

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 84530**

This is to certify that: LUKE D SCHLABACH
1136 HIGHWAY 28
SALMON, ID 83467-5331

LYNDON HELMUTH
MARGARET HELMUTH
1111 HIGHWAY 28
SALMON, ID 83467

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
74-16234	WR/DECREED	6/28/1899	0.200 cfs	N/A	N/A	6.5	LEMHI RIVER
74-485	WR/DECREED	6/28/1899	0.320 cfs	N/A	N/A	10.5	LEMHI RIVER

Purpose of Transfer (Changes Proposed)

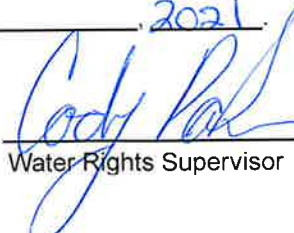
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
74-16234	NO	NO	NO	YES	NO	NO
74-485	NO	NO	NO	YES	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
74-16234	74-16234	0.200 cfs	N/A	N/A	6.5	N/A	N/A	N/A	N/A	N/A
74-485	74-485	0.320 cfs	N/A	N/A	10.5	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.520 cfs	N/A	N/A	17.4		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 12th day of December, 2021.



Water Rights Supervisor

Transfer No. 84530

WATER RIGHT NO. 74-485**As Modified by Transfer No. 84530**

In accordance with the approval of Transfer No. 84530, Water Right No. 74-485 is now described as follows:

Right Holder: LUKE D SCHLABACH
1136 HIGHWAY 28
SALMON, ID 83467-5331

Priority Date: 6/28/1899

Source: LEMHI RIVER

Tributary: SALMON RIVER

BENEFICIAL USE

IRRIGATION

From

03/15

To

to 11/15

Diversion Rate

0.320 cfs

0.320 cfs

LOCATION OF POINT(S) OF DIVERSION

LEMHI RIVER
LEMHI RIVER

SWNE
NWNW

Sec 14 Twp 20N Rge 23E LEMHI County
Sec 14 Twp 20N Rge 23E LEMHI County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
20N	23E	14					10.5												10.5

POU Total Acres: 10.5

CONDITIONS OF APPROVAL

1. This right authorizes the irrigation of 10.7 total acres.
2. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
3. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.s 170 and 74.
4. This right does not grant any right-of-way or easement across the land of another.
5. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 84530

WATER RIGHT NO. 74-485
As Modified by Transfer No. 84530

CONDITIONS OF APPROVAL

7. Pursuant to Idaho Code § 42-1412(6), 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.



WATER RIGHT NO. 74-16234**As Modified by Transfer No. 84530**

In accordance with the approval of Transfer No. 84530, Water Right No. 74-16234 is now described as follows:

Right Holder: LYNDON HELMUTH
MARGARET HELMUTH
1111 HIGHWAY 28
SALMON, ID 83467

Priority Date: 6/28/1899

Source: LEMHI RIVER

Tributary: SALMON RIVER

BENEFICIAL USE

IRRIGATION

From

03/15

To

to 11/15

Diversion Rate

0.200 cfs

0.200 cfs

LOCATION OF POINT(S) OF DIVERSION

LEMHI RIVER
LEMHI RIVER

SWNE
NWNW

Sec 14 Twp 20N Rge 23E LEMHI County
Sec 14 Twp 20N Rge 23E LEMHI County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
20N	23E	14					4.5	2.0											6.5

POU Total Acres: 6.5

CONDITIONS OF APPROVAL

1. This right authorizes the irrigation of 6.7 total acres.
2. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
3. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 170 and 74.
4. This right does not grant any right-of-way or easement across the land of another.
5. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 84530

WATER RIGHT NO. 74-16234
As Modified by Transfer No. 84530

CONDITIONS OF APPROVAL

7. Pursuant to Idaho Code § 42-1412(6), 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.





IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little
December 3, 2021

Director Gary Spackman

LUKE D SCHLABACH
1136 HIGHWAY 28
SALMON ID 83467-5331

LYNDON HELMUTH
MARGARET HELMUTH
1111 HIGHWAY 28
SALMON ID 83467

Re: Transfer No: 84530
Water Right Nos.: 74-485 and 16234

Transfer Approval Notice

Dear Water Right Holders:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right. Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right is a PRELIMINARY ORDER issued by the Department pursuant to Idaho Code § 67-5243. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to Idaho Code § 42-1701A(3). A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office

of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 287-4800.

Sincerely,

A handwritten signature in black ink, reading "Angela M. Hansen". The signature is written in a cursive style with a large initial 'A' and a stylized 'M'.

Angela Hansen

Water Rights Section Manager

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2021 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the persons listed below:

Re: Transfer No.: 84530
Water Right Nos.: 74-485 and 74-16234

LUKE D SCHLABACH
1136 HIGHWAY 28
SALMON ID 83467-5331

LYNDON HELMUTH
MARGARET HELMUTH
1111 HIGHWAY 28
SALMON ID 83467



Debbi Judd
Technical Records Specialist

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

TO: Transfer No. 84530

FROM: Shilynn Novak

DATE: July 6, 2021

RE: Evaluation of Application

Transfer 84530 proposes to add a point of diversion (POD) for water rights 74-485 and 74-76234. This new POD is a new pump which will be located approximately 0.5 miles downstream of the current POD on the applicant's property.

The site is located about 12.5 miles southeast of Salmon, Idaho along State Highway 28 on the Lemhi River.

Summary of Information Submitted

Authority to File:

Two Notices in Change of Ownership along with proper conveyance documents accompanied the Application for Transfer for water right 74-485 and was received by the Department on March 9, 2020. The proposal was to split water right 74-485 and add the proposed POD for each portion of the split right through the same transfer. The application was returned by the Department on March 11, 2020 with a request that each owner submit a separate transfer application. The application did not need to have two separate transfers so the applicants returned the transfer application. The Department received the application June 24, 2020.

The water right was split prior to processing the transfer. Luke D Schlabach is the new owner of 74-485 (which is parent to 74-16234). Lyndon H Helmuth and Margaret Helmuth are the new owners of 74-16234 (which is the child right of 74-485).

Both Mr. Schlabach and Mr. Helmuth filed the transfer to add a POD to water right 74-485 and its child right, 74-16234. Margaret Helmuth submitted a letter March 25, 2021 notifying the Department that Mr. Helmuth has authority to file the transfer on her behalf. Mr. Schlabach and Mr. Helmuth appear to have authority to file this transfer.

Water Right Validity: In the transfer application, the applicants stated:

"We just purchased these properties and found the ditch abandoned. This is a situation beyond our control and should be a defense to forfeiture of the water right."

As of this memo, the Department does not have an official policy for evaluating the application of 42-223(6) when water right validity is in question.

Despite this, the water right is still presumed to be valid since beneficial use appears to have occurred within the last five years. Beneficial use was confirmed by the Department aerial imagery, google earth images, climate engine, and other evidence. This use presented as intentional vegetation across the POU within the property boundary.

In the February 26, 2021 memo, it states that the rights were split 10.7 acres and 6.7 acres for a total of 17.4 acres. Before the split, the water right POU listed 17.0 acres with the condition that irrigation was for 17.4 acres. The updated conditions and POU for the rights should be as follows:

Water Right	POU Acres	Condition Acres
74-0485	10.5	10.7
74-16234	6.5	6.7

Although the February memo has the water right amounts swapped, the values were used. The following comment was left in 74-485 ProofReport: "Mr. Schlabach filed a corrected ownership change. The title company reversed the property descriptions between Schlabach and Helmuth's property. Rate, acres and shapes were updated to reflect the correction." Comparing the water rights to the parcels, the number of acres for the water rights have been updated and are correct.

Injury to Other Water Rights: Although this falls within the Salmon River Wild and Scenic area and the Lemhi River minimum stream flow area, this transfer is not a new appropriation of water and the nature of use is still the same. This transfer proposed to add a point of diversion to the water rights, but there is no change the the rate nor volume. This application was advertised and had an open protest period in which there were no protests received.

Enlargement of Use: No enlargement is anticipated. The additional POD will be providing the same amount of water at the same rate for the same use on the same place of use. This transfer does not propose to change the rate, annual volume, season of use, beneficial use, or irrigated acres.

Local Public Interest: The watermasters for this area were notified of this transfer and neither protested nor had any additional comments. Idaho Fish and Game and Idaho Department of Environmental Quality were each sent comment letters and there was no protest or any additional comments submitted. The application was advertised in the local newspaper and there were no protests made during the protest period. For these reasons this application proposes a change consistent with the local public interest.

Beneficial Use/Conservation of Water Resources: This transfer does not changing any rates and will continue to irrigate at 0.03 cfs/acre as was decreed. The application proposes beneficial use consistent with conservation of water resources in Idaho.

Water Right Overlap: No concerns about overlap nor any additional water rights to take into consideration. In the POU Overlap Analysis, 74-885 is in the same QQ and should not be considered for this transfer because it does not overlap.

Water Supply Bank: These rights are not in the Water Supply Bank.

The application is consistent with criteria of I. C. § 42-222 and should be processed.

20N23E14

POU Overlap Analysis for 74-485 and 74-16234

Water Right	Owner	Source	Use	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
74-15935	BAILEY, JOE A; SCHLABACH, GENEVA F; SCHLABACH, GERALD ; YOHMAN, MARK	LEMHI RIVER	IRRIGATION								0.6								
74-15937	BAILEY, JOE A; SCHLABACH, GENEVA F; SCHLABACH, GERALD ; YOHMAN, MARK	LEMHI RIVER	IRRIGATION							18.5	2.5								
74-663	BEACHY JR, ROMAN; BEACHY, VONDA; KOSSLER, GALEN J; KOSSLER, NORMA F; MAURER, GRANT D; RIGGAN, CLARK H; RIGGAN, HARRIET C	LEMHI RIVER	IRRIGATION											3					
74-16234	COOK, BETTY A; COOK, BLAINE H; HELMUTH, LYNDON; HELMUTH, MARGARET; WEBB, CHRISTINE; WEBB, JAMES	LEMHI RIVER	IRRIGATION					4.5	2										
74-16105	COOK, BETTY A; COOK, BLAINE H; HOLLOWAY, JOSHUA; KING, MORGAN; KIRSCHENMANN, GORDEN R; WAGNER, JAMES W	LEMHI RIVER	IRRIGATION						16.5										
74-474	COOK, BETTY A; COOK, BLAINE H; KIRSCHENMANN, GORDEN R; WAGNER, JAMES W	LEMHI RIVER	IRRIGATION						15.5										
74-485	COOK, BETTY A; COOK, BLAINE H; SCHLABACH, LUKE D; WEBB, CHRISTINE; WEBB, JAMES	LEMHI RIVER	IRRIGATION					10.5											
74-15528	D L EVANS BANK; SNOOK, EDWARD M; SNOOK, FRED H; SNOOK, JOHN C; SNOOK, LOIS; SNOOK, QUINTON	LEMHI RIVER	IRRIGATION																
74-15530	D L EVANS BANK; SNOOK, EDWARD M; SNOOK, FRED H; SNOOK, JOHN C; SNOOK, LOIS; SNOOK, QUINTON	LEMHI RIVER	IRRIGATION			1.2											10.5	13.2	
74-790B	D L EVANS BANK; SNOOK, EDWARD M; SNOOK, FRED H; SNOOK, JOHN C; SNOOK, LOIS; SNOOK, QUINTON	LEMHI RIVER	IRRIGATION																8
74-791	D L EVANS BANK; SNOOK, EDWARD M; SNOOK, FRED H; SNOOK, JOHN C; SNOOK, QUINTON; SNOOK, STEPHANIE	LEMHI RIVER	IRRIGATION			4										1	8	2	2
74-16106	HOLLOWAY, JOSHUA; KING, MORGAN; WAGNER, JAMES W	LEMHI RIVER	IRRIGATION							4									
74-456	LOGAN, MILDRED I; LOGAN, RALPH G; MINOR, BOB; MINOR, JANE; MORRIS, ELMER; MORRIS, NAOMI; SIMS, RALPH E; SIMS, RUTH A	LEMHI RIVER	IRRIGATION								2								
74-15944	RIVCO LLC; WAGNER, JAMES W	LEMHI RIVER	IRRIGATION								8.4								
74-15945	RIVCO LLC; WAGNER, JAMES W	LEMHI RIVER	IRRIGATION							2.8	10.5	3	1						
74-855	SNOOK, ELIZABETH H; SNOOK, FRED H; STOKES, BETTY W; STOKES, EARL DEAN	LEMHI RIVER	IRRIGATION		27			8											
74-857	SNOOK, ELIZABETH H; SNOOK, FRED H; STOKES, BETTY W; STOKES, EARL DEAN	LEMHI RIVER	IRRIGATION	24.6	10.3														
74-858	SNOOK, ELIZABETH H; SNOOK, FRED H; STOKES, BETTY W; STOKES, EARL DEAN	LEMHI RIVER	IRRIGATION	9.6															
74-15529	SNOOK, FRED H; SNOOK, JOHN C; SNOOK, LOIS; SNOOK, QUINTON	LEMHI RIVER	IRRIGATION											18.8	20.9				
74-15705	SNOOK, LOIS; SNOOK, QUINTON; STOKES, BETTY W; STOKES, EARL DEAN	LEMHI RIVER	IRRIGATION			18.1	36.4									36.9	2		12.4
74-15934	WAGNER, JAMES W	LEMHI RIVER	IRRIGATION							1.4									
74-15936	WAGNER, JAMES W	LEMHI RIVER	IRRIGATION							0.7		27	30						

**NOTICE OF PROPOSED CHANGE
OF WATER RIGHT TRANSFER
NO. 84530**

LYNDON HELMUTH and MARGARET HELMUTH, 1111 HIGHWAY 28, SALMON, ID 83467; LUKE D SCHLABACH, 1136 HIGHWAY 28, SALMON, ID 83467-5331 has filed Application No. 84530 for changes to the following water rights within LEMHI County(s): Right No(s). 74-16234, 74-485; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrightsquerynewtransfers>.

The purpose of the transfer is to change a portion of the above rights as follows: to add a point of diversion from the Lemhi River to water rights 74-485 and 74-16234. Water will continue to be used at the current place of use, approximately 12.5 miles southeast of Salmon Idaho.

For additional information concerning the property location, contact IDWR State office at (208) 287-4800; or for a full description of the transfer, please see <http://www.idwr.idaho.gov/water-rights/transfers/search.html>.

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, 322 E Front St, PO Box 83720, Boise ID 83720-0098 together with a protest fee of \$25.00 for each application on or before 05/03/2021. The protestant must also send a copy of the protest to the applicant. GARY SPACKMAN, Director. 4-15-2tc

Affidavit of Publication

STATE OF IDAHO

County of Lemhi

ss.

RICKY G. HODGES being first duly sworn, deposes and says he is one of the publishers (printers) of The Recorder Herald, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein. That the **NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER - NO. 84530** a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for **TWO (2)** consecutive issue(s), commencing with the issue dated **4-15-2021** and ending with the issue dated **4-22-2021**.

STATE OF IDAHO

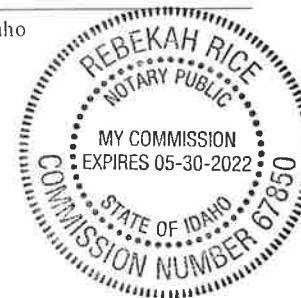
County of Lemhi

ss.

On this **22nd day of APRIL** in this year of 2021 before me, A Notary Public, personally appeared RICKY G. HODGES, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Residing At Salmon, Idaho

Notary Public for Idaho



Publication Fee \$90.00

RECEIVED

APR 26 2021

DEPARTMENT OF
WATER RESOURCES

RECEIVED

APR 26 2021

FISCAL

Handwritten: 4-26-21

Handwritten: 1/10