

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

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) The Ferrarone Family Living Trust

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: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 20 2022

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1**

Department of Water Resources
Eastern Region

Name of Applicant(s) The Ferrarone Family Living Trust Phone _____
Mailing address 8 Ryan Ave., Mill Valley, CA 94941 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

JB Ferrarone, Trustee
Print Name and Title if applicable

Date

4/12/22

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.O.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 contracted to purchase water right 22-12784 and proposes to relocate it to a new property. The water right will be exchanged from Darby Creek to Dick Creek for diversion. Additional information and analysis is provided in attachments.

Narrative to Support Transfer Application of Water Right 22-12784

The Ferrarone Family Living Trust

Applicant proposes to purchase water right 22-12784 and relocate it to a new place of use and new point of diversion. Currently, the water right is diverted from Darby Creek through the Cherry Grove Canal. The proposed point of diversion is located on Dick Creek, a tributary which diverges from Darby Creek, as shown in Figure 1. The proposed use is for irrigation purposes to *supplement* existing junior water rights from Dick Creek. This narrative will provide additional information regarding historical use, availability, and deliverability to evaluate potential impacts to other users.

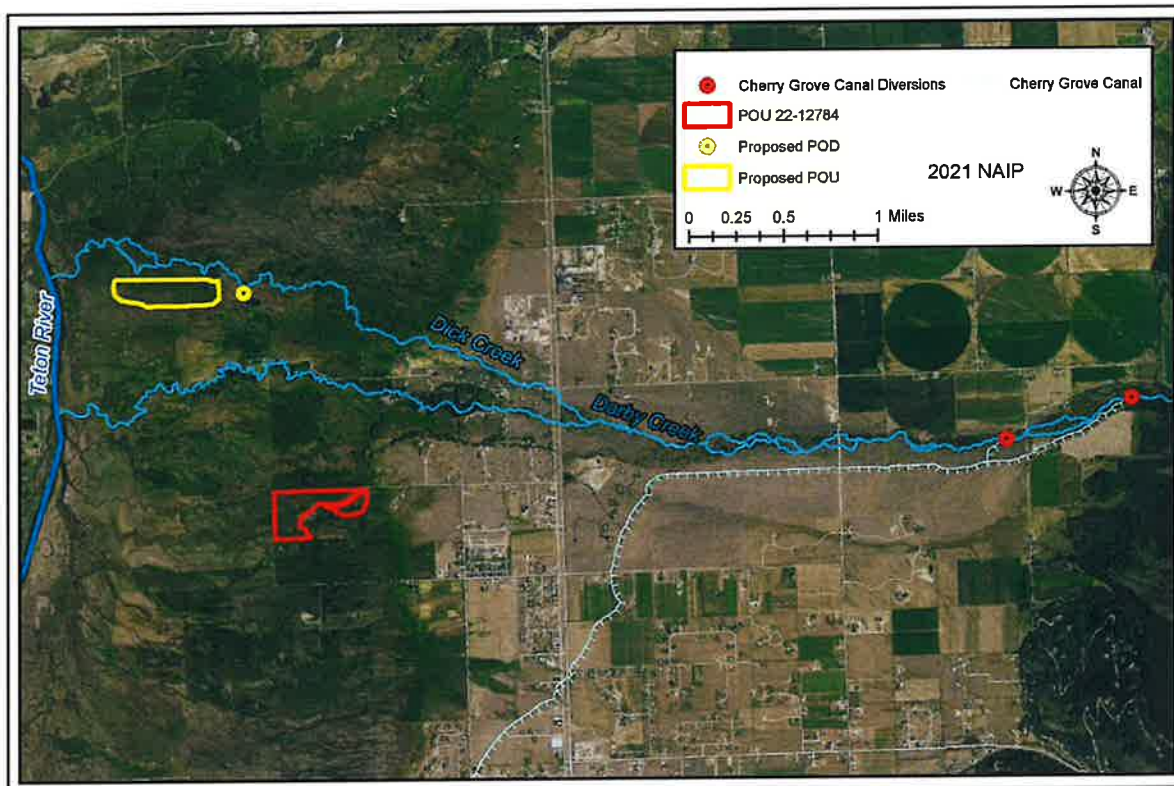


Figure 1. Locations of Existing and Proposed Diversions and Stream Locations

Historical Use, Availability, and Deliverability

Water right 22-12784 is partially overlapped by water right 22-13974 on 15.5 acres. Water right 22-13974 is sourced from a spring adjacent to the property and has a priority date of 1945. This application proposes to unstack these two water rights and restack 22-12784 at the new proposed location.

The current owner of water right 22-12784 has indicated that the entire water right is diverted through Cherry Grove Canal each year, provided it is available, and sent down a ditch for

delivery to the place of use. Due to precipitation and elevated ground water levels, full use of the water right has not been required every year. During the season of 2021, however, the entire water right was documented as being used (photos below). The owner used a combination of flood irrigation and sprinkler irrigation (using small retention ponds and a portable pump and sprinkler system). The place of use was used most recently for pasture. The attached Photos 2, 3 and 4 give a representation of recent irrigation use in 2021.



Photo 1. Ditch that delivers water right to POU.



Photo 2. Dam in ditch for flood irrigation



Photo 3. Small retention pond used for pumping water into sprinklers.

The Cherry Grove Canal is shared by 23 other water rights. All water rights are delivered through Cherry Grove Canal as listed in Table 1 through two different authorized diversions on Darby Creek. Right 22-12784 is authorized for diversion from the *upper* diversion location. However, that location has not been used for over 20 years and all Cherry Grove Canal water rights have since been diverted through the *lower* diversion (2022, personal communication with Deputy Watermaster Nick Olsen). Most water rights in Cherry Grove Canal have the same priority date as water right no. 22-12784 or June 1, 1896. Cherry Grove Canal Company manages and operates the system for all users and have provided authorization for water right 22-12784 to be removed from their canal system. See Attachment #10.

Table 1. Water Rights Delivered through Cherry Grove Canal

Priority Date	Owner	WR #	Div. Rate (cfs)
1895-06-01	CHERRY GROVE LLC	22-426A	0.5
1896-06-01	JOE NETHERCOTT	22-420B	0.7
1896-06-01	BARBARA J DEC	22-420C	0.8
1896-06-01	TETON RAINBOW RANCHES INC	22-420A	1.4
1896-06-01	STEVENS N KEARSLEY	22-11417	1.1
1896-06-01	ALLEN CHRISTENSEN	22-11418	1.21
1896-06-01	MAX S PALMER	22-11829	2.18
1896-06-01	MARK HARRINGTON	22-12784	0.94
1896-06-01	CHERRY GROVE CANAL CO	22-13331	4.4
1896-06-01	JOHN P O'CONNOR	22-13978	0.5
1896-06-01	FOSTER FAMILY TRUST	22-14016	0.31
1896-06-01	RHONDA TOLBERT	22-14017	0.05
1896-06-01	SHERMAN STINTON	22-14087	0.2
1896-06-01	JASON WILCOX	22-14099	0.1
1896-06-01	CLEAR SPRINGS RANCH LLC	22-14253	1.54
1897-06-01	VINTAGE II LLC	22-186	0.4
1897-06-01	CHERRY GROVE CANAL CO	22-218	0.4
1899-05-26	CHERRY GROVE LLC	22-427A	1.1
1899-06-01	TETON SADDLEBACK VISTA LLC	22-530	0.93
1899-06-01	VINTAGE II LLC	22-14149	0.27
1904-12-03	CHERRY GROVE CANAL CO	22-2005	1.02
1906-06-01	TETON SADDLEBACK VISTA LLC	22-531	1.55
1906-06-01	VINTAGE II LLC	22-14150	0.45
1916-01-22	CHERRY GROVE CANAL CO	22-96	29.6
Total Cumulative Diversion			51.65

Review of the Water Master Records from Water District 01 shows that, provided the water right is in priority and there is physical availability in the creek, the water right has been diverted and used in the last 5 years. In about mid-July, the water rights in Cherry Grove Canal go out of priority, followed by Darby Creek disconnecting (breaks or quits flowing to) from the Teton River. Once Darby Creek breaks, there is rarely water available for Cherry Grove to divert

during that time of *futile call*. There are senior users upstream of Cherry Grove who claim all available flows in Darby Creek during *futile call*. Indeed, the water master records support that no diversion continues once the creek disconnects from the Teton River. In fact, it appears typical that the water runs out in the creek before the priority curtailment.

Tables 2-4 show diversions from the Water District 1 annual reports for 2016-2020 from May through July. Other months were excluded since no measurements were reported.

Table 2. Watermaster Measurements on Cherry Grove Canal for May 2016-2020 (cfs).

	May																															
Date	5-1	5-2	5-3	5-4	5-5	5-6	5-7	5-8	5-9	5-10	5-11	5-12	5-13	5-14	5-15	5-16	5-17	5-18	5-19	5-20	5-21	5-22	5-23	5-24	5-25	5-26	5-27	5-28	5-29	5-30	5-31	
2020																		30	30	24	24	23	23	23	23	21	21	21	22	22	22	
2019															19	19	19	16	16	16	16	17	17	17	17	17	14	14	14	14	32	32
2018																15	15	15	18	21	24	26	30	33	34	36	35	33	34	33		
2017																									54	60	60		63	66		
2016								68												63							54			51		

Table 3. Watermaster Measurements on Cherry Grove Canal for June 2016-2020 (cfs).

	June																													
Date	6-1	6-2	6-3	6-4	6-5	6-6	6-7	6-8	6-9	6-10	6-11	6-12	6-13	6-14	6-15	6-16	6-17	6-18	6-19	6-20	6-21	6-22	6-23	6-24	6-25	6-26	6-27	6-28	6-29	6-30
2020	31	35	32	32	32	33	31	30	30	30	30	30	30	28	28	28	29	31	31	32	32	33	33	33	34	35	36	37	37	36
2019	34	41	39	41	42	46	45	48	43	46	40	35	32	34	30	28	26	28	26	27	25	24	22	26	25	27	29	27	28	28
2018	34	35	35	35	34	37	38	39	37	37	37	36	35	37	37	37	36	35	28	27	28	28	28	25	24	25	24	25	24	19
2017				33	33	54	51	49	54	60	46	33	33	54	60	57	60	63	63	60	63	60	63	63	63	63	60	60	63	60
2016	60					49				52				57		39				63	43			41	0	0				

Table 4. Watermaster Measurements on Cherry Grove Canal for July 2016-2020 (cfs).

Date	July																														
	7-1	7-2	7-3	7-4	7-5	7-6	7-7	7-8	7-9	7-10	7-11	7-12	7-13	7-14	7-15	7-16	7-17	7-18	7-19	7-20	7-21	7-22	7-23	7-24	7-25	7-26	7-27	7-28	7-29	7-30	7-31
2020	36	36	36	29	27	26	24	20	17	15	15	12	9	3	2	1															
2019	28	28	26	25	25	25	24	23	22	21	21	19	19	16	15	14	12	8	0												
2018	15	18	19	16	15	19	12	11	10	10	9	5																			
2017	63	63	63	63	63	63	60	60	62	60	60	60	59	57	60	60	4	4	4	4	4	4	2	2	2						
2016																															

	1896 Priority is on
Red	Less than 15.93 cfs, which includes all rights with 1896 priority and more senior

Proposed Location on Dick Creek

Darby Creek divides just before reaching Highway 33, becoming Dick Creek and Darby Creek. There are no intervening water right diversions between the Cherry Grove and the Dick Creek diversions. On Dick Creek, there are very few users; including rights owned by the applicant (in blue), as shown in Table 5.

Table 5. Water Right Users of Dick Creek

Priority Date	Owner	Water Use	Water Right #	Total Acres	Diversion Rate (cfs)
1/22/1916	LEWIS M MITHUN	IRRIGATION	22-13282	41.5	0.83
1/22/1916	JERRY KIRK	WILDLIFE STORAGE	22-13283	0	0.45
7/15/1916	SHOOTING STAR DEVELOPMENT LLC	IRRIGATION	22-13264	9	0.18
10/11/1937	FERRARONE FAMILY LIVING TRUST	IRRIGATION	22-2124B	30	0.6
11/29/1942	FERRARONE FAMILY LIVING TRUST	IRRIGATION	22-4083	53	2
3/30/2004	JERRY KIRK	WILDLIFE STORAGE	22-13285	0	0.45
Total Diversions from Dick Creek					4.51

There are only 4 total users, including the applicant, who is also the majority water user. However, since the applicant's water rights have such junior priority dates, the purchase and transfer of 22-12784 would allow the applicant to receive water longer in the summer than is currently authorized under the existing rights.

Figure 2 on the following page illustrates the locations of the other water users on Dick Creek. The applicant is the second to last diversion on Dick Creek and could, therefore, not harm the upstream users. It is understood and recognized that to prevent injury to other Dick Creek users, the transferred water right may be required to be subordinated to the other Dick Creek users.

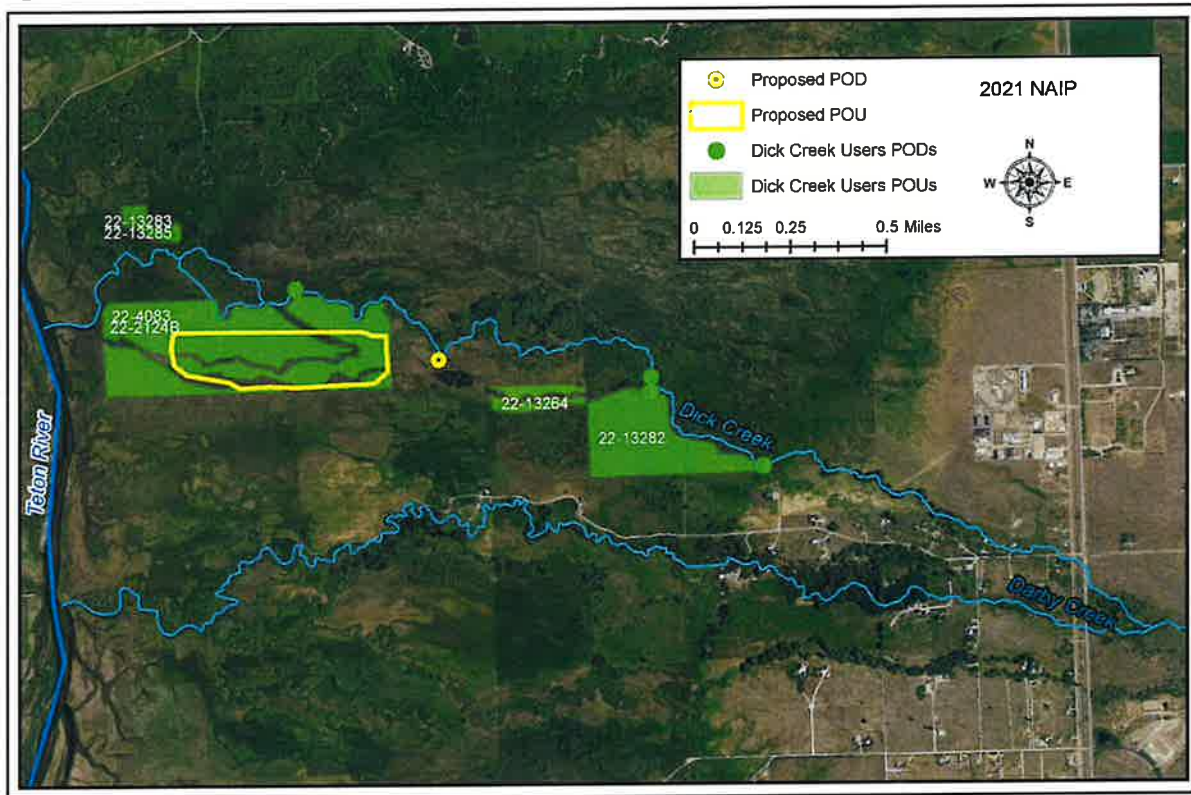
Since water right 22-12784 is coming from a location that is partially stacked with another junior surface water right, it is vital that the new location also include at least 15.5 acres of stacked water right with another junior water right to prevent enlargement. There are at least 15.5 acres of existing water rights within the proposed POU. There are no enlargement concerns due to stacking.

Conclusion

Based on the historical delivery, availability, and the proposed location of diversion, it is suggested that to be able to approve this transfer without potential for injury or enlargement, the transferred water right can only be diverted when all of the following conditions are met:

1. Water is physically available downstream of the Cherry Grove Canal headgate.
2. The water right is in priority.
3. The Dick Creek users have sufficient water to receive their authorized diversion quantities.

Figure 2. Water Users on Dick Creek



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued **RECEIVED**

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MAY 24 2022

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.

[illegible]

Total authorized under rights 0.94 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.94 cubic feet per second and/or _____ 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**.

[illegible]

4. Place of use: (If irrigation, identify with number of acres irrigated per $\frac{1}{4}$ tract.)

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

[illegible]

Total Acres (for irrigation use)	120
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Acre Limit: 47 acres

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 ☒ ☐	22-12784	0.94 cfs	Irrigation	4/15 to 10/31	Dick Creek Trib. Teton Rv.
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.94 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.94 cubic feet per second and/or _____ 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 #
N			SE	NE	9	4N	45E	Teton	Dick Creek	

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	9			20				5	22									47
Total Acres (for irrigation use)																			47

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:
An existing diversion on Dick Creek will convey water through an open ditch to the POU for irrigation on existing fields.
- b. Who owns the property at the point(s) of diversion? Shooting Star Development LLC
 If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
The diversion is a historical diversion location and no new infrastructure will be installed.
- 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 current place of use will no longer be irrigated, except for the area covered under water right 22-13974, from a local spring.
- 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:
Existing POU: 22-13974 overlaps partially. Existing POD: Cherry Grove Canal, multiple other users.
Proposed POU/POU: 22-4083 and 22-2124B from Dick Creek.
- 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:



WATER RIGHT REPORT

12/7/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 22-12784

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MARK HARRINGTON PO BOX 300 DRIGGS, ID 83422 2083542900

Priority Date: 06/01/1896

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
DARBY CREEK	TETON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	0.94 CFS	
Total Diversion			0.94 CFS	

Location of Point(s) of Diversion:

DARBY CREEK | SWNWNE Lt 1 | Sec. 17 | Township 04N | Range 46E | 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>
04N	45E	15		NESW	16		NWSW	31						

Total Acres: 47

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. C03 Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
3. F01 Water is delivered through Cherry Grove Canal Co. ditch.
4. F06 The following rights are also diverted through point of diversion described above: 22-11414, 22-11417, 22-11418, and 22-11829.
5. P29 This right is a combination of old Right Nos. 22-216B, 22-369B, 22-373B, 22-375B, 22-436B, and 22-449B.

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:

Water District Number: 01

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

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 10 day of January, 2022 (the "Effective Date"), by and between **MARK HARRINGTON**, a single man, whose address is PO Box 300, Driggs, ID 83422 (hereinafter "Seller"), and John B. Ferrarone, as trustee of **THE FERRARONE FAMILY LIVING TRUST** dated February 4, 2015, whose address is 8 Ryan Ave, Mill Valley, CA 94941 (hereinafter "Buyer"). Buyer and Seller are individually a "Party" and together the "Parties".

RECITALS:

- A. Seller owns Water Right No. 22-12784 (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 1, 1896. 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 up to 47 acres, which is the entirety of 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. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, up to the following-described portion of the Water Right.

Source:	Darby Creek, tributary to Teton River
Purpose:	Irrigation
Priority:	June 1, 1896
Quantity (Diversion Rate):	up to 0.94 cfs of the total authorized 0.94 cfs
Place of Use (Acreage):	up to 47 acres of the 47 authorized acres

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 all remaining portions of the Water Right, if any, and 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] per acre for a possible total of up to [REDACTED] (the "Purchase Price") depending upon the total amount of acres successfully transferred.
4. Earnest Money Deposit. [REDACTED]
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. 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) Unstacking of Water Rights. While the elements of the Water Right and an associated water right, Water Right No. 22-13974, are sufficiently described to allow IDWR to "unstack" these water rights, the purchased portion shall be reduced to the amount of 22-12784 that IDWR will authorize, provided it meets with the satisfaction of the Buyer.
 - (b) 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 IDWR, but the Transfer is (i) denied, (ii) approved by IDWR for less than 47 acres or an acreage satisfactory to the Buyer and Seller, 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.

7. Closing.

- (a) Closing Date. If (1) the Water Right is unstacked from Water Right No. 22-13974; and (2) no protest to the Transfer is filed with IDWR and (3) IDWR issues a transfer approval consistent with paragraph 6(b), 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 and Buyer does not exercise the contingency set forth in paragraph 6(b) of this Agreement, the Closing shall occur with 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 Rigby, Andrus, & Rigby Law, P.L.L.C, 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.
 - (2) At Closing, Seller shall deliver to Buyer the Special Warranty Deed (the "Deed") substantially in the form attached to this Agreement as **Exhibit 2** for the Purchased Water Right, and any lien release or other documents reasonably requested to confirm the conveyance of the Purchased Water Right free and clear of encumbrances.
- (d) Fees and Costs of Closing. The cost of recording the Deed after Closing 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 not 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.

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. 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, or by facsimile. Notice shall be provided to the following:

<u>Seller</u>	<u>Buyer</u>
Mark Harrington	The Ferrarone Family Living
PO Box 300	Trust
Driggs, ID 83422	8 Ryan Ave
Email:	Mill Valley, CA 94941
mhfishcreek@gmail.com	
<u>Seller's Representative</u>	<u>Buyer's Representative</u>
	JB Ferrarone
	8 Ryan Ave
	Mill Valley, CA 94941
	Email: jferrarone@plathco.com

- (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) Broker.
- (1) Buyer shall and does hereby indemnify Seller against, and agrees to hold Seller harmless from, any claim, demand or suit for any brokerage commission, finder's fee or similar charge with respect to the execution of this Agreement or the transaction based on any

act by or agreement or contract with Buyer, and for all losses, obligations, costs, expenses and fees (including attorneys' fees) incurred by Seller on account of or arising from any such claim, demand or suit.

- (2) Seller shall and does hereby indemnify Buyer against, and agrees to hold Buyer harmless from, any claim, demand or suit for any brokerage commission, finder's fee or similar charge with respect to the execution of this Agreement or this transaction based on any act by or agreement or contract with Seller; and for all losses, obligations, costs, expenses and fees (including attorneys' fees) incurred by Buyer on account of or arising from any such claim, demand or suit.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- (j) 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.
- (k) Essence of Time. Time is of the essence in this Agreement.

[SIGNATURES ON NEXT PAGE]

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

"SELLER"



Mark Harrington

"BUYER"

THE FERRARONE FAMILY LIVING TRUST

By: JB Ferrarone
Its: Trustee

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

"SELLER"

Mark Harrington

"BUYER"

THE FERRARONE FAMILY LIVING TRUST



By: JB Ferrarone
Its: Trustee

Exhibit 1
The "Water Right"

**WATER RIGHT REPORT**

12/7/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 22-12784

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MARK HARRINGTON PO BOX 300 DRIGGS, ID 83422 2083542900

Priority Date: 06/01/1896

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
DARBY CREEK	TETON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	0.94 CFS	
Total Diversion			0.94 CFS	

Location of Point(s) of Diversion:

DARBY CREEK | SWNWNE Lt 1 | Sec. 17 | Township 04N | Range 46E | 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>
04N	45E	15		NESW	16		NWSW	31						

Total Acres: 47

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. C03 Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
3. F01 Water is delivered through Cherry Grove Canal Co. ditch.
4. F06 The following rights are also diverted through point of diversion described above: 22-11414, 22-11417, 22-11418, and 22-11829.
5. P29 This right is a combination of old Right Nos. 22-216B, 22-369B, 22-373B, 22-375B, 22-436B, and 22-449B.

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:

Water District Number: 01

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

**Exhibit 2
Form of the Deed**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Rocky Mountain Environmental Associates, Inc.
482 Constitution Way Ste 303
Idaho Falls, ID 83402

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHTS

MARK HARRINGTON, a single man, whose address is PO Box 300, Driggs, ID 83422 (hereinafter collectively "Grantor") does hereby grant, bargain, sell, assign, and convey unto John B Ferrarone, as trustee of **THE FERRARONE FAMILY LIVING TRUST** dated February 4, 2015, whose address is 8 Ryan Ave, Mill Valley, CA 94941 (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 4th day of January, 20 22.

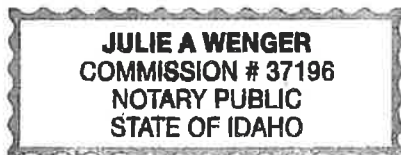
“GRANTOR”

Mark Harrington

Mark Harrington

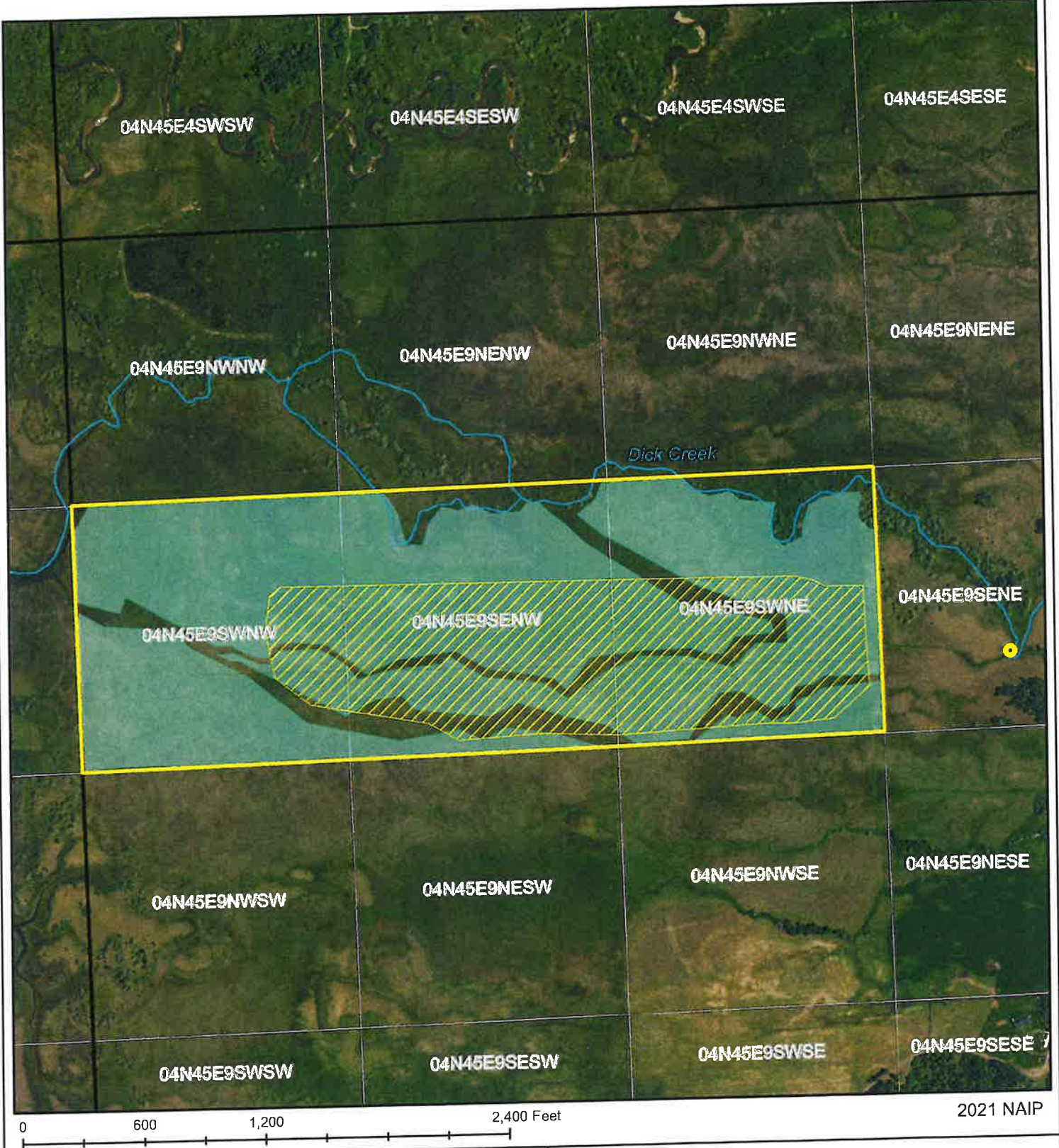
STATE OF IDAHO)
County of Teton)ss.

This record was acknowledged before me on the 4th day of January, 2022, by **Mark Harrington**.



Julie A Wenger
Notary Public for Idaho
My Commission Expires: 11/25/2025

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



Legend

☐ Proposed PPU

Specific 47 acres

Proposed ROP

POU 22-408049

RECEIVED

PPU
MAY 24 2021
7 acres

Department of Water Resources
Eastern Region
POU 22-400-22-204B

☐ Typ & Ring

Section

Q



Proposed Locations

The Ferrarone Family Living Trust

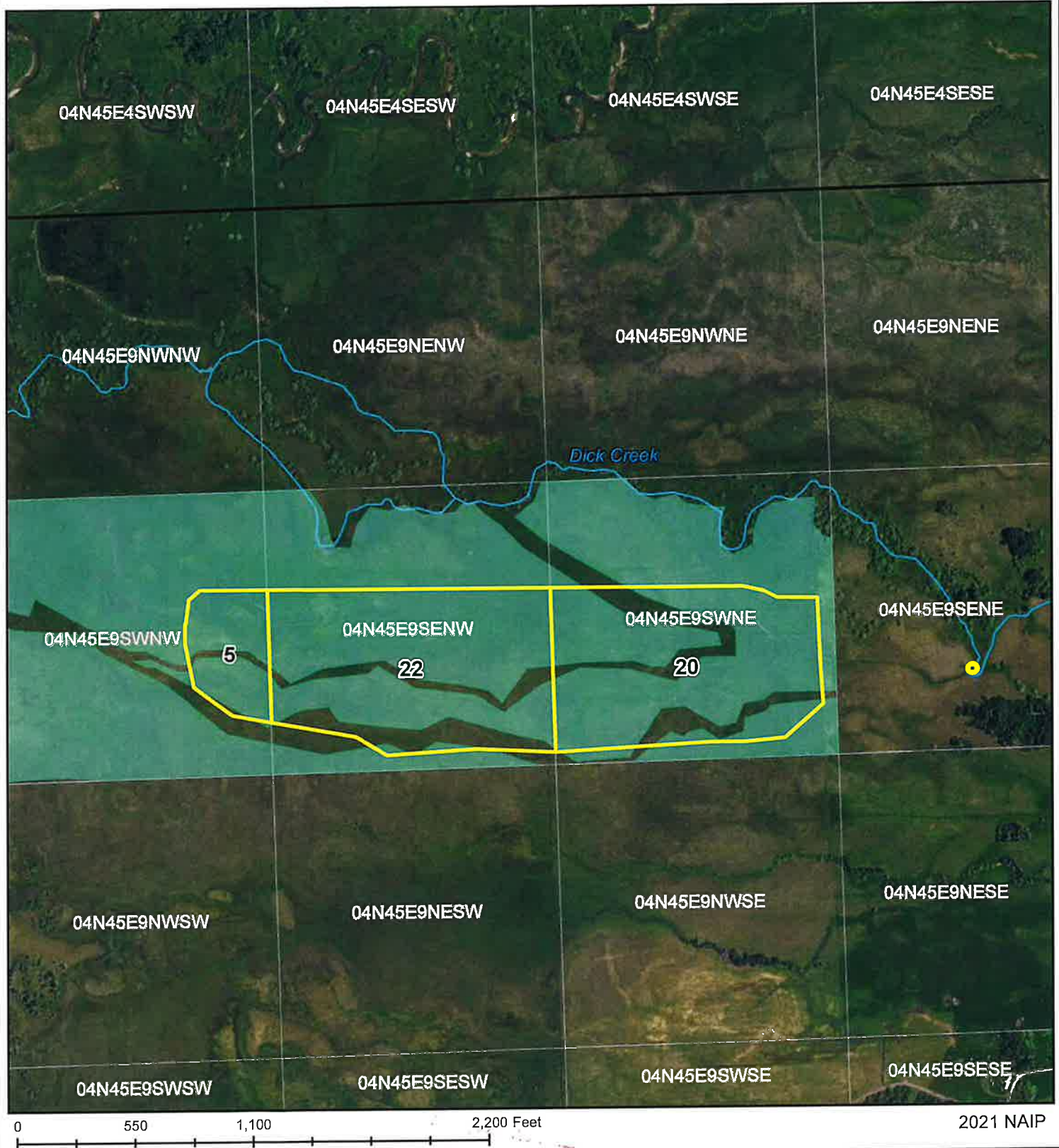
RMEA # 21-0040

by: KM

Date: 5/23/2022



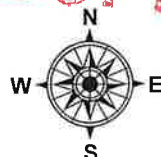
Rocky Mountain
ENVIRONMENTAL
ASSOCIATES, INC.



Legend

- Proposed POD
- Proposed POU
- POU 22-4083 & 22-2124B
- Twp & Rng

- Section
- QQ



Proposed Locations

The Ferrarone Family Living Trust

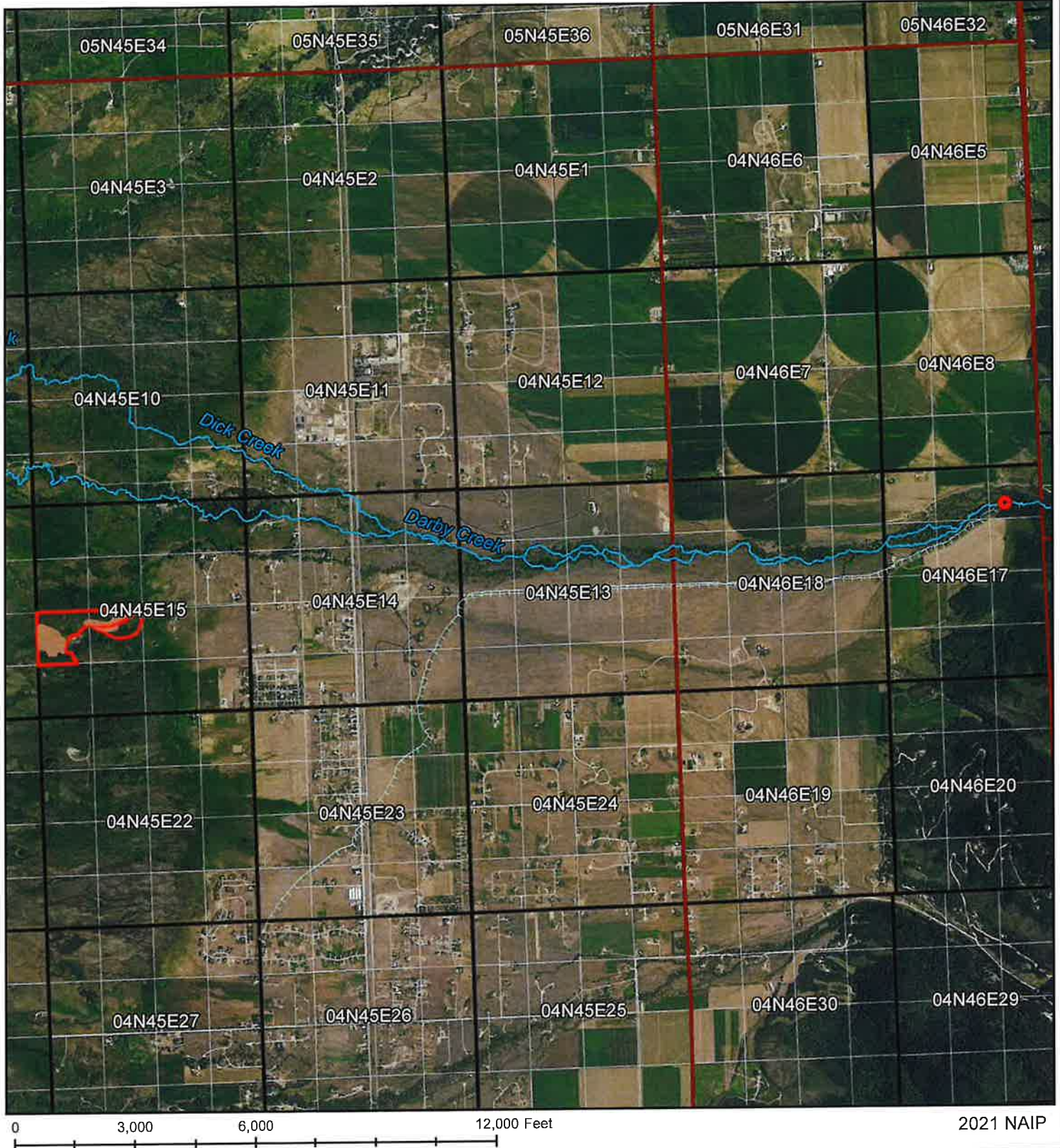
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by: KM

Date: 3/10/2022

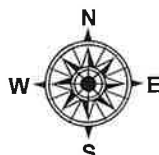


Rocky Mountain
ENVIRONMENTAL
ASSOCIATES, INC.



Legend

- POD 22-12784
- Overlapping POU 22-13974
- POU 22-12784
- Twp & Rng
- Section
- QQ
- Cherry Grove Canal



Existing Locations Pg 1

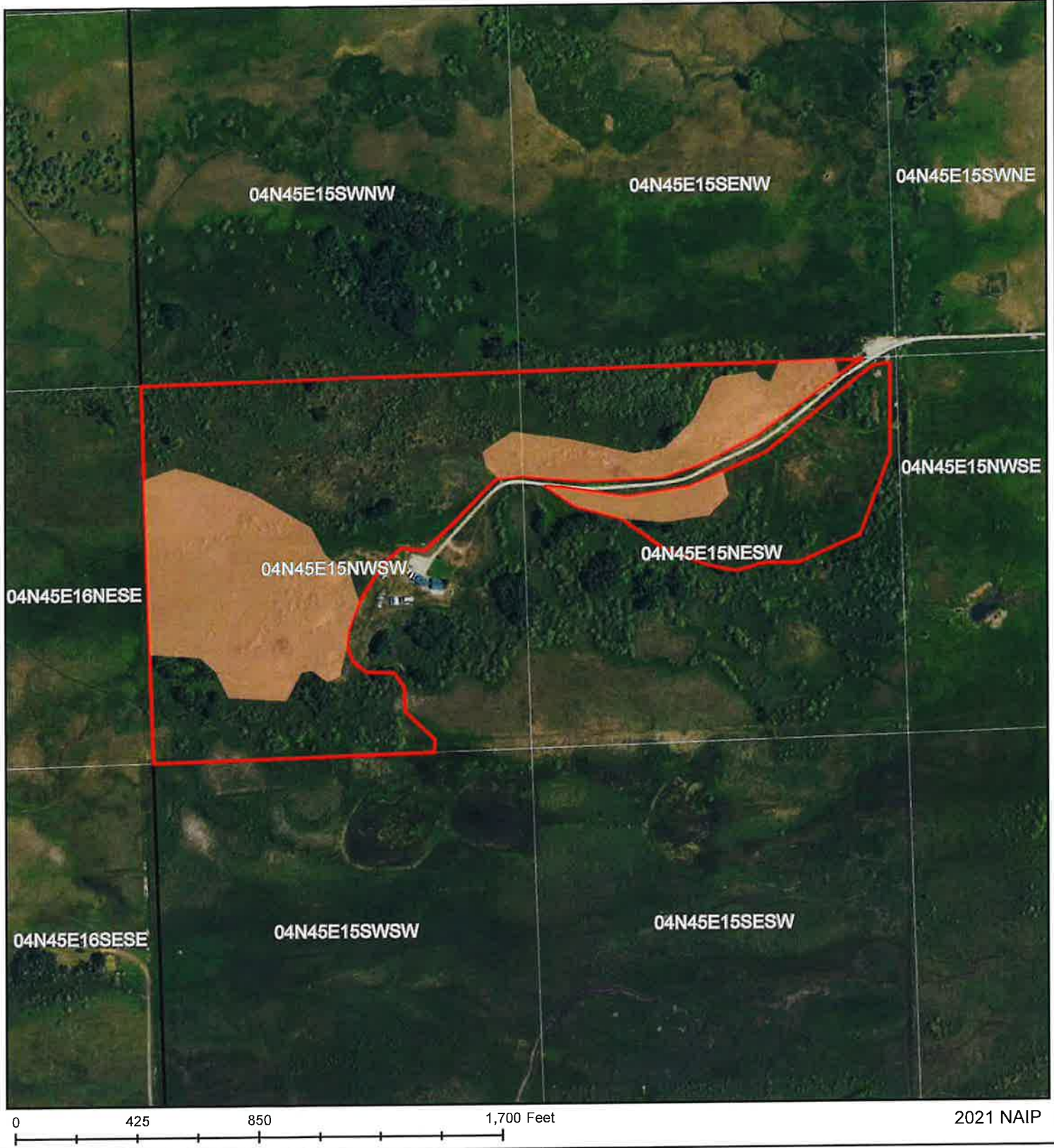
The Ferrarone Family Living Trust

RMEA # 21-0040

by: KM

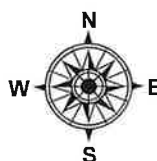
Date: 3/15/2022





Legend

- POD 22-12784
- Overlapping POU 22-13974
- POU 22-12784
- Cherry Grove Canal
- Twp & Rng
- Section
- QQ



Existing Locations Pg 2

The Ferrarone Family Living Trust

RMEA # 21-0040

by: KM

Date: 3/15/2022



Authorization for Transfer of Water Right #22-12784

Water Right 22-12784 is currently diverted through the Cherry Grove Canal from Darby Creek. The Cherry Grove Canal Company manages and operates the canal for the purposes of delivering canal company water rights and privately decreed rights to individuals. We have been presented with the proposal by Mark Harrington to remove water right 22-12784 from the Cherry Grove Canal to be delivered through another diversion downstream on Dick Creek. We have no objection to the removal of water right 22-12784 from Cherry Grove Canal and hereby grant our authorization for the Idaho Department of Water Resources to approve the transfer.

CHERRY GROVE CANAL COMPANY

Pres.
J.P. O'Connor
Signature

J.P. O'Connor
Printed Name and Title

03/22/2022
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 1, 2022

FERRARONE FAMILY LIVING TRUST
8 RYAN AVE
MILL VALLEY, CA 94941-2124

RE: Transfer No. 86096
Water Right No(s). 22-12784

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 6/8/2022 and 6/15/2022. 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 1, 2022 2:01 PM
To: legalnotices@postregister.com
Subject: Legal Notice for Teton Valley News
Attachments: 86096 Teton Valley News.docx

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

RE: Transfer No. 86096
Water Right No(s). 22-12784

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 6/27/2022. 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. 86096**

FERRARONE FAMILY LIVING TRUST, 8 RYAN AVE, MILL VALLEY, CA 94941-2124 has filed Application No. 86096 for changes to the following water rights within TETON County(s): Right No(s). 22-12784; 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 and place of use. The proposed point of diversion is in SENE Sec 9 T04N R45E for 0.94 cfs from Dick Creek. The proposed place of use is in SWNW, SENW, and SWNE Sec 9 T04N R45E for 47 acres within a 120-acre permissible place of use.

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 6/27/2022. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 6/8/2022 and 6/15/2022