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DEPT OF WATER RESOURCES
SOUTHERN REGION

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IDAHO STATE BAR NO. 1693

Attorneys for Applicant

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 37-23224 In the name of John N. Infanger and Debra A. Infanger	STIPULATION FOR WITHDRAWAL OF IDAHO POWER COMPANY'S PROTEST
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COME NOW, ROBERT E. WILLIAMS, of Williams, Meservy & Larsen, LLP, as attorney for John N. Infanger and Debra A. Infanger ("Applicant") and John K. Simpson, of BARKER, ROSHOLT AND SIMPSON, LLP, and Scott Pugrud, as attorneys for Idaho Power Company ("Protestant"), and stipulate that the Protest of Idaho Power Company filed in this matter on May 4th, 2020 be withdrawn, and hereby is withdrawn, subject to the following conditions:

1. Applicant will file and receive approval of an Application for Transfer of Water Right under Idaho Code §42-222 with the Idaho Department of Water Resources seeking a change of the nature of use of .02 cfs of Water Right No. 37-21649 from irrigation to mitigation, with a total volume of 4.6 acre feet per annum to used for groundwater recharge purposes. A copy of the Application for Transfer of Water Right is attached as **EXHIBIT A**;
2. The Application for Transfer of Water Right shall propose using the new mitigation right for groundwater recharge via an infiltration trench to be constructed on real

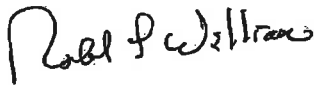
property owned by the Applicant at the location shown on the aerial map attached to the Application to Transfer of Water right. The infiltration trench and measuring device for the mitigation right shall conform to the map and specifications contained in EXHIBIT A. Applicant shall recharge a total of 4.6 acre feet per annum through the infiltration trench;

3. Applicant will install a measuring device approved by the Idaho Department of Water Resources;
4. Applicant will permanently retire 1.4 acres of the real property to which water right 37-21649 is appurtenant from irrigation;
5. Applicant will fully abide all conditions contained in the approval of the Application for Transfer of Water Right; and
6. The withdrawal of the Idaho Power Protest will be fully effective as of the date of the entry of a final order approving the Application for Transfer of Water Right and the expiration of the time period for any interested party to seek any further administrative or judicial relief.

DATED this 1st day of September, 2020.

WILLIAMS, MESERVY & LARSEN, LLP

BARKER ROSHOLT & SIMPSON LLP



ROBERT E. WILLIAMS

Attorneys for Applicant

Dated: September 1st, 2020


JOHN K. SIMPSON
Dated: 9/8/2020

SCOTT N. PUGRUD

Dated: _____

Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I hereby certify that on September 8th, 2020, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the manner indicated below:

IDWR Southern Region
650 Addison Ave W, Ste 500
Twin Falls, ID 83301-5858

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Facsimile to:
- ☐ Email to:

John N. Infanger and Debra A. Infanger
1241 Main Street
Gooding, Idaho 83330-1813

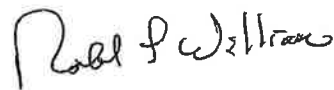
- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Facsimile to:
- ☒ Email to: debyinfanger@yahoo.com

John K. Simpson
BARKER ROSHOLT & SIMPSON LLP
1010 W Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83702

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Facsimile to:
- ☒ Email to: jks@idahowaters.com

Scott N. Pugrud
Idaho Power Company
1221 W. Idaho Street
P.O. Box 70
Boise, ID 83707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Facsimile to:
- ☒ Email to: spugrud2@idahopower.com



ROBERT E. WILLIAMS

EXHIBIT A
Application for Transfer of Water Right

Rev. 07/18

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

**MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER**

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

Name of Applicant(s) John N. Infanger and Debra A. Infanger

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: _____

Page 1 of Transfer No. _____

STIPULATION FOR WITHDRAWAL OF IDAHO POWER COMPANY'S PROTEST - 4

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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

Name of Applicant(s) John N. Infanger and Debra A. Infanger Phone (208) 539-7271
Mailing address 1241 Main St., Gooding, ID 83330 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 Charles G. Brockway, P.E. Phone (208) 736-8543
Mailing address 2016 Washington St. N., Ste 4, Twin Falls, ID 83301 Email _____

- ☐ 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

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☒ Change nature of use ☐ Change period of use ☐ Other Split right
2. 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**.
3. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.3**.
1.4 acres / 0.023 cfs of right 37-21649 will be changed to groundwater recharge to mitigate for the irrigation usage under permit application 37-23224.

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 ☐ ☒	37-21649	0.023	Groundwater Recharge	3/15 to 11/15	Little Wood R. / Malad R.
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.023 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.023 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 #
			SE	SE	36	05S	14E	Gooding	Little Wood River	Existing Pump

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	
05S	14E	36																Rch	
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:
Existing pump and mainline, tee from mainline through lockable valve and IDWR-approved flow meter, infiltration trench approximately 320 feet in length.

- b. Who owns the property at the point(s) of diversion? Scott Burnett
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
Easement

- 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:
1.4 acres will be retired

- 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:

- 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:

A. DESCRIPTION OF RIGHT(S) AS RECORDED

B. IF ONLY A PORTION OF THE RIGHT IS PROPOSED TO BE CHANGED, DESCRIBE THE PORTION BEING CHANGED AS IT APPEARS BEFORE THE REQUESTED CHANGES

- Right Number:
- 37-21649

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

[illegible]

Page _____ of _____

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 37-21649

Current Owner: DEBRA A INFANGER
JOHN N INFANGER

Priority Date: 4/1/1883

Origin: Water Right

Status: Active

Basis: Decreed

Source

LITTLE WOOD RIVER

Tributary

MALAD RIVER

<u>Beneficial Use</u>	<u>From To</u>
IRRIGATION	03/15 to 11/15
	<u>Total Diversion</u>

<u>Diversion Rate</u>	<u>Annual Volume</u>
0.2 CFS	
0.2 CFS	

Location of Point(s) of Diversion

LITTLE WOOD RIVER
GOODING County

SE1/4SE1/4 Sec. 36, Twp 05S, Rge 14E B.M.

Place of Use

IRRIGATION Within GOODING County

T05S R14E S36	SESE	14.20
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Total Acres: 14.2

Page _____ of _____

Conditions of Approval:

1. K06 This right is limited to the irrigation of 12.0 acres within the place of use described above in a single irrigation season.
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 37-M.
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. This right is a split from former right 37-21172.
5. 151 Delivery of this right is subject to the water exchange provisions contained in Bureau of Reclamation contract no. 14-06-W-73, executed October 14, 1954, between the United States of America and American Falls Reservoir District No. 2, as supplemented by Bureau of Reclamation contract no. 14-06-100-6031, executed June 1, 1962, between and among the United States of America, American Falls Reservoir District No. 2, and the Big Wood Canal Company.
6. R68 This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afu per acre at the field headgate for irrigation of the lands above.
7. 004 This right does not grant any right-of-way or easement across the land of another.
8. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree, Section 42-1412(6), Idaho Code.

Decreed Date: 2/23/2016

Williams, Meservy & Larsen, LLP
Attorneys at Law

153 East Main
Post Office Box 168
Jerome, Idaho 83338-0168



JAMES C. MESERVY
BRIAN J. WILLIAMS
THEODORE R. LARSEN
KIMBERLY L. WILLIAMS - ASSOCIATE
BRANDON J. HESS - ASSOCIATE
ROBERT E. WILLIAMS - OF COUNSEL

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TELECOPIER: (208) 324-3135
E-MAIL: rewilliams@wmlattys.com

EUGENE D. FREDERICKSEN - RETIRED

RECEIVED

SEP 10 2020

DEPT OF WATER RESOURCES
SOUTHERN REGION

September 8, 2020

IDWR Southern Region
650 Addison Ave W, Suite 500
Twin Falls, ID 83301-5858

RE: Application for Permit No. 37-23224 in the name of John N. Infanger and Debra A. Infanger

Gentlemen:

Enclosed for filing with your agency please find an original *Stipulation for Withdrawal of Idaho Power Company's Protest*.

Very truly yours,

WILLIAMS MESERVY & LARSEN, LLP

ROBERT E. WILLIAMS

REW/mbb

Encl.

C: Client

Charles G. Brockway

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