

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

RECEIVED

85192

AUG 02 2021

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

Department of Water Resources
Eastern Region

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) Knife River Corporation Mountain West

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: _____

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AUG 02 2021

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Department of Water Resources
Eastern Region

Name of Applicant(s) Knife River Corporation Mountain West Phone _____
 Mailing address 5450 W Gowen Rd., Boise, ID 83709-5625 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

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 ☐ Add diversion point(s) ☒ Change place of use
☒ Change nature of use ☒ Change period 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 portions of proposed water rights to be converted for use at industrial facility in Idaho Falls. Ownership will not be changed until after approval of transfer.

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Narrative to Support Application

Knife River Corporation Mountain West

Water rights 35-7720 and 1-7017 are currently appurtenant to 36.6 acres of the PT Elliot LLC property. Rights 35-7720 from ground water and 1-7017 from the Snake River were developed as fully overlapping at the described place of use. The ground water right 35-7720 is diverted from a well and a pond. Water right 1-7017 is diverted directly from the Snake River at the Tomchak B #1 pump, then conveyed through mainline for delivery into the sprinkler system.

Right 1-7017, having a junior priority date of 1978, is seldom available for diversion during the irrigation season. The ground water right 35-7720 has been used as a primary water right historically due to curtailment of 1-7017. It is proposed that the overlapping portion of 1-7017, in amounts described below, be abandoned upon approval of this transfer:

1-7017 for 4.0 acres and 0.07 cfs

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 ☐ ☒	35-7720	0.08 cfs	Industrial	1/01 to 12/31	Ground Water
		8.3 afa		to	
				to	
	35-14746	0.07 cfs	Industrial	1/01 to 12/31	Ground Water
		17.1 afa		to	
				to	
				to	
				to	

Total authorized under rights 0.15 cfs cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.15 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			NE	SW	36	2N	37E	Bonneville	Ground Water	

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	
2N	37E	36																	
Total Acres (for irrigation use)																			

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:
Well to pump to mainline and batch plant.

- 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:
Lands now irrigated under each water right will no longer be irrigated.

- 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 for 35-7720: 1-7017 from Teton River (same POU); 35-14649, 35-14650, 35-7744 (same GW POD)
Existing for 35-14746: 35-14268, 35-14467 (same POD); no other rights at POU.
Proposed POD/POU: 35-14351 and 35-14344 (same POD) and 35-13979 (same 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:

Right 35-7720 is currently enrolled in the Water Supply Bank for the 2021 season.

WATER RIGHT REPORT

7/22/2021

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 35-7720

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	PT ELLIOTT LLC 392 N 4500 E RIGBY, ID 83442-5596 2085897140
Directors Report Owner	BURLEIGH TOMCHAK 202 BASSETT RD ROBERTS, ID 83444 2082286871
Directors Report Owner	MABEL TOMCHAK 458 BASSETT RD ROBERTS, ID 83444 2082286871

Priority Date: 04/22/1979

Basis: Decreed

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	04/01	10/31	0.73 CFS	146.4 AFA
Total Diversion			0.73 CFS	146.4 AFA

Location of Point(s) of Diversion:

GROUND WATER | NESW Lt 6 | Sec. 03 | Township 04N | Range 37E | JEFFERSON County

GROUND WATER | SWSW Lt 5 | Sec. 03 | Township 04N | Range 37E | JEFFERSON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION JEFFERSON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	37E	3	7	SWNE	5.7	12	SWNE	4.6						
				NWSW	25.5	5	SWSW	0.3	14	SWSW	0.5			

Total Acres: 36.6

Conditions of Approval:

1. X35 Rights 35-7720 and 01-7017 when combined shall not exceed the irrigation of 36.6 acres.
2. E53 Use of this right with all other rights is limited to a total combined annual diversion volume of 146.4 acre-feet at the field headgate for the lands below.
3. T19 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.

Dates:

Licensed Date:

Decreed Date: 01/12/2004

Permit Proof Due Date: 7/1/1982

Permit Proof Made Date: 5/20/1982

Permit Approved Date: 7/25/1977

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 05/20/1977

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 120

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 78.7

Combined Volume Limit:

Combined Rate Limit:

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

IDAHO Department of Water Resources



WATER RIGHT REPORT

7/22/2021

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 35-14746

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WAYNE PROPERTIES LLC PO BOX 2906 IDAHO FALLS, ID 83403-2906 2085698194
Original Owner	KETTLE BUTTE FARMS LTD C/O WILLIAM PUGH 6062 ADAMS RD TALENT, OR 97540

Priority Date: 01/14/1983

Basis: License

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	04/01	10/31	3.85 CFS	1400 AFA
Total Diversion			3.85 CFS	1400 AFA

Location of Point(s) of Diversion:

GROUND WATER | NESW | Sec. 13 | Township 03N | Range 34E | BONNEVILLE County

Licensed Diversion Capacity: 7.58

IRRIGATION Use:

Acre Limit: 350

Place(s) of use:

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Place of Use Legal Description: IRRIGATION BONNEVILLE 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>
03N	34E	13		NENE	33.3		NWNE	34.8		SWNE	39.7		SENE	34
				NENW	33.4		NWNW	34.2		SWNW	39.5		SENW	39.7
				NESW	39.7		NWSW	39.5		SWSW	39.6		SESW	39.7
				NESE	33.8		NWSE	39.7		SWSE	39.8		SESE	33.2
		14		NENE	1.6		SENE	0.8						
				NESE	1.3		NWSE	0.6		SWSE	30.3		SESE	36.6
		23		NENE	37.1		NWNE	28.7		SWNE	0.4		SENE	0.7
		24		NWNE	34.2									
				NENW	39.9		NWNW	39.9		SWNW	33.4		SENW	33.4

Total Acres: 912.5

Conditions of Approval:

1. 206 This right is limited to the irrigation of a specific 350.0 acres within the 912.5 acre place of use authorized by this right in a single irrigation season. The specific 350.0 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 350.0 acres to be irrigated within the 912.5 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
2. R05 Use of water under this right will 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. 120.
3. R02 A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
4. 131 Prior to the diversion and use of water under Transfer approval 74838, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion and in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
5. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
6. 205 The approval of transfer 77958 redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.

7. R55 This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
8. SF2 This water right enjoys the benefit of subordination of hydropower water right nos. 02-00100, 02-4000A, 02-4001A, 02-02032A, 02-4000B, 02-4001B, 02-02032B, 02-02036, 02-02056, 02-02065, 02-02064, 02-10135, 02-02060, 02-02059, 02-02001B, 02-02001A, 02-02057, 37-02128, 37-02472, 37-02471, 37-20710, 37-20709, 36-02013, 36-02018 and 36-02026 only so long as the average daily flows as measured at the Murphy Gage station meet or exceed the minimum stream flows established by state action.
9. T07 The right holder shall accomplish the change authorized by this transfer within one year(s) of the date of this approval.
10. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Dates:

Licensed Date:

Decreed Date:

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:

Owner Name Connector:

Water District Number: 120

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 4

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

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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 6 day of May, 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. **Knife River Corporation Mountain West**, a Delaware corporation, whose address is 5450 W Gowen Rd, Boise, ID 83709-5625, (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 a portion of Water Right No. 35-7720 (the "Water Right"), which was decreed on January 12, 2004 in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of Idaho for irrigation purposes with priority dates of April 22, 1977. 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:

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: JK / RBN DATE: 5/6/2021 PAGE 1 OF 14

Purpose:	Irrigation
Priority:	April 22, 1977
Quantity (Diversion Rate):	0.08 cfs of the total authorized 1.21 cfs
Quantity (Volume):	16.0 acre-feet per annum
Place of Use (Acreage):	4.0 acres of the 60.9 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") [REDACTED] (Item 12a).
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. A check for earnest money should be made to "Rocky Mountain Water Exchange LLC" who will hold said monies until closing.
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). 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 and/or defending against a protest to 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 Water Right No. 1-7017 is stacked with the Purchased Water Right and the historical use should 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. 1-7017.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: JS / LRL DATE: 5/14/2021 PAGE 2 OF 14

- (b) 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 4.0 acres-equivalent, 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.
- (c) 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.
- (d) 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) Water Bank Release. The Purchased Water Right is scheduled to be released from the Idaho Water Supply Bank on December 31, 2021. If the Purchased Water Right is not released from the Idaho Water Supply Bank by January 1, 2022, Buyer may, in Buyer's sole and absolute discretion, terminate this Agreement, and in such instance, the Earnest Money shall be returned to Buyer within 14 days of receipt of notice of termination.
- (b) 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; and is timely released from the Water Bank as provided in paragraph 7(a), 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.
- (c) Closing Location. The Closing shall occur at the offices of Rocky Mountain Water Exchange LLC, 482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402, or at another location mutually agreed by the Parties.
- (d) Documents to be Delivered at Closing.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: SL / KLL DATE: 5/6/2021 PAGE 3 OF 14

- (1) At Closing, Buyer shall deliver the Purchase Price 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 the conveyance of the Purchased Water Right free and clear of encumbrances.
- (e) 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 been forfeited or abandoned in whole or in part.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ✓ / ✓ DATE: 5/16/2021 PAGE 4 OF 14

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- (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. Broker.
- (a) The Broker represents Buyer under this Agreement and Buyer shall pay Broker a fee of 10%.
- (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

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ✓ / LRL DATE: 5/6/2021 PAGE 5 OF 14

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.)

_____/_____
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

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ✓ / ✓ DATE: 5/6/2021 PAGE 6 OF 14

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>
Rocky Mountain Water Exchange, LLC	Knife River Corporation Mountain West
482 Constitution Way Ste 303	5450 W Gowen Rd
Idaho Falls, ID 83402	Boise, ID 83709-5625
Email: rog.rmea@gmail.com	Email: sean.marsh@kniferiver.com
 <u>Seller's Representative</u>	 <u>Buyer's Representative</u>
Reed Nord	
3525 Merlin Dr.	
Idaho Falls, ID 83404	
Email: rgnord@ida.net	

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

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ✓ 12 / 18 DATE: 5/11/2021 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: Manager

"BROKER"

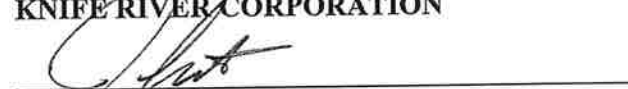
KELLER WILLIAMS EAST IDAHO



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

"BUYER"

KNIFE RIVER CORPORATION



By: James L Lauteren
Its: President

\\RMEASERVER\Projects\2017\17-0142_WR_WaterRightSales\Water Right Buyer\Knife River

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: 12/12/21 DATE: 5/16/2021 PAGE 8 OF 14

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Exhibit 1

The "Water Right"

IDAHO

Department of
Water Resources



WATER RIGHT REPORT

1/5/2021

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 35-7720

Owner Type	Name and Address
Current Owner	PT ELLIOTT LLC 392 N 4500 E RIGBY, ID 83442-5596 2085897140
Directors Report Owner	BURLEIGH TOMCHAK 202 BASSETT RD ROBERTS, ID 83444 2082286871
Directors Report Owner	MABEL TOMCHAK 458 BASSETT RD ROBERTS, ID 83444 2082286871

Priority Date: 04/22/1979

Basis: Decreed

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	1.21 CFS	
Total Diversion			1.21 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NESW Lt 6	Sec. 03	Township 04N	Range 37E	JEFFERSON County
GROUND WATER	SWSW Lt 5	Sec. 03	Township 04N	Range 37E	JEFFERSON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION JEFFERSON County

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: YL / LRL DATE: 5/16/2021 PAGE 9 OF 14

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Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	37E	3	7	SWNE	5.7	12	SWNE	4.6						
			6	NESW	9.5		NWSW	38	5	SWSW	2.3	14	SWSW	0.5
			14	SESW	0.3									

Total Acres: 60.9

Conditions of Approval:

1. X35 Rights 35-7720 and 01-7017 when combined shall not exceed the irrigation of 60.9 acres.
2. E53 Use of this right with all other rights is limited to a total combined annual diversion volume of 244 acre-feet at the field headgate for the lands below.
3. T19 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.

Dates:

Licensed Date:

Decreed Date: 01/12/2004

Permit Proof Due Date: 7/1/1982

Permit Proof Made Date: 5/20/1982

Permit Approved Date: 7/25/1977

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 05/20/1977

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 120

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 78.7

Combined Volume Limit:

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ✓ / ✓ DATE: 5/6/2021 PAGE 10 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

PT ELLIOT, LLC, an Idaho limited liability company, whose address is 392 N 4500 E, Rigby, Idaho 83442 (hereinafter collectively "Grantor") does hereby grant, bargain, sell, assign, and convey unto **KNIFE RIVER COPORATION MOUNTAIN WEST**, a Delaware corporation, whose address is 5450 W Gowen Rd, Boise, ID 83709-5625, (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 _____, 20_____.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ✓ LRL DATE: 5/11/2021 PAGE 12 OF 14

"GRANTOR"

STATE OF IDAHO)
)ss.
County of _____)

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

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 _____.

Notary Public for Idaho
My Commission Expires: _____

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ✓L/LRL DATE: 5/7/2021 PAGE 13 OF 14

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

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: ____ / ____ **DATE:** _____ **PAGE 14 OF 14**

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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 2nd day of May, 2021 (the "Effective Date"), by and between **Wayne Properties LLC**, a Delaware trust, whose address is 9914 South Henry Creek Road, Idaho Falls, Idaho 83401 (hereinafter "Seller"), and **Knife River Corporation-Mountain West**, a Delaware Corporation authorized to conduct business in Idaho, whose address is 5450 W. Gowen Rd., Boise, Idaho 83709 (hereinafter "Buyer"). Buyer and Seller are individually a "Party" and together the "Parties".

RECITALS:

- A. Seller is the owner Water Right No. 35-14268 (the "Water Right"), which is a licensed water right authorized to be used for irrigation purposes for 350 acres with a priority date of 01/14/1983. The Water Right is more fully described in the report obtained from the Idaho Department of Water Resources ("IDWR" or the "Department") attached hereto as **Exhibit 1**.¹
- B. Buyer is the owner of property near Idaho Falls, Idaho. Seller desires to sell, and Buyer desires to buy, a 6-acre portion of the Water Right and convert it to industrial use. Buyer has agreed to purchase the 6-acre portion of the Water Right from Seller to move to Buyer's property (in conjunction with moving other water rights) in order to yield sufficient industrial water for its intended purposes. Accordingly, the Parties agree as follows:

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.

Source:	Ground water
Purpose:	Irrigation
Priority:	January 14, 1983
Quantity (Diversion Rate):	.07 cfs of the total authorized 3.85 cfs
Quantity (Volume):	24 acre-feet per annum of the total authorized 1,400 acre-feet per annum
Place of Use (Acreage):	6 acres of the total 350 authorized acres identified on Exhibit 2 .

¹ There is an error on this water right report that IDWR is in the process of correcting. This water right report indicates that Seller owns 4.15 cfs and 377 acres under the Water Right. However, Seller's water right is only for 3.85 cfs and 350 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 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 irrigated acre, for a total of [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 10% of the Purchase Price, which is [REDACTED] (the "Earnest Money"). The Earnest Money shall be applied towards the Purchase Price at closing, or otherwise disposed of as provided herein.
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) ☐ 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 6 acres of the Purchased 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/denial 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.
 - (b) ☐ 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 no protest to the Transfer is filed with IDWR and 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 within 30 days after receiving the final decision from the Department or a court of law approving the Transfer. 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 Holden, Kidwell, Hahn & Crapo, 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 (less the Earnest Money).
 - (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 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 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.
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>
Wayne Properties LLC	Knife River Corporation-
9914 South Henry Creek Road	Mountain West
Idaho Falls, Idaho 83401	5450 W. Gowen Rd.
	Boise, ID 83709
<u>Seller's Representative</u>	<u>Buyer's Representative</u>
Robert L. Harris	
Holden, Kidwell, Hahn & Crapo,	
P.L.L.C.	
P.O. Box 50130	
Idaho Falls, ID 83405	

- (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 FOLLOWING PAGE]

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

"SELLER"

WAYNE PROPERTIES LLC

By:

Wayne Ball,

Manager

"BUYER"

**KNIFE RIVER CORPORATION-MOUNTAIN
WEST**

By:

_____, _____

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

“SELLER”

WAYNE PROPERTIES LLC

By: Wayne Ball,

“BUYER”

KNIFE RIVER CORPORATION-MOUNTAIN WEST

By: [Signature], PRESIDENT
[Signature]

Exhibit 1 The "Water Right"

4/12/2021

Water Right Report

IDAHO Department of Water Resources



IDWR offices are open to the public and following the CDC guidelines for wearing masks and observing social distancing. For in-person visits, we encourage you to call ahead for an appointment.

WATER RIGHT REPORT

4/12/2021

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 35-14268

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WAYNE PROPERTIES LLC PO BOX 2906 IDAHO FALLS, ID 83403-2906 2085698194
Original Owner	KETTLE BUTTE FARMS LTD C/O WILLIAM PUGH 6062 ADAMS RD TALENT, OR 97540

Priority Date: 01/14/1983

Basis: License

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	04/01	10/31	4.15 CFS	1508 AFA
Total Diversion			4.15 CFS	1508 AFA

Location of Point(s) of Diversion:

GROUND WATER | NESW | Sec. 13 | Township 03N | Range 34E | BONNEVILLE County

Licensed Diversion Capacity: 7.58

IRRIGATION Use:

<https://idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=14268&SplitSuffix=&TypeWaterRight=True>

1/3

4/12/2021

Water Right Report

Acre Limit: 377

Place(s) of use:

Place of Use Legal Description: IRRIGATION BONNEVILLE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
03N	34E	13		NENE	33.3		NWNE	34.8		SWNE	39.7		SENE	34
				NENW	33.4		NWNW	34.2		SWNW	39.5		SENE	39.7
				NESW	39.7		NWSW	39.5		SWSW	39.6		SESW	39.7
				NESE	33.8		NWSE	39.7		SWSE	39.8		SESE	33.2
		14		NENE	1.6		SENE	0.8						
				NESE	1.3		NWSE	0.6		SWSE	30.3		SESE	36.6
		23		NENE	37.1		NWNE	28.7		SWNE	0.4		SENE	0.7
		24		NWNE	34.2									
				NENW	39.9		NWNW	39.9		SWNW	33.4		SENE	33.4

Total Acres: 912.5

Conditions of Approval:

1. 206 This right is limited to the irrigation of a specific 377.0 acres within the 912.5 acre place of use authorized by this right in a single irrigation season. The specific 377.0 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 377.0 acres to be irrigated within the 912.5 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
2. R05 Use of water under this right will 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. 120.
3. R02 A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
4. 131 Prior to the diversion and use of water under Transfer approval 74838, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion and in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
5. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
6. 205 The approval of transfer 77958 redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
7. R55 This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.

<https://dwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=14268&SplitSuffix=&TypeWaterRight=True>

2/3

4/12/2021

Water Right Report

8. SF2 This water right enjoys the benefit of subordination of hydropower water right nos. 02-00100, 02-4000A, 02-4001A, 02-02032A, 02-4000B, 02-4001B, 02-02032B, 02-02036, 02-02056, 02-02065, 02-02064, 02-10135, 02-02060, 02-02059, 02-02001B, 02-02001A, 02-02057, 37-02128, 37-02472, 37-02471, 37-20710, 37-20709, 36-02013, 36-02018 and 36-02026 only so long as the average daily flows as measured at the Murphy Gage station meet or exceed the minimum stream flows established by state action.
9. T07 The right holder shall accomplish the change authorized by this transfer within one year(s) of the date of this approval.
10. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Dates:

Licensed Date: 09/25/1997

Decreed Date:

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:

Owner Name Connector:

Water District Number: 120

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 4

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

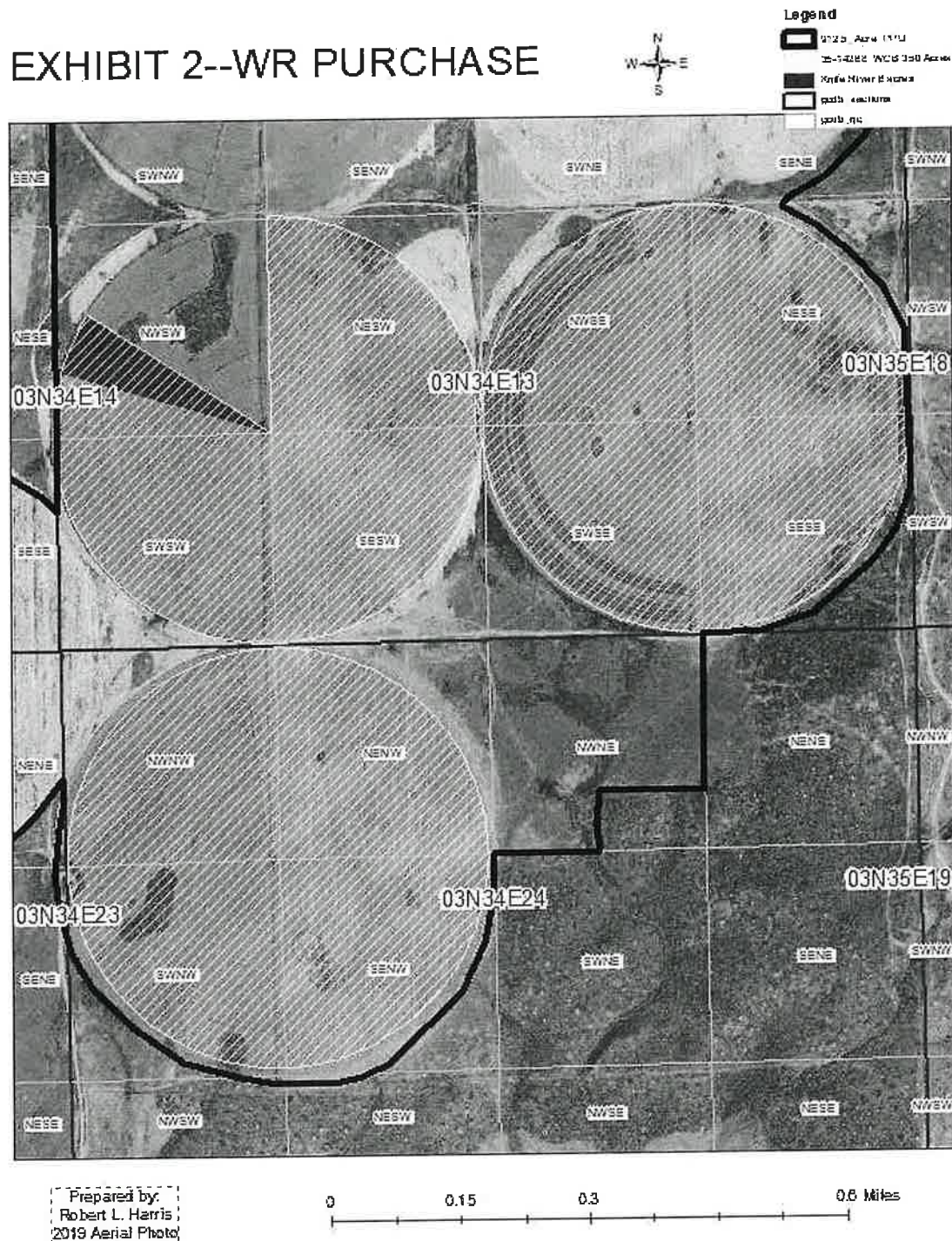
Mitigation Plan: False

<https://dwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=14268&SplitSuffix=&TypeWaterRight=True>

3/3

Exhibit 2
Map of 6 Acres—the “Purchased Water Right”

EXHIBIT 2--WR PURCHASE



**Exhibit 3
Form of the Deed**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Robert L. Harris
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
PO Box 50130
Idaho Falls, ID 83405

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHTS

Wayne Properties LLC, a Delaware trust, whose address is 9914 South Henry Creek Road, Idaho Falls, Idaho 83401 (hereinafter collectively "Grantor") does hereby grant, bargain, sell, assign, and convey unto **Knife River Corporation-Mountain West**, an Delaware Corporation authorized to conduct business in Idaho, whose address is 5450 W. Gowen Rd., Boise, Idaho 83709 (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 _____, 20_____.

“GRANTOR”

WAYNE PROPERTIES LLC

By: _____
Wayne Ball, _____

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2020, by Wayne Ball in his capacity as a _____ of Wayne Properties LLC.

Notary Public for Idaho
My Commission Expires: _____

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

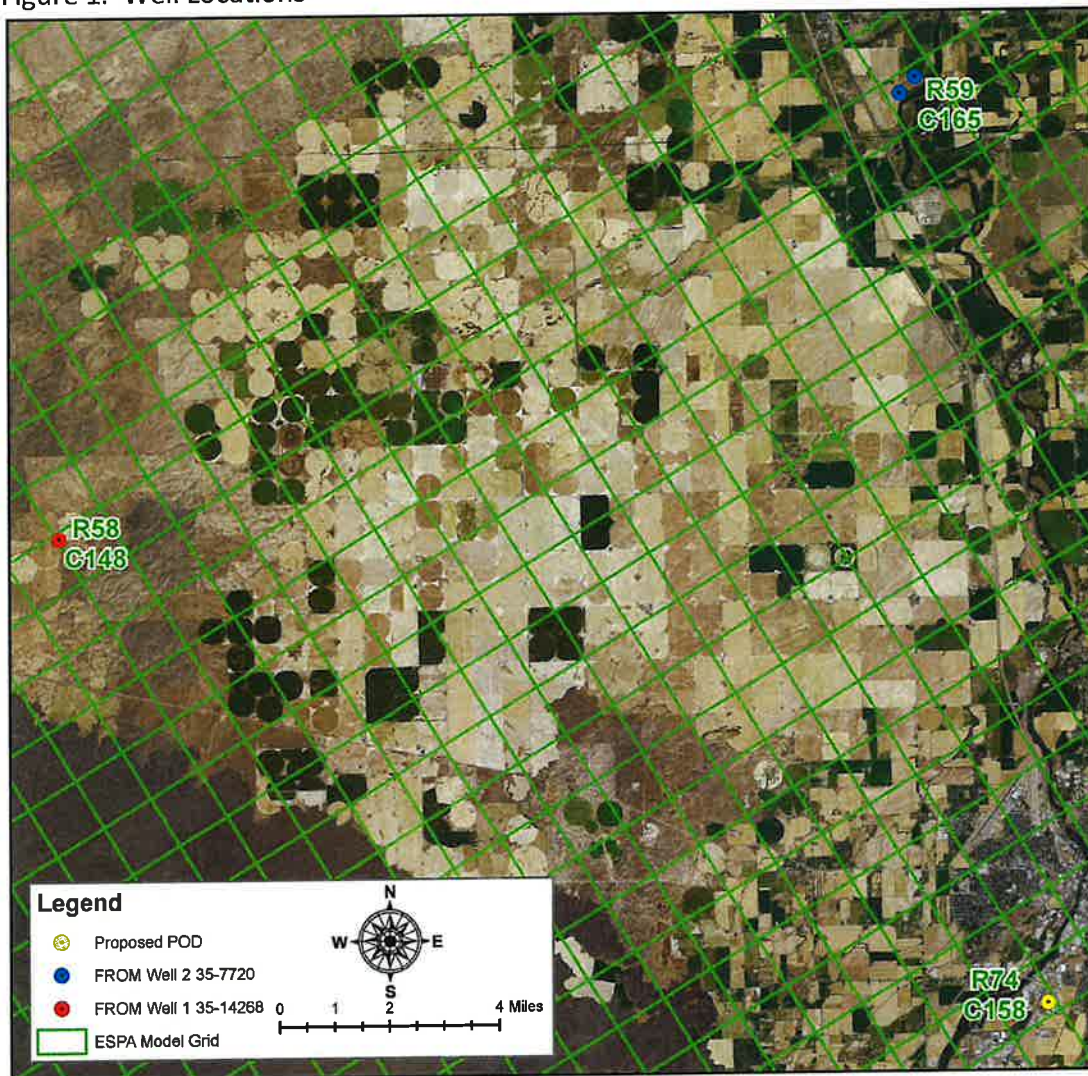
Eastern Snake Plain Aquifer Modeling Analysis

Knife River Corporation Mountain West

The Applicant proposes to transfer 6 acres from 35-14746 and 4 acres from 35-7720 for industrial use. The points of diversion included in this modeling analysis are identified to be located in the following grid cells and shown in Figure 1:

TO Well	Knife River	R74 C158
FROM Well 1	35-14746	R58 C148
FROM Well 2	35-7720	R59 C165

Figure 1. Well Locations



Total quantities to be modeled for the transfer are based upon consumptive use values discussed in Attachment #8a. Values entered into the modeling simulation are:

FROM Well 1	35-14746	17.1 afa or 5.7 af/trimester
FROM Well 2	35-7720	8.3 afa or 2.8 af/trimester
To Well		25.4 afa or 8.5 af/trimester

Using ESPAM 2.1 to simulate the depletions of transferring 25.4 AFA (8.5 AF/trimester), the affects do not exceed the threshold of 2.0 af/trimester. **No mitigation is required.**

Figures 2-4 include excerpts from the ESPAM 2.1 simulation.

Figure 12. Data Entry

ENHANCED GROUND-WATER RIGHTS TRANSFER
UNIVERSITY OF IDAHO - IDAHO WATER RESOURCES RESEARCH INSTITUTE IDAHO DEPARTMENT OF AGRICULTURE

Cells this color are set up for user entries

ENTER STARTING DATE FOR SIMULATION. THEN PUSH "UPDATE DATES" BUTTON
 TRANSFER NO: 35-14746 & 35-7720
 YEAR: 1982
 SEASON: WINTER
 TRANSFER NAME: Knife River

UPDATE DATES RUN MODEL GET OUTPUT

CALCULATE EFFECTS

ENTER CELL LOCATIONS:

	'TO' CELL	'FROM1' CELL	'FROM2' CELL	'FROM3' CELL
ROW	74	58	59	45
COLUMN	158	148	165	30

TRIMESTER OF ACTIVITY	TO WELL Projected Use AF/TRIMESTER	FROM1 WELL		FROM2 WELL		FROM3 WELL	
		With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER
WIN 1982	0	6	6	3	3	0	0
SPR 1983	0	6	6	3	3	0	0
SUM 1983	0	6	6	3	3	0	0
WIN 1983	0	6	6	3	3	0	0
SPR 1984	0	6	6	3	3	0	0
SPR 2021	0	6	6	3	3	0	0
SUM 2021	0	6	6	3	3	0	0
WIN 2021	0	6	6	3	3	0	0
SPR 2022	9	0	6	0	3	0	0
SUM 2022	9	0	6	0	3	0	0
WIN 2022	9	0	6	0	3	0	0
SPR 2023	9	0	6	0	3	0	0
SUM 2023	9	0	6	0	3	0	0
WIN 2023	9	0	6	0	3	0	0
SPR 2024	9	0	6	0	3	0	0
SUM 2024	9	0	6	0	3	0	0
WIN 2024	9	0	6	0	3	0	0
SPR 2025	9	0	6	0	3	0	0
SUM 2025	9	0	6	0	3	0	0
WIN 2025	9	0	6	0	3	0	0
SPR 2026	9	0	6	0	3	0	0
SUM 2026	9	0	6	0	3	0	0
WIN 2026	9	0	6	0	3	0	0
SPR 2131	9	0	6	0	3	0	0
SUM 2131	9	0	6	0	3	0	0
WIN 2131	9	0	6	0	3	0	0
SPR 2132	9	0	6	0	3	0	0
SUM 2132	9	0	6	0	3	0	0

Figure 3. Net Transfer Graphs

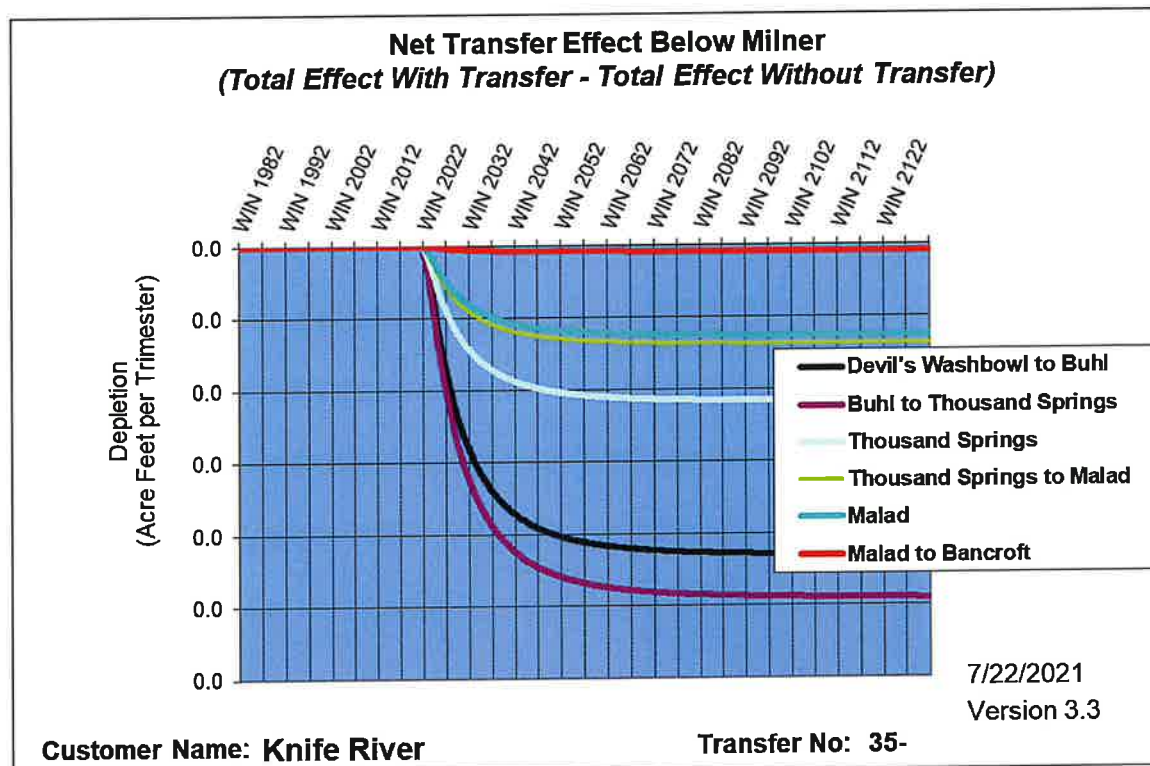
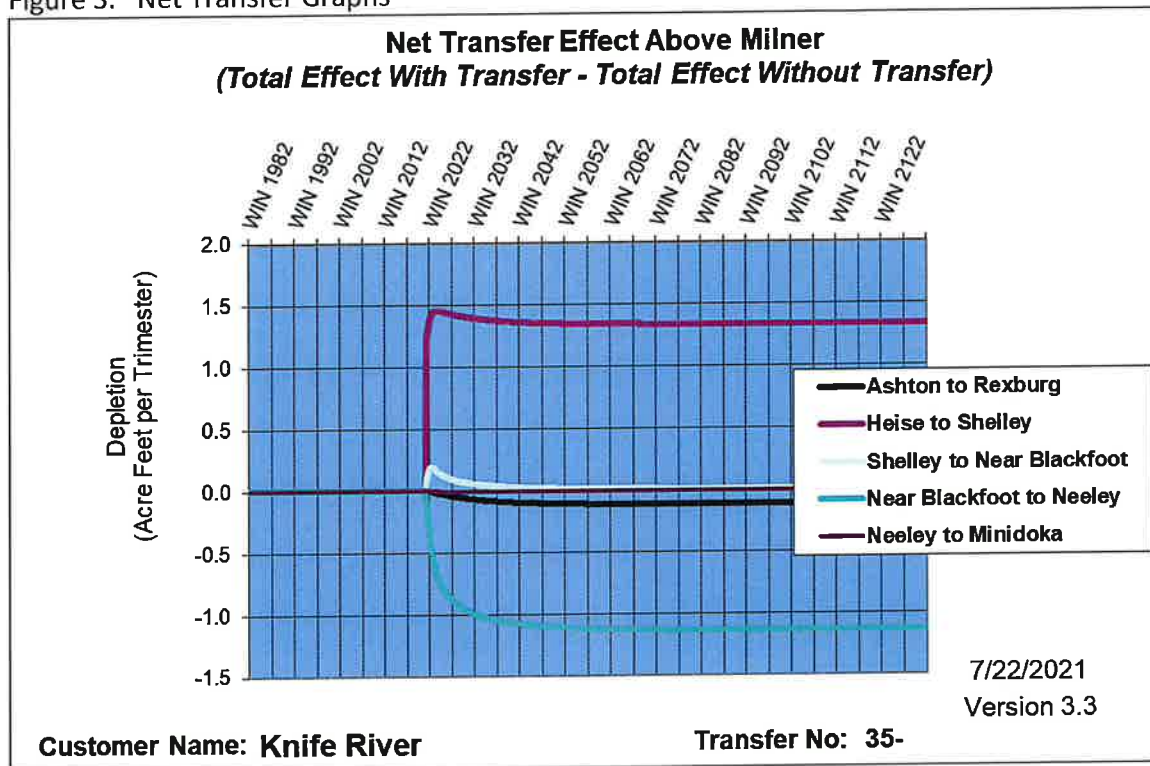


Figure 3. Calculated Effects.

	Net Transfer Effect (AF/four months)										
	Ashton to Rexburg	Heise to Shelley	Shelley to Nr Bickft	Neeley to Neeley	Dev. Wbl. Minidoka	Buhl to Buhl	Kspr Kspr	Kspr to Malad	Malad Malad	Malad to Bancroft	
WIN 1982	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1983	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1983	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1983	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1984	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1984	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1984	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1985	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2021	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2021	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2021	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2022	0.0	1.2	0.1	-0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2022	0.0	1.3	0.2	-0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2022	0.0	1.4	0.2	-0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2023	0.0	1.4	0.2	-0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2023	0.0	1.4	0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2023	0.0	1.5	0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2024	0.0	1.5	0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2024	0.0	1.5	0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2024	0.0	1.5	0.1	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2025	0.0	1.5	0.1	-0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2025	0.0	1.5	0.1	-0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2025	0.0	1.4	0.1	-0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2026	0.0	1.4	0.1	-0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2026	0.0	1.4	0.1	-0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2026	0.0	1.4	0.1	-0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2027	0.0	1.4	0.1	-0.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2027	0.0	1.4	0.1	-0.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2027	0.0	1.4	0.1	-0.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2028	0.0	1.4	0.1	-0.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2028	0.0	1.4	0.1	-0.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2130	-0.1	1.3	0.0	-1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2130	-0.1	1.3	0.0	-1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2131	-0.1	1.3	0.0	-1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2131	-0.1	1.3	0.0	-1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2131	-0.1	1.3	0.0	-1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2132	-0.1	1.3	0.0	-1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2132	-0.1	1.3	0.0	-1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Enter First Time Step of Transfer: SPR 2022													
Match:	119	Match:	456										
	AtR	HIS	SINB	NBIN	NIM	DWtB	BITS	TS	TStM	M	MtB	Total	
Preexisting Effects @ SS (Last Time Step):	0.28	3.54	1.24	3.22	0.02	0.06	0.07	0.03	0.02	0.02	0.00	8.48	Total Effect
Steady State - Value of Dep. @ Last Time Step:	0.16	4.87	1.24	2.08	0.01	0.04	0.04	0.02	0.01	0.01	0.00	8.49	Total Effect
Effects @ Transient State (Max Value Time Step):	0.28	3.54	1.24	3.22	0.02	0.06	0.07	0.03	0.02	0.02	0.00	8.48	Total Effect
Transient State - Max. Value of Dep. After Transfer:	0.26	4.98	1.42	3.02	0.02	0.06	0.07	0.03	0.02	0.02	0.00	9.89	Total Effect
Steady State Change:	-0.12	1.34	0.00	-1.14	-0.01	-0.02	-0.02	-0.01	-0.01	-0.01	0.00		
Transient State Change:	-0.01	1.44	0.18	-0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00		

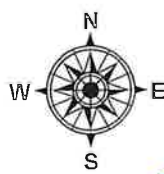


0 500 1,000 2,000 Feet

2019 NAIP

Legend

- Proposed POD
- Proposed POU
- POU 35-13979
- POU 35-14351 & 35-14344
- Twp & Rng
- Section
- QQ



Proposed Locations Knife River Corp. Mountain West

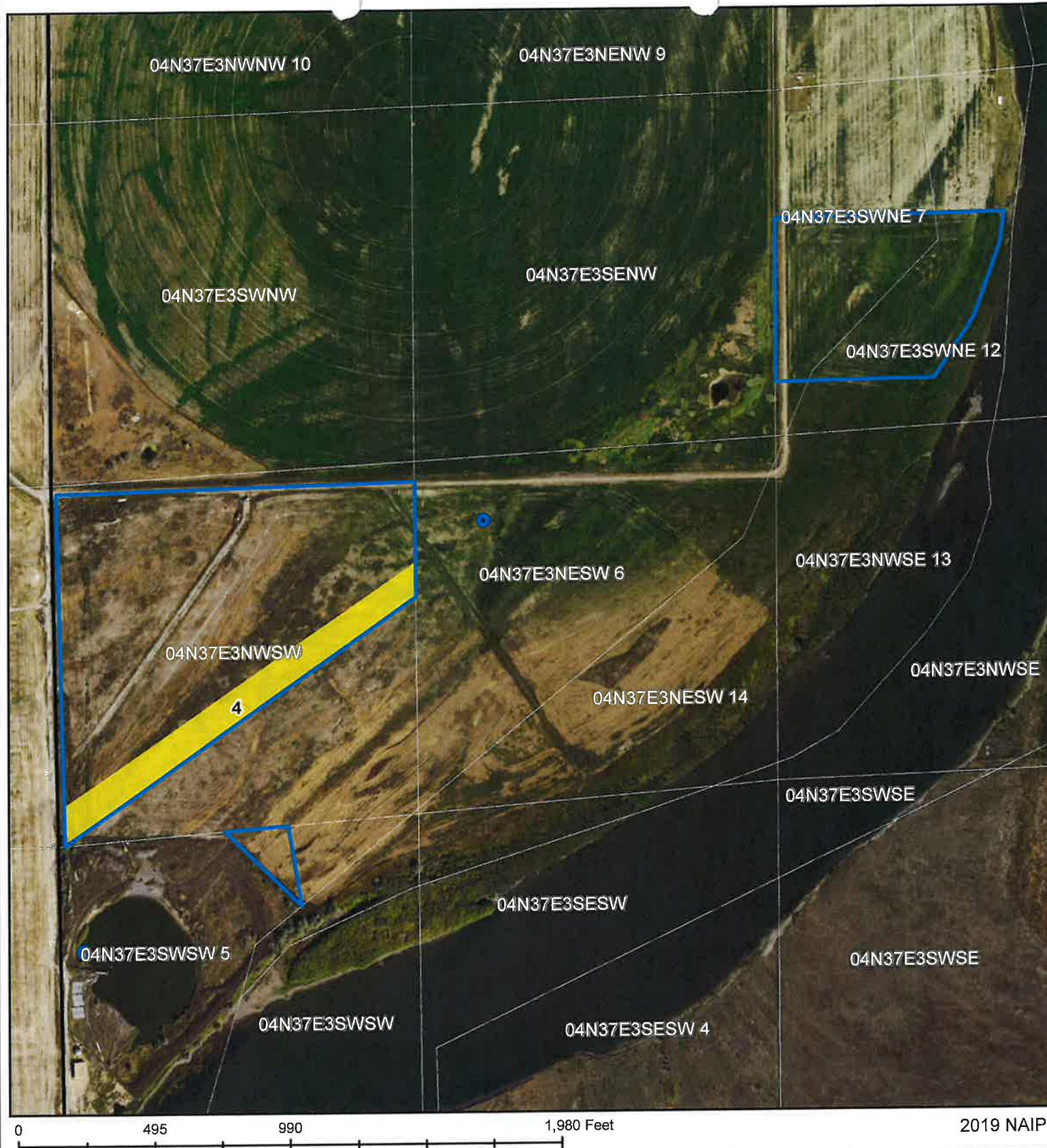
RMEA # 21-0063

by: KM

Date: 7/22/2021

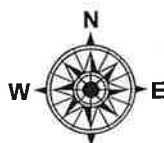


85192



Legend

- POD 35-7720
- POU 35-7720
- Purchased Acres
- Twp & Rng
- Section
- QQ



Existing Location 35-7720

Knife River Corp. Mountain West

RMEA # 21-0063

by: KM

Date: 7/22/2021

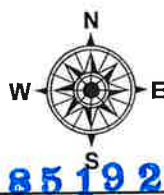


85192



Legend

- WRPOD35-14268
- POU 35-14746
- Purchased Acres
- Twp & Rng
- Section
- QQ



Existing Location 35-14746

Knife River Corp. Mountain West

RMEA # 21-0063

by: KM

Date: 7/22/2021



Conversion of Nature of Use

Knife River Corporation Mountain West

Applicant proposes to convert a portion of existing water rights 35-7720 and 35-14746 from irrigation to be used for industrial purposes at an existing concrete mixing facility.

Historically, 35-7720 has most recently been used to irrigate grain. Using ET Idaho 2017, and based upon information gathered at the Roberts station (AM/INL -- ROBI), Spring Grain has a precipitation deficit of 630 mm/year, or 2.07 af/year, for the growing season. Therefore, 4 acres of irrigation water right would convert to a total of 8.3 afa (4 ac x 2.07 afa/ac) available for industrial use.

Water right 35-14746 has historically been used to irrigate alfalfa hay – less frequent cuttings. Information gathered at the Kettle Butte (PN-AM—KTBI) station shows that Alfalfa – less frequent cuttings has a precipitation deficit of 869 mm/year, or 2.85 af/year, for the growing season. A conversion of 6 acres from irrigation would therefore enable 17.1 afa (6 ac x 2.85 afa/ac) to be used for industrial use.

In combination, the portions of 35-7720 and 35-14746 proposed to be transferred would allow a total consumptive volume of 25.4 afa at the proposed location.

Excerpts of the ET Idaho 2017 precipitation deficits are included in Figures 1 and 2.

Figure 1. ET Values for Spring Grain at Roberts (AM/INL – ROBI).

Spring Grain - Irrigated Precipitation Deficit															
	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	-0.21	0.11	0.14	0.43	2.17	6.01	8.31	3.50	0.13	-0.25	-0.12	-0.32	630	-18	612

Figure 2. ET Values for Alfalfa – less frequent cuttings at Kettle Butte (PN-AM—KTBI)

Alfalfa - less frequent cuttings Precipitation Deficit															
	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	-0.17	0.13	0.19	0.69	4.03	5.65	6.08	5.56	4.36	1.68	0.21	-0.21	869	-4	865

APPLICATION FOR TRANSFER OF WATER RIGHT

ATTACHMENT WSB:

TRANSFERRING WATER RIGHTS LEASED TO THE WATER SUPPLY BANK

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

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

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

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

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

Water Right Number	Lease Contract Expiration Date	Water Right Quantities Leased to the Bank			Map Attachment 7B Clearly Identifies Idled Place of Use at New Location
		Rate (cfs)	Volume (AF)	Acres	
35-7720	Dec 31, 2021	0.73	147	36.7	Attached? ☐ or No Change ☒
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐
					Attached? ☐ or No Change ☐

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

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

Additional Information:

Applicant will not require the transferred water right until after 35-7720 is released from the Bank at the end of 2021. No portion will be used in 2021.

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



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

August 18, 2021

KNIFE RIVER CORPORATION
5450 W GOWEN RD
BOISE, ID 83709-5625

RE: Transfer No. 85192
Water Right No(s). 35-14746, 35-7720

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 POST REGISTER, JEFFERSON STAR on 8/25/2021 and 9/1/2021. 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
C/O KRISTIN MOORE
482 CONSTITUTION WAY STE 303
IDAHO FALLS, ID 83402-3552

Henman, Christina

From: Henman, Christina
Sent: Wednesday, August 18, 2021 3:36 PM
To: 'info@jeffersonstarnews.com'
Subject: Legal Notice for Jefferson Star
Attachments: 85192 Jefferson Star, Post Register.docx

LEGAL NOTICE DEPARTMENT
JEFFERSON STAR
PO BOX 37
RIGBY, ID 83442

RE: Transfer No. 85192
Water Right No(s). 35-14746, 35-7720

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 9/13/2021. 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

Henman, Christina

From: Henman, Christina
Sent: Wednesday, August 18, 2021 3:36 PM
To: 'legalnotices@postregister.com'
Subject: Legal Notice for Post Register
Attachments: 85192 Jefferson Star, Post Register.docx

LEGAL NOTICE DEPARTMENT
POST REGISTER
PO BOX 1800
IDAHO FALLS, ID 83403-1800

RE: Transfer No. 85192
Water Right No(s). 35-14746, 35-7720

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 9/13/2021. 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. 85192**

KNIFE RIVER CORPORATION, 5450 W GOWEN RD, BOISE, ID 83709-5625 has filed Application No. 85192 for changes to the following water rights within BONNEVILLE, JEFFERSON Counties: Right Nos. 35-14746, 35-7720; 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. The proposed point of diversion is in NESW Sec 36 T02N R37E for 0.15 cfs from ground water. The proposed place of use is within S1/2NW1/4 and SW1/4 Sec 36 T02N R37E for industrial use from 1/01 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 9/13/2021. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 8/25/2021 and 9/1/2021