

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
MAR 18 2020
VERSION Water Resources
Eastern Region

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)** Boweta LLC Phone (208) 720-5360

2. MAILING ADDRESS HC 64 Box 8028 City Ketchum

State ID Zip 83340 Email chrisflanigan@mac.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) 34-97, 34-99 & 34-10250

- ☒ 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 9.4 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*.

[illegible]

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:

Pump from slough or river to mainline to pivot for sprinkler irrigation

- 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 $\frac{1}{4}$ $\frac{1}{4}$ 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.


Signature of applicant or authorized agent

Chris Flanigan, Manager
Print name and title if applicable

3/18/20
Date

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 _____ Date _____

Fee paid _____ Date _____ Received by _____ Receipt # _____

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)

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[illegible]

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- 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:

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☐ ☒ 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)?

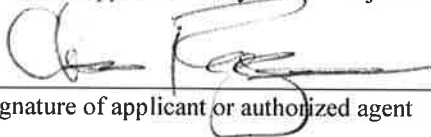
If yes, describe:

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- ☐ 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.)

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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.


Signature of applicant or authorized agent

Chris Flanigan, Manager
Print name and title if applicable

2/26/20
Date

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 CA

Date 3/9/2020

Fee paid \$1220.00 Date 3/9/2020

Received by CA

Receipt # E045715

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)

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

Current Water Right No.: 34-97

Current Owner: BOWETA LLC
Priority Date: 7/1/1902
Origin: Water Right
Status: Active
Basis: Decreed

Source

BIG LOST RIVER

Tributary

SINKS

Beneficial Use

IRRIGATION

From To

5/01 to 10/15

Diversion Rate

1.7 CFS

Annual Volume

Total Diversion

1.7 CFS

Location of Point(s) of Diversion

BIG LOST RIVER

CUSTER County

NW1/4SE1/4NW1/4

Sec. 11, Twp 08N, Rge 21E B.M.

BIG LOST RIVER

CUSTER County

SE1/4SE1/4NE1/4

Sec. 19, Twp 08N, Rge 21E B.M.

Place of Use

IRRIGATION Within CUSTER County

T08N R21E S2	SWNE	5.00	T08N R21E S2	NESW	33.00
T08N R21E S2	NWSW	21.00	T08N R21E S2	NESE	36.00
T08N R21E S2	NWSE	40.00	T08N R21E S2	SWSE	40.00
T08N R21E S2	SESE	40.00	T08N R21E S11	NENE	40.00
T08N R21E S11	NWNE	40.00	T08N R21E S11	SWNE	24.00
T08N R21E S11	SENE	10.00	T08N R21E S12	NWNW	16.00

Total Acres: 345

Page _____ of _____

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. USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 9.72 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1207.5 AF.
COMBINED RIGHT NOS.: 34-00099, 34-07140 AND 34-10250.
3. S34 THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.
4. WATER IS DELIVERED THROUGH BRADSHAW DITCH (PARTIALLY).
5. USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 345 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 34-00099, 34-07140 AND 34-10250.
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 85 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Decreed Date: 5/29/2001

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

Current Water Right No.: 34-99

Current Owner: BOWETA LLC
Priority Date: 1/3/1902
Origin: Water Right
Status: Active
Basis: Decreed

Source

BIG LOST RIVER

Tributary

SINKS

Beneficial Use

IRRIGATION

From To

5/01 to 10/15

Total Diversion

Diversion Rate

2.6 CFS

2.6 CFS

Annual Volume

Location of Point(s) of Diversion

BIG LOST RIVER

CUSTER County

NW1/4SE1/4NW1/4

Sec. 11, Twp 08N, Rge 21E B.M.

BIG LOST RIVER

CUSTER County

SE1/4SE1/4NE1/4

Sec. 19, Twp 08N, Rge 21E B.M.

Place of Use

IRRIGATION Within CUSTER County

T08N R21E S2	SWNE	5.00	T08N R21E S2	NESW	33.00
T08N R21E S2	NWSW	21.00	T08N R21E S2	NESE	36.00
T08N R21E S2	NWSE	40.00	T08N R21E S2	SWSE	40.00
T08N R21E S2	SESE	40.00	T08N R21E S11	NENE	40.00
T08N R21E S11	NWNE	40.00	T08N R21E S11	SWNE	24.00
T08N R21E S11	SENE	10.00	T08N R21E S12	NWNW	16.00

Total Acres: 345

Page _____ of _____

Conditions of Approval:

1. S34 THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.
2. WATER IS DELIVERED THROUGH BRADSHAW DITCH (PARTIALLY).
3. USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 9.72 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1207.5 AF. COMBINED RIGHT NOS.: 34-00097, 34-07140 AND 34-10250.
4. USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 345 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 34-00097, 34-07140 AND 34-10250. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 130 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
5. 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: 5/30/2001

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

Current Water Right No.: 34-10250

Current Owner: BOWETA LLC
Priority Date: 7/1/1916
Origin: Water Right
Status: Active
Basis: Decreed

Source

BIG LOST RIVER

Tributary

SINKS

Beneficial Use

IRRIGATION

From To

5/01 to 10/15

Total Diversion

Diversion Rate

5.1 CFS

5.1 CFS

Annual Volume

Location of Point(s) of Diversion

BIG LOST RIVER

CUSTER County

SE1/4SE1/4NE1/4

Sec. 19, Twp 08N, Rge 21E B.M.

BIG LOST RIVER

CUSTER County

NW1/4SE1/4NW1/4

Sec. 11, Twp 08N, Rge 21E B.M.

Place of Use

IRRIGATION Within CUSTER County

T08N R21E S2	SWNE	5.00	T08N R21E S2	NESW	33.00
T08N R21E S2	NWSW	21.00	T08N R21E S2	NESE	36.00
T08N R21E S2	NWSE	40.00	T08N R21E S2	SWSE	40.00
T08N R21E S2	SESE	40.00	T08N R21E S11	NENE	40.00
T08N R21E S11	NWNE	40.00	T08N R21E S11	SWNE	24.00
T08N R21E S11	SENE	10.00	T08N R21E S12	NWNW	16.00

Total Acres: 345

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2. USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 9.72 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1207.5 AF.
COMBINED RIGHT NOS.: 34-00097, 34-00099 AND 34-07140.
3. THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 34-00098 AND 34-00100.
WATER IS DELIVERED THROUGH BRADSHAW DITCH (PARTIALLY).
4. S34 THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.
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COMBINED RIGHT NOS.: 34-00097, 34-00099 AND 34-07140.

Decreed Date: 5/29/2001

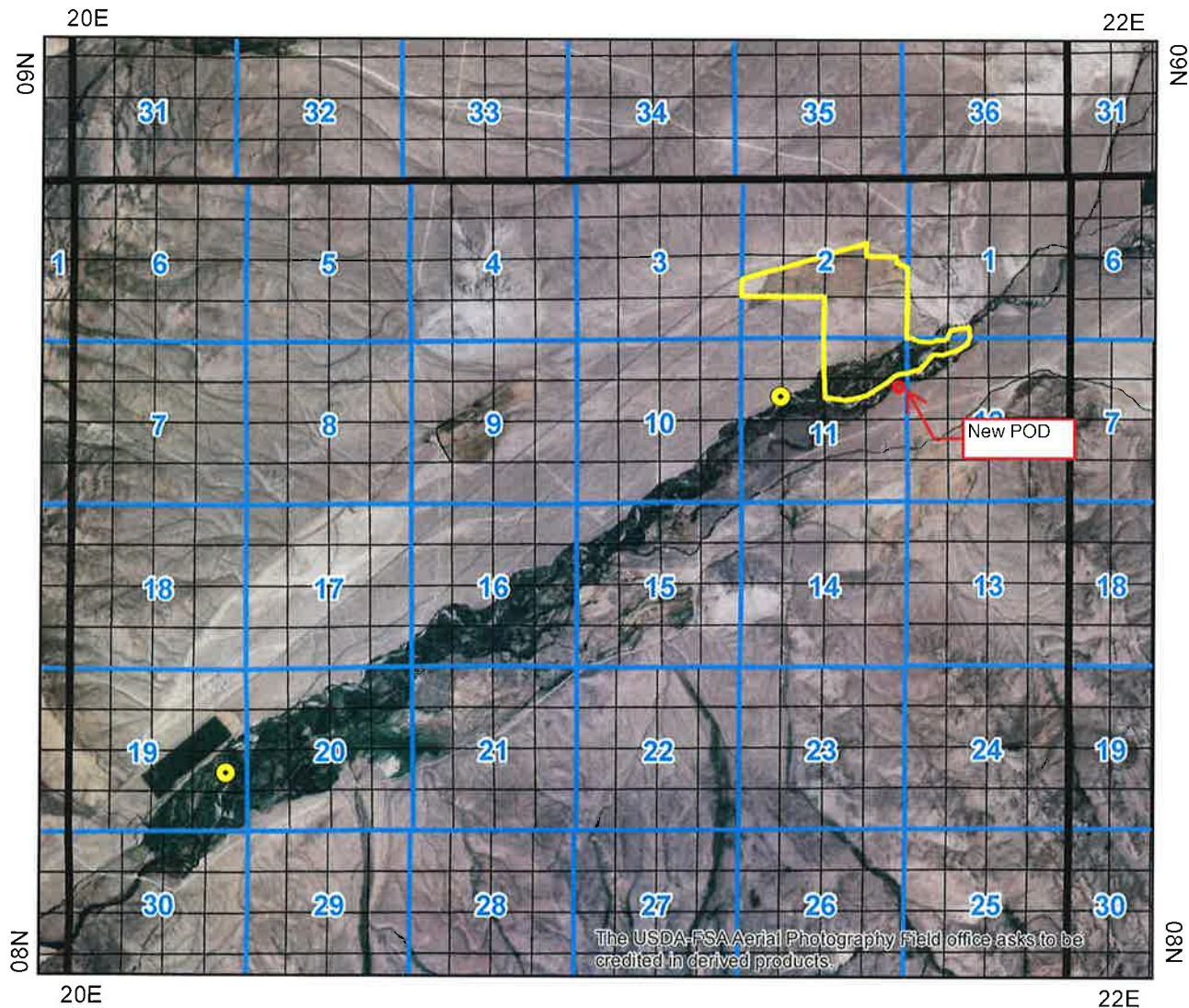
State of Idaho
Department of Water Resources

Water Right

34-97

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.



● Point of Diversion

□ Place Of Use Boundary

□ Townships

□ PLS Sections

□ Quarter Quarters

0 0.5 1 2 Miles

BOWETA, LLC
APPLICATION FOR TRANSFER - POD'S
34-97, 34-99 & 34-10250
ATTACHMENT 7

Map produced on December 09, 2019

83935

COPY

OPERATING AGREEMENT

OF

BOWETA LLC

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OPERATING AGREEMENT

OF

BOWETA LLC

THIS OPERATING AGREEMENT (this "Agreement"), dated as of the 28th day of February, 2002, is by and between Christopher A. Flanigan ("C. Flanigan") and Jacqueline Renee Adams Flanigan ("J. Flanigan"), all of whom are referred to as the "Members" and individually as a "Member." In consideration of the mutual promises contained herein the Members agree as follows:

ARTICLE 1 THE LIMITED LIABILITY COMPANY

1.1 Formation. The Members hereby form a limited liability company upon the terms and conditions provided in this Agreement, subject to the provisions of the Colorado Limited Liability Company Act (the "Act").

1.2 Name. The name of the limited liability company shall be Boweta LLC (the "Company").

1.3 Articles of Organization. The Manager shall cause articles of organization that comply with the requirements of the Act to be properly filed with the Colorado Secretary of State. In the future, the Manager shall execute such further documents (including amendments to the articles of organization) and take such further action as shall be appropriate or necessary to comply with the requirements of law for the formation and operation of a limited liability company in all states and counties where the Company elects to carry on its business.

1.4 Purpose and Business. The company's purposes are to: (a) accommodate the consolidation of the Members' investment assets for more convenient and cost-effective management; (b) protect the Members' assets from creditors' claims; (c) prevent the transfer of interests in the Company's assets and activities to persons whose objectives may be incompatible with or antagonistic to the members' objectives; (d) facilitate the administration and settlement of a deceased Member's estate; and (e) serve as a flexible vehicle for the establishment of new or expansion of existing financial enterprises. The business of the Company shall be to: (i) acquire, own, manage, hold for investment, develop, lease, sell, exchange, and otherwise deal with or dispose of the property described on Exhibit A of this Agreement; (ii) make investments in additional real property, tangible personal property, and intangible personal property; (iii) own, operate and develop any asset or business; and (iv) engage in such other lawful activities as the Manager deems desirable. The Company may sell or otherwise dispose of all or substantially all of its assets for such consideration as may be approved by the Manager and the Members agree that any such sale or disposition shall be within the scope of the Company's business. Title to any property of the company may, in the discretion of the Manager, be held in the name of a nominee on behalf of the Company.

1.5 Principal Place of Business; Registered Office and Agent. The Company's principal place of business shall be at 8439 Greenwood Drive, Niwot, CO 80503, or such other place either within or without Colorado as may be selected from time to time by the Manager. The registered office of the Company shall be at 8439 Greenwood Drive, Niwot, CO 80503, or such other place in Colorado as may be selected from time to time by the Manager. The Company's registered agent at such address shall be J. Churchill Owen, III.

1.6 Additional Members. Additional Members may be admitted into the Company upon such terms and conditions as may reasonably be determined by the Manager.

ARTICLE 2 DEFINITIONS

2.1 AFR. "AFR" for any loan shall mean the applicable federal rate of interest for loans of such type and term, determined as of the date of the loan and in accordance with section 7872 of the Code.

2.2 Cash Flow. "Cash Flow" shall mean the excess of all cash receipts of the Company over all cash disbursements of the Company.

2.3 Code. "Code" shall mean the Internal Revenue Code of 1986, as amended, or any successor statute.

2.4 Manager. "Manager" shall mean, collectively, C. Flanigan, J. Flanigan or J. Churchill Owen, or any person or entity elected or appointed as successor Manager to manage of the business of the Company as provided in Section 7.4. A Manager need not be a Member of the Company.

2.5 Non-Voting Member. "Non-Voting Member" shall mean the interest of a Member that has no right to participate in the Management and affairs of the Company.

2.6 Profit or Loss. "Profit" or "Loss" shall mean the profit or loss of the Company as determined under the capital accounting rules of Treasury Regulations § 1.704-1(b)(2)(iv) for purposes of adjusting the capital accounts of the members including, without limitation, the provisions of paragraphs (b), (f) and (g) of those regulations relating to the computation of items of income, gain, deduction and loss

2.7 Sharing Ratio. The "Sharing Ratio" of each Member shall be as follows:

<u>Member</u>	<u>Type of Interest</u>	<u>Sharing Ratio</u>
C. Flanigan	Voting Member	1%
C. Flanigan	Non-Voting Member	49%
J. Flanigan	Voting Member	1%
J. Flanigan	Non-Voting Member	49%

The Sharing Ratios of the members shall be adjusted from time to time to account for transfers of interests in the Company and other transactions authorized under this Agreement.

2.8 Treasury Regulations. "Treasury Regulations" shall mean regulations issued by the Department of Treasury under the Code. Any reference to a specific section or sections of the Treasury Regulations shall be deemed to include a reference to any corresponding provision of future regulations under the Code.

2.9 Voting Interest. "Voting Interest" shall mean a number of votes equal to a Voting Member's Sharing Ratio multiplied by 100.

2.10 Voting Member. "Voting Member" shall mean the interest of a Member that has all of the rights of a member to participate in the management and affairs of the Company as provided in the Act and this Agreement.

ARTICLE 3 CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions. Upon execution of this Agreement, the Members shall make initial capital contributions to the Company as set forth on Exhibit A to this Agreement.

3.2 Additional Capital Contributions. (a) If from time to time the Manager determines for any reason that the Company requires additional capital, the Manager may, in his discretion (i) cause the Company to borrow the funds from a third party or any Member, (ii) admit additional members pursuant to the Manager's authority under Section 1.6, or (iii) assess the members for such additional capital (a "Capital Call"). Any loan made by a Member to the company shall be represented by a promissory note, bearing interest at a rate that is equal to or in excess of the AFR, and shall be payable out of the first available funds, including proceeds from the sale of all or any portion of the assets of the Company. Additional capital contributions made pursuant to a Capital Call under this Section 3.2(a) shall be shared among the Members in proportion to their Sharing Ratios. The Manager shall advise the members of a Capital Call under this Section 3.2(a) by sending the members a written notice that specifies the capital contribution to be made by each Member. Each Member shall deliver to the Company the capital contribution specified in the Capital Call notice on or before the date specified in such notice. If any Member fails to contribute his or her share of a Capital Call by the date specified in the Capital Call notice, the Manager may take such actions that the Manager deems appropriate, including pursuing any action permitted at law to enforce the defaulting member's obligation to contribute capital to the company or decreasing the defaulting Member's Sharing Ratio to an amount equal to the following:

Capital Account of Defaulting Member
Capital Accounts of All Members

If the Manager elects to decrease the defaulting Member's Sharing Ratio, the amount by which the defaulting Member's Sharing Ratio was decreased shall be added to the Sharing Ratios of the non-defaulting Members in proportion to the non-defaulting Members' relative Sharing Ratios.

(b) Notwithstanding anything to the contrary in Section 3.2(a), C. Flanigan and J. Flanigan may acquire additional Non-Voting Member interests by contributing additional capital to the Company at any time without the other Members being given the opportunity to contribute additional capital to the Company on a proportionate basis. If additional capital contributions are made under this Section 3.2(b), the Members' capital accounts shall be adjusted in the manner provided in Treasury Regulations section 1.704-1(b)(3)(iv)(f) to reflect a revaluation of the Company's assets and the Members' Sharing Ratios will be adjusted so that they are in balance with the Members' capital accounts.

3.3 Initial Capital Contribution of J. Flanigan. The Members hereby acknowledge that J. Flanigan's interest in the Company is not based upon her separate initial capital contribution to the Company but, rather, was acquired through a gift from her husband, C. Flanigan.

3.4 Costs and Expenses. All costs and expenses of the Company shall be paid from its funds.

3.5 Right to Enforce. No person other than a Manager or Member shall have the right to enforce any obligation of a Member to contribute capital or make a loan to the Company, and specifically no lender or other third party shall have such rights.

3.6 Return of Capital Contributions. Capital contributions shall be expended in furtherance of the business of the Company. No Member shall be entitled to interest on its capital contributions. No Member shall be entitled to a return of its capital contribution and no Manager shall have any personal liability for the repayment of any capital contribution or loan made to the Company.

ARTICLE 4 DISTRIBUTIONS

4.1 Nonliquidating Distributions. The Company shall make distributions of Cash Flow at such times and in such amounts as the Manager shall determine. Except as provided in Section 4.2, all distributions shall be made among the Members in accordance with their relative Sharing Ratios. The Members acknowledge and agree that the Company is being formed for investment purposes and capital appreciation and that the Manager should reinvest available Cash Flow as the Manager deems appropriate.

4.2 Liquidating Distributions. All distributions made in connection with the sale or exchange of all or substantially all of the Company's assets and all distributions made in connection with the liquidation of the Company shall be made to the Members in accordance with their relative

positive capital account balances at the time of distribution, after giving effect to the allocation of any Profit or Loss under Article 5.

ARTICLE 5 ALLOCATION OF PROFIT AND LOSS

5.1 Determination of Profit And Loss. Profit and Loss shall be determined on an annual basis and for such other periods as may be required.

5.2 Allocation of Losses. Except as provided in Section 5.4, for book purposes all Loss shall be allocated among the Members in accordance with their relative Sharing Ratios.

5.3 Allocation of Profits. Except as provided in Section 5.4, for book purposes all Profit shall be allocated among the Members in accordance with their relative Sharing Ratios.

5.4 Regulatory Allocations and Curative Provisions. (a) The "qualified income offset" provisions of Treasury Regulation section 1.704-1(b)(2)(ii)(d) are incorporated herein by reference and, to the extent provided in that regulation, shall apply to adjust the allocation of Profit and Loss otherwise provided for under Sections 5.2 and 5.3.

(b) The "minimum gain" provision of Treasury Regulations section 1.704-2 are incorporated herein by reference and, to the extent provided in that regulation, shall apply to adjust the allocation of Profit and Loss otherwise provided for under Sections 5.2 and 5.3.

(c) Notwithstanding the provisions of Section 5.2, if during any fiscal year of the Company the allocation of any loss or deduction, net of any income or gain, to a Member would cause or increase a negative balance in a Member's capital account as of the end of that fiscal year, only the amount of such loss or deduction that reduces the balance to zero shall be allocated to the Member and the remaining amount shall be allocated to the other Members. For the purpose of the preceding sentence, a capital account shall be reduced by the adjustments, allocations and distributions described in Treasury Regulations sections 1.704-1(b)(2)(ii)(d)4), (5) and (6), and increased by the amount if any, of the negative balance in the Member's capital account that the Member is obligated to restore within the meaning of Treasury Regulation section 1.704-1(b)(2)(ii)(c) as of that time or is deemed obligated to restore under Treasury Regulation section 1.704-2(g)(1) or section 1.704-2(i)(5).

(d) All allocations pursuant to the foregoing provisions of this Section 5.4 (the "Regulatory Allocations") shall be taken into account in computing allocations of other items under Sections 5.2 and 5.3, including, if necessary, allocations in subsequent fiscal years, so that the net amounts reflected in the Members' capital accounts and the character for income tax purposes of the taxable income recognized (e.g., as capital or ordinary) will, to the extent possible, be the same as if no Regulatory Allocations had been given effect.

ARTICLE 6
ALLOCATION OF TAXABLE INCOME AND LOSS

6.1 In General. (a) Except as provided in Sections 6.1(b) and 6.2, each item of income, gain, loss and deduction of the Company for federal income tax purposes shall be allocated among the Members in the same manner as such item is allocated for capital account purposes under Article 5.

(b) To the extent of any recapture income (as defined below) resulting from the sale or other taxable disposition of a Company asset, the amount of any gain from such disposition allocated to (or recognized by) a Member (or its successor in interest) for federal income tax purposes shall be deemed to consist of recapture income to the extent such Member (or such Member's predecessor in interest) has been allocated or has claimed any deduction directly or indirectly giving rise to the treatment of such gain as recapture income. For this purpose "recapture income" shall mean any gain recognized by the Company (but computed without regard to any adjustment required by sections 734 and 743 of the Code) upon the disposition of any property or asset of the Company that does not constitute capital gain for federal income tax purposes because such gain represents the recapture of deductions previously taken with respect to such property or assets.

6.2 Allocation of Section 704(c) Items. The Members recognize that with respect to property contributed to the Company by a Member and with respect to property revalued in accordance with Treasury Regulation section 1.704-1(b)(2)(iv)(f), there will be a difference between the agreed values or "carrying values" of such property at the time of contribution or revaluation and the adjusted tax basis of such property at that time. All items of tax depreciation, cost recovery, amortization, amount realized and gain or loss with respect to such assets shall be allocated among the Members to take into account the book-tax disparities in accordance with the provisions of sections 704(b) and 704(c) of the Code and the Treasury Regulations under those sections.

6.3 Integration With Section 754 Election. All items of income, gain, loss, deduction and credit recognized by the Company for federal income tax purposes and allocated to the Members in accordance with the provisions hereof and all basis allocations to the Members shall be determined without regard to any election under section 754 of the Code that may be made by the Company; provided, however, such allocations, once made, shall be adjusted as necessary or appropriate to take into account the adjustments permitted by sections 734 and 743 of the Code.

ARTICLE 7
MANAGEMENT

7.1 Management Authority. Management of the Company shall be vested exclusively in the Manager. Each Manager shall have the power and authority to conduct the business of the Company. Each Manager is hereby expressly authorized on behalf of the Company to make all decisions with respect to the Company's business and to take all actions necessary to carry out such

decisions. All documents executed on behalf of the Company need only be signed by one Manager.

7.2 Duties. A Manager shall carry out his duties in good faith, in a manner he believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs his duties shall not have any liability by reason of being or having been a Manager of the Company.

7.3 Time Devoted to Business. A Manager shall devote such time to the business of the Company as he, in his discretion, deems necessary for the efficient carrying on of the Company's business.

7.4 Tenure and Removal. A Manager shall hold office until he resigns, dissolves, dies, becomes bankrupt or incompetent, or is removed by the Members. If a Manager or his successor resigns, dissolves, dies, becomes bankrupt or incompetent, or is removed by the Members, a majority of the Voting Interests may elect someone else to fill the vacancy and serve as Manager. A Manager may be removed at any time, with or without cause, by a majority of the Voting Interests. A majority of the Voting Interests shall have the authority to determine the number of Managers who shall serve from time to time, but there shall always be at least one Manager.

7.5 Reliance by Third Parties. No third party dealing with the Company shall be required to ascertain whether a Manager is acting in accordance with the provisions of this Agreement. All third parties may rely on a document executed by any Manager as binding the Company. A Manager acting without authority shall be liable to the Members for any damages arising out of his unauthorized actions.

7.6 Transactions Between Company and Manager or Member. A Manager may cause the Company to contract and deal with the Manager, or any person or entity affiliated with the Manager, provided such contracts and dealings are on terms comparable to and competitive with those available to the Company from others dealing at arm's length or are approved by all of the Members in writing.

7.7 Management Fees and Reimbursements. The Manager shall be entitled to a reasonable fee for managing the operations of the Company. The determination of a reasonable fee shall be made by all of the Voting Members in their sole discretion. Any fee paid under this Section 7.7 to a Manager who is also a Member shall be treated as a guaranteed payment under section 707(c) of the Code. A Manager shall be reimbursed by the Company for any reasonable out-of-pocket costs incurred on behalf of the Company.

7.8 Other Activities. The Members and the Manager shall at all times be free to engage for their own account in any business that competes with the business of the Company. It is specifically understood and agreed between the Members that nothing in this Agreement shall be construed to constitute any Member or Manager the agent or partner of any other Member for purposes beyond this Company, nor in any manner to limit the Members in the carrying on of their respective businesses or activities.

7.9 Insurance. The Company shall maintain for the protection of the Company and all of its Members such insurance as the Manager deems necessary for the operations being conducted.

7.10 Exculpation. The doing of any act or the failure to do any act, the effect of which may cause or result in loss or damage to the Company or any Member, if done in good faith to promote the best interests of the Company shall not subject the Manager to any liability. The Company shall indemnify and hold harmless the Manager as to third parties against and from any personal loss, liability or damage incurred as a result of any act or omission of the Manager. Indemnification under this Section 7.10 shall be provided only out of and to the extent of the assets of the Company. In no event shall the Company or any Member be liable to a third party as a result of any indemnification.

ARTICLE 8 MEMBERS

8.1 Participation in Management. A Member, in his capacity as a Member, shall take no part in the control, management, direction or operation of the affairs of the Company and shall have no power to bind the Company.

8.2 Quorum. A majority of the Voting Interests, represented in person or by proxy, shall be necessary to constitute a quorum at meetings of the Members. Each of the Members hereby consents and agrees that one or more Members may participate in a meeting of the Members by means of conference telephone or similar communication equipment by which all persons participating in the meeting can hear each other at the same time, and such participation shall constitute presence in person at the meeting. If a quorum is present, the affirmative vote of a majority of the Voting Interests entitled to vote on the subject matter shall be the act of the Members, unless a greater number is required by the Act or this Agreement. In the absence of a quorum, those present may adjourn the meeting for any period, but in no event shall such period exceed sixty days.

8.3 Informal Action. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is evidenced by a written consent describing the action taken, signed by each Voting Member. Action taken under this section is effective when all Voting Members have signed the consent, unless the consent specifies a different effective date.

8.4 Meetings. Meetings of the Members for any purpose or purposes may be called by the Manager or by holders of not less than ten percent (10%) of all outstanding Voting Interests.

8.5 Place of Meeting. The Manager or Member(s) calling the meeting shall designate the place of meeting. If no designation is made, the place of meeting shall be the principal office of the Company.

8.6 Notice of Meeting. Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered either personally or by

mail, by or at the direction of the Manager or other person(s) calling the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed delivered as provided in Section 13.3. Meetings of the Members may be called upon four days' written notice.

8.7 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by its duly authorized attorney-in-fact. Such proxy shall be filed with the Manager of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

8.8 Conduct of Meeting. At each meeting of the Members, the Manager shall serve as Chairman of the meeting. The Chairman shall preside over and conduct the meeting and shall appoint someone in attendance to make accurate minutes of the meeting. Following each meeting, the minutes of the meeting shall be sent to each Manager and Member.

8.9 Tax Matters Partner. Pursuant to section 6231 of the Code, C. Flanigan is hereby designated as the "Tax Matters Partner" for the Company. The Tax Matters Partner is expressly authorized to perform on behalf of the Company or any Member any act that may be necessary to make this designation effective under any regulation, ruling, procedure or instruction that may be issued by the Internal Revenue Service.

ARTICLE 9 ACCOUNTING AND REPORTING

9.1 Books. The Manager shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business and such other place as the Manager may designate in a written notice to all of the Members. The books and records of the Company will be available for inspection and copying by a Member or his or her authorized representative, at his or her expense, during ordinary business hours. The books and records of the Company shall include the following:

- (a) A current list of the full name and last known business address, residence or mailing address of each Member and Manager, both past and present.
- (b) A copy of the articles of organization and any amendments, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- (c) For the three most recent years, copies of the Company's federal, state and local income tax returns and reports, and copies of any Company financial statements;
- (d) Copies of this Agreement and any effective amendments; and
- (e) Minutes of every meeting of the Members.

9.2 Capital Accounts. The Company shall maintain a separate capital account for each Member in accordance with the Treasury Regulations under section 704(b) of the Code and such other accounts as may be necessary or desirable to comply with the requirements of applicable law and regulations.

9.3 Transfers During Year. In order to avoid an interim closing of the Company's books, the share of Profits and Losses under Article 5 of a Member who transfers part or all of its interest in the Company during the Company's accounting year may be determined by taking its pro rata share of the amount of such Profits and Losses for the year. The proration shall be based on the portion of the Company's accounting year which has elapsed prior to the transfer or may be determined under any other reasonable method; provided, however, that any gain or loss from the sale of Company assets shall be allocated to the owner of the Company interest at the time of such sale. The balance of the Profits and Losses attributable to the Company interest transferred shall be allocated to the transferee of such interest.

9.4 Reports. The books of account shall be closed promptly after the end of each fiscal year. Promptly thereafter, the Manager shall make a written report to each Member which shall include a statement of Profits and Losses for the year, a statement of each Member's capital account and of his distributive share of income, gain, deductions and credits for income tax reporting purposes for the previous fiscal year, and such additional statements with respect to the status of the Company property and the distribution of Company funds as are considered necessary by the Manager to advise all Members properly about their investment in the Company. Such report may consist in part of a copy of part or all of the Company's United States income tax return (Form 1065). Prior to March 30 of each year, each Member shall also be provided with an information letter with respect to his distributive shares of income, gains, deductions, losses and credits for income tax reporting purposes for the prior fiscal year.

9.5 Section 754 Election. Upon the request of any Member, the Company shall make the election provided for under section 754 of the Code if such request is approved by all of the Voting Members. Any costs attributable to making such election shall be borne solely by the requesting Member.

ARTICLE 10 TRANSFERS

10.1 Restrictions. Except as provided in this Article 10, without the prior written approval of the Manager (which approval shall be within the sole and absolute discretion of the Manager), a Member shall not sell, assign, pledge or otherwise transfer any portion of his interest in the Company.

10.2 Offer to Other Members. (a) If at any time any Member proposes to sell, assign or otherwise dispose of all or a part of his or her interest in the Company, such Member ("Offeror") shall make a written offer to sell such interest in the Company to the other Members at the "Purchase Price" (as defined in Section 10.2(b)) and on such other terms and conditions as those on which the Offeror proposes to transfer the interest in the Company to the proposed transferee. Such offer shall

state the name of the proposed transferee and all the terms and conditions of the propped transfer, including the price (if any) to the proposed transferee, and shall be accompanied by a copy of any written, signed offer from the proposed transferee.

(b) Except as provided in Section 10.5, the "Purchase Price" of the Offeror's interest in the Company shall be the price to be paid by the proposed transferee, or, if the Offeror is transferring his or her interest in the Company for no consideration, the "Fair Market Value" of the Offeror's interest. The "Fair Market Value" of the Offeror's interest in the Company shall be the value agreed to by the Offeror and those Members (the "Participating Members") who elect under Section 10.3 to participate in purchasing the Offeror's interest. If the Offeror and the Participating Members are not able to agree upon the Fair Market Value of the Offeror's interest in the Company within 20 days after the beginning of the 30-day period under Section 10.3, the Manager shall appoint an appraiser to determine the Fair Market Value of the Offeror's interest. The Company shall make available all books, records and tax returns of the Company that the appraiser determines reasonably necessary to determine the Fair Market Value of the Offeror's interest. In determining the Fair Market Value of the Offeror's interest, the appraiser shall: (i) take into account all appropriate discounts, including discounts for lack of control and lack of marketability; and (ii) determine the Fair Market Value as of the date of the written offer made by the Offeror under Section 10.2(a). The appraiser appointed to determine the Fair Market Value of the Offeror's interest shall possess reasonable qualifications with respect to valuing the Company's type of business and the type of interest that the Participating Members are acquiring. The appraiser shall issue a written report that sets forth his or her conclusions (and the basis for such conclusions) as to the Fair Market Value of the Offeror's interest. The Participating Members may elect to purchase the interest at the Fair Market Value determined by the appraiser by giving written notice of such election to the Offeror within ten (10) days after the appraiser issues his or her report. Any fees and expenses incurred in determining the Fair Market Value of the Offeror's interest in the Company shall be paid one-half by the Offeror and one-half by the Participating Members.

10.3 Acceptance of Offer. The other Members shall have the right for a period of 30 days after receipt of the offer from the Offeror, or such longer period as may be required under Section 10.2(b) or Section 10.5, to elect to purchase all of the interest in the Company offered. In exercising their right to purchase, the Participating Members may divide the interest offered in any manner to which they all agree and in the absence of agreement the offered interest shall be divided among the Participating Members in proportion to their relative Sharing Ratios. To exercise their rights to purchase, the other Members shall give written notice to the Offeror. Upon exercise of a right to purchase and provided the right is exercised with respect to all of the interest offered, the purchase shall be closed, and the Purchase Price paid, on the same terms and conditions as those on which the Offeror proposes to transfer the interest in the Company to the proposed transferee.

10.4 Failure to Accept Offer. If the other Members do not elect to purchase all of the interest in the Company offered, the Offeror may transfer the offered interest to the proposed transferee named in the offer to the other Members, subject to the restrictions imposed by Section 10.7. However, if that transfer is not made within 90 days after the end of the 30-day period

provided for in Section 10.3, a new offer shall be made to the other Members and the provisions of this Article 10 shall again apply.

10.5 Cash Equivalents. If the Purchase Price to be paid by the proposed transferee is in consideration other than cash or cash plus deferred payments of cash, the Participating Members may pay the cash equivalent of such other consideration. The Offeror and the Participating Members shall attempt to agree upon a cash equivalent of such other consideration. If they cannot agree within 20 days after the beginning of the 30-day period under Section 10.3, any of such Members may, by five days' written notice to the others, initiate arbitration proceedings for determination of the cash equivalent without regard to income tax consequences to the Offeror as a result of receiving cash rather than the other consideration. The Participating Members may elect to purchase the interest at the determined cash equivalent by giving written notice of such election to the Offeror within ten (10) days after the arbitrator's decision.

10.6 Direct and Indirect Transfers. For purposes of this agreement, restrictions upon the sale, assignment or disposition of a Member's interest shall extend to any direct or indirect transfer including, without limitation, an involuntary transfer such as a transfer pursuant to a foreclosure sale or a transfer resulting by operation of law.

10.7 Substitution of a Member. Notwithstanding the foregoing provisions of this Article 10 and except as provided in Section 10.10, the following provision of this Section 10.7 shall apply in determining whether a transferee of a Member's interest in the Company shall be admitted as a substituted Member of the Company.

(a) No assignee, legatee, or transferee (by conveyance, operation of law or otherwise) of the whole or any portion of a Member's interest in the Company shall have the right to become a substituted Member without the written consent of all of the Voting Members. The granting or denial of a request for such written consent shall be within the absolute discretion of the Voting Members. A substituted Member shall succeed to all the rights and interest of his assignor in the Company. An assignee of a Member who is not admitted as a Member shall be entitled only to the distributions to which his assignor would otherwise be entitled.

(b) If a Member shall die, his executor, administrator or trustee, or, if he shall be adjudicated insane or incompetent, his committee, conservator or representative, or if a Member shall be dissolved, merged or consolidated, his successor in interest, shall have the same rights and obligations that such Member would have had if he had not died or had not been adjudicated insane or incompetent or had not been dissolved, merged or consolidated, except that the executor, administrator, trustee, committee, conservator, representative or successor shall not become a substitute Member without the written consent of all of the Voting Members.

(c) No transfer of any interest in the Company otherwise permitted under this Agreement shall be effective for any purpose whatsoever until the transferee shall have assumed the transferor's obligations to the extent of the interest transferred and shall have agreed to be bound by

all the terms and conditions hereof, by written instrument, duly acknowledged, in form and substance reasonably satisfactory to all of the Voting Members.

10.8 Conditions to Substitution. As conditions to his admission as a Member (a) any assignee, legatee, transferee or successor of a Member shall execute and deliver such instruments, in form and substance satisfactory to all of the Voting Members, as the Voting Members shall deem necessary, and (b) such assignee, legatee, transferee or successor shall pay all reasonable expenses in connection with his admission as a substituted Member.

10.9 Waiver as to Certain Transfers. Notwithstanding the foregoing provisions of this Article 10, the restrictions on transfer of this Article 10 shall not apply to (a) a distribution of an interest in the Company to the owners of a Member which is an entity or a trust, or (b) a transfer by gift during lifetime or at death of all or any portion of a Member's interests to any other Member or the descendants of any Member, whether outright or in trust or custody for the benefit of any other Member or descendants of such Member, although the provisions of Section 10.7 and 10.8 shall apply to any such distribution or transfer, except as provided in Section 10.10.

10.10 Death of a Voting Member. Upon the death of a Voting Member, such Voting Member's interest shall automatically be converted into a Non-Voting Member interest. Upon the conversion of such interest, the personal representative of such Voting Member's estate shall have all of the rights of a Non-Voting Member (and the same interest in profits, losses, and distributions as such person had prior to the conversion without regard to whether they are admitted as substituted Members of the Company. Upon the death of the second Voting Member, the personal representative of such person's estate shall have all of the rights of a Voting Member (and the same interest in profits, losses, and distributions as such person had prior to his death).

ARTICLE 11

TERM

11.1 Events of Dissolution. The Company shall have perpetual existence and continue until dissolved by the unanimous written consent of all the Members.

11.2 Continuance of Company. (a) Upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member the business of the Company shall continue. The Company shall continue even though it has only one Member or only one person owning all of the interests in the Company. Upon the death of a Member, all interests owned by the deceased Member shall be held by the personal representative of the estate of the deceased Member and the Company shall automatically continue with the personal representative of the deceased Member's estate, in its fiduciary capacity, acting as a Member under this Agreement.

(b) If at any time the Members unanimously consent to discontinue the Company, the Manager or other person selected as liquidator shall file a statement of intent to dissolve, and the Company's affairs shall be wound up as provided in Article 12.

ARTICLE 12
DISSOLUTION AND TERMINATION

12.1 Final Accounting. In case of the dissolution of the Company, a proper accounting shall be made as provided in Section 9.4 from the date of the last previous accounting to the date of dissolution.

12.2 Liquidation. Upon the dissolution of the Company, the Manager or, if the Manager is unable to act, some person selected by the Members whose Sharing Ratios comprise more than 50 percent of the Sharing Ratios of the Members, shall act as liquidator to wind up the Company. The liquidator shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and businesslike manner. All proceeds from liquidation shall be distributed in the following order of priority: (a) to the payment of debts and liabilities of the Company and the expenses of liquidation; (b) the setting up of such reserves as the liquidator may reasonably deem necessary for any contingent liabilities of the Company; and (c) to the Members in accordance with Section 4.2.

12.3 Distribution in Kind. If the liquidator shall determine that a Company asset should be distributed in kind, the liquidator shall obtain an independent appraisal of the fair market value of the asset as of a date reasonably close to the date of liquidation. Any unrealized appreciation or depreciation with respect to such asset shall be allocated among the Members (in accordance with the provisions of Article 5 assuming that the asset was sold for the appraised value) and taken into consideration in determining the balance in the Members' capital accounts as of the date of liquidation. Distribution of any such asset in kind to a Member shall be considered a distribution of an amount equal to the asset's fair market value for purposes of Section 12.2. The liquidator, in its sole discretion, may distribute any percentage of any asset in kind to a Member even if such percentage exceeds the percentage in which the Member shares distributions as long as the sum of the cash and fair market value of all the assets distributed to each Member equals the amount of the distribution to which each Member is entitled.

12.4 Waiver of Right to Court Decree of Dissolution. The Members agree that irreparable damage would be done to the Company if any Member brought an action in court to dissolve the Company. Accordingly, each of the Members accepts the provisions of this Agreement as its sole entitlement on termination of its membership in the Company. Each Member hereby waives and renounces its right to seek a court decree of dissolution or to seek the appointment by a court of a liquidator for the Company.

12.5 Articles of Dissolution. Upon the completion of the distribution of Company assets as provided in this Article 12, the Company shall be terminated and the person acting as liquidator shall file articles of dissolution and shall take such other actions as may be necessary to terminate the Company.

ARTICLE 13
GENERAL PROVISIONS

13.1 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties concerning the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.

13.2 Amendment. This Agreement may only be amended with the unanimous written consent of the Members. No rights hereunder may be waived except by an instrument in writing signed by the party sought to be charged with such waiver.

13.3 Notices. (a) All notices required or permitted by this Agreement shall be in writing and shall be hand delivered, sent by registered or certified mail, postage prepaid, or by facsimile (and confirmed in writing delivered or sent by one of the other methods described here), and shall be effective when delivered or, if mailed, on the date set forth on the receipt of registered or certified mail, or on the fifth day after mailing, whichever is earlier, or, if by facsimile, on the first business day after receipt of such facsimile.

(b) In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

13.4 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.

13.5 Pronouns. References to a Member, including by use of a pronoun, shall be deemed to include masculine, feminine, singular, plural, individuals, partnerships, limited liability companies or corporations where applicable.

13.6 Counterparts. This instrument may be executed in any number of counterparts each of which shall be considered an original.

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the date first above written.

MANAGERS:

Christopher A Flanigan
Christopher A. Flanigan

Jacqueline Renee Adams Flanigan
Jacqueline Renee Adams Flanigan

J. Churchill Owen, III
J. Churchill Owen, III

MEMBERS:

Christopher A Flanigan
Christopher A. Flanigan

Jacqueline Renee Adams Flanigan
Jacqueline Renee Adams Flanigan

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

March 4, 2020

Sharla Cox
Idaho Department of Water Resources
Eastern Region
900 N. Skyline, Suite A
Idaho Falls ID 83402-1718

RE: Boweta LLC - Application for Transfer of Water Right - Points of Diversion

Dear Sharla:

Enclosed you will find the original and one copy of the above-referenced Application for Transfer of Water Right - Points of Diversion for Water Rights 34-97, 34-99 and 34-10250 owned by my client, Boweta LLC. I have also enclosed a copy of the Operating Agreement and my firm's check payable to the Department for the \$1,220.00 filing fee. You will see this Application simply proposes to add a third point of diversion from the Big Lost River for these three water rights which are stacked to irrigate the same place of use.

Please contact me right away if you have any questions or concerns about the Application. Otherwise, kindly receipt date-stamp the copy and return it to me in the postage prepaid, self-addressed envelope I have included for that purpose.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 

James P. Speck

Enclosures

cc: Chris Flanigan w/enclosures - via email



State of Idaho

DEPARTMENT OF WATER RESOURCES

EASTERN Region • 900 N SKYLINE DR STE A • IDAHO FALLS, ID 83402-1718

Phone: (208)525-7161 • Fax: (208)525-7177 • Website: www.idwr.idaho.gov

**Brad Little
Governor**

**Gary Spackman
Director**

March 25, 2020

BOWETA LLC
HC 64 BOX 8028
KETCHUM, ID 83340-9703

RE: Transfer No. 83935
Water Right No(s). 34-10250, 34-97, 34-99

Dear Applicant(s):

The Department of Water Resources has received your water right transfer application. Please refer to the transfer number referenced above in all future correspondence regarding this transfer.

A legal notice of the application has been prepared and is scheduled for publication in the CHALLIS MESSENGER on 4/2/2020 and 4/9/2020. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the approval document.

Please contact this office if you have any questions regarding the application.

Sincerely,

Christina Henman
Administrative Assistant

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

Henman, Christina

From: Henman, Christina
Sent: Wednesday, March 25, 2020 10:12 AM
To: CHALLIS MESSENGER (info@challismessenger.com)
Subject: Legal Ads for Challis Messenger
Attachments: 83935 CHALLIS MESSENGER.doc

Hello,

Please see attached document regarding legal ads for your paper.

Thank You,

Christina Henman
Administrative Assistant
Idaho Dept. of Water Resources, Eastern Region
900 N Skyline Ste. A
Idaho Falls, ID 83402
Phone: (208) 497-3793

PLEASE NOTE: CAN CONTAIN 2 OR MORE PAGES

March 25, 2020

Legal Notice Department

Challis Messenger

PO Box 405

Challis ID 83226

RE: Transfer No. 83935

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before **4/20/2020**. Your cooperation is appreciated.

Sincerely

Christina Henman

Administrative Assistant

PLEASE PUT IN NORMAL COLUMN AND NO BORDERS. THANK YOU.

**NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 83935**

BOWETA LLC, HC 64 BOX 8028, KETCHUM, ID 83340-9703 has filed Application No. 83935 for changes to the following water rights within CUSTER County(s): Right No(s). 34-10250, 34-97, 34-99; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows: add point of diversion. The points of diversion are in NESENE (new) and NWSENE Sec 11, and SESENE Sec 19, T8N R21E for 9.40 cfs from Big Lost River. The place of use remains the same.

For additional information concerning the property location, contact Eastern Region office at (208)525-7161. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Eastern Region, 900 N SKYLINE DR STE A, IDAHO FALLS ID 83402-1718 together with a protest fee of \$25.00 for each application on or before 4/20/2020. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 4/2/2020 and 4/9/2020

Henman, Christina

From: Henman, Christina
Sent: Tuesday, March 24, 2020 4:46 PM
To: 'watermaster34@atcnet.net'
Subject: Applications for Transfer No. 83960, 83958, 83935
Attachments: RecommendationForm Transfer0.docx; RecommendationForm Transfer1.docx; RecommendationForm Transfer2.docx

Watermaster:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right applications. You can find a copy of the applications at: <https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Please review the applications, then complete the enclosed recommendation forms and return to this office within 7 DAYS of the date of this email.

If the applications are approved, IDWR will include appropriate standard conditions of approval for a water right located within a water district, such as regulation by the watermaster, lockable controlling works, and/or measuring devices. Any special conditions or other concerns you have related to these applications should be specifically addressed in your recommendation.

IDWR can finish reviewing an unprotested application as soon as the protest period has passed. Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 7 DAYS from the date of this letter, IDWR will presume that you do not oppose approval of the applications and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.