 36 T06N R45E for 3.8 acres of irrigation and 0.4 af of wildlife storage. The proposed period of use for wildlife storage is 1/1 to 12/31.

TRANSFER NO. 86396

CHARLES G. GAUDET, PO BOX 788, VICTOR, ID 83455-0788 has filed Application No. 86396 for changes to the following water rights within TETON County(s): Right No(s). 22-14026; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows: change point of diversion, place of use, nature of use and period of use, and add points of diversion. The three proposed points of diversion are in SWNW Sec 11 T04N R45E for 0.01 cfs and 2 af from ground water. The proposed place of use is in SWNW Sec 11 T04N R45E for aesthetic storage, wildlife storage, and fish propagation storage from 1/1 to 12/31.

For additional information concerning the property location, contact Eastern Region office at (208)525-7161. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Eastern Region, 900 N SKYLINE DR STE A, IDAHO FALLS ID 83402-1718 together with a protest fee of \$25.00 for each application on or before 7/25/2022. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 7/6/2022 and 7/13/2022