

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 83926**

This is to certify that: DENNIS C NEWTON AND
PATRICIA R NEWTON
9948 GLORIA RD
MIDDLETON, ID 83644-5049

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

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
63-34941	WR/DECREED	10/26/1977	0.020 cfs	11.5 af	N/A	2.5	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
63-34941	NO	YES	NO	NO	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
63-34941	63-34941	0.020 cfs	11.5 af	N/A	2.5	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.020 cfs	11.5 af	N/A	2.5		N/A	N/A	N/A	N/A

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

Dated this 04 day of September, 2020.

for Patricia Wiley
Chief, Water Allocation Bureau

Transfer No. 83926

WATER RIGHT NO. 63-34941

As Modified by Transfer No. 83926

In accordance with the approval of Transfer No. 83926, Water Right No. 63-34941 is now described as follows:

Right Holder: PATRICIA R NEWTON
DENNIS C NEWTON
9948 GLORIA RD
MIDDLETON, ID 83644-5049

Priority Date: 10/26/1977

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	03/15	to 11/15	0.020 cfs	11.5 af
			0.020 cfs	11.5 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SENE Sec 20 Twp 05N Rge 02W CANYON County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	02W	21										2.5							2.5

POU Total Acres: 2.5

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
2. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/1 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 3/15 is subordinate to all water rights having no subordinated early irrigation use and a priority date earlier than 4/3/2009.
3. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
4. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 83926

WATER RIGHT NO. 63-34941

As Modified by Transfer No. 83926

CONDITIONS OF APPROVAL

6. 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.



State of Idaho
Department of Water Resources

Attachment to Water Right Transfer 83926

63-34941

This map depicts the IRRIGATION place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.

02W



-  Point of Diversion
-  Place of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.0425 0.085 0.17 Miles



MAR 09 2020
42-222 POD - 07/18

MAR 04 2020

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDEPARTMENT OF
WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the [Application for Transfer Instructions](#) for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

- ☒ Change diversion point(s) ☐ Add diversion point(s) ☐ Ownership change ☒ Ownership split
☐ Transfer is for changes pursuant to [Idaho Code § 42-221.O.8](#). Attach an explanation and any supporting documentation.

1. **APPLICANT(S)** Dennis C. Newton and Patricia R. Newton Phone (208) 585-61782. **MAILING ADDRESS** 9948 Gloria Rd City MiddletonState ID Zip 83644 Email magrawnewton@gmail.com

- ☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.
☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.
☒ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the [fee schedule](#).

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

- ☒ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.
☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. **LIST WATER RIGHT NUMBER(S)** 63-9069D

- ☒ Attach a copy of the water right(s) as recorded, available at [idwr.idaho.gov](#), *Water Right Transfers, Step 1*, or by contacting any Department office.

4. **TOTAL AMOUNT OF WATER** transferred is 0.02 cubic feet per second and/or _____ acre-feet per annum.
(diversion rate) (storage volume)5. **POINT OF DIVERSION** – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

- ☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at [idwr.idaho.gov](#), *Water Rights, Water Right Transfers, Modeling Resources*.

New?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
N			NW	SW	21	5N	2W	Canyon	Ground Water	existing well

6. 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 well, pump

- 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. 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 used in a mitigation plan limiting the use of water under the right(s), or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

- d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ 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.
(Disregard if these items are on file and ownership has not changed.)

7. **MAP** – ☒ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and ¼ ¼ of section information. You may create a map at idwr.idaho.gov, *Water Rights, Water Right Transfers, File a Transfer Application, Step 2C*.

8. **SIGNATURE** – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Dennis C. Newton Sr DENNIS C. NEWTON SR OWNER 2-28-2020
Signature of applicant or authorized agent Print name and title if applicable Date

Patricia R. Newton Patricia R. Newton 2-28-2020
Signature of applicant or authorized agent Print name and title if applicable Date

9. **FEE** – ☐ The application filing fee provided in Idaho Code § 42-221.O, must be submitted with the application for transfer. Applications for changes pursuant to Idaho Code § 42-221.O.8. require a filing fee of \$50 per water right. All other application fees are based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The Fee Schedule is available at www.idwr.idaho.gov, *Water Right Transfers, Step 4* and in the Application for Transfer Instructions.

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments. Received by KM Date 3-4-2020

Fee paid 450 Date 3-4-2020 Receipted by KM Receipt # C108383

Preliminary review by _____ Date _____ Active in the Water Supply Bank? Yes ☐ No ☐

W-9 received? Yes ☐ No ☐ Name on W-9 _____ W-9 forwarded to fiscal? Yes ☐ No ☐

(Do NOT scan the W-9 – confidential information is held by fiscal only)

Path: S:\PROJECTS\SM thru R Projects\Map Projects\Map_15080010_Steve Property\PROJECT\GIS\ArcMap_Project\XFR Map.mxd



Legend

-  63-9069D Point of Diversion
-  63-9069D Place of Use
-  Newton Water Right Portion - 2.5 acres
-  Proposed Newton Well (existing)



300 East Mallard Drive, Suite 350
Boise, Idaho 83706
Tel (208) 383-4140 Fax (208) 383-4156

Application for Transfer Point of Diversion Change

Dennis C. & Patricia R. Newton

DATE: 1/16/2020

CREATOR: LGraves

PROJECT: 1508.0010



Absolute Scale: 1:7,000
0 170 340 680
Feet

83926



[Home](#) / [Water Rights](#) / [Research](#) / [Search Water Rights](#)

WATER RIGHT REPORT

9/9/2019

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 63-9069D

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JEFF NONA 6411 W DRY CREEK ROAD BOISE, ID 83714 2083459792
Current Owner	LESLIE NONA 6411 W DRY CREEK RD BOISE, ID 83714 2088505743
Original Owner	ESTATE OF DAN W CLARKE 6815 N MOONGLOW DR TUCSON, AZ 85718 6025759434
Original Owner	DAN CLARKE 2465 OVERLAND RD BOISE, ID 83705
Original Owner	JOHN W CLARK RT 1 BOX 137A CALDWELL, ID 83605
Original Owner	MARK STEELE
Original Owner	MICHELLE STEELE 10123 GOODSON RD MIDDLETON, ID 83644 2085852128

Priority Date: 10/26/1977

Basis: Decreed

Status: Active

Source | Tributary
GROUND WATER |

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	1.51 CFS	690.7 AFA
Total Diversion			1.51 CFS	690.7 AFA

Location of Point(s) of Diversion:

GROUND WATER | SENE | Sec. 20 | Township 05N | Range 02W | CANYON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION CANYON County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05N	02W	20		NENE	23		SENE	30						
				NESE	15									
		21		NWNW	34		SWNW	34						
				NWSW	17.5									

Total Acres: 153.5

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. S39 The use of water for irrigation under this right may begin as early as March 1, provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

Dates:

Licensed Date:

Decreed Date: 04/03/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: TBD

Generic Max Rate per Acre:

Generic Max Volume per Acre:

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

State of Idaho
Department of Water Resources

Water Right
63-9069D

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

02W



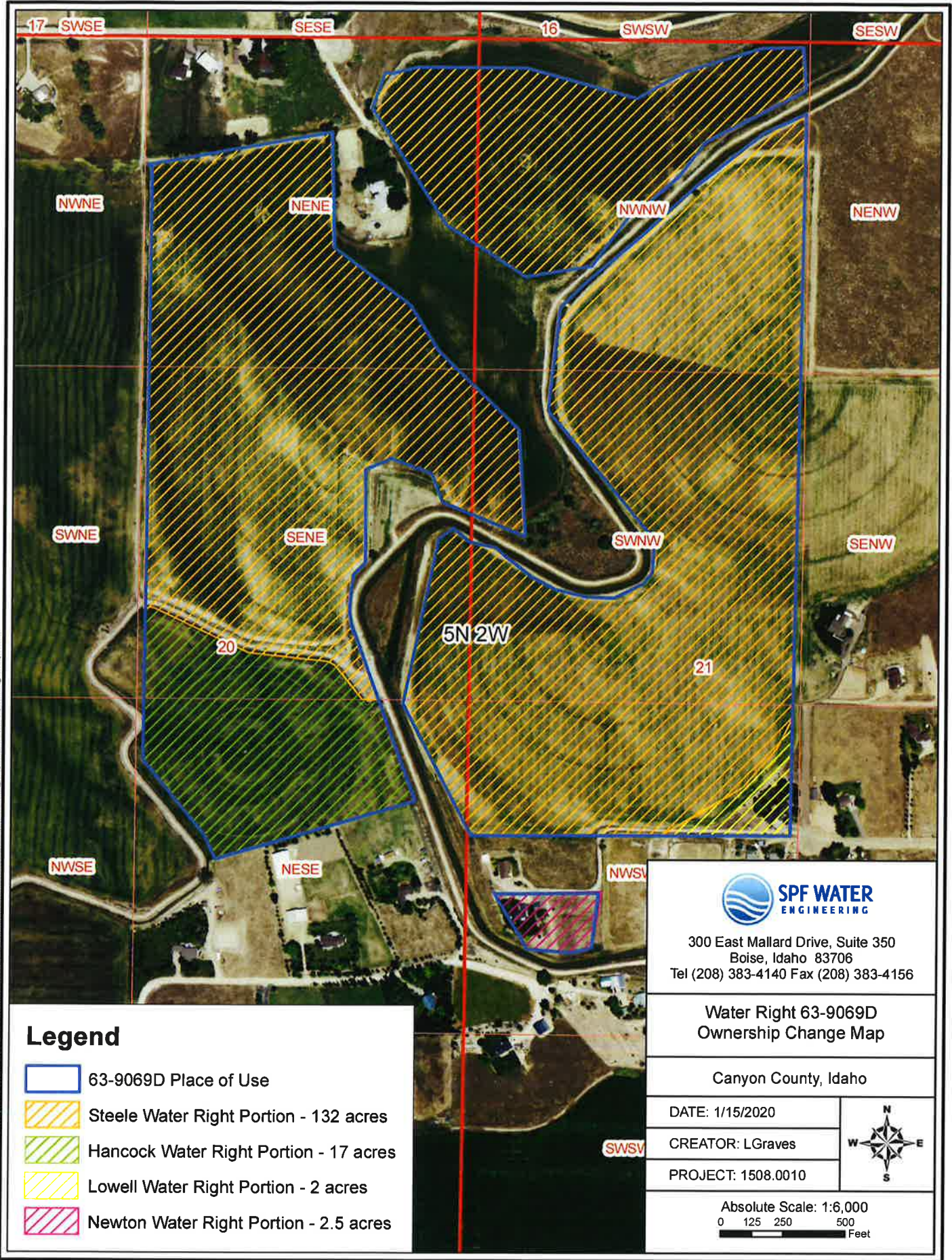
-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.125 0.25 0.5 Miles



**WATER RIGHT OWNERSHIP CHANGE
SUPPORTING DOCUMENTS**

Path: S:\PROJECTS\1508\0010_ Steele Property\PROJECT\GIS\Map\Map_Project\Ownership Change Map.mxd



Legend

-  63-9069D Place of Use
-  Steele Water Right Portion - 132 acres
-  Hancock Water Right Portion - 17 acres
-  Lowell Water Right Portion - 2 acres
-  Newton Water Right Portion - 2.5 acres



300 East Mallard Drive, Suite 350
Boise, Idaho 83706
Tel (208) 383-4140 Fax (208) 383-4156

Water Right 63-9069D Ownership Change Map

Canyon County, Idaho

DATE: 1/15/2020
CREATOR: LGraves
PROJECT: 1508.0010



Absolute Scale: 1:6,000
0 125 250 500 Feet

2020-011710

RECORDED

03/02/2020 04:03 PM



00503083202000117100040041

CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=4 HCRETAL

\$15.00

DEED

WHITEBARN REAL ESTATE

After recording send to:

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P. O. Box 2139
Boise, Idaho 83701-2139
Telephone (208) 336-0700

Recording Information

QUITCLAIM DEED

THIS INDENTURE, made this 24 day of January 2020, by and between Jeffery E. Nona of 380 S 4th St, Ste 203, Boise, ID 83702, and Leslie Nona, of 6411 W Dry Creek Rd. Boise, ID 83714, collectively party of the first part, and Dennis C. Newton and Patricia R. Newton, Husband and Wife, whose address is 9948 Gloria Rd., Middleton, ID 83644, party of the second part.

WITNESSETH: That the party of the first part, Jeffery and Leslie Nona, for good and valuable consideration, do by these presents release, remise, and forever quitclaim unto Dennis C. Newton and Patricia R. Newton, husband and wife, party of the second part, and to their successors and assigns all of their right, title, and interest in and to a portion of this water right consisting of 0.02 cfs for use on 2.5 acres of Water Right # 63-9069D as further described herein, to wit:

Water Right: 63-9069D

Priority Date: 10/26/1977

Source: Ground Water

Beneficial Use: Irrigation

Season of Use: March 15 – November 15

Diversion Rate: 1.51 cfs

Irrigated Acres: 153.5 acres

TOGETHER with and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, the reversion and reversions, remainder and

remainders, grants, issues, and profits thereof.

TO HAVE AND TO HOLD, unto, Dennis C. Newton and Patricia R. Newton husband and wife, the party of the second part and to their successors and assigns forever.

The remaining 1.49 cfs for use on 151 acres are subject to separate transfers/transactions.

IN WITNESS WHEREOF, that the said party of the first part have hereunto set their hand and seal, the day and year first above written.

By: _____

Jeffery Nona

By: _____

Leslie Nona

STATE OF IDAHO)

County of Ada) ss.

On this 24 day of January, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffery Nona, known to me to be the Party of the First Part herein, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



(SEAL)

Lisa M. Wilson

Notary Public for Idaho

Residing at: Boise, Idaho

My Commission expires: 5/2/21

STATE OF IDAHO)

County of Ada) ss.

On this 24th day of January, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Leslie Nona, known to me to be the Party of the First Part herein, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)



April Haro

Notary Public for Idaho

Residing at: Middleton, ID

My Commission expires: 9/22/22



April Wilke
Notary Public for Idaho
Residing at Middleton, ID

2009004039

RECORDED

2009 JAN 29 AM 11 51

WILLIAM H. HURST
CANYON COUNTY RECORDER
BY *[Signature]*

REQUESTED BY *[Signature]*
TYPE *[Signature]* FEE *[Signature]*

Above Space Reserved for Recording

[If required by your jurisdiction, list above the name & address of: 1) where to return this form; 2) preparer; 3) party requesting recording.]

Quitclaim Deed—Idaho

THIS QUITCLAIM DEED, executed this 29 day of January, 2009, by first party, Grantor, Lamar L. and Tammera R. Lowell, whose post office address is 9760 Gloria Rd, Middleton, Idaho 83644, to second party, Grantee, Dennis C. and Patricia R. Newton, whose post office address is 9948 Gloria Rd, Middleton, Idaho 83644.

WITNESSETH: That Grantor, for good consideration and for the sum of Two hundred thirty-five thousand Dollars (\$235,000.00) paid by Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto Grantee forever, all the right, title, interest and claim which Grantor has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Canyon, State of Idaho.

DESCRIPTION OF LAND: 9948 Gloria Rd., Middleton, Idaho 83644. See attached legal description—Exhibit A.

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written. Signed, sealed and delivered in the presence of:

Signature of Witness:

Print Name of Witness:

Signature of Witness:

Print Name of Witness:

Signature of Grantor:

Print Name of Grantor:

Lamar L. Lowell and Tammara R. Lowell

Signature of Preparer:

Print Name of Preparer: Tammara R. Lowell

Address of Preparer: 9760 Gloria Rd, Middleton, Idaho 83644

State of: Idaho

County of: Canyon

On this 29th day of January in the year 2009, before me, M. Jean Crane, Notary Public, personally appeared Lamar L. and Tammara R. Lowell, known or identified to me to be the person[s] whose name[s] is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal.

Signature of Notary:

M. Jean Crane
Comm exp 3-10-09
Resides in Middleton

Affiant: Known

Type of ID: Idaho D/L
(Seal)

Produced ID

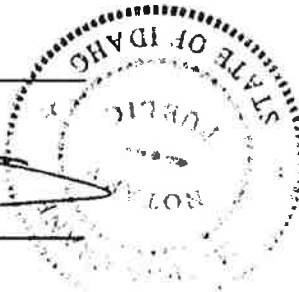


EXHIBIT A

BAR

A portion of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, marked by a G.L.O. brass cap monument; thence

South 00° 01' 18" East a distance of 531.30 feet along the East line of said Northwest Quarter of the Southwest Quarter to a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence

North 89° 55' 48" West a distance of 778.75 feet along the North line of that certain Warranty Deed recorded as Instrument No. 8801419, records of Canyon County, Idaho, to a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence

South 00° 01' 18" East a distance of 220.51 feet along the West line of said Warranty Deed No. 8801419 to the **TRUE POINT OF BEGINNING** marked by a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence continuing

South 00° 01' 18" East a distance of 272.52 feet to the centerline of the C.E. Main Canal; thence along said centerline the following courses and distances:

South 79° 06' 01" West a distance of 147.96 feet;

North 80° 39' 22" West a distance of 98.92 feet;

North 64° 12' 10" West a distance of 201.68 feet;

North 47° 39' 47" West a distance of 75.97 feet;

North 22° 56' 27" West a distance of 158.72 feet; thence leaving said centerline

South 89° 55' 48" East a distance of 542.40 feet to the **TRUE POINT OF BEGINNING**.

TOGETHER WITH a 28-foot-wide ingress, egress and utility easement lying Northerly and Westerly of the following described lines:

COMMENCING at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, marked by a G.L.O. brass cap monument; thence

South 00° 01' 18" East a distance of 531.30 feet along the East line of said Northwest Quarter of the Southwest Quarter to the **TRUE POINT OF BEGINNING** marked by a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence

North 89° 55' 48" West a distance of 778.75 feet to a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence

South 00° 01' 18" East a distance of 220.51 feet to a point referred to hereinafter as Point "A" and the **POINT OF TERMINUS** of this easement marked by a set 1/2-inch iron pin with plastic cap stamped PLS 6552.

The limits of said easement shall be extended or shortened at all angle points so as to make for a continuous and uniform width of access throughout.

AND TOGETHER WITH AND SUBJECT TO a 28-foot-wide ingress, egress and utility easement lying 14 feet either side of the following described line:

BEGINNING at Point "A" described above; thence

North 89° 55' 48" West a distance of 361.60 feet to the **POINT OF TERMINUS** of this easement.

AND ALSO TOGETHER WITH an ingress and egress easement over and across a tract of land situated in a portion of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

DAR

COMMENCING at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, marked by a G.L.O. brass cap monument; thence

South $00^{\circ} 1' 18''$ East a distance of 531.30 feet along the East line of said Northwest Quarter of the Southwest Quarter to a set 1/2-inch iron pin with plastic cap stamped PLS 6552 and the TRUE POINT OF BEGINNING; thence

North $89^{\circ} 55' 48''$ West a distance of 10 feet along the North line of that certain Warranty Deed recorded as Instrument No. 8801419, records of Canyon County, Idaho; thence

North $00^{\circ} 01' 18''$ West a distance of 56 feet parallel to said East line; thence

South $89^{\circ} 55' 48''$ East 10 feet to a point on said East line; thence

South $00^{\circ} 01' 18''$ East a distance of 56 feet along said East line to the TRUE POINT OF BEGINNING.



8151 W. Rifleman Ave. / Boise
Idaho 83704 / (208) 377-2700

REQUEST
PIONEER-CALDWELL
YRF. Deed Fee 9

CANON
BY Jack Brown
ORDER

2006 NOV 29 PM 4 26

RECORDED

200694930

PCH4080

WARRANTY DEED

For Value Received Dee Ann Randall, an unmarried person

hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto

Lamar L. Lowell and Tammera R. Lowell, Husband and Wife

hereinafter referred to as Grantee, whose current address is 9948 Gloria Road, Middleton, ID 83644

the following described premises, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

Tax Parcel ID #R374330100

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: November 28, 2006

Dee Ann Randall
Dee Ann Randall

STATE OF Idaho, County of Canyon, ss.

On this 28th day of November, in the year of 2006, before me the undersigned, a notary public personally appeared Dee Ann Randall known or identified to me to be the person/persons whose name is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



[Signature]

Notary Public of

Residing in Nampa, Idaho
My Commission Expires 7-31-12

Residing at

Commission expires:

83926

EXHIBIT A

0AR

A portion of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, marked by a G.L.O. brass cap monument; thence

South 00° 01' 18" East a distance of 531.30 feet along the East line of said Northwest Quarter of the Southwest Quarter to a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence

North 89° 55' 48" West a distance of 778.75 feet along the North line of that certain Warranty Deed recorded as Instrument No. 8801419, records of Canyon County, Idaho, to a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence

South 00° 01' 18" East a distance of 220.51 feet along the West line of said Warranty Deed No. 8801419 to the TRUE POINT OF BEGINNING marked by a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence continuing

South 00° 01' 18" East a distance of 272.52 feet to the centerline of the C.E. Main Canal; thence along said centerline the following courses and distances:

South 79° 06' 01" West a distance of 147.96 feet;

North 80° 39' 22" West a distance of 98.92 feet;

North 64° 12' 10" West a distance of 201.68 feet;

North 47° 39' 47" West a distance of 75.97 feet;

North 22° 56' 27" West a distance of 158.72 feet; thence leaving said centerline

South 89° 55' 48" East a distance of 542.40 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH a 28-foot-wide ingress, egress and utility easement lying Northerly and Westerly of the following described lines:

COMMENCING at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, marked by a G.L.O. brass cap monument; thence

South 00° 01' 18" East a distance of 531.30 feet along the East line of said Northwest Quarter of the Southwest Quarter to the TRUE POINT OF BEGINNING marked by a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence

North 89° 55' 48" West a distance of 778.75 feet to a set 1/2-inch iron pin with plastic cap stamped PLS 6552; thence

South 00° 01' 18" East a distance of 220.51 feet to a point referred to hereinafter as Point "A" and the POINT OF TERMINUS of this easement marked by a set 1/2-inch iron pin with plastic cap stamped PLS 6552.

The limits of said easement shall be extended or shortened at all angle points so as to make for a continuous and uniform width of access throughout.

AND TOGETHER WITH AND SUBJECT TO a 28-foot-wide ingress, egress and utility easement lying 14 feet either side of the following described line:

BEGINNING at Point "A" described above; thence

North 89° 55' 48" West a distance of 361.60 feet to the POINT OF TERMINUS of this easement.

AND ALSO TOGETHER WITH an ingress and egress easement over and across a tract of land situated in a portion of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

DAR

COMMENCING at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 21, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, marked by a G.L.O. brass cap monument; thence

South $00^{\circ} 1' 18''$ East a distance of 531.30 feet along the East line of said Northwest Quarter of the Southwest Quarter to a set 1/2-inch iron pin with plastic cap stamped PLS 6552 and the TRUE POINT OF BEGINNING; thence

North $89^{\circ} 55' 48''$ West a distance of 10 feet along the North line of that certain Warranty Deed recorded as Instrument No. 8801419, records of Canyon County, Idaho; thence

North $00^{\circ} 01' 18''$ West a distance of 56 feet parallel to said East line; thence

South $89^{\circ} 55' 48''$ East 10 feet to a point on said East line; thence

South $00^{\circ} 01' 18''$ East a distance of 56 feet along said East line to the TRUE POINT OF BEGINNING.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

September 4, 2020

DENNIS C NEWTON
PATRICIA R NEWTON
9948 GLORIA RD
MIDDLETON ID 83644-5049

Re: Transfer No: 83926
Water Right No(s): 63-34941

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

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

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

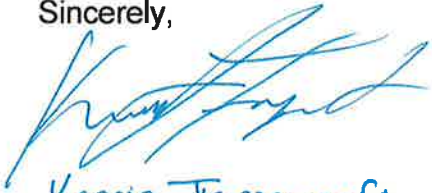
ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and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

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

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

If you have any questions, please contact me at (208) 334-2190

Sincerely,



For: *Kensie Thorneycroft*
Patrick Kelly
Water Rights Supervisor

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2020 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

Re: Transfer No: 83926
Water Right No(s): 63-34941

DENNIS C NEWTON
PATRICIA R NEWTON
9948 GLORIA RD
MIDDLETON ID 83644-5049

SPF WATER ENGINEERING LLC
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706-6660



Kensie Thorneycroft
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

REQUEST FOR HEARING

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

MEMORANDUM

TO: Transfer No. 83926
FROM: Shilynn Novak
DATE: July 1, 2020
RE: Evaluation of Application

Summary of Information Submitted

The transfer proposes to move the point of diversion and complete an ownership change split. 63-9069D was an irrigation water right from a large irrigation well. The land has become subdivided to a few residential lots. The purpose of this transfer is to split a small acreage from the irrigation use and recognize the domestic well on the property as the POD.

63-9069D was split into two rights: 63-34930 is the child right that went to the Lowells while 63-34941 went to the Newtons. The split was completed based on a quit-claim deed submitted with the transfer/ownership change application.

The site is approximately 3.7 miles northeast of the City of Middleton and 0.5 miles northeast of the intersection of Duff Lane and Galloway Road.

Matt Wilke is the representative for the Newtons, but do not have authority to sign on behalf of the applicants. (He is also a representative for the Lowell Transfer 83925. This is why correspondence for the Lowells also applies to the Newtons.)

Matt Wilke Farm and Land Specialist White Barn Real Estate Mills & Co. Realty Inc. 208.412.9803 Matt@MyWhiteBarn.com

Data entry was started at the State Office where water right 63-9069D was split through ownership changes completed for Hancock and Steele. Lowell and Newton filed POD transfers so the files were sent to Western Region to process.

Ownership Changes & Splits of 63-9069D

Parent	63-9069D	Original Owner: Jeff and Leslie Nona
Child	63-34930	Lamar and Tammera Lowell
Child	63-34941	Dennis and Patricia Newton
Child	63-34862	Jeremy Hancock
Child	63-34861	Michelle Steele
The above water rights were split from 63-9069D after ownership change paperwork was submitted March 4, 2020 and the completion of the transfer/split for Lowell and Newton.		

A partial forfeiture letter was sent May 28, 2020 and requested historical background showing the full use of the irrigation water. After correspondence with the representatives for the Newtons by

myself and Patrick Kelly (IDWR Water Rights Supervisor) clarifying the information needed, a letter was submitted outlining the historical background for water on the Newton property.

Authority to File:

Applicants Dennis C Newton and Patricia R Newton are current owners of the property. The Newtons submitted documentation showing they have authority to file the ownership change/split and transfer for 63-9069D.

The representative does not have authority to sign on behalf of the Newtons, but is the point of contact for the applicants.

Water Right Validity:

Upon review of arial imagery, it appeared part of the land was not being consistently irrigated. Although the land appeared to have been irrigated up until at least April 2016 (Google Earth date), additional information was requested from the applicant in case of partial forfeiture concerns.

On May 28, 2020 I sent the applicant a letter requesting evidence beneficial use occurred in the past 5 years. After a conversation with Mr. Wilke, a letter with the historical background for the property was submitted. The letter explained that the Newtons did not know about the water right on their property and therefore were not using the water to the fullest benefit.

Courts have found that in some circumstances, a water right holder's reasonable reliance on the statements or actions of another can provide a "no control" defense to forfeiture. Using such cases as examples along with the historical use letter provided by Mr. Wilke, it is reasonable for the Newtons to use 0.02 cfs of irrigation for 2.5 acres on their property as requested in their application.

Examples of Resonable Reliance on Others

Special Master Terrance Dolan of the SRBA Court has found that a water right holder's reasonable reliance on a neighbor's statement that the newly acquired property was a "dry piece of land" so no adjudication claim need be filed constituted a "no control" defense to forfeiture and provided a partial defense to forfeiture. In Re Case No 39576, 11SRBA 3 Subcase 45-176A (Rose), Special Master Report at 3.8 (2007), the SRBA found that Rose reasonably relied on statements from her neighbor, a farmer who grew up in the area, that her newly acquired property lacked water rights, leading her to not file a claim in the adjudication. After the time had passed to file even a late claim, Rose discovered that she should have filed an irrigation claim in the adjudication. The SRBA Court held that Rose's reliance on the statements contributed to a partial defense of forfeiture due to circumstances outside Rose's control.

In Scott v. McTiernan, the Wyoming Supreme Court applied the "no control" defense to a water right holder who had failed to use his irrigation water as a result, in part, of his reliance on statements made by his neighbor's employees. In McTiernan, the water right holder diverted his irrigation water from a ditch that ran through his neighbor's land. His neighbor began to block the water flow, but when the water right holder confronted his neighbor, both the ranch manager and other employees assured the water right holder that the ditches would be cleared and the water would be allowed to flow. Instead the neighbor filed an action of forfeiture. The court found that the water right holder should have done more to act against his neighbor's aggressions, but believed the water right holder had reasonably relied on the deliberate statements of his neighbor's ranch manager

and other employees, so the court found that the water right holder's failure to exercise his water right was beyond his control. One caveat in this case that distinguishes Wyoming law from Idaho law is that in Wyoming, five years of nonuse constitutes abandonment and nonuse that results in forfeiture. Thus in Wyoming, some level of intent seems to be built in to forfeiture/abandonment statute. In McTiernan, the Wyoming Supreme Court focused on the lack of intent behind the water right holder's actions.

The irrigation POU was modified to exclude the house and driveway.

Overlap Analysis

Although there are multiple water rights that use ground water as a source in the same NWSW QQ, none of the POUs or PODs overlap Newton property.

There are surface water rights that overlap the property owned by Black Canyon Irrigation District and the Bureau of Reclamation, but are not relevant for this transfer.

Injury to Other Water Rights:

Unlikely to cause injury to other water rights. The water is from the same source as before and is diverted at 0.02 cfs. Although the volume of water transferred after the split will be greater (4.6 af/acre) than the Department standards (4.5 af/acre), the volume of water is close to the Department standard and should not injure other rights in the area. This will make the volume 11.5 afa.

Enlargement of Use:

No enlargement is anticipated. The area that will be watered by the Newtons is limited to irrigating within the acres they own. Irrigating 2.5 acres total (minus the home and driveway) on a 2.9-acre parcel. The volume of water to be split between the Lowells and Newtons is within the amount allotted on 63-9069D.

Local Public Interest:

No information has been made available to suggest a conflict with public interest.

Beneficial Use/Conservation of Water Resources:

The application proposes beneficial use consistent with conservation of water resources in Idaho.

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

Summary

Assuming other information not yet discovered does not contradict the above analysis, the application can be approved as reflected by the draft approval.

Pursuant to Section 42-222, Idaho Code, the Department has discretion to provide public notice as deemed appropriate. The water right changes proposed through this transfer application do not appear to change the effect on the original or hydraulically connected water source or affect other water rights. Therefore, staff review of the transfer application found no cause to require public notice. This application will continue processing without advertisement and be forwarded for approval consideration.

RECEIVED

JUN 19 2020

WATER RESOURCES
WESTERN REGION

Dennis and Patricia Newton
9948 Gloria Road
Middleton, ID 83644

Idaho Department of Water Resources
2735 W. Airport Way
Boise, Idaho 83705

6/18/2020

To whom it may concern,

When we acquired our property in 2009, we did not realize we had a Water Right pertaining to our land as it was never transferred into our name during the original sale. We did not realize we had a Water Right until December 2019 when Matt Wilke, a Real Estate agent for Mills and Company Inc. had informed us that we actually had a Water Right applicable to our land.

Mr. Wilke discovered this error with the Water Rights while preparing the neighboring Steele farm for sale, and that the then current owners of the Water Right, Jeffery and Leslie Nona would be willing to quit claim the Water Right into our name, as they no longer held any land in the Water Right area.

Attached is the recorded quitclaim showing the transfer of the Water Right from Nona to Newton.

We are requesting that you please grant the Point of Diversion change along with the Water Right Split from #63-9069D for 2.5 acres and allow us the appropriate timeframe to establish our system to irrigate the acreage outlined in the application filed by SPF Water Rights Specialist Lori Graves.

Thank you for your time and consideration in this matter.

Sincerely,


Dennis Newton


Patricia Newton



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

May 28, 2020

DENNIS AND PATRICIA NEWTON
9948 GLORIA RD
MIDDLETON ID 83644

Re: Additional Information Request – Transfer 83926

Dear Applicant:

On March 9, 2020 this office received your transfer application #83926 to change a point of diversion and split Water Right 63-9069D. Part of the transfer process is review for rights subject to forfeiture. Idaho Statute 42-222 states in part:

... (2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

I am trying to verify the water use on the land. You requested 2.5 acres of irrigation use from the right described above. Aerial imagery and digital tools were used to measure the actual irrigated lands and found a surface area of 0.4 irrigated acres. (See table below for impacts.) The attached map shows the current irrigated areas and the original place of use. If you irrigate more than 0.4 acres, please provide evidence of irrigation use in these areas.

Newton			
Requested	2.5 acres	0.02 cfs	-
Actual	0.4 acres	0.01 cfs	1.8 AF
Forfeit	2.1 acres	0.01 cfs	9.7 AF

Please submit the requested information for the application to be processed. You may seek additional time to provide the information by making a written request to interrupt processing for up to six months. The application may be approved with partial forfeiture or rejected without a timely written reply within the next thirty (30) days. Refunds are not issued for rejected applications. Please contact me at Shilynn.Novak@idwr.idaho.gov if you need more information. Thank you for your attention to these matters.

Sincerely,

Shilynn Novak
Water Resource Agent
208.334.2190
shilynn.novak@idwr.idaho.gov

Enclosures: Aerial imagery
Idaho Statute §42-223

63-9069D

Place of Use (POU) for water right has not been split yet, but will be split after forfeiture concerns are resolved



Kelly, Patrick

From: Hersley, Jean
Sent: Monday, March 09, 2020 9:13 AM
To: Miller, Nick; Kelly, Patrick
Subject: Transfers/ownership split for Lowell and Newton
Attachments: 20200309090503.pdf; 20200309090551.pdf

I'm sending over two transfers for water right 63-9069D. I data entered them and then asked Cody if we should keep them or send them to you. He chose the latter.

There are ownership documents for both transfers. SPF filed these with two other ownership splits, that have been completed, I am going to request a partial refund for the ownership splits. Since the ownership requests were all filed at once, they only require one fee of \$100. Please let me know if you have any questions. Thanks.

*Jean Hersley
Technical Records Specialist II
Idaho Dept Water Resources
(208) 287-4942*