



RANDALL C. BUDGE
rcb@racinelaw.net

June 8, 2018

RECEIVED

JUN 11 2018

Department of Water Resources
Eastern Region

Chatterton Land & Livestock Company
c/o Steve Chatterton
5238 E. Maple Creek Road
Franklin, Idaho 83237

Jensen Family Trust
c/o Wanda Jensen, Trustee
14399 N. Mountain Home Road
Cove, Utah 84320

David Rallison
1750 E. Center Street
Lewiston, Utah 84320

G&G Franklin Properties, LLC
c/o Guy Arnell
3427 Overland Ave, #2
Burley, Idaho 83318

Re: Deep Canyon Creek Irrigation Company

Dear Folks:

This will follow-up on our May 22, 2018 meeting in Franklin with you and James Cefalo from the Idaho Department of Water Resources ("IDWR") regarding your respective water rights in Deep Canyon Creek. In addition to reviewing the map prepared by Mr. Cefalo showing the points of diversion and place of use and your irrigation practices since the pipeline system was installed in approximately 1981, we discussed his recommendation that you consider organizing an irrigation company to own all of the water rights and operate and manage the delivery system for the benefit of each of you who would be the shareholders.

Based upon my experience in working with many large and small irrigation companies throughout southeast Idaho, I sincerely believe that there are many advantages and that it would be in your best long-term interests to organize and operate an irrigation company to own the water rights and maintain and deliver water to the shareholders. Let me explain some of the reasons.

First, an irrigation company could be organized as a non-profit corporation to operate without any tax obligations. Second, the Company could be organized to exist perpetually and then would have continuity of life. Third, a budget could be established to operate and maintain the delivery system. The shares would be subject to assessments pursuant to which each of the shareholders would pay their proportionate share of the expenses. Fourth, the shareholders could elect a board of directors to operate the Company, make operation and maintenance decisions and higher a watermaster/manager to manage the system and deliver the water to the shareholders proportionate to their respective shares. Fifth, the irrigation Company could file the Transfer Application with IDWR for the purposes of updating and clarifying ownership of the water rights and to reflect the current points of diversion and places of use. Sixth, ownership of the water rights by the Company and approval of the Transfer Application would go a long way to establish and protect all of the water rights in Deep Canyon Creek, thus avoiding much of the in-depth scrutiny and risks that otherwise all of you will have to deal with on an individual basis when the Bear River Basin and all tributaries are adjudicated as expected in the next couple of years.

At the end of our discussion, there appeared to be a general consensus to proceed to prepare legal documents necessary to organize Deep Canyon Creek Irrigation Company. To facilitate that effort and further discussions, I have prepared and enclosed the following draft documents:

1. Articles of Incorporation. These would be filed with the Idaho Secretary of State's Office to organize Deep Canyon Creek Irrigation Company as an Idaho Non-Profit Corporation. These need to be signed and filed in duplicate with the Idaho Secretary of State's Office with a \$30 filing fee paid. Anyone or several of you can be the original incorporators; or, you could authorize me to sign and file them on your behalf.
2. Bylaws. These would govern the conduct and affairs of the Company. I have highlighted in yellow a few areas that need to be completed or require further discussion. I will summarize some of the key points below.
3. Stock Ownership Ledger. This ledger would reflect the shareholders, their address, the number of shares. It would be used to handle future transfers to reflect current ownership of the shares. I recognize that Rallison family has divided up some of their property and shares already among family and others and this may need to be updated. The number of shares is based upon the 1981 design of the delivery system which reflected the nozzles on each of the properties of the owners.

4. Special Warranty Deed for Water Rights. This would be used for each of the owners to transfer their water right interests in Deep Canyon Creek to the new Company.
5. Application for Transfer prepared by Mr. Cefalo. Once the Company is organized it would file the Transfer Application with IDWR in order to establish ownership of all the water rights in Deep Creek, together with the current points of diversion and places of use.

Let me provide a brief summary of some of the key provisions of the Bylaws by article:

Article 1 – Organization. This provides for the date of incorporation, a registered agent and an office address in Franklin.

Article 2 – Shareholders. Paragraph 2.1 provides that there would be an annual meeting of the shareholders in Franklin. The date and the time of the meeting can be decided upon. Normally it is good idea to have the annual meeting late in the year, after the irrigation season, or prior to the beginning of the irrigation season. Paragraph 2.7 provides that a quorum of some percentage of the stock needs to be present in person or by proxy at the meeting to be able to conduct business. I have suggested a 1/3 but it could be a higher percentage, although you don't want to get it too high that you can't get enough shares represented at the meeting to conduct business.

Article 3 – Board of Directors. This provides that the business and affairs of the Company will be managed by its board of directors elected at the annual meeting. I would suggest a board of not less than 3 or more than 5 members.

Article 4 – Officers. This provides for the officers of the Company which normally would be a president, secretary and treasurer elected by the board. Paragraph 4.8 provides that the board would employ a watermaster/manager to operate the system, keep records and deliver water to the shareholders.

Article 5 – Contracts, Loans, Checks and Deposits. This provides that the directors can authorize officers to enter into contracts, take out loans, etc. Paragraph 5.3 provides that for certain expenditures shareholder approval is required. What I have suggested here is that expenditures of more than \$5,000 must be approved by not less than 2/3 of the shareholders. This could be further discussed and changed as needed.

Article 6 – Shares and their Transfers. Rather than issuing paper stock certificates which get lost and are hard for the Company to manage long-term, it simply provides that the Company would maintain a Stock Ownership and Transfer Ledger in the form provided to keep track of the shareholders.

Paragraph 6.3 provides that water is only delivered to place of use designated in the Company's water rights.

Article 7 – Assignment of Shares. This provides for the assessment of shares to pay the expenses.

Article 8 – Enforcement of Assessments. This provides that if the shareholders don't pay their assessments their water will be cut off. It also provides a means that the Company could foreclose and sell delinquent shares in a summary fashion providing the procedure outlined.

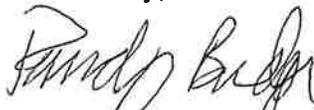
Article 9 – Distribution and Use of Water. This provides for the distribution and use of water to the shareholders. Paragraph 9.1 requires that water won't be delivered to shareholders holding less than two shares to avoid having to deal with fractional share interests. This may require further discussion. Paragraph 9.3 identifies the Company's water right 13-53. Paragraph 9.4 provides that shareholders must take their water from the delivery system through outlets constructed and maintained by the Company. It is the shareholder's responsibility to deliver the water and maintain their own lateral pipes beyond the Company's outlet. In paragraph 9.7 the shareholders grant the Company easements to maintain and operate the delivery system.

Article 10 – Miscellaneous. This contains miscellaneous provisions. Paragraph 10.7 provides that the Bylaws can be amended by $\frac{3}{4}$ vote of the board of directors or upon $\frac{2}{3}$ vote of the shareholders. This requires further discussion.

It is suggested that the parties a follow-up meeting be held to discuss these things and move forward. Accordingly, please plan on attending the **next meeting scheduled for July 11, 2018 at 1pm at the Franklin City Hall**. By copy of this letter and the enclosures I am advising Mr. Cefalo of the forgoing and he is planning to again meet with us and assist as needed.

If you have any questions, please don't hesitate to contact me.

Sincerely,



RANDALL C. BUDGE

RCB:ts

Enclosures

c: James Cefalo



ARTICLES OF INCORPORATION (Non-Profit)

Title 30, Chapters 21 and 30, Idaho Code

Filing fee: \$30 typed, \$50 not typed

Complete and submit the form in duplicate.

Article 1: The name of the corporation shall be:

Deep Canyon Creek Irrigation Company

Article 2: The purpose for which the corporation is organized is: Own and maintain water rights and deliver water to shareholders.

Article 3: Registered agent name and address:

Guy Arnell 3427 Overland Ave, #2, Burley, Idaho 83318

(Name)

(Address)

Article 4: The board of directors shall consist of no fewer than three (3) people. The names and addresses of the initial directors are:

Guy Arnell 3427 Overland Ave, #2, Burley, Idaho 83318

(Name)

(Address)

Steve Chatterton

(Name)

(Address)

David Rallison 1750 E. Center Street, Lewiston, Utah 84320

(Name)

(Address)

Article 5: Incorporator name(s) and address(es):

Guy Arnell 3427 Overland Ave, #2, Burley, Idaho 83318

(Name)

(Address)

Steve Chatterton 5238 E. Maple Creek Road, Franklin, Idaho 83237

(Name)

(Address)

David Rallison 1750 E. Center Street, Lewiston, Utah 84320

(Name)

(Address)

Article 6: The mailing address of the corporation shall be:

P.O. Box _____, Franklin, Idaho 83237

(Address)

Article 7: The corporation (does does not) have voting members.

Article 8: Upon dissolution the assets shall be distributed: _____

Signatures of all incorporators:

Printed Name: Guy Arnell

Signature: _____

Printed Name: Steve Chatterton

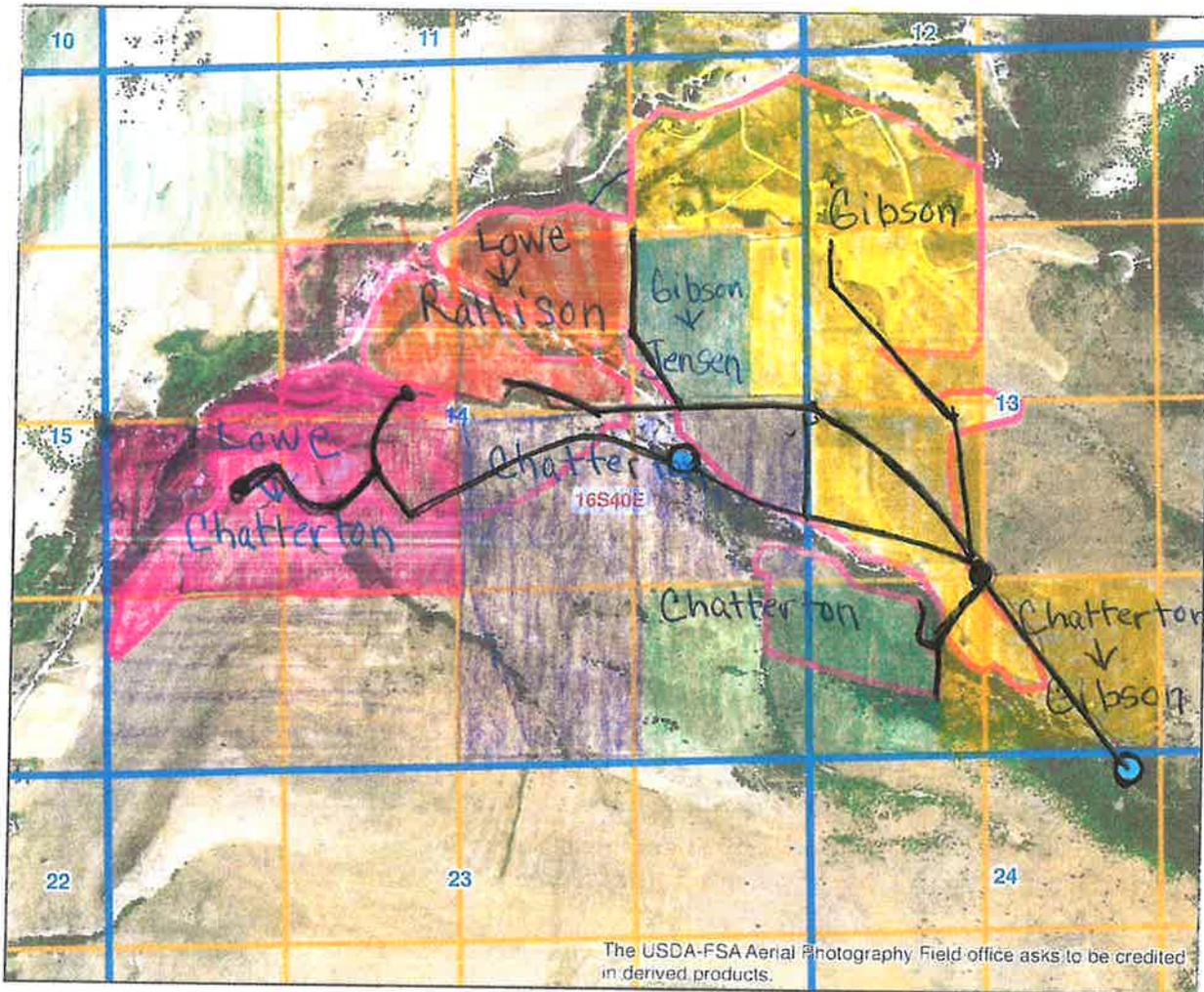
Signature: _____

Printed Name: David Rallison

Signature: _____

Secretary of State use only

Application for Transfer Water Right 13-53



2013 Aerial Photo

| | |
|---|--------------------|
|  | 13-53 Proposed POU |
|  | Proposed POD |
|  | Township/Range |
|  | Sections |
|  | Quarter Quarters |

0 1,000 2,000 Feet



Turns of Water from Deep Canyon Creek

Chatterton $\frac{3}{8}$ - 3 days

Gibson $\frac{2}{8}$ - 2 days

Rattison $\frac{2}{8}$ - 2 days

Jensen $\frac{1}{8}$ - 1 day



Stock Ownership Ledger

Deep Canyon Creek Irrigation Company

As of 6/1/2018

| Shareholder | Address/Phone | Shares | % of Total Shares | Date of Issuance | Transferred From |
|---------------------------------------|--|------------|-------------------|------------------|-------------------|
| Chatterton Land and Livestock Company | 5238 E. Maple Creek Road Franklin, Idaho 83237 | 51 | 25.0% | 2018 | Original Issuance |
| David Rallison | 1750 E. Center Street Lewiston, Utah 84320 | 50 | 24.5% | 2018 | Original Issuance |
| Jensen Family Trust | Wanda Jensen, Trustee 14399 N. Mountain Home Road Cove, Utah 84320 ph: 801-258-2765 | 30 | 14.7% | 2018 | Original Issuance |
| G&G Franklin Properties, LLC | c/o Guy Arnell 3427 Overland Ave, #2 Burley, Idaho 83318 ph: 208-431-3030 | 73 | 35.8% | 2018 | Original Issuance |
| Total | | 204 | 100% | | |

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 www.idwr.idaho.gov.

Name of Applicant(s) Chatterton Land & Livestock, Jensen Family Trust, Silcock Ward Properties, David Rallison

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 www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.
- #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see fee schedule.
- #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. (Attachment WSB)
- #10 Other. Please describe: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant(s) See Attached Phone _____

Mailing address _____ 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 _____ Phone _____

Mailing address _____ 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 _____

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.2.**
See Attached.

**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.

| | <u>Right Number</u> | <u>Amount</u> (cfs/ac-ft) | <u>Nature of Use</u> | <u>Period of Use</u> | <u>Source & Tributary</u> |
|---|---------------------|------------------------------|----------------------|----------------------|-------------------------------|
| All or Part <input checked="" type="checkbox"/> <input type="checkbox"/> | 13-53A | 10.38 cfs | Irrigation | 4/1 to 10/31 | Deep Creek |
| <input checked="" type="checkbox"/> <input type="checkbox"/> | 13-53B | 1.02 cfs | Irrigation | 4/1 to 10/31 | Deep Creek |
| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |

Total authorized under rights 11.4 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed _____ 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 # |
|-------|-----|---|----|----|-----|-----|-----|----------|------------|-----------------------|
| | | | NE | NW | 24 | 16S | 40E | Franklin | Deep Creek | Upper Pipeline Intake |
| | | | NE | SE | 14 | 16S | 40E | Franklin | Deep Creek | Lower Pipeline Intake |
| | | | | | | | | | | |
| | | | | | | | | | | |

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 | |
| 16S | 40E | 13 | | | | | | 24 | 36 | 0.2 | 1.0 | 32 | 19 | 4.2 | | | | | 116.4 |
| | | 14 | 29 | 5.0 | 33 | 39 | | | 0.9 | 18 | 22 | 9.1 | 2.5 | | 15 | 15 | | 4.1 | 192.6 |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| Total Acres (for irrigation use) | | | | | | | | | | | | | | | | | | | 309 |

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:

Within Water District 13A. Will install a measuring device if requested by local watermaster.

b. Who owns the property at the point(s) of diversion? Sagebrush Steppe Regional Land Trust

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
Pipeline has been in place since the early 1980s.

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: N/A

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:

This transfer proposes to define the place of use for water right 13-53. Place of use described in 1905 decree was poorly defined. Place of use is not changing.

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:

None.

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:
