

RECEIVED

MAY 31 2022

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

Department of Water Resources
Eastern Region

MINIMUM REQUIREMENTS CHECKLIST
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) Earthfire Institute, Inc.,

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 idwr.idaho.gov/water-rights/transfers/resources.html.
- ☐ ☒ #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: Authorization from property owner Susan Eirich and deeds supporting ownership of water right by seller Gary Summers.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Earthfire Institute, Inc., Phone 208-456-0926
Mailing address PO Box 368, Driggs, ID 83422 Email susan@earthfireinstitute.org

- ☐ 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 Phone 208-524-2353
Mailing address 482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402 Email kristin.rmea@gmail.com

☐ Send all correspondence for this application to the representative and not to the applicant.

OR

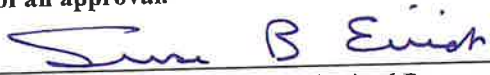
☒ Send original correspondence to the applicant and copies to the representative.

☒ 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

SUSAN EIRICH, EXECUTIVE DIRECTOR 5/19/2022
Print Name and Title if applicable Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
☒ Change nature of use
 ☐ Add diversion point(s)
☐ Change period of use
 ☒ Change place of use
☐ Other _____
- 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 **Part 1A.2**.
- 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 **Part 1A.3**.
Applicant is proposing to transfer 4 acres of water right 22-14026 for irrigation and for storage to maintain 4 proposed ponds and streams within the expanded bear enclosures.

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.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☐ ☒	22-14026	0.04cfs/11.4af	Irrigation	4/15 to 10/15	Groundwater
☐ ☐		0.01 cfs	Diversion to Storage	4/15 to 10/15	Groundwater
☐ ☐		0.4 afa	Wildlife Storage	1/01 to 12/31	Groundwater
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.05 cfs cfs and/or 11.8 acre-feet.

2. Total amount of water proposed to be transferred or changed 0.05 cfs cubic feet per second and/or 0.4 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 #
No			NW	SW	36	45E	06N	Teton	Groundwater	Existing Dom. Well
Yes			NW	SW	36	45E	06N	Teton	Groundwater	New 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	
06N	45E	36N										3.8							3.8
												W							
Total Acres (for irrigation use)																			3.8

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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:
Two existing wells will be connected to a mainline with sprinklers for irrigation. Water for maintenance of the ponds will be diverted from the same wells.

- 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:

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:
The land now irrigated will be retired from irrigation.

- 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 two existing surface water rights used for irrigation at the proposed POU, water right 22-13406 and 22-615B. There are no other water rights at the existing POU.

- 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:

Currently leased to the WSB under Lease Agreement 1009. However, an amended lease application that will remove the proposed transferred acres has been submitted and is awaiting processing by the WSB.

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						

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:

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

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

B. CHANGES IN NATURE OF USE (Water Balance)

- ### C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

86355

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 _____ day of November, 2021 (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 **Michael James Johnston** as Broker and **Reed D. Nord** acting as Agent for the Broker (hereinafter "Broker").
3. **Earthfire Institute, Inc.**, whose address is PO Box 368, Driggs, ID 83422 (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 4.0 acres of the Water Right. Buyer has agreed to purchase 4.0 acres 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>0.05</u> cfs of the total authorized <u>1.91</u> cfs
Quantity (Volume):	<u>12</u> acre-feet per annum

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SE / _____ DATE: Dec 16 '21 PAGE 1 OF 14

Place of Use (Acreage): 4.0 acres of the 157.6 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

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SS / _____ DATE: Dec. 16 '21 PAGE 2 OF 14

IDWR, but the Transfer is (i) denied, (ii) approved by IDWR for less than 4.0 acres 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 [REDACTED]
 - (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: SE / _____ DATE: Dec. 16 '21 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: SE / _____ DATE: 12/17/21 PAGE 4 OF 14

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 [REDACTED] of the sale price or [REDACTED] 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: SS / _____ DATE: 12/16/21 PAGE 5 OF 14

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

_____/_____
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: SE / _____ DATE: 12/17/21 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:

Seller

Rocky Mountain Water Exchange, LLC
482 Constitution Way Suite 303
Idaho Falls, ID 83402
Email: rog.rmea@gmail.com

Buyer

Earthfire Institute, Inc.
PO Box 368
Driggs, ID 83422

Seller's Representative

Reed Nord
3525 Merlin Dr.
Idaho Falls, ID 83404
Email: rgnord@ida.net

Buyer's Representative

Susan B. Eirich
5507 N Baseline Rd.
Tetonia, ID 83452
susan@earthfireinstitute.org

- (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: SE / _____ DATE: Dec 16, 21 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.

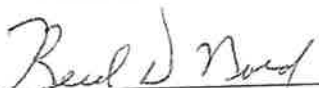
"SELLER"

**ROCKY MOUNTAIN WATER EXCHANGE,
LLC**


By: W Roger Warner
Its: Partner

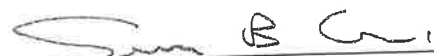
"BROKER"

KELLER WILLIAMS EAST IDAHO


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

"BUYER"

EARTHFIRE INSTITUTE, INC.


By: SUSAN B. EIRICH
Its: FOUNDER & EXECUTIVE DIRECTOR

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SE / DATE: 12/16/21 PAGE 8 OF 14

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

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	1.91 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

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	37.8						
				SWNW	16.4		SENE	29.5						

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SE / DATE: 12/16/21 PAGE 9 OF 14

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:

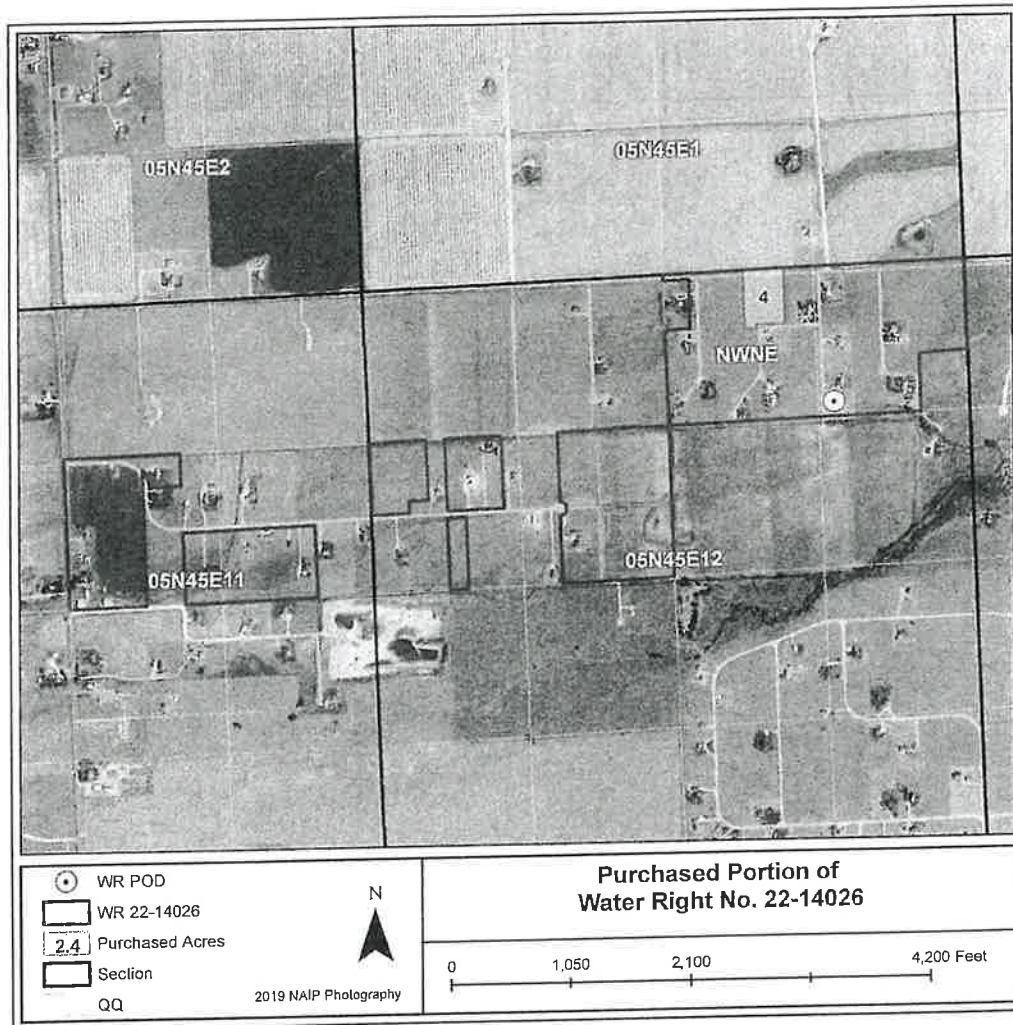
Mitigation Plan: False

Water Supply Bank:

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SS / DATE: 12/16/21 PAGE 10 OF 14

Exhibit 2
Map of 4 Acres—the “Purchased Water Right”



AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SE / DATE: 12/16/24 PAGE 11 OF 14

**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 **EARTHFIRE INSTITUTE, INC.**, whose address is PO Box 368, Driggs, ID 83422 (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: SE / _____ DATE: 12/14/21 PAGE 12 OF 14

"GRANTOR"_____
Gary Summers_____
Shannon SummersSTATE 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: SE / _____ DATE: 12/16/21 PAGE 13 OF 14

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

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SF / _____ DATE: 12/16/24 PAGE 14 OF 14

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 \$ 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 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: 12/11/24 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: MDK 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.

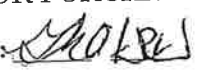
Single Agency

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

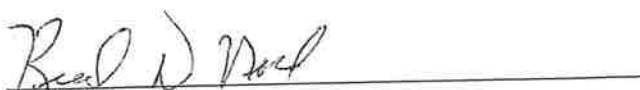
"BUYER"

**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: W. Warner DATE: 12/11/20 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

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
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: DATE: 12/11/21 PAGE 9 OF 13

86355

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

86355

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: 2/11/21 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**

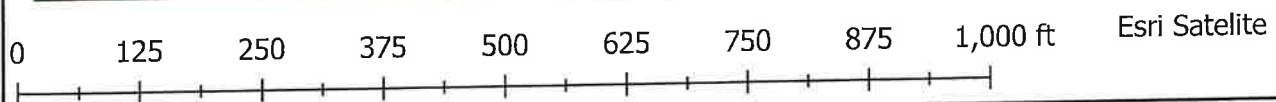
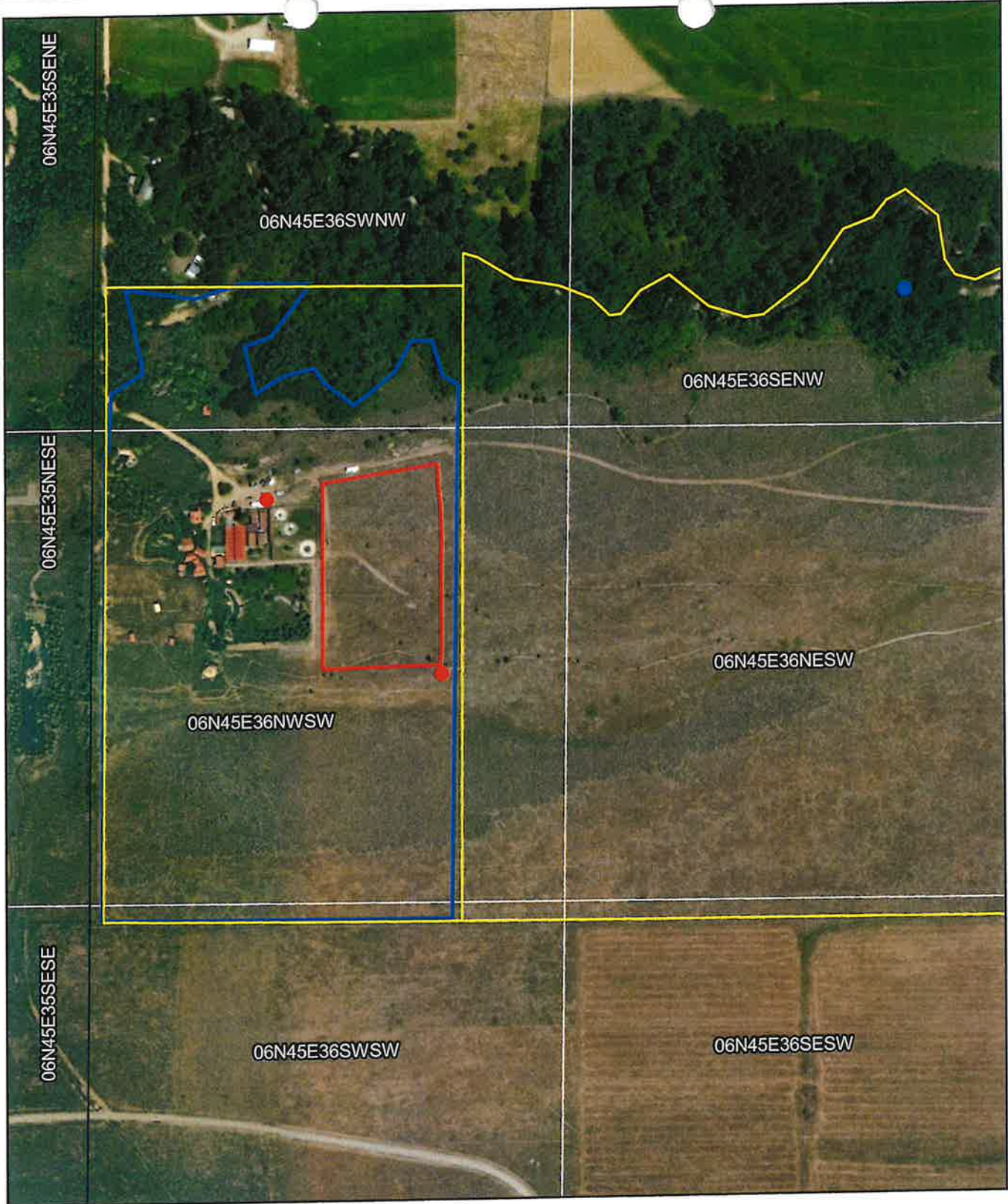
AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

(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: 12/16/24 PAGE 13 OF 13

86355



Legend

- Property Boundary
- POD 22-13406
- Proposed PODs
- TR
- Proposed POU
- TRS
- POU 22-13406, 22-615B
- QQ



Earthfire Institute Inc.,
To Location

RMEA #21-0199

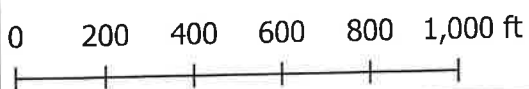
by: MM

Date: 4/12/2022



**Rocky Mountain
ENVIRONMENTAL**
ASSOCIATES, INC.

86355



Legend

- WR POU 22-14026
- WR POD 22-14026
- TR
- Purchased Acres
- TRS

QQ ESRI Satellite



Earthfire Institute Inc.,
From Location

RMEA #21-0199
by: MM
Date: 12/28/2021



Conversion of Nature of Use

Earthfire Institute, Inc.,

Applicant proposes to develop 4 new ponds with streams for expanded bear enclosures. The stream and pond's dimensions include a surface area of approximately .25 acres, and a total volume of 0.36 acre feet. This application proposes to transfer 0.2 acres of water right 22-14026 to provide for the consumptive components of the ponds in addition to sufficient water rights to irrigate the enclosures.

Using IDWRs Pond Loss Calculation Spreadsheet, evaporation of the total 0.25 acre ponds with connected streams is calculated to be 0.4 afa, based upon the precipitation deficit from ET Idaho 2017 of Open Water-Shallow Systems from the Tetonia Exp. Stn. (NWS – USC00109065) Station. Excerpts of the spreadsheet and the ET values from ET Idaho 2017 are included in Figures 1 and 2.

It is proposed that to mitigate for the 0.4 afa increase in consumption, a portion of water right 22-14026 will be converted from irrigation to pond storage. Historically, 22-14026 has been used to irrigate alfalfa. Using ET Idaho 2017 and based upon information gathered at the Tetonia Exp. Stn. (NWS -- USC00109065) station, alfalfa has a precipitation deficit of 608 mm/yr, or 1.99 af/yr. It is calculated to require 0.2 acres of 22-14026 be converted for pond maintenance, as shown in the equation below:

$$\text{Acres to Retire for Mitigation} = 0.4 \text{ afa} / 1.99 \text{ af/yr} = 0.2 \text{ acres}$$

First time fill of the ponds and streams will be provided through 4 acres of 22-615B and 22-13406, which will be diverted from South Leigh Creek at the authorized point(s) of diversion and ditches and conveyed to the bear gardens. The 4 acres within the footprint of the new bear gardens will not be irrigated with these surface rights in the year of construction. The historical land cover of rights 22-615B and 22-13406 is Grass Pasture-Low Management. According to ET Idaho 2017, Grass Pasture – Low management has a precipitation deficit of 480 mm/yr, or 1.57 af/yr. Only 0.2 acres are required to supply adequate volume for first-time fill. This application anticipates mitigating first time fill with 4 acres, which is more than adequate to satisfy the requirement.

Figure 1. Excerpt of IDWR Pond Loss Calculation Spreadsheet

Precipitation Deficit

Station: Tetonia Exp Station (NWS - USC00109065)

Month	mm/day ¹	Days per month	mm/Month
Jan	-1.08	31	0.00
Feb	-0.26	28	0.00
March	0.34	31	10.54
April	1.27	30	38.10
May	1.21	31	37.51
June	3.00	30	90.00
July	3.39	31	105.09
August	3.02	31	93.62
September	2.11	30	63.30
October	0.95	31	29.45
November	-0.64	30	0.00
December	-1.13	31	0.00

Total mm/year = 467.61

$$[(\text{mm/yr}) \div (\text{convert to feet})] \times (\text{Surface area of pond, in acres}) = \text{Evaporation Loss in Acre Feet}$$

$$(467.61 \div 304.8) \times 0.25 = 0.4 \text{ AFA}$$

Figure 2. Excerpts of ET Idaho 2017 ([Tetonia Exp. Stn. \(NWS -- USC00109065\)](#))

Figure 21. Example 10-10

Alfalfa - less frequent cuttings															
Precipitation Deficit (Click here for a graph)															
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Growing Season ^a	Non Growing Season ^b	Annual
Mean ^j	mm/day												mm		
Monthly ^c	-0.84	-0.03	0.09	0.06	1.48	5.56	4.75	4.99	2.48	0.35	-0.61	-0.73	608	-71	537

Open water - shallow systems (ponds/streams)															
Precipitation Deficit (Click here for a graph)															
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Growing Season ^a	Non Growing Season ^b	Annual
Mean ^f	mm/day												mm		
Monthly ^c	-1.08	0.26	0.34	1.27	1.21	3.00	3.39	3.02	2.11	0.95	0.64	-1.13	373	0	373

Grass Pasture - low management															
Precipitation Deficit (Click here for a graph)															
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Growing Season ^a	Non Growing Season ^b	Annual
Mean ^j	mm/day												mm		
Monthly ^c	-0.05	0.09	0.10	0.09	1.10	3.94	4.32	3.99	2.03	0.01	-0.75	-0.19	480	-31	449

WARRANTY DEED

For Value Received, GARY SUMMERS and SHANNON SUMMERS, husband and wife, the grantors, do hereby grant, bargain, sell and convey unto TOD H. LAUBLE and LESLIE H. LAUBLE, husband and wife, whose current address is P.O. Box 294, Driggs, Idaho 83422, the grantees, the following described premises, in Teton County, Idaho, to wit:

All of Lots 15, 16 and 17, Block 1, Four P~~ark~~ 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 Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, 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 2 day of ^{July}~~July~~, 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.

93122

FILED
AT 25 MINUTES PAST 47
DATE JUL 15 1983
CLERK OF DIST. COURT
BY [Signature]

Notary Public
Residing at: *Titania*
Commission expires: *9-20-83*

FILMED ☒
INDEXED ☒
PLATED ☐

~~86355~~



Furnished by FIRST AMERICAN TITLE COMPANY
Formerly TARGHEE TITLE CO.

WARRANTY DEED

For Value Received GARY SUMMERS and SHANNON SUMMERS, Husband and Wife

the grantor s, do hereby grant, bargain, sell, and convey unto

RICHARD L. ROBERSON and MARY K. ROBERSON, Husband and Wife, of P. O. Box 93, Driggs, Idaho 83422

the grantee s, the following described premises, to-wit:

All of Lot 20, Block 1, Four Peaks Subdivision, Division I, per the recorded 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 Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that said premises are free from all incumbrances except as hereinabove set forth and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: October 4, 1983.

GARY SUMMERS by D. GARY PETERSON,
Attorney-in-fact

SHANNON SUMMERS by D. GARY PETERSON,
Attorney-in-fact

STATE OF IDAHO, COUNTY OF TETON

On this 5th day of October, 1983, before me, a notary public in and for said State, personally appeared D. GARY PETERSON, as attorney in fact for GARY SUMMERS and SHANNON SUMMERS,

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as said attorney in fact.

Darwin L. Fraga
Notary Public
Residing at *Driggs, Idaho*, Idaho
Comm. Expires *June*

By *D. Gary Peterson*
Attorney in fact

By *Shannon Summers*
Attorney in fact

of *Teton County*

and *Idaho*

on *October 4, 1983*

at *Driggs, Idaho*

for *the purpose of*

the *conveyance*

of *Lot 20, Block 1, Four Peaks Subdivision, Division I*

to *Gary and Shannon Summers*

Filed for *Recording*

Request

93444

FILED
INDEXED
PLATED

INSTRUMENT No.

Authorization to Submit Transfer Application

Susan Eirich owns the land where Earthfire Institute, Inc. is proposing to transfer a portion of water right 22-14026. This letter grants authority to Earthfire Institute, Inc. to file an Application for Transfer of Water Right to the location described for the proposed Place of Use.

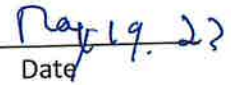
Susan Eirich



Signature



Printed Name



Date



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

EARTHFIRE INSTITUTE, INC
PO BOX 368
DRIGGS, ID 83422

RE: Transfer No. 86355
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