

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 84141

This is to certify that: AMY FALLS AND
HARTLEY ROGERS
610 5TH AVE STE 401
NEW YORK, NY 10020-2403

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> |
|--------------------|---------------------|----------------------|-----------------------|-------------------------|-------------------|--------------------|---------------|
| 37-10718 | WR/DECREED | 5/31/1978 | 0.040 cfs | N/A | N/A | N/A | 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> |
|-----------------------|--------------|------------|------------|----------------|----------------------|----------------------|
| 37-10718 | NO | YES | YES | 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> |
|------------------------|----------------------------------|----------------------|------------------------|-------------------|--------------------|------------------------------------|-----------------------|-------------------------|-----------------------------|------------------------------|
| 37-10718 | 37-10718 | 0.040 cfs | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| COMBINED TOTALS | | 0.040 cfs | N/A | N/A | N/A | | 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 16th day of June, 2020.



Southern Region Manager

Transfer No. 84141

WATER RIGHT NO. 37-10718

As Modified by Transfer No. 84141

In accordance with the approval of Transfer No. 84141, Water Right No. 37-10718 is now described as follows:

Right Holder: AMY FALLS AND
HARTLEY ROGERS
610 5TH AVE STE 401
NEW YORK, NY 10020-2403

Priority Date: 5/31/1978

Source: GROUND WATER

BENEFICIAL USE
DOMESTIC

From 1/01 **To** 12/31

Diversion Rate
0.040 cfs
0.040 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER NWNE Sec 23 Twp 05N Rge 17E BLAINE County

PLACE OF USE: DOMESTIC

| Twp | Rng | Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | | | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | |
| 05N | 17E | 23 | | X | X | | | | | | | | | | | | | | |

CONDITIONS OF APPROVAL

1. The quantity of water under this right shall not exceed 13,000 gallons per day.
2. The quantity of water decreed for this water right is not a determination of historical beneficial use.
3. Property is also known as TL 8260 within a portion of Homestead Entry Survey No. 128,
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.
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.






Transfer No. 84141

State of Idaho
Department of Water Resources
Attachment to Transfer # 84141
37-10718


This map depicts the DOMESTIC 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.

17E



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

0 0.035 0.07 0.14 Miles



RECEIVED

MAY 28 2020

DEPT OF WATER RESOURCES
SOUTHERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 84141MINIMUM 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) Hartley Rogers and Amy FallsCheck 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: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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JUN 08 2020

DEPT OF WATER RESOURCES
SOUTHERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Hartley Rogers and Amy Falls Phone 917-414-8452
Mailing address 610 Fifth Avenue Suite 401, New York, NY 10200 Email hrogers@hamiltonlane.com

- ☐ 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**.

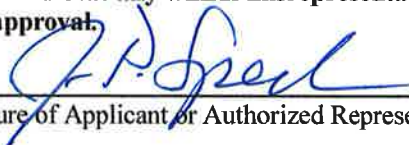
Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative James P. Speck Phone 208-726-4421
Mailing address Speck & Aanestad, P.O. Box 987, Ketchum, ID 83340 Email jim@speckandaanestad.com

- ☐ Send all correspondence for this application to the representative and not to the applicant.
OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.


Signature of Applicant or Authorized Representative

Hartley Rogers ~~JAMES P. SPECK~~
Print Name and Title if applicable

6.1.2020
Date

Signature of Applicant or Authorized Representative

Amy Falls
Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
☐ Change nature of use
 ☐ Add diversion point(s)
☐ Change period of use
 ☒ Change place of use
☐ Other _____
- Is this a t _____ Idaho Code § 42-221.O.8?
If yes, ☒ attach an explanation and any supporting documentation labeled as **Part 1A.2**. See 1.A.3, below
- 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**.
No physical changes in the locations of the POD or POU will occur. This Application is filed solely to correct the legal descriptions of the POD and POU as decreed in the SRBA.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAY 28 2020

DEPT OF WATER RESOURCES
SOUTHERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Hartley Rogers and Amy Falls Phone 917-414-8452
Mailing address 610 Fifth Avenue Suite 401, New York, NY 10200 Email hrogers@hamiltonlane.com

- ☐ 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 James P. Speck Phone 208-726-4421
Mailing address Speck & Aanestad, P.O. Box 987, Ketchum, ID 83340 Email jim@speckandaanestad.com

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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 | <u>Hartley Rogers</u> Print Name and Title if applicable | _____ Date |
| _____ Signature of Applicant or Authorized Representative | <u>Amy Falls</u> 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. 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**. See 1.A.3, below
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**.
No physical changes in the locations of the POD or POU will occur. This Application is filed solely to correct the legal descriptions of the POD and POU as decreed in the SRBA.

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 <input checked="" type="checkbox"/> <input type="checkbox"/> | 37-10718 | 0.04 cfs | domestic | Jan. 1 to Dec. 31 | ground water |
| <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 | |
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| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | to | |

Total authorized under rights 0.04 cfs cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.04 cfs 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 | NW | NE | 23 | 5N | 17E | Blaine | ground water | |
| | | per 6-10-20 Email exchange w/ Jim Speck | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |

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 | |
| 5N | 17E | 23 | | D | D | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
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| | | | | | | | | | | | | | | | | | | | |
| Total Acres (for irrigation use) | | | | | | | | | | | | | | | | | | | |

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Well & pump for domestic use in home & irrigation or surrounding landscaping

- b. Who owns the property at the point(s) of diversion? Applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: _____

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

N/A

- 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:

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

Current Water Right No.: 37-10718

Current Owner: AMY FALLS
HARTLEY ROGERS

Priority Date: 5/31/1978

Origin: Water Right

Status: Active

Basis: Decreed

Source

Tributary

GROUND WATER

| <u>Beneficial Use</u> | <u>From To</u> | <u>Diversion Rate</u> | <u>Annual Volume</u> |
|-----------------------|------------------------|-----------------------|----------------------|
| DOMESTIC | 1/01 to 12/31 | 0.04 CFS | |
| | <u>Total Diversion</u> | 0.04 CFS | |

Location of Point(s) of Diversion

| | | | | |
|---------------|------------|----------|----------|--------------|
| GROUND WATER | SE1/4NW1/4 | Sec. 23, | Twp 05N, | Rge 17E B.M. |
| BLAINE County | | | | |

Place of Use

DOMESTIC Within BLAINE County

T05N R17E S23 SENW

Conditions of Approval:

1. N11 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
2. PARCEL NO. 05N170238028A
3. N13 THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
4. 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: 1/5/2001





State of Idaho

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION • 650 ADDISON AVE W STE 500 • TWIN FALLS ID 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037

Website: www.idwr.idaho.gov • Email: southerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

June 17, 2020

HARTLEY ROGERS
AMY FALLS
610 5TH AVE STE 401
NEW YORK NY 10020-2403

Re: Transfer No: 84141
Water Right No(s): 37-10718

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

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

The Transfer of Water Right(s) 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) 736-3033.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Skinner".

Corey Skinner
Southern Regional Manager

Enclosure

c:

JAMES P SPECK
SPECK & AANESTAD PC
PO BOX 987
KETCHUM ID 83340-0998

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 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.: 84141
Water Right No(s): 37-10718

HARTLEY ROGERS
AMY FALLS
610 5TH AVE STE 401
NEW YORK NY 10020-2403

JAMES P SPECK
SPECK & AANESTAD PC
PO BOX 987
KETCHUM ID 83340-0998



Denise Maline
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.

Bitzenburg, James

From: James Speck <jim@speckandaanestad.com>
Sent: Wednesday, June 10, 2020 1:14 PM
To: Bitzenburg, James
Subject: RE: Hartley Rogers and Amy Falls Transfer #84141

Jim,

Thanks for your valued scrutiny of this one. I agree with both points so the answer is "YES" for each.

Jim

From: Bitzenburg, James <James.Bitzenburg@idwr.idaho.gov>
Sent: Wednesday, June 10, 2020 9:51 AM
To: James Speck <jim@speckandaanestad.com>
Subject: Hartley Rogers and Amy Falls Transfer #84141

Jim-

On a different subject, I am processing the POD/POU correction transfer (#84141) you submitted for Hartley Rogers and Amy Falls north of Ketchum. In reviewing and data entering the transfer, the point of diversion location description on page 3, item #3 shows the POD in 5N, 17E, Section 23, SENWNE, while the map attached to the application seems to show it in the SWNWNE. Would it seem reasonable to drop the 10 acre tract description and go with the NWNE of Section 23?

Additionally, I have attached a map showing the parcel location in relation to the PLSS grid, and some of the parcel dips down into the SWNE of Section 23. It looks like there may be some lawn/landscaping down in that QQ, so would you like to add that QQ (SWNE) to the POU description on page 3, item #4, so that both the SWNE and NWNE are POUs?

Thanks and let me know what you think.

Jim

Jim Bitzenburg
Water Resource Agent
Idaho Department of Water Resources
Southern Regional Office
Phone (208)-736-3033
james.bitzenburg@idwr.idaho.gov

MEMORANDUM

Date: June 10, 2020
To: Transfer #84141 File
From: Jim Bitzenburg
Re: Evaluation of Sufficiency of Information Submitted

Application for transfer proposes to correct the place of use and point of diversion descriptions for a domestic ground water right, 37-10718, with a flow rate of 0.04 cfs, appurtenant to a parcel located approximately 5.0 miles north and 1.6 miles west of the center of Ketchum. This is a paper correction to the decreed POD and POU; no physical changes have occurred.

No physical changes have occurred; this is a paper correction only, so advertising is not necessary.

- **Authority to File:**
The Department's database indicates that water right 37-10718 is owned by the applicants, Hartley Rogers and Amy Falls, as a result of a recent change of ownership. The application was signed by James Speck, the attorney representing Mr. Rogers and Ms. Falls in the matter.
- **Water Right Validity:**
The water right was decreed in the SRBA in 2001, and a home is located on the property, so use of the rights has likely been maintained.
- **Injury to Other Water Rights:**
None anticipated or foreseen.
- **Enlargement of Use:**
None anticipated.
- **Local Public Interest:**
No issues anticipated. Because the changes to the POD and POU are paper changes only, the transfer was not advertised.
- **Beneficial Use/Conservation of Water Resources:**
Proposed use is recognized as a beneficial use of water.
- **Effect on the Economy of the Local Area:**
None Anticipated
- **Effect of the Agricultural Base of the Area:**
None Anticipated

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

TRANSFER SYNOPSIS

Date: June 10, 2020
To: Transfer 84141, Hartley Rogers and Amy Falls Transfer file
From: Jim Bitzenburg
Re: Summary of transfer

Application for transfer proposes to correct the place of use and point of diversion descriptions for a domestic ground water right, 37-10718, with a flow rate of 0.04 cfs, appurtenant to a parcel located approximately 5.0 miles north and 1.6 miles west of the center of Ketchum. This is a paper correction to the decreed POD and POU; no physical changes have occurred.

No physical changes have occurred; this is a paper correction only, so advertising is not necessary.

MEMORANDUM

Date: June 10, 2020
To: Transfer 84141
From: James Bitzenburg
Re: Legal Notice Not Required

Legal Notice Not Required
6/10/2020

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.

The application involves paper corrections to the decreed place of use and point of diversion, and no actual physical changes, so advertising is not necessary.

FEE MEMORANDUM

Date: June 10, 2020
To: Hartley Rogers and Amy Falls Transfer #84141 File
From: Jim Bitzenburg
Re: Receipting/disposition of fees paid

This transfer was filed on May 28, 2020 and the purpose of the transfer is to correct the legal description for a ground water domestic right north of Ketchum. Because the transfer is to correct the decreed legal description and no unauthorized physical change in location has occurred, the fee is \$50.00. The fee was paid by Speck and Aanestad with check #41565 on the date the application was filed. The IDWR receipt number is S037939.

JAMES P. SPECK
jim@speckandaanestad.com

DOUGLAS J. AANESTAD
(retired)

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

120 EAST AVENUE NORTH
P. O. BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208)726-4421
FACSIMILE
(208)726-0752

May 22, 2020

RECEIVED

MAY 28 2020

DEPT OF WATER RESOURCES
SOUTHERN REGION

Idaho Department of Water Resources
650 Addison Ave. W
Suite 500
Twin Falls, ID 83301

**Re: Application for Transfer of Water Right
No. 37-10718**

Dear Denise:

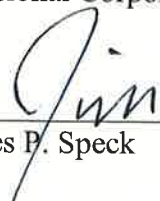
Enclosed you will find an *original* and one copy of the above-referenced Application for Transfer of Water Right accompanied by our firm's check for the \$50.00 Application filing fee.

Please return the receipt date-stamped copy to me in the postage prepaid self-addressed envelope I have included for that purpose. Please call me if you have any questions, comments or concerns.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
James P. Speck

Enclosures

cc: Client (w/enclosure) via Email