

Dylan B. Lawrence, ISB # 7136
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JUN 06 2018

WATER RESOURCES
WESTERN REGION

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JUN 05 2018

DEPARTMENT OF
WATER RESOURCES

Attorneys for Protestants Pearson Farms & Ranch, LLC and Nathan Jones

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.)
81459)
)
IN THE NAME OF TRAIL FAMILY)
FARMS LLLP)

**DECLARATION OF DYLAN
LAWRENCE IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

IN THE MATTER OF EXCHANGE NO.)
81775)
)
IN THE NAME OF TRAIL FAMILY)
FARMS LLLP)

Pursuant to Idaho Code Section 9-1406, Dylan Lawrence states and declares as follows:

1. My name is Dylan Lawrence. I am of sound mind and the age of majority. I am an attorney at the law firm of Varin Wardwell LLC, which currently represents the Protestants Pearson Farms & Ranch, LLC and Nathan Jones in the above-referenced matters. I have access to the files pertinent to this matter, and I make this declaration based upon my own personal knowledge.

DECLARATION OF DYLAN LAWRENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT -

2. Attached hereto as Exhibit A is a true and correct copy of the July 10, 1975 permit application for water right 61-7236 that I obtained from the Department's online water right database.

3. Attached hereto as Exhibit B is a true and correct copy of the August 4, 1987 Beneficial Use Field Report for water right 61-7236 that I obtained from the Department's online water right database.

4. Attached hereto as Exhibit C is a true and correct copy of the April 3, 1989 license for water right 61-7236 that I obtained from the Department's online water right database.

5. Attached hereto as Exhibit D is a true and correct copy of the October 26, 2000 SRBA partial decree for water right 61-7236A that I obtained from the Department's online water right database.

6. Attached hereto as Exhibit E is a true and correct copy of the March 4, 2003 SRBA partial decree for water right 61-7236B that I obtained from the Department's online water right database.

7. Attached hereto as Exhibit F is a true and correct copy of the October 26, 2000 SRBA partial decree for water right 61-2000A that I obtained from the Department's online water right database.

8. Attached hereto as Exhibit G is a true and correct copy of the July 31, 2003 SRBA partial decree for water right 61-2000B that I obtained from the Department's online water right database.

9. Attached hereto as Exhibit H is a true and correct copy of the Water Right Report for water right 61-12189 that I downloaded from the Department's online water right database on June 1, 2018.

10. Attached hereto as Exhibit I is a true and correct copy of the Water Right Report for water right 61-12190 that I downloaded from the Department's online water right database on June 1, 2018.

11. Attached hereto as Exhibit J is a true and correct copy of the February 15, 2017 application for transfer number 81459 that I obtained from the Department's online water right database.

12. Attached hereto as Exhibit K is a true and correct copy of the April 10, 2017 letter from the Department to Trail that I obtained from the Department's online water right database.

13. Attached hereto as Exhibit L is a true and correct copy of the July 14, 2017 application for exchange number 81775 that I obtained from the Department's online water right database.

14. Attached hereto as Exhibit M is a true and correct copy of the Department's December 21, 2009 "Transfer Processing Policies & Procedures" memorandum that I obtained from the Department's website.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

[Signature page follows.]

DATED THIS 5th day of June, 2018.

Varin Wardwell LLC

A handwritten signature in blue ink, appearing to read "Dylan Lawrence", written over a horizontal line.

Dylan Lawrence

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2018, I caused the original of this document to be filed with the state office of the Idaho Department of Water Resources via hand delivery and a true and correct copy of the foregoing to be served by the method indicated below, and addressed to the following:

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

☒ U.S. Mail
☐ E-Mail
☐ Hand Delivery
☐ Fax (208) 334-2348

Candice M McHugh
McHugh Bromley PLLC
380 S 4th Street, Suite 103
Boise, Idaho 83702

☐ U.S. Mail
☐ E-Mail
☒ Hand Delivery
☐ Fax

Trail Family Farms LLLP
5308 E Trail Road
King Hill, Idaho 83633

☒ U.S. Mail
☐ E-Mail
☐ Hand Delivery
☐ Fax

Jerry Gorrell
Ark Properties
PO Box 727
Glenns Ferry, Idaho 83623

☒ U.S. Mail
☐ E-Mail
☐ Hand Delivery
☐ Fax

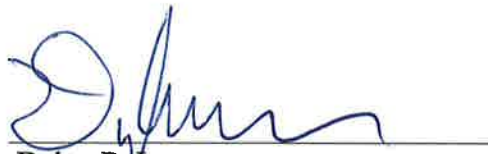

Dylan B. Lawrence

Exhibit A

Identification No. _____
Application No. 61-7236

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To Appropriation the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

- 1 Name of applicant Richard P. Viner Phone: -2318
366-7920
post office address Box 656, Glenns Ferry, Idaho 83623
- 2 Source of water supply waste and seepage water (Little Canyon Cr.) R.W.H.
which is a tributary of _____
- 3 a Location of point of diversion is SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 18 Township 5 S
Range 10 E B.M. Elmore County, additional points of diversion if any _____
- b If water is not consumed, it will be discharged into Little Canyon Creek at a point in SE $\frac{1}{4}$
of SE $\frac{1}{4}$ of Section 18 Township 5S Range 10 E B.M. Elmore County
- 4 Water will be used for the following purposes.
Amount 1 cfs for irrigation purpose from March 15 to October 15 (both dates inclusive)
(cfs or acre feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)
- 5 Total quantity to be appropriated,
a 1 cubic feet per second and/or
b _____ acre feet per annum
- 6 Proposed diverting works:
a Description of ditches, flumes, pumps, headgates, etc. pump with sprinkler irrigation

b Height of storage dam _____ feet, active reservoir capacity _____ acre feet, total reservoir
capacity _____ acre feet, materials used in storage dam, _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
c Proposed well diameter is _____ inches, proposed depth of well is _____ feet
- 7 a Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years
b Estimated construction cost is \$ 5000.00
- 8 Description of proposed uses
a If water is not for irrigation
(1) Give the place of use of water _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M. _____
(2) Amount of power to be generated _____ hp under _____ feet of head
(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____
(5) If water is to be used for other purposes describe _____

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below

TWP	RANGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
5 S	10 E	18															40	10	50

Total number of acres to be irrigated 50

c. Describe any other water rights used for the same purposes as described above. Deereed rights from Little Canyon Creek which I have applied to transfer to lands higher on the creek.

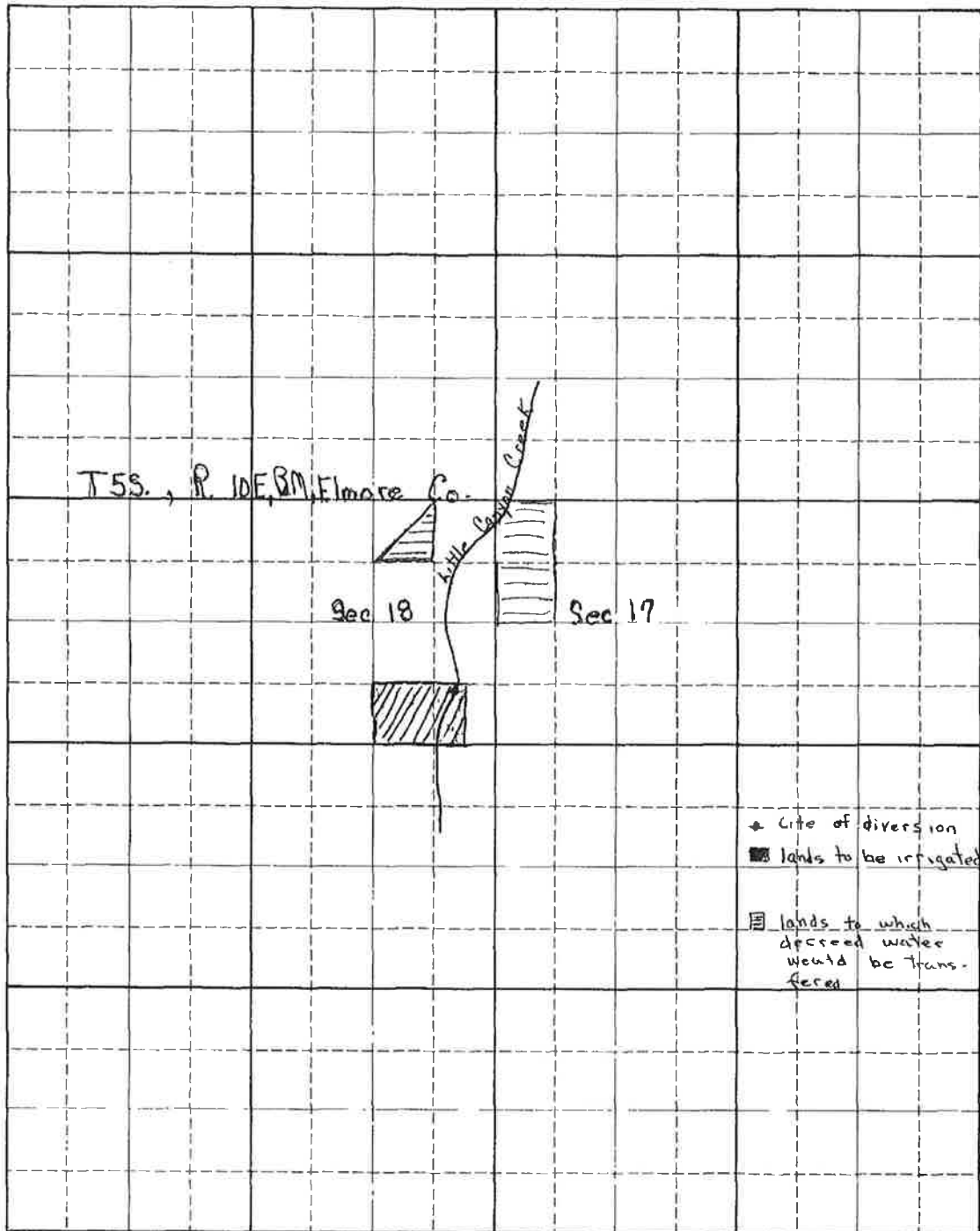
9 a. Who owns the property at the point of diversion Richard Viner through Contract of Sale with C.H. Parml

b. Who owns the land to be irrigated or place of use Richard Viner " " " " "

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Richard P. Viner obtained possession of the property by purchase through a Contract of Sale with Charles H. Parmley on December 5, 1972. The warranty deed, contract, and title insurance are held in escrow at the Bank of Idaho, Main Office, Boise, Idaho.

10. Remarks Changes in division and ownership of land parcels, existing ditch rights, and a deepened channel for the creek which was caused by floods five years ago, make it wasteful and difficult for me to utilize my deereed waters on the same lands for which they were origionally appropriated. It also makes it impossible for me to utilize my irrigation run-off waste waters and seepage waters.
In order to establish a more effective and praduative irrigation system, I would like to transfer the deereed rights for this land to land higher on the creek and be allowed to pump my waste and seepage waters out of the creek on to this land. I would use sprinklers to irrigate with.

11 Map of proposed project show clearly the proposed point of diversion, place of use, section number, township and range number



Scale 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth

Richard Pliner
(Applicant)

Proposed Priority 7-10-1975

Received by W.H. Date 7-10-75 Time 8:00 A
Preliminary check by W.H. Fee \$25.00
Received by Ch Date 7-10-75 # 1219
Publication prepared by Ch Date 7-16-75
Published in Mountain Home News
Publication dates July 24 & 31
Publication approved Ch Date 8-5-75
Priority reduced to _____ Reason _____

Protests filed by _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by Ch 1988

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No 61-7236, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 19 80.
- c. Other. A measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.

2. Denial of said application is for the following reasons _____

Witness my hand this 15 day of August, 19 75.

R. Karl Hing
Director

Exhibit B

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

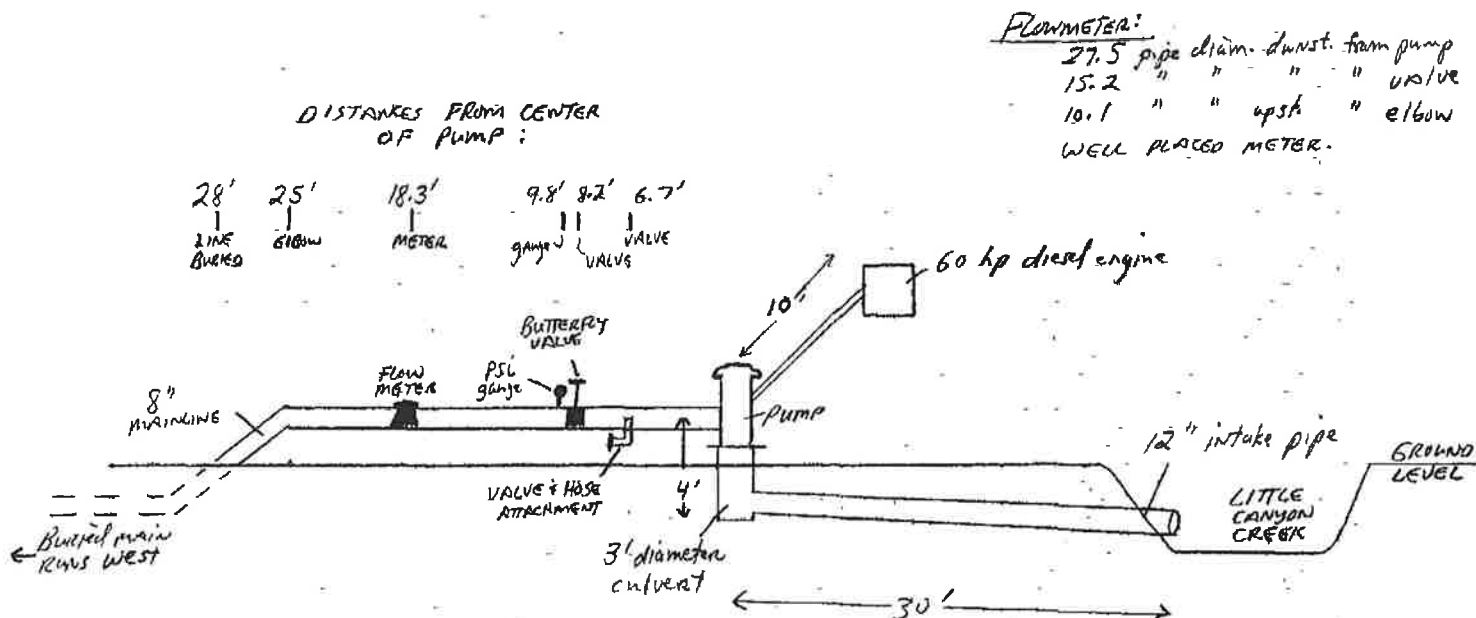
Permit No. 61-7236
1. Owner: Richard P. Viner Phone No. 366-2318
Current Address: Rt. 1 Box 420 Glenns Ferry, Id. 83623
2. Accompanied by: Jerry Viner EXAM. DATE: 8/4/87
Address: same Phone No. same
Relationship to Permit Holder: son
3. Source: Little Canyon Creek tributary to Snake River - see remarks

B. OVERLAP REVIEW

1. Other water rights with same place of use: 37-4112, 61-0303 & 4038 & 4039
☒ Copies Attached
2. Other water rights with same point of diversion: 61-2000 & 7575
☒ Copies Attached ☐ Copies of Field Exam's Attached
N/A (61-2000 field exam not found in file or microfiche)

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



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Scale: 1" = NOT TO SCALE

2. ☒ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required).
☒ Photo of Diversion and System Attached
(required for all but single household domestic groundwater, and stockwater).
☒ Aerial Photo Attached
(required for irrigation of 10 acres or more).

System Description (continued)

3. Narrative: Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc)

A 60 hp. diesel engine, Holla shaft pump, 12" intake, and 8" mainline buried 28' from pump describe this system. Water is pumped from Little Canyon Creek to irrigate 50 acres. Normal irrigation consists of two wheel lines with 29 heads each and one hand line with 29 heads. Wheel lines use 4" pipe, and the hand line is 3". Rainbird and Nelson sprinklers with 3/16" nozzles are found. Best fit to sprinkler chart is Model 30. The mainline ~~line~~ runs W. across N. edge of S 1/2 SE 1/4 S 18 and continues into NE 1/4 SW 1/4 S 18 and NE 1/4 NW 1/4 S 19 for other water rights.

☐ See Remarks on page 4 for continuation

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	U.S. MOTORS (Diesel)	60	1-1078	Holla shaft	9473-01-H-42; 8" pipe

*Code to correspond with No. on map and aerial photo

5. Point(s) of Diversion:

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		SE	SE	18	SS	10E	E/more		USGS 7 1/2 Quad 5 ASCS photo

6. Place(s) of Use:

Indicate Method of Determination same as above

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
SS	10E	18															40	10	50

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D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Flowmeter		McGrometer		87-8-499		
Pressure gauge / pitot					100 psi	

2. Measurements:

Flowmeter - 750 gpm

psi gauge on mainline - 68

Sprinkler gauge - wheel line psi = 70, 68, 68, 70, $\bar{x} = 69$ } 87 heads total

58 heads hand line psi = 68, 69, 70, $\bar{x} = 69$ }

29 heads model 30, 3/16" nozzle, chart (extrapolating) = 8.25 gpm/head

NOTE mainline psi is 68. \bar{x} sprinkler head psi is 69. This is due to flow control nozzles on sprinklers.

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method:

FLOWMETER $\frac{750 \text{ gpm}}{448.8 \text{ gpm/cfs}} = 1.67 \text{ cfs}$

2. Alternate Method for Checking Purposes:

2a) sprinkler chart $(87)(8.25) = 717.75 \text{ gpm} = 1.60 \text{ cfs}$

2b) H₂O eq. where: $Q = \frac{(8.8)(60)(6.6)}{(2.31 \times 68) + 34} = \frac{316.8}{191.08} = 1.66 \text{ cfs}$
H_p = 60 eff = .6
psi = 68 Z = 34

2c) owner's info: $Q = [(58 \times 5) + (29 \times 1)] \div 448.8 = .90 \text{ cfs}$

wheel line, 5 gpm flow control nozzles
hand line, 4 gpm flow control nozzles

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3) : Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Amps x 001732 = _____ (8)

Panel Input HP (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation

V_{IR} = (Acres Irrigated) x (Irrigation Requirement) = $(50)(5.0) = 250.0$

V_{DR} = [Diversion Rate (cfs)] x (Days in Irrigation Season) x 1.9835 = $(1.0)(212)(1.9835) = 420.5$

V = Smaller of V_{IR} and V_{DR} = 250.0

2. Volume Calculations for Other Uses.

N/A

RECORDED

MAY 12 1969

SEE REMARKS

N/A, Diesel engine

H. REMARKS AND OVERLAP REVIEW ANALYSIS

Source: Note Permit shows source as "waste & sewage water (Little Canyon Creek)", which is also how source was advertised. Actually, the source is L.C. Creek water. Wastewater enters creek without any development/collection/delivery work, and therefore becomes creek water (public water). The wastewater is from irrigated lands upstream of the pump for this water right and contributes to L.C. Creek supply during irrigation periods.

Diversion Rate: Allow 1.0 cfs for 50 acres at .02 cfs/acre. Discount measurement based on owner's info of flow control nozzles. Note that flowmeter, sprinkler gauge, and hp equation are all compatible.

License condition: R33.

Overlap:

P/D: 61-7575 - Same pump & pipeline. Application on hold, Senior Falls issue.

61-2000 - Same pump & pipeline. License involving transfer #2599. This is one of three P/D's for the license. This P/D is for 45 acres in S 1/4 SW 1/4 S. 18.

I. RECOMMENDATIONS - CONTINUED ON ATTACHED PAGE -

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Irrigation	3/15	10/15	1.0	420.5
Totals:				

2. Recommended Amendments

- ☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☒ None
☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

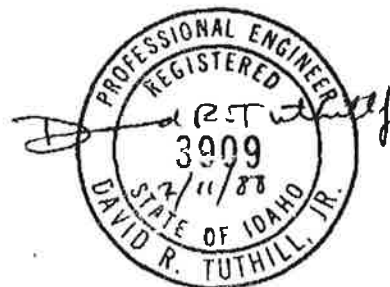
Field Examiner's Name Steve Lester BD
Signature Steve Lester 2/10/88
Certification Date _____
Field Report Preparation Date 8/4/87

CONSULTANT SEAL

K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

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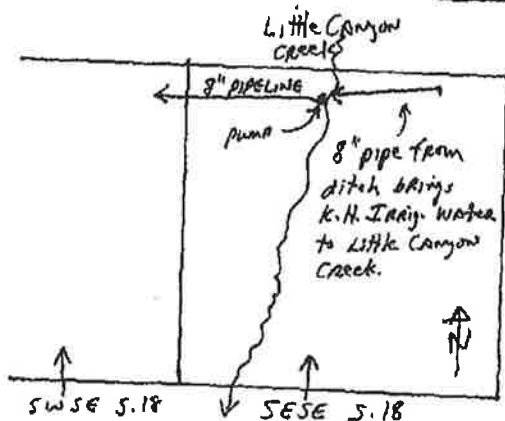


Viner 61-7236 continued

Overlap:

R/U: 37-4112 - King Hill Irrigation water from Malad River.

- Irrigation and stockwater but no domestic water.
- 6 ac. in SESE are on E. side of Little Canyon Creek and not involved with Permit 61-7236.
- 19 ac. in SWSE are same as ones covered by Permit.



8" pipe delivers K.H. Irrigation water to creek at a point just ~~above~~ upstream from pump. Thus, the water becomes L.C. Creek water. It may or may not be valid to consider this arrangement as one that delivers Malad River water to land on W. side of creek.

Copy of this 1902 priority claim or proof not included here. See S.O. file if needed.

2/10/88:

See Attached letters and Viner response of 1/30/88. 61-0303 is now to be used entirely in SWNE S.18. No overlap with permit under this arrangement.

61-0303 - Decreed right to use Little Canyon Creek water on undetermined No. of acres in $5\frac{1}{2}SE\frac{1}{4}$ S.18.

- 25 acres using .50 cfs are covered ~~with~~ ⁱⁿ $5\frac{1}{2}SE\frac{1}{4}$ S.18 and $N\frac{1}{2}SE\frac{1}{4}$ S.18 and $SW\frac{1}{4}NE\frac{1}{4}$ S.18.
- Point of diversion not specified in decree but is known to be one of two ditches upstream on creek (information from DRT, 12-17-87).
- Since creek is a decreed source, cannot add licensed water to decreed water on same lands. Users must choose which WR to apply to 25 acres within $5\frac{1}{2}SE\frac{1}{4}$ and take appropriate steps to implement this.

61-4038

- Claim on a spring for .92 cfs irrigation on 100 acres, which includes:

$$10 \text{ ac. in SESE S.18} \rightarrow 10 \times \frac{.92}{100} = .092 \text{ cfs}$$

$$40 \text{ ac. in SWSE S.18} \rightarrow 40 \times \frac{.92}{100} = .368 \text{ cfs}$$

- note that claim & proof reports list 20 ac. in SESE. However, only 10 ac. on W. side of creek could be irrigated by ditch system from spring, which is also on W. side of creek.

61-4039

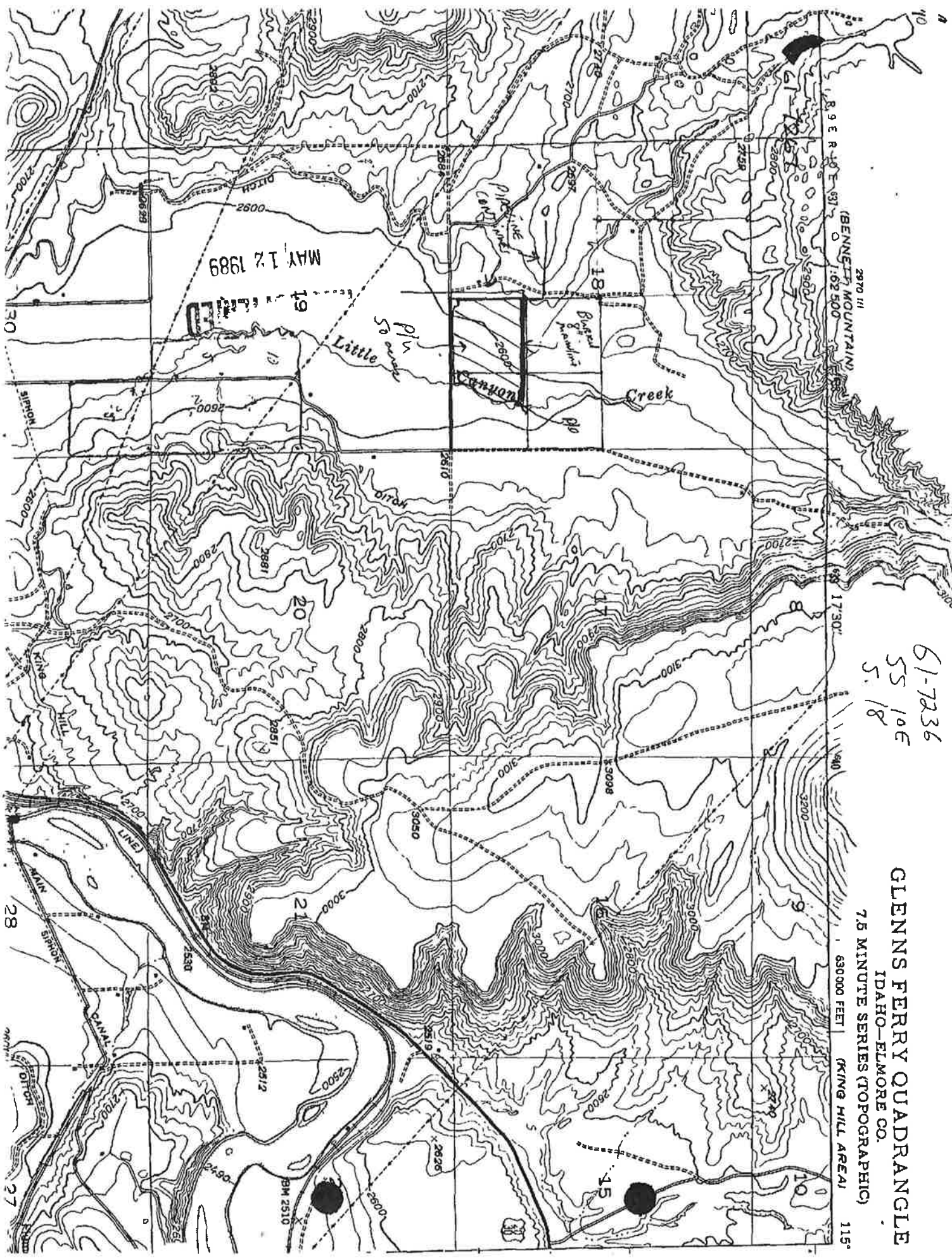
- claim on Sand Spring gulch for .92 cfs irrigation on 160 acres, which include:

$$40 \text{ ac. in SWSE S.18} \rightarrow 40 \times \frac{.92}{160} = .23 \text{ cfs}$$

Same delivery system but different sources.

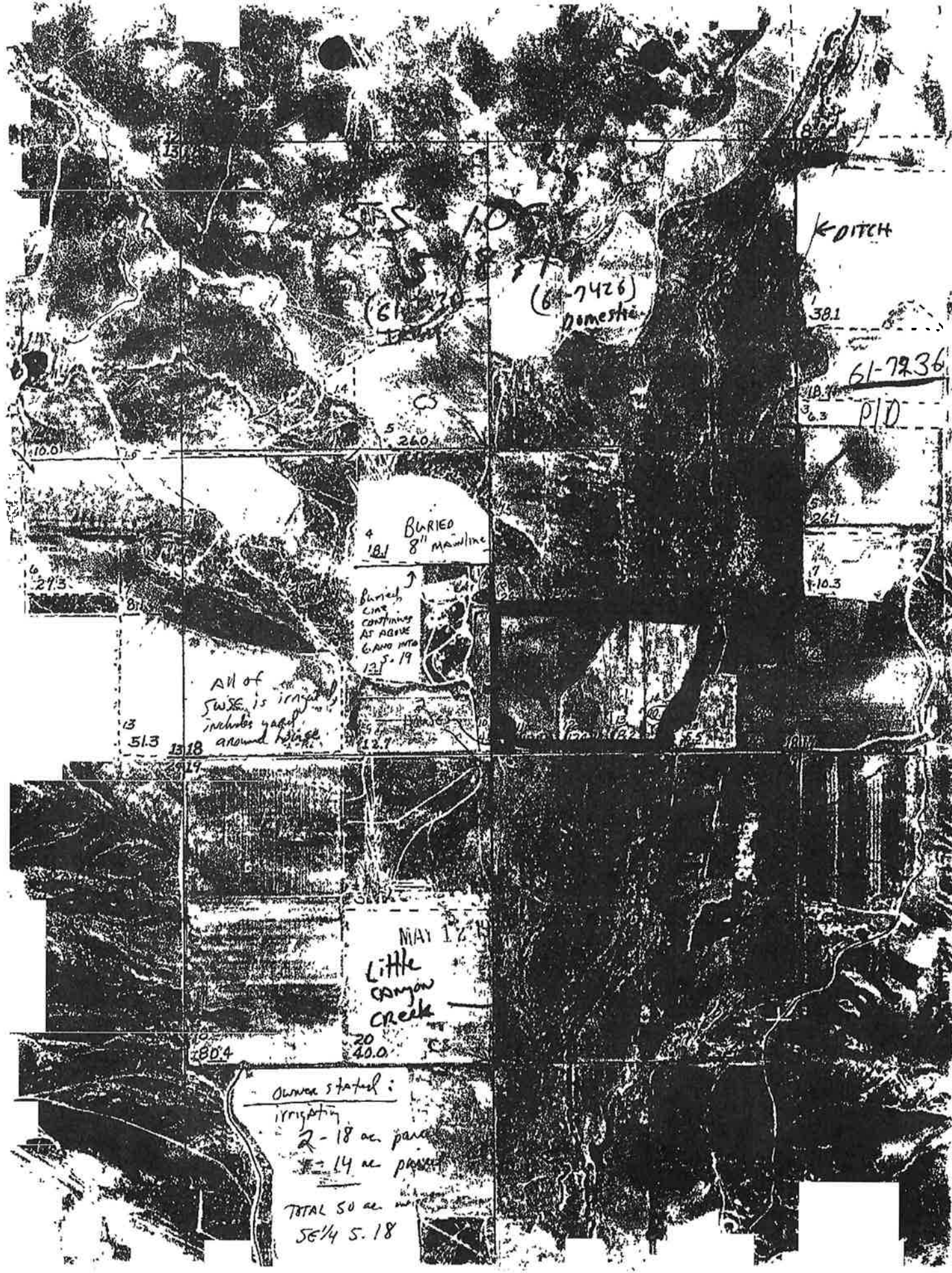
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61-7236
SS 10E
S. 18

GLENN'S FERRY QUADRANGLE
IDAHO-ELMORE CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)
63000 FEET (KING HILL AREA) 115°



S.S. 10
S.S. 11
(61-7426) Domestic

DITCH

38.1

61-7236

18.7

P/D

3.3

26.1

10.3

BURIED
8" mainline

Buried
line continuing
as above
6. and into
12.5. 19

All of
SW 1/4 is irrigated
includes yard
around house

MAY 12 1918
Little
Canyon
Creek

owner stated:
irrigating
2-18 ac. parcel
1-14 ac. parcel
TOTAL 50 ac. water
SE 1/4 S. 18

Exhibit C

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07236

Priority: July 10, 1975 Amount: 1.00 CFS 225.0 AFA

This is to certify, that RICHARD P. VINER
RT. 1 BOX 420

GLENNS FERRY, ID 83623 has complied with the terms and conditions
of the permit issued pursuant to Application for Permit dated July 10, 1975, and
has submitted proof to the Department of Water Resources on April 28, 1981, that
water has been applied to a beneficial use; an examination by the Department indicates
that the works have a diversion capacity of 1.670 cfs of water from:

WASTE WATER tributary to SNAKE RIVER

source and that a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>VOLUME</u>
IRRIGATION	04/01 to 11/01	1.00 CFS	225.0 AFA

LOCATION OF POINT(S) OF DIVERSION: SESE, Sec. 18, Township 05S, Range 10E
ELMORE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
05S	10E	18	SWSE 40	SESE 10		50

Total number of acres irrigated: 50

CONDITIONS/REMARKS:

1. The right to the use of water hereby confirmed is limited to the amount which can actually be beneficially used and is restricted and appurtenant to the lands or place of use and to the purpose herein described, as provided by the laws of Idaho.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for the lands above.
5. The maximum combined rate of diversion under this right & Right 61-2000 from the point of diversion in the SESE shall not exceed 1.67 cfs.

MAY 12 1989

PAGE 2

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07236

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 3rd
day of April, 1959.

for the Director 

Exhibit D

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 61-07236A

NAME AND ADDRESS: ROGER L JONES
DBA RJT FARMING INC
PO BOX 475
RUPERT, ID 83350

SOURCE: WASTE WATER TRIBUTARY: SNAKE RIVER
QUANTITY: 0.86 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 1.67 CFS. COMBINED RIGHT NOS.:
61-02000A, 61-02000B, 61-07236B.

PRIORITY DATE: 07/10/1975

POINT OF DIVERSION: T05S R10E S18 SESE Within Elmore County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.86 CFS

PLACE OF USE:	Irrigation		Within Elmore County
	T05S R10E S18	SWSE 33.0	SESE 10.0
	43.0 Acres Total		

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

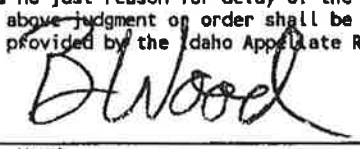

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

Exhibit E

DISTRICT COURT-SRBA
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
FILED

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 61-07236B

2003 MAR 4 PM 1 35

NAME AND ADDRESS: CARLENE SMITH
RT 1 BOX 420
GLENN'S PERRY, ID 83623

SOURCE: WASTE WATER TRIBUTARY: SNAKE RIVER

QUANTITY: 0.14 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 1.67 CFS. COMBINED RIGHT NOS.:
61-02000A, 61-02000B, 61-07236A

PRIORITY DATE: 07/10/1975

POINT OF DIVERSION: T05S R10E S18 SESE Within Elmore County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.14 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 1 AND AFTER NOVEMBER 1 UNDER THIS
REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE
DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Elmore County
T05S R10E S18 SWSE 7.0
7.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Roger Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

Exhibit F

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 61-02000A

NAME AND ADDRESS: ROGER L JONES
DBA RJT FARMING INC
PO BOX 475
RUPERT, ID 83350

SOURCE: LITTLE CANYON CREEK TRIBUTARY: SNAKE RIVER
QUANTITY: 1.044 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 1.67 CFS. COMBINED RIGHT NOS.:
61-02000B, 61-07236A, 61-07236B.

PRIORITY DATE: 12/07/1903

POINT OF DIVERSION: T05S R10E S18 SESE Within Elmore County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.044 CFS

PLACE OF USE:	Irrigation		Within Elmore County
	T05S R10E S18	NESW 6.0	SESW 23.0
	29.0 Acres Total		

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

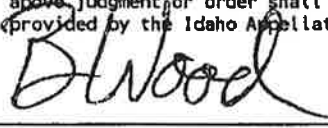
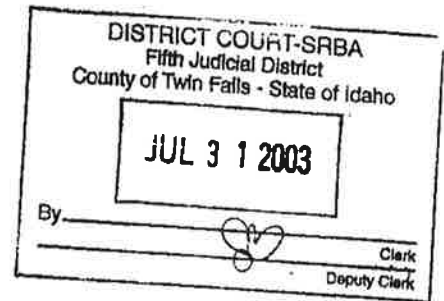

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

Exhibit G



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS


In Re SRBA)
Case No. 39576) **ORDER OF PARTIAL DECREE**
) **For Water Right 61-02000B**
)

On June 17, 2003, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 61-02000B is hereby decreed as set forth in the attached *Partial Decree* Pursuant to I.R.C.P. 54(b).

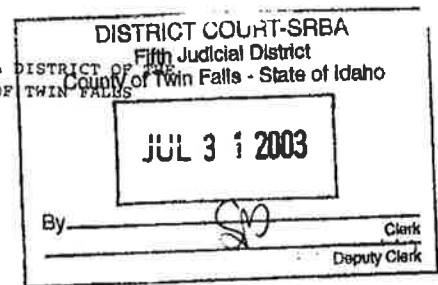
DATED July 31, 2003.



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

ORDER OF PARTIAL DECREE

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS



In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 61-02000B

NAME AND ADDRESS: CARLENE SMITH
RT 1 BOX 420
GLENN'S FERRY, ID 83623

SOURCE: LITTLE CANYON CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 2.056 CFS

USE OF THIS RIGHT WITH RIGHTS 61-02000A, 61-07236A, AND
61-07236B IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF
1.67 CFS.

PRIORITY DATE: 12/07/1903

POINT OF DIVERSION: T05S R10E S05 SWSE Within Elmore County
S08 NENWSW
S18 NWSWSW
SESE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation		03-15 TO 11-15	2.056 CFS
Stockwater		11-01 TO 03-31	0.10 CFS

PLACE OF USE: Irrigation Within Elmore County

T05S R10E S07	SESE 16.0	
S08	SESW 16.0	
S17	NWNW 39.0	SWNW 40.0
	NWSW 21.0	
S18	NENE 39.0	NWNE 15.0
	SWNE 31.0	SENE 19.0
	NESW 18.0	
274.0 Acres Total		

Stockwater Within Elmore County

T05S R10E S17	SWNW	NWSW
S18	NESW	

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 63 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

Exhibit H

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

6/1/2018

WATER RIGHT NO. 61-12189

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	TRAIL FAMILY FARMS LLLP 5308 E TRAIL RD KING HILL, ID 83633-3431
Original Owner	CARLENE R VINER
Original Owner	RICHARD P VINER
Original Owner	JAMES WATKINS 2604 N MORROW RD GLENN'S FERRY, ID 83623-5016 2083662231

Priority Date: 12/07/1903

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
LITTLE CANYON CREEK	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	0.14 CFS	
STOCKWATER	11/01	03/31	0.1 CFS	
Total Diversion			0.14 CFS	

Location of Point(s) of Diversion:

LITTLE CANYON CREEK|SWSE |Sec. 05|Township 05S|Range 10E|ELMORE County

LITTLE CANYON CREEK	NENWSW	Sec. 08	Township 05S	Range 10E	ELMORE County
LITTLE CANYON CREEK	NWSWSW	Sec. 08	Township 05S	Range 10E	ELMORE County
LITTLE CANYON CREEK	SESE	Sec. 18	Township 05S	Range 10E	ELMORE County

IRRIGATION Use:

Acre Limit: 4.1

Place(s) of use:

Place of Use Legal Description: IRRIGATION ELMORE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
05S	10E	18		NESW	18									

Place of Use Legal Description: STOCKWATER ELMORE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
05S	10E	18		NESW										

Total Acres: 18

Conditions of Approval:

1. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 4.1 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
2. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
3. USE OF THIS RIGHT WITH RIGHTS 61-02000A, 61-07236A, 61-07236B AND 61-12190 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.67 CFS.
4. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
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.

Dates:

Licensed Date:

Decreed Date: 07/31/2003

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal: S
Owner Name Connector:
Water District Number: 61D
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False
Close

Exhibit I

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

6/1/2018

WATER RIGHT NO. 61-12190

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	HEATHER P WILLIAMS
Current Owner	TRAVIS T WILLIAMS
	1173 S 1700 E
	GOODING, ID 83330
	2083496205
Original Owner	CARLENE R VINER
Original Owner	RICHARD P VINER
Original Owner	JAMES WATKINS
	2604 N MORROW RD
	GLENN'S FERRY, ID 83623-5016
	2083662231

Priority Date: 12/07/1903

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
LITTLE CANYON CREEK	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	1.92 CFS	
STOCKWATER	11/01	03/31	0.1 CFS	
Total Diversion			1.92 CFS	

Location of Point(s) of Diversion:

LITTLE CANYON CREEK	SWSE	Sec. 05	Township 05S	Range 10E	ELMORE County
LITTLE CANYON CREEK	NENWSW	Sec. 08	Township 05S	Range 10E	ELMORE County
LITTLE CANYON CREEK	NWSWSW	Sec. 08	Township 05S	Range 10E	ELMORE County
LITTLE CANYON CREEK	SESE	Sec. 18	Township 05S	Range 10E	ELMORE County

IRRIGATION Use:
Acre Limit: 58.9

Place(s) of use:

Place of Use Legal Description: IRRIGATION ELMORE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05S	10E	7		SESE	16									
		8		SESW	16									
		17		NWNW	39		SWNW	40						
				NWSW	21									
		18		NENE	39		NWNE	15		SWNE	31		SENE	39

Place of Use Legal Description: STOCKWATER ELMORE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05S	10E	17		SWNW										
				NWSW										

Total Acres: 256

Conditions of Approval:

1. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
2. 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.
3. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 58.9 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
4. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

5. | USE OF THIS RIGHT WITH RIGHTS 61-02000A, 61-07236A, 61-07236B AND 61-12189 IS
| LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.67 CFS.

Dates:

Licensed Date:

Decreed Date: 07/31/2003

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number: 61D

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

Exhibit J

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

FEB 15 2017

WATER RESOURCES
WESTERN 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

1. APPLICANT(S) Trail Family Farms, LLLP Phone 208-366-7762

2. MAILING ADDRESS 5308 E. Trail Rd City King Hill

State ID Zip 83633 Email cmchugh@mchughbromley.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. *Change of ownership 3/2016* **Filed**
- ☐ 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) 61-7236A and 61-7236B

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

4. TOTAL AMOUNT OF WATER transferred is 1 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 www.idwr.idaho.gov, Water Right Transfers, Online Resources.

New?	Lot	1/4	1/4	Sec	Twp	Rge	County	Source	Local name or tag #
			SE	SE	18	5S	10E	Elmore	waste water
✓			SW	SW	17	5S	10E	Elmore	waste water

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:

Collection pond on the end of King Hill Irr. Dist lateral then piped to pump station on Little Canyon Creek where there is a small collection dam to pump water to property.

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

Verbal agreement (and visible ditch) with Travis Williams

- 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:

n/a

- 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. The Map Tool, available at maps.idwr.idaho.gov/TransferApplicationLayouts/ provides a satisfactory template for creating the required map.

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.

Walter L. Trail
Signature of applicant or authorized agent

Walter L. Trail - General Partner
Print name and title if applicable

2/15/2017
Date

Signature of applicant or authorized agent

Print name and title if applicable

Date

9. FEE - ☐ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is 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 14 pages of attachments.

Received by aj Date 2/15/17

Fee paid \$500 Date 2/15/17

Received by aj Receipt # W044954

Preliminary review by P. Kelly

Date 2-7-17

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)

Item 2

Instrument # 452575 # Pages: 4
ELMORE COUNTY, Idaho
Mar 21, 2016 3:01:28 pm Fee: \$ 19.00
For: GUARANTY TITLE INC
BARBARA STEELE, Recorder
DELLIS, Deputy

CONSERVATOR'S DEED

THIS DEED is made by Tresco of Idaho, conservator for Carlene Smith, Grantor, to Trail Family Farms, LLLP, Grantee, 5308 E. Trail Rd., King Hill, Idaho 83683.

WHEREAS, Grantor was duly appointed conservator for Carlene Smith by the District Court of the Third Judicial District, of the State of Idaho, in and for the County of Canyon, Case No. CV 2015-0001859-C, on June 4, 2015; and is now qualified in acting in that capacity.

NOW, THEREFORE, pursuant to the powers conferred upon Grantor by the Idaho Probate Code, Grantor does hereby convey, assign, transfer and set over unto Grantee a fee simple interest in and to the following described five parcels of real property, situate in the County of Elmore, State of Idaho:

SEE EXHIBIT A

Dated this 17 day of March, 2016.

TRESCO OF IDAHO,
Conservator for Carlene Smith

By Karl Seideman
Karl Seideman

STATE OF IDAHO)
) ss:
County of Ada)

On this 17 day of March, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared KARL SEIDEMAN for Tresco of Idaho, Conservator for Carlene Smith, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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



Joellen Warren
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 4-21-17

EXHIBIT "A"

Parcel 1:

Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho

Section 18: E1/2SW1/4 SAVE AND EXCEPT:

A parcel of land being a portion of the East 1/2 of the SW1/4 of Section 18, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho, said parcel being more particularly described as follows:

**Commencing at the Brass Cap marking the 1/4 corner common to Sections 18 and 19, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho; thence
North 89°52'32" West 1338.07 feet to an iron pin marking the West 1/16 corner common to said Sections 18 and 19, said point being the REAL POINT OF BEGINNING;
thence along the following courses and distances to iron pins:
North 00°22'29" East 1731.48 feet along the West 1/16 Line of said Section 18; thence
South 88°06'31" East 660.04 feet; thence,
South 00°44'15" West 1092.50 feet; thence,
South 89°55'01" East 276.37 feet; thence,
South 20°18'56" East 135.95; thence
North 87°04'55" East 152.83 feet; thence
South 5°48'26" East 502.28 feet to the line common to said Sections 18 and 19; thence
North 89°52'32" West 1183.96 feet to the REAL POINT OF BEGINNING.**

Parcel II:

Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho

Section 18: A parcel of land being a portion of the East 1/2 of the SW1/4 of Section 18, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho, said parcel being more particularly described as follows:

**Commencing at the Brass Cap marking the 1/4 corner common to Sections 18 and 19, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho; thence
North 89°52'32" West 1338.07 feet to an iron pin marking the West 1/16 corner common to said Sections 18 and 19, said point being the REAL POINT OF BEGINNING;
thence along the following courses and distances to iron pins:
North 00°22'29" East 1731.48 feet along the West 1/16 Line of said Section 18; thence
South 88°06'31" East 660.04 feet; thence,
South 00°44'15" West 1092.50 feet; thence,
South 89°55'01" East 276.37 feet; thence,
South 20°18'56" East 135.95; thence
North 87°04'55" East 152.83 feet; thence
South 5°48'26" East 502.28 feet to the line common to said Sections 18 and 19; thence
North 89°52'32" West 1183.96 feet to the REAL POINT OF BEGINNING.**

Parcel III:

Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho

Section 18: SE1/4SE1/4 Save and Except a portion of the following described parcel;

A parcel of land being a portion of the South 1/2 of the SE1/4 of Section 18, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho, said parcel being more particularly described as follows:

Commencing at the Brass Cap marking the corner common to Sections 18, 17, 20, and 19, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho; thence South 89°33'00" West 1246.88 feet along the line common to said Section 18 and 19 to an iron pin, said point being the REAL POINT OF BEGINNING; thence along the following courses and distances to iron pins; continuing South 89°33'00" West 1178.67 feet; thence North 00°32'22" East 1327.77 feet to the South 1/16 Line of said Section 18; thence along said South 1/16 Line, North 89°46'50" East 1576.58 feet; thence South 6°50'44" West 553.76 feet; thence South 30°29'02" West 559.98 feet; thence South 11°40'24" West 298.27 feet to the REAL POINT OF BEGINNING.

Parcel IV:

Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho

Section 18: A parcel of land being a portion of the South 1/2 of the SE1/4 of Section 18, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho, said parcel being more particularly described as follows:

Commencing at the Brass Cap marking the corner common to Sections 18, 17, 20, and 19, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho; thence South 89°33'00" West 1246.88 feet along the line common to said Section 18 and 19 to an iron pin, said point being the REAL POINT OF BEGINNING; thence along the following courses and distances to iron pins; continuing South 89°33'00" West 1178.67 feet; thence North 00°32'22" East 1327.77 feet to the South 1/16 Line of said Section 18; thence along said South 1/16 Line, North 89°46'50" East 1576.58 feet; thence South 6°50'44" West 553.76 feet; thence South 30°29'02" West 559.98 feet; thence South 11°40'24" West 298.27 feet to the REAL POINT OF BEGINNING.

Parcel V:

A parcel of land being a portion of the SW1/4 of the SE1/4 of Section 18, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho, said parcel being more particularly described as follows:

Commencing at the iron pin marking the corner common to sections 18, 17, 20 and 19, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho; thence South 89°33'00" West 2680.51 feet to the Brass Cap marking the 1/4 corner common to said Sections 18 and 19, said point being the REAL POINT OF BEGINNING; thence along the following courses and distances to iron pins: North 00°28'43" East 1328.78 feet to the South 1/16 Corner of said section 18; thence along the South 1/16th line, North 89°46'50" East 256.35 feet; thence South 00°32'22" West 1327.77 feet to the South line of said Section 18; thence South 89°33'00" West 254.95 feet to the REAL POINT OF BEGINNING.

TOGETHER WITH WATER RIGHT NUMBERS: 61-2000A, 61-4038, 61-7236A, 617236B, 61-12187, 61-12189, 61-12191, 61-12193, 61,12196, 61-12197, 61-7426, 61-11731, 61-00585, 61-293D

Guaranty Title, Inc
Trust Account
206 South 3rd East St
Mountain Home, Id 83647

Bank of the Cascades
400 North 3rd East St
Mountain Home, ID 83647
96-602/1232.5

11909

PAY *Four Hundred Twenty Five and 00/100*
TO THE
ORDER OF

IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082

16021

DATE
03/21/2016

AMOUNT
\$425.00

VOID AFTER 90 DAYS

Memo: Water Right Transfers

Jessie Martinez
David A. Reynolds

Guaranty Title, Inc
Trust Account
206 South 3rd East St
Mountain Home, Id 83647

Bank of the Cascades
400 North 3rd East St
Mountain Home, ID 83647
96-602/1232.5

11909

16021

Check Date: 03/21/2016

\$425.00

PAYEE: IDWR Western Region
SELLER: Carlene R Smith
BUYER: Trail Family Farms, LLLP
ADDRESS: , , D

Line Items	Description
1301	Water right transfers

Amount
\$425.00

Guaranty Title, Inc
Trust Account
206 South 3rd East St
Mountain Home, Id 83647

Bank of the Cascades
400 North 3rd East St
Mountain Home, ID 83647
96-602/1232.5

11909

16021

Check Date: 03/21/2016

\$425.00

PAYEE: IDWR Western Region
SELLER: Carlene R Smith
BUYER: Trail Family Farms, LLLP
ADDRESS: , , D

Line Items	Description
1301	Water right transfers

Amount
\$425.00

No. L 6389 Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		Due no later than Apr 30, 2016 Annual Report Form 1. Mailing Address: Correct in this box if needed. TRAIL FAMILY FARMS, LLLP TERRIE E TRAIL 5308 E TRAIL RD KING HILL ID 83633		2. Registered Agent and Address (NO PO BOX) TRAIL PROPERTIES LLC 5308 E TRAIL RD KING HILL ID 83633 3. New Registered Agent Signature:*			
Office Held	Name	Street or PO Address	City	State	Country	Postal Code	
GENERAL PARTNER	JENNIFER R TRAIL	5603	KING HILL	ID	USA	83633	
GENERAL PARTNER	TERRIE E TRAIL	5308 E TRAIL RD	KING HILL	ID	USA	83633	
GENERAL PARTNER	RUSTY L TRAIL	5603 E TRAIL RD	KING HILL	ID	USA	83633	
GENERAL PARTNER	WALTER L TRAIL	5308 E TRAIL RD	KING HILL	ID	USA	83633	
5. Organized Under the Laws of: ID L 6389		6. Annual Report must be signed.* Signature: Terrie E Trail Name (type or print): Terrie E Trail Date: 04/16/2016 Title: sec					
Processed 04/16/2016		* Electronically provided signatures are accepted as original signatures.					

FILED EFFECTIVE

230



CERTIFICATE OF LIMITED PARTNERSHIP

(Instructions on back of application)

2010 APR 22 PM 2: 08

SECRETARY OF STATE
STATE OF IDAHO

1. The name of the limited partnership:

Trail Family Farms, LLLP

2. The mailing address of the principal office:

5305 E. Trail Road, King Hill, Idaho 83633

4. The name and mailing address of each general partner:

Name

Address

Trail Properties, LLC

5305 E. Trail Road, King Hill, Idaho 83633

(If more space is needed, continue in item 6.)

5. This limited partnership [☐ is not] [☒ is] a limited liability limited partnership.
(If you check that your partnership is a limited liability limited partnership, your partnership name must end in LLLP or Limited Liability Limited Partnership.)

6. Other matters (optional):

7. Signature of all general partners:

William L. Rocky Trail

Trail Properties, LLC

Typed Name

William L. "Rocky" Trail

Typed Name

Typed Name

Typed Name

Secretary of State use only

Web Form

IDAHO SECRETARY OF STATE
04/22/2010 05:00
CK: 5018 CT: 85349 DH: 1216953
1 @ 100.00 = 100.00 LTD PTR DH # 2

L6389

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

2/15/2017

WATER RIGHT NO. 61-7236A

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CARLENE R SMITH 13805 QUINTESSA ST CALDWELL, ID 83607 208-459-3394
Original Owner	RICHARD P VINER 2604 N MORROW RD GLENN'S FERRY, ID 83623-5016 (208)366-2318

Priority Date: 07/10/1975

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
WASTE WATER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	11/01	0.86 CFS	
Total Diversion			0.86 CFS	

Location of Point(s) of Diversion:

WASTE WATER|SESE|Sec. 18|Township 05S|Range 10E|ELMORE County

Place(s) of use:

Place of Use Legal Description: IRRIGATION ELMORE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
-----------------	--------------	----------------	------------	--------------	--------------	------------	--------------	--------------	------------	--------------	--------------	------------	--------------	--------------

05S

|10E

|18

|SWSE|33

|SESE|10

Total Acres: 43

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 RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.67 CFS. COMBINED RIGHT NOS.: 61-02000A, 61-02000B, 61-07236B. THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER
3. ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER NOVEMBER 1 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT. THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 61: WATER RIGHT NO. SOURCE NONE NONE THE FOLLOWING WATER RIGHTS FROM THE
4. C15 FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN THE SNAKE RIVER BASIN: WATER RIGHT NO. SOURCE NONE NONE ALL WATER RIGHTS WITHIN BASIN 61 ARE FROM CONNECTED SOURCES OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED CONJUNCTIVELY.

Dates:

Licensed Date:

Decreed Date: 10/26/2000

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit:

Combined Volume Limit:

Combined Rate Limit: 1.67

Civil Case Number:

61459

Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

2/15/2017

WATER RIGHT NO. 61-7236B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CARLENE R SMITH 13805 QUINTESSA ST CALDWELL, ID 83607 208-459-3394
Original Owner	CARLENE R VINER
Original Owner	RICHARD P VINER 2604 N MORROW RD GLENN'S FERRY, ID 83623-5016 (208)366-2231

Priority Date: 07/10/1975
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary</u>
WASTE WATER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	11/01	0.14 CFS	
Total Diversion			0.14 CFS	

Location of Point(s) of Diversion:

WASTE WATER|SESE|Sec. 18|Township 05S|Range 10E|ELMORE County

Place(s) of use:

Place of Use Legal Description: IRRIGATION ELMORE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
05S	10E	18		SWSE	7									

Total Acres: 7

Conditions of Approval:

1. USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.67 CFS. COMBINED RIGHT NOS.: 61-02000A, 61-02000B, 61-07236A THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER NOVEMBER 1 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
2. THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 61: WATER RIGHT NO. SOURCE NONE NONE THE FOLLOWING WATER RIGHTS FROM THE
3. C15 FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN THE SNAKE RIVER BASIN: WATER RIGHT NO. SOURCE NONE NONE ALL WATER RIGHTS WITHIN BASIN 61 ARE FROM CONNECTED SOURCES OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED CONJUNCTIVELY.

Dates:

Licensed Date:

Decreed Date: 03/04/2003

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit:

Combined Volume Limit:

Combined Rate Limit: 1.67

Civil Case Number:

Old Case Number:

Decree Plaintiff:

8 950

2/15/2017

Water Right Report

Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

Item. #7

Trail
- additional
point of
diversion



Exhibit K



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 10, 2017

TRAIL FAMILY FARMS LLLP
5308 E TRAIL RD
KING HILL ID 83633

COPY

RE: Transfer 81459

Dear Applicant:

On February 15, 2017, you filed a transfer application for waste water rights authorized under water right 61-7236A and 61-7236B. The transfer application proposes to add a point of diversion at a point located at the end of the King Hill Irrigation District Canal for your place of use west of Little Canyon Creek.

Review of water right file 61-7236 shows that the application for permit submitted in August of 1975 contained a map outlining the point of diversion within the SESE $\frac{1}{4}$ $\frac{1}{4}$ Sec 18, Township 5 South, Range 10 East on Little Canyon Creek. The irrigation use is described by "allowing to pump waste and seepage water out of the creek on to this land." It is clear that the source of waste water is water collected from fields above the place of use and diverted from the creek. As indicated on the field exam that was conducted August of 1987, a more accurate source would be Little Canyon Creek. Nevertheless, water that enters this point of diversion is upstream of the proposed point of diversion, and is dependent upon the availability of flow naturally occurring.

Water at the proposed point of diversion is delivered via the King Hill Irrigation District Canal. This originates as Snake River water before it is wasted at the end of the canal. The source of wastewater being applied for under transfer no. 81459 is being considered different than the source described by water rights 61-7236A and 61-7236B.

Transfers do not authorize a change of source. An application for exchange pursuant to Section 42-240, Idaho Code may be a more appropriate process rather than an application for transfer. Criteria based on preventing an enhancement to the source is still reviewed however. An application which proposes to change a point of diversion to a new location where the water available is greater or more reliable is presumed to enlarge the water right, unless the proposed change is subject to conditions limiting diversion of water at the proposed new point of diversion to times when water is available and in priority at the original point of diversion.

If you concur with the information above, please withdraw the transfer application. You may seek the changes you desire by filing either an exchange or application for permit. You may seek additional time to provide the information by making a written request to interrupt processing for up to six months. The application will be rejected without a timely written reply within the next thirty (30) days. Refunds are not issued for rejected applications.

Respectfully,

Patrick Kelly
Water Resource Agent, Sr.

Exhibit L

RECEIVED

~~JUN 29 2017~~

Exchange No. B1775

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JUL 14 2017

* INCOMPLETE UNTIL
MRP RECEIVED 7-14-17

APPLICATION FOR EXCHANGE OF WATER

WATER RESOURCES
WESTERN REGION

Under the provisions of Section 42-240, *Idaho Code*, any person holding a surface water right may apply to exchange such water for the use of water from the same source or a different surface water source. Surface water right holders may also apply to exchange for the use of water authorized for diversion under one or more other valid water rights from the same source or a different surface water source.

1. INFORMATION ABOUT THE APPLICANT

Applicant Trail Family Farms, LLLP Telephone No: 208-366-7762
(Name of Applicant)
5308 E. Trail Rd King Hill ID 83633 Email: cmchugh@mchughbromley.com
(Mailing Address) (Zip Code)

Applicant's Water Right(s) to be exchanged 61-7236A and 61-7236B
Attach a photocopy of the License, Permit, Transfer, Decree, or Claim evidencing the right(s) or attach a printout obtained from IDWR.

2. INFORMATION ABOUT THE CO-APPLICANT

Complete this portion if the applicant proposes to exchange for water diverted under a water right held by another party. The co-applicant is the holder of the right to be exchanged for the applicant's right. If more space is needed, please attach another sheet containing information about each co-applicant.

Co-applicant N/A Telephone No: _____
(Name of Co-applicant)

(Mailing Address) (Zip Code) Email: _____

Co-applicant's Water Right(s) to be exchanged _____
Attach a photocopy of the License, Permit, Transfer, Decree, or Claim evidencing the right(s) or attach a printout obtained from IDWR.

3. EXCHANGE AGREEMENT -- Attach a copy of the written agreement between the applicant and the co-applicant(s).

4. EXCHANGE INFORMATION -- Complete Part A or Part B to explain how the proposed exchange will operate.

Part A -- For an exchange involving two or more water right holders.

The applicant proposes to divert _____ cfs and/or _____ acre feet per year of water authorized to be diverted under the co-applicant's water right(s) listed above at _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____ Sec. _____ Township _____ Range _____ B.M., _____ County.

Additional points of diversion, if any: _____

In exchange for authorization to divert water as described above, _____ cfs and/or _____ acre feet per year of water authorized for diversion under the applicant's water right(s) listed above will be (complete 1 or 2 below):

- made available to the co-applicant for diversion at _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____ Sec. _____ Township _____ Range _____ B.M., _____ County.
Additional points of diversion, if any: _____

OR

- released from storage by the co-applicant into _____ at _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____ Sec. _____ Township _____ Range _____ B.M., _____ County.

Part B -- For an exchange involving only the applicant's water right(s).

The applicant proposes to divert 1 cfs and/or _____ acre feet per year of water at SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Govt. Lot _____ Sec. 17 Township 5S Range 10E B.M., Elmore County. Additional points of diversion, if any: SE SE Sec. 18 T5S R10E

In exchange for authorization to divert water as described above, 0 cfs and/or 0 acre feet per year of water authorized for diversion under the applicant's water right(s) listed above will be (complete 1 or 2 below):

1. diverted from waste water at SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Govt. Lot _____ Sec. 18 Township 5S Range 10E B.M., Elmore County and injected into N/A at _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____ Sec. _____ Township _____ Range _____ B.M., _____ County.

OR

2. released from storage by the applicant into N/A at _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____ Sec. _____ Township _____ Range _____ B.M., _____ County.

Additional Explanation -- Attach additional sheets if necessary.

The water from the point of diversion listed on water right nos. 61-7236A and 61-7236B will be diverted under this exchange at the section 17 point of diversion as listed above.

If this exchange is not intended to be a permanent arrangement, please describe the circumstances under which the proposed exchange will terminate. _____

5. MAPS -- Attach two maps, one showing the water right(s) as it is (they are) now used, and another showing how the water right(s) will be used under the proposed exchange. Each map should be on an 8 $\frac{1}{2}$ "x11" sheet and should clearly identify the locations of the point(s) of diversion, injection, and re-diversion of water and the place(s) of use by 40-acre subdivisions, section, township and range of the public land survey. Photocopies of USGS 7 $\frac{1}{2}$ -minute topographic quadrangles are preferred as base maps.

SIGNATURE

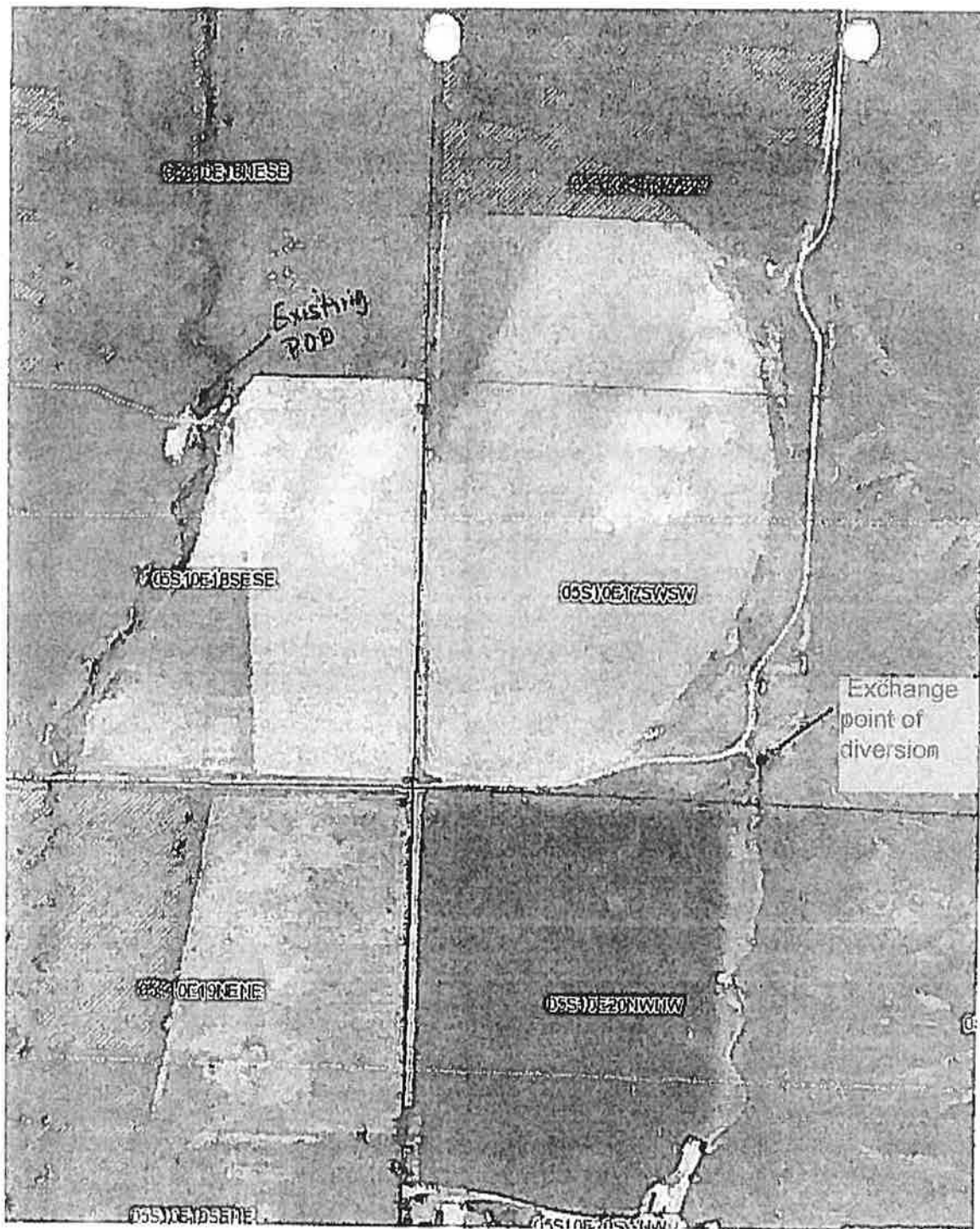
Applicant hereby asserts that no one will be injured by such exchange of water and acknowledges that the applicant and/or the co-applicant will be responsible for all actions taken pursuant to this exchange. I understand that any willful misrepresentations made in this application may result in voiding its approval.

Walter Gail-Parker Gail Family Farm
Applicant's Signature (and title if application is for an organization)

June 23 2017
/Date

FOR DEPARTMENT USE ONLY

This exchange application contains _____ pages, including attachments.
Received by CS Date 6/29/17 Fee 4500⁰⁰
Received by CS Date 6/29/17 Receipt No. W045433
Preliminary review by _____
Published in _____
Publication dates _____
Protests filed by _____
Copies of protests forwarded by _____
Watermaster recommendation requested on _____
Watermaster recommendation received on _____
Hearing held by _____ Date _____
Recommended for Approval _____ Denial _____ By _____



Item 5 - Map
Application
for Exchange
Trail -
61-7236A & B

RECEIVED


JUL 14 2017

WATER RESOURCES
WESTERN REGION

Exhibit M

ADMINISTRATOR'S MEMORANDUM

Transfer Processing No. 24

To: Water Management Division Staff
From: Jeff Peppersack 
RE: TRANSFER PROCESSING POLICIES & PROCEDURES
Date: December 21, 2009

This memorandum supersedes Transfer Processing Memorandum No. 24 dated January 21, 2009.

The purpose of this memorandum is to provide policy guidance for processing applications for transfers of water rights pursuant to Section 42-222, *Idaho Code*, and other applicable law. The revisions to the October 30, 2002 memorandum are provided to recognize statewide application of this memorandum, to clarify the guidance based on updates to statutes and Department policy, and to streamline transfer processing to reduce application processing time and existing application backlogs. These policies and procedures are to be followed until rescinded or amended, or superseded by statute or rule or court decision, to assure that applications are processed efficiently and with consistency.

Regardless of whether or not an application for transfer is protested, Section 42-222, *Idaho Code*, requires that the department evaluate whether there would be injury to other water rights, there would be an enlargement in use of the original right, the proposed use would be a beneficial use, the proposed use would be in the local public interest, the proposed use would be consistent with the conservation of water resources within the State of Idaho, and whether the proposed change would impact the agricultural base of the local area. In the case where the place of use is outside of the watershed or local area where the source of water originates, the department must also evaluate whether the change would adversely impact the local economy of the watershed or local area. The department must also evaluate the validity of the right (or part thereof) being changed and must assure that the applicant owns the right or otherwise has the authority to apply for the transfer.

1. When a Transfer is Required.

Section 42-222, *Idaho Code*, requires the holder of a water right to obtain approval from the department prior to changing: (1) the point of diversion, (2) the place of use, (3) the period of use, or (4) the nature of use of an established water right. An established water right is a licensed right, a decreed right, or a right established by diversion and beneficial use. Approval is sought by filing an application for transfer with the department. A claim in an adjudication or a statutory claim must be filed to allow a transfer application to be processed for a right based upon diversion and beneficial use.

Changes to Elements of a Water Right. An application for transfer is required if a proposed change would alter any of the four elements of the water right listed above that can be changed pursuant to Section 42-222, *Idaho Code*, as recorded with the department or by decree. Conditions or other provisions of a water right may further define or limit a recorded element of a water right; an application for transfer is required for a proposed change that could alter such a condition. For example, a proposed change of use under a water right for an industrial use, which includes a condition limiting the quantity of water that can be consumptively used, to a different industrial use that would increase the quantity of water that would be consumptively used can not be made unless enlargement is prevented.

If a proposed change has the potential to injure other rights or the potential to enlarge the right, even when there would be no change in any of the recorded elements of the right, an application for transfer should be filed to provide for evaluation of injury and enlargement issues before the change is made. For example, if the point of diversion from a fully appropriated creek is proposed to be moved where additional water would be available for diversion or if the proposed point of diversion as changed would move upstream of the points of diversion for other rights, the change can not be made unless other conditions are imposed, such as mitigation, to prevent injury.

Changes to Points of Diversion. If a point of diversion is proposed to be moved to a different tract than described as an element under an established water right, then a transfer application is required. This includes a change from one 10-acre legal subdivision to another if the point of diversion has been previously described as a 10-acre legal subdivision. An application for transfer is also required when a point of diversion is proposed to be added for a water right, even when the existing authorized point of diversion is recorded as a 10-acre legal subdivision and the additional diversion would be within the same 10-acre legal subdivision.

If a point of diversion is proposed to be moved from a tributary to a location downstream from the confluence of the tributary and the surface water stream to which the tributary is joined, then an application for transfer is required. If a point of diversion is proposed to be moved from a stream to the stream to which it is tributary at a location upstream of the confluence between them, or moved from one tributary to another tributary, an application for exchange is required pursuant to Section 42-240, *Idaho Code* rather than an application for transfer.

Changes in Place of Use. An application for transfer is required if a change in the location of use between 40-acre legal subdivisions is proposed that would result in an increase in the number of acres within a 40-acre legal subdivision or in use of water at a new 40-acre legal subdivision that is not included within the recorded place of use element for the right. An application for transfer is also required for a proposed change in location of use under a water right for irrigation to a location outside of prescribed boundaries such as those provided under Section 42-219, *Idaho Code*, with or without a proposed change in purpose of use, except for those rights held by irrigation districts or municipal providers, even when the change in location would be included within the same 40-acre legal subdivisions existing prior to the proposed change. A proposed change to any water right held for irrigation involving a change in the number of irrigated acres of less than one acre at the original place of use or at a proposed new place of use is not approvable unless the proposed change involves a new purpose of use within the original place of use or the applicant provides a verification procedure approved by the Director that can be practically administered to prevent injury or enlargement.

Consolidation of Acreage. An application for transfer is required for proposed consolidation of water use for irrigation by permanently reducing the number of acres authorized for irrigation under a water right, while maintaining the original diversion rate or annual diversion volume.

Land Application of Wastewater. An application for transfer is required for a proposed change in the place of use under a water right for uses such as industrial, dairy, or confined animal feeding operations that would allow land application of wastewater from that use or change the location of lands used for application of wastewater, when there is not a full existing water right for irrigation of the place of use receiving wastewater.¹

Correction of Errors. An application for transfer may also be required to correct errors in licenses or decrees. For example, a transfer application may be required to correct the location of the place of use of a water right decreed by a court if the decree is later determined to be in error. However, a transfer action is not always required to correct such errors. For example, if a water right claim is determined to be in error, the claim can be amended to correct the error. Similarly, some clerical errors in a license or decree may be corrected by issuance of an amended license or decree (by the jurisdictional court) without using the transfer process. Also, a change to a description of the location of the place of use or point of diversion, as used by the department for administration of water rights, resulting from improved methodology does not require an application for transfer, as described below. In addition, conditions that are no longer applicable may be modified or removed from a license without a transfer, provided other rights are not materially affected. For decrees, conditions that are no longer applicable should be noted in comments on the department's electronic record for the right. However, a change to any element of a decreed water right requires filing an application for transfer, unless the appropriate court makes the change by amending the decree.

¹ The guidance provided here effectively revises the guidance to staff for filing an application for transfer as provided in Application Processing Memorandum No. 61 concerning wastewater from industrial uses.

2. When a Transfer is not Required.

An application for transfer is not required if a proposed change will not alter any of the elements of a water right as licensed or decreed, except that even when the recorded elements of a water right are not changed an application should be filed under such circumstances described in Section 1 above. In addition, an application for transfer is not needed when an accomplished change to a water right or an enlargement of a right has been claimed in an adjudication in accordance with the provisions of Sections 42-1425 or 42-1426, *Idaho Code*.

Changes in Consumptive Use. Consumptive use of water under a water right is not, by itself, an element of the water right subject to the requirements to file an application for transfer. Unless there is a specific condition of the water right limiting the amount of consumptive use, changes in water use under a water right for the authorized purpose of use that simply change the amount of consumptive use do not require an application for transfer provided that no element of the water right is changed. However, when determining the amount of water that can be transferred pursuant to an application for transfer proposing to change the nature or purpose of use, and for certain other circumstances as described herein, historical consumptive use is considered.

Change in Ownership. An application for transfer is not required to change the owner of record for a water right or address of record for a right holder. Changes in ownership or address are to be filed in accordance with Section 42-248, *Idaho Code*, or for adjudication claims in accordance with Section 42-1409(6), *Idaho Code*. However, a transfer application filed pursuant to Section 42-222, *Idaho Code*, accompanied by evidence documenting a change in ownership for a water right, or showing a change in the address of the owner of a water right, satisfies the requirements of Section 42-248, *Idaho Code*.

An application for transfer is not required to change the owner of record of one or more water rights, or portions thereof, that are part of a larger group of water rights authorized for use within and appurtenant to a permissible place of use² if the conveyance documents provide evidence of the change in ownership and appurtenance of each of the rights and if other elements of the rights will not be changed.

An application for transfer is not required to eliminate one or more points of diversion authorized under a water right through a change in ownership if the conveyance

² A permissible place of use is defined as a legal description of the authorized location where water may be applied under a water right for irrigation use, but the use in any year is limited to a specified number of acres which is less than the larger described location. For example, a water right may describe a permissible place of use as four 40-acre legal subdivisions totaling 160 acres, but the water right also limits the acreage that may be irrigated to 40 acres. The water right owner cannot irrigate more than 40 acres in a given year under the right. A permissible place of use is typically, but not always, irrigated by multiple rights with separate acreage limitations that, when used together, provide for irrigation of the entire permissible place of use in the same year.

documents provide evidence of the limitation and if other elements of the rights will not be changed.

Partial Relinquishment. An application for transfer is not required to relinquish a portion of a water right such as elimination of a purpose of use or a point of diversion or a reduction in acres and proportional rate. The water right owner should provide a notarized statement of relinquishment including specific identification of the water right(s) and the specific reduction(s).

Split Rights. An application for transfer is not required when a water right for irrigation is proposed to be split, with notice to the department pursuant to the provisions of Section 42-248, *Idaho Code*, such that a disproportionate per acre share of the right would be conveyed to another party provided that the resulting diversion rates do not exceed 0.02 cfs per acre, the amount of water historically applied per acre, or the amount of water diverted at a particular point of diversion, whichever is greater, for that part of the right conveyed or retained, and provided no other changes are made.

Changes to Points of Diversion within Recorded Location. An application for transfer is not required if a change in point of diversion is proposed to be moved to a location within the same legal public land survey subdivision as currently recorded on the water right and the change will not enlarge the right or injure other rights (if within a recorded legal public land survey subdivision, a transfer is required if injury is likely when moving the point of diversion to bypass another point of diversion or when moving a well significantly closer to another well or surface water source).

An application for transfer is not required for the situation described in the preceding paragraph, even when the point of diversion is described by a shapefile in the department's GIS database. The department will not initiate an enforcement action against the water right owner due to a discrepancy between the department's shape file and the physical location of use within the recorded legal subdivision if the discrepancy is limited to the situation described in the preceding paragraph. The department may update the shapefile in its GIS database from its own information or information provided by the water right owner.

Replacement of Point of Diversion. An application for transfer is not required to replace a point of diversion if the new point of diversion is constructed at the same location as described in the license or decree for the water right, and the change will not enlarge the right or injure other rights.

Refined Descriptions. An application for transfer is not required when a change in the description of the location of the point of diversion or place of use is only the result of improved methodology for referencing and displaying the location, which results in a more accurate description of the same physical location. The department will not initiate an enforcement action against the water right owner due to the discrepancy between the water right record and the referenced location if the discrepancy is created by better methodology and is not due to a change in the physical location. However, if the water right owner wishes to correct the water right record, an application for transfer

or an appropriate amendment will be required, as previously described for correction of errors.

Changes in Place of Use within Recorded Location. An application for transfer is not required if a change in the location of use within 40-acre legal subdivisions is proposed that would not result in an increase in the number of acres within any 40-acre legal subdivision nor use of water at a new 40-acre legal subdivision (except for a proposed change in location outside of prescribed boundaries such as those provided for irrigation use under Section 42-219, *Idaho Code* or by court decree, even when the change in location would be included within the same 40-acre legal subdivisions existing prior to the proposed change).

An application for transfer is not required for the situation described in the preceding paragraph, even when the place of use is described by a shapefile in the department's GIS database. The department will not initiate an enforcement action against the water right owner due to a discrepancy between the department's shape file and the physical location of use within the 40-acre legal subdivisions if the discrepancy is limited to the situation described in the preceding paragraph. The department may update the shapefile in its GIS database from its own information or information provided by the water right owner.

Generally Described Place of Use. As provided in Section 42-219, *Idaho Code*, an application for transfer is not required to change the place of use within a generally described place of use. A generally described place of use may be by court decree or as provided in Section 42-219(5) and (6). Pursuant to Section 42-219(7), any change within a generally described place of use can not result in an increase in the diversion rate, or in the total number of acres irrigated under the water right, and can not cause injury to other water rights. Any change to the boundaries of a generally described place of use requires an application for transfer, except for a municipal provider as described below or for an irrigation district where changes in boundaries must be documented by a map of the revised boundaries filed with the department in accordance with Section 43-323(2), *Idaho Code*.

Municipal Places of Use. An application for transfer is not required to change or add a place of use for "municipal purposes" within the "service area" of a "municipal provider." See Sections 42-202B and 42-222(1), *Idaho Code*, for appropriate definitions and provisions governing use of municipal water rights. The ownership of a portion of a municipal water right held by a municipal provider for reasonably anticipated future needs can be changed to a different municipal provider subject to the provisions of Section 42-248, *Idaho Code*. However, the right can not be changed to a place of use outside the service area of a municipal provider or to a new nature of use, and an application filed for such a change is to be returned and any associated application fee refunded.

In-stream Stock Watering. An application for transfer is not required to divert water away from a stream for stock watering purposes provided the diversion is added and used in conjunction with an in-stream stockwater right and provided the diversion meets

certain conditions pursuant to Section 42-113(3), *Idaho Code*. See guidance memorandum for in-stream stock diversions dated June 26, 2000, for additional information.

Intensified Use of Water. An application for transfer is not required to increase production under an authorized use of water, unless the proposed change would also result in a change to one or more of the elements of the water right(s) as licensed or decreed. For example, an application for transfer is not required to increase the number or volume of raceways in a fish propagation facility, increase the number of cows at a dairy, change irrigation to a more water consumptive crop, or increase the generating capacity of hydroelectric generators, so long as none of the elements of the associated water rights are changed.

Mitigation Through Non-Use of a Right. An application for transfer is not required to mitigate for the diversion and use of water under another right if the mitigation is accomplished through non-use of water under an existing valid water right, except under specific circumstances where a transfer is required as part of the Department's approval of the mitigation plan (see Section 42-223 (10), *Idaho Code* for reference to mitigation approvals where non-use of water may apply).

Land Application of Wastewater to Replace Existing Supply. An application for transfer is not required for a proposed change in the place of use under a water right for uses such as industrial, dairy, or confined animal feeding operations that would allow land application of wastewater from that use or change the location of lands used for application of wastewater, when there is a full existing water right for irrigation of the place of use receiving wastewater.¹

3. Requirements for an Acceptable Application for Transfer.

The department is a public service oriented agency, and department employees traditionally have helped applicants complete transfer application forms. The existing transfer backlog, together with the increasing number and complexity of new applications for transfer, requires that staff focus their time on processing existing acceptable applications. Department employees are encouraged to provide general assistance to applicants but should refrain from completing application forms on behalf of applicants.

An applicant or qualified consultant must prepare and submit an application for transfer in accordance with the minimum requirements enumerated below to be acceptable for initiating the processing of the application by the department. An application that does not comply with these minimum requirements is to be considered incomplete and is to be returned to the applicant along with a letter or checklist identifying the deficiencies. The letter shall state that unless the application is resubmitted within 30 days of its return, the application fee will be refunded. An application for transfer that satisfies the minimum requirements will be processed in accordance with Section 5, Information Needed to Complete Processing of a Transfer Application.

- (1) Application Forms. An application for transfer must be submitted on a current form provided by the department entitled, "Application for Transfer of Water Right." The current form is available from the department's Internet homepage at:

http://www.idwr.idaho.gov/water/rights/water_rights_forms.htm

- (2) Name and Address. An application for transfer must include the name and address of the applicant. In addition, the application must include the name and address of any new right holder(s) for the water rights (or parts thereof) being transferred, if different than the applicant. The applicant's name must match the department's current record of ownership for the water rights (or parts thereof) being transferred. Otherwise, adequate documentation must be included to show that a change in ownership or authority to make the change has legally occurred. Adequate documentation can be a warranty or other deed, title policy, contract of sale or option for purchase by applicant (if the contract or option allows the transfer), or other similar document confirming ownership of the water right(s) or the authority to change the water right. See Records Memorandum No. 9 for additional guidance on water right ownership documentation.

A transfer application filed to change a right (or part thereof) claimed in a pending adjudication, where the claimed place of use is based on an accomplished transfer pursuant to Section 42-1425, *Idaho Code*, must include adequate documentation demonstrating the applicant's ownership of the right or authority to make the change.

- (3) List of Water Rights to be Changed. An application for transfer must list all water rights for use in a common system of diversion and distribution for which the point of diversion, place of use, period of use, or nature of use are proposed to be changed (the water rights to be transferred). Proposed changes which involve separate diversion and distribution systems must be filed as separate applications. A proposed change to the remaining portion of an existing water right subsequent to a proposed transfer requires a separate application for transfer.
- (4) Associated Water Rights or Water Supply. The application must include a separate list of individual water rights, other than those proposed to be changed, and a description of water supplied by a canal company, irrigation district, or municipality, that provide water currently used in the same diversion system or at the same place of use as the right(s) proposed to be transferred (associated water rights or water supply). In addition, the application must include a separate list of associated water rights or water supply proposed to be used in the same system or at a new place of use. If the associated water rights or water supply are not owned by the applicant and changes to conditions

for those rights are necessary, documentation must be submitted confirming that the applicant has the legal authority to make such changes on behalf of the current owner of the other rights.

Changes to conditions or remarks for associated water rights that are necessary as a result of an approved transfer and that do not affect the rights of other persons or entities can be made without a separate transfer application or process. Such changes usually result from a division in ownership and should be included in the transfer approval document.

- (5) Reason for Change. The application must list the purpose for and a general statement of the reason for the proposed change.
- (6) Description of Proposed Change. The application must describe in writing the proposed changes, which must include the following:
 - a. The right number(s) assigned by the department for the right(s) proposed to be changed must be identified. If the right was established by a beneficial use for which a claim has not been filed, a claim must be filed before or together with the transfer application. If the right is represented by a decree and the department has not assigned a number to the right, a copy of the decree must be included with a description of the right that is proposed to be changed.
 - b. The amount of water proposed to be diverted, as a rate of flow in cubic feet per second and as acre-feet per year, if the transferred water right has a volume limitation, for natural flow and ground water rights must be set forth. The amount of any stored water involved in a transfer must be identified in terms of acre-feet per year for each purpose of use listed.
 - c. The proposed nature or purpose of use must be stated. For non-irrigation uses such as "industrial" or "commercial," a more detailed description of the proposed use(s) must be provided under the "Remarks" section of the application, or as an attachment to the application. For applications proposing to change the nature of use to municipal purposes for reasonably anticipated future needs (RAFN), the applicant shall provide information to establish that the applicant qualifies as a municipal provider and that the RAFN, service area, and planning horizon are consistent with the definitions and requirements specified in Section 42-202B, *Idaho Code*.

- d. The period of each year during which water is proposed to be diverted, or diverted and stored, and beneficially used must be set forth for each use listed.
- e. The source of water for the proposed changes must be listed. An application proposing a diversion, injection, and re-diversion of water must list the source for the original diversion as the source for the injection and re-diversion. An application proposing to change the point of diversion to a location resulting in a change from ground water to surface water or from surface water to ground water shall include an analysis confirming a direct and immediate hydraulic connection (at least 50 percent depletion in original source from depletion at proposed point of diversion in one day). See Section 5c. (7) for further details.
- f. The legal description of the point(s) of diversion must be described. The description must be to the nearest 40-acre subdivision or U. S. Government Lot of the Public Land Survey System. Existing point(s) of diversion should be described to the nearest 10-acre tract, if based on a previously recorded 10-acre description or other accurate means such as GPS or a detailed and accurate map. Proposed point(s) of diversion need only be described to the nearest 40-acre tract. The location of springs must be described to the nearest 10-acre tract. Subdivision names, lot and block numbers, and any name in common usage for the point of diversion should be included in the "Remarks" section of the application form.
- g. Except as provided herein, the legal description of the place of use must be set forth to the nearest 40-acre subdivision or U. S. Government Lot of the Public Land Survey System. Subdivision names, block and lot numbers, and any name in common usage for the place of use should be included in the "Remarks" section of the application form. For water rights held by irrigation districts, municipal providers, and others included under the provisions of Sections 42-202B or 42-219, *Idaho Code*, the place of use may be generally described even if previously described to the nearest 40-acre subdivision or government lot.
- i. If irrigation is a purpose of use, the number of acres in each 40-acre tract of the place of use or within a generally described place of use must be shown. The location of uses, other than for municipal providers or

for irrigation, must be identified in the appropriate 40-acre tract(s).

- ii. Except for wastewater when there is a full existing water right for irrigation of the place of use receiving wastewater, if a proposed change includes disposal or use of wastewater by land application to growing crops the application must identify the location of the waste disposal area by legal description under the use from which the wastewater originates.
 - h. An adequate description of the proposed diversion, delivery and application system(s) must be provided. This may include preliminary sizes and dimensions of pumps, pipelines, headgates, ditches, dams, impoundments, and application equipment. The type and location of measuring devices might also be required for applications providing for measurement of water to address specific injury or enlargement concerns. For large existing systems, such as those owned by municipal providers, irrigation districts, and canal companies, only those features proposed to be added or modified need to be described.
- (7) Map of System. A map corresponding to the written description above must be included showing the location of points of diversion, reservoirs, dams, canals, ditches, pipelines, and other works proposed to be used in the diversion and conveyance of water. The map must clearly show the location of the place of use including lands to be irrigated, if any. If only a part of the water right(s) is proposed to be changed, the map must include the location of the part of the existing recorded right(s) proposed to be removed (or changed). Legal descriptions including townships, ranges, sections, quarter-quarters, and government lots must be evident or labeled unless other reference information is evident on the map to identify the specific location. In lieu of creating a map, a copy of a published map, such as a U. S. Geological Survey quadrangle map, or an aerial photograph, can be attached to the application with the required identification shown thereon. For large existing systems, such as those owned by municipal providers, irrigation districts, and canal companies, only those features proposed to be added or modified need to be shown.
- (8) Response to Questions on the Form. The application for transfer must include responses to the questions on the application form concerning the validity of the right, the proposed use of the land from which the right is proposed to be removed (if applicable) and the existence of mortgages or liens. In addition, the application should address any agreements or commitments not to divert water under the right(s)

proposed for transfer such as a lease to the water supply bank (WSB), enrollment in the federal Conservation Reserve Enhancement Program (CREP) or dedication of the right(s) for mitigation purposes.

- (9) Changes to Part of a Right. If only a part of a right is being changed, the application for transfer must define that part by describing each of the elements, as currently licensed or decreed or otherwise recorded, for the part of the right being changed.
- (10) Signature. The application for transfer must include the signature of the applicant or the applicant's authorized representative. If a representative signs the application, evidence of authority to sign for the applicant must accompany the application. An application in more than one name must be signed by each applicant unless the right is held in the name of one joint owner "or" other joint owner(s), or the right is held in the name of one joint owner "and/or" other joint owner(s).
- (11) Filing Fee. The filing fee provided in Section 42-221, *Idaho Code*, must be submitted with the application for transfer. If the applicant is a governmental agency, a purchase order for the required amount is acceptable. (See the memorandum titled "Guidance on SB 1337 Amending Section 42-221, I.C.," dated June 26, 2000, and Transfer Processing Memorandum No. 23 for further guidance on application fees.)
- (12) Changes to Point of Diversion from Eastern Snake Plain Aquifer. Except as provided below, if the application for transfer proposes to move the point of diversion for a water right to divert and use ground water from one location to another within the Eastern Snake Plain Aquifer (ESPA) including any modeled tributary aquifers, the applicant must submit an attachment with the application that sets forth the time series of calculated depletions (transient to steady-state) to reaches of the Snake River that are hydraulically-connected to the ESPA using or based on the department's current ground water model for the ESPA, or other equivalent analysis acceptable to the department. When using results from or based on the department's ground water model, the time series of calculated depletions must be for the cells containing the points of diversion both before and after the proposed transfer (initiating at the date of priority of the water right and ending at future steady state condition). If the cells are the same, the attachment is not required except as described below. A copy of the department's ESPA ground water model, or associated transfer spreadsheet³ can be obtained by contacting the department or visiting the department's web site.

³ The Department's ESPA transfer spreadsheet has a fixed 150-year analysis period which may not reach a true steady-state condition in all instances; however, the analysis period provided by the spreadsheet is acceptable to the Department for purposes of the required attachment. For purposes of this

The purpose of the time series of depletion attachment is to provide a basis for evaluating whether the proposed transfer will increase depletions to hydraulically-connected reaches of the Snake River.⁴ Increases in such depletions are presumed to cause injury to existing water rights because all of the hydraulically-connected reaches of the Snake River (including tributary springs) have water rights that are not fully satisfied at certain times. Increased depletions greater than 10 percent for any reach are presumed to cause injury and must be fully mitigated such that there are no increases in depletion to those reaches except as described below.⁵

Increased depletions greater than 10% in any reach are considered insignificant under either of the following conditions and will not require mitigation for the proposed transfer to be approvable:

- a. Increased depletions (transient to steady-state) to the reach are two acre-feet or less per trimester; or
- b. The reach, at steady-state conditions, will not be depleted by an amount greater than 10% of the total depletion to all reaches caused by the diversion under the proposed transfer.⁶

Where mitigation is necessary for increased transient-state depletions, variance from the requirement for full mitigation during the transient state is allowed to provide for periods of static mitigation within the period of change. Mitigation for increased transient-state depletion to a reach is acceptable if the resultant depletion to a reach is no more than 5% over the simulated pre-transfer depletion to the reach and any deficient mitigation is approximately the same as excess mitigation during the transient state.

If the application for transfer proposes to move or add a point of diversion within or adjacent to the model cell for the existing point(s) of diversion, the attachment described above is not required when the application is submitted. However, if the department determines that the proposed change may significantly increase depletions to a

memorandum, the transient state is the initial period of significant change to calculated depletions prior to approaching steady-state conditions.

⁴ Increased depletions are based on the depletion volume that will be transferred through the change in point of diversion (i.e. not to include any volume for unchanged portions of rights or other associated rights not part of the change in point of diversion).

⁵ This 10% threshold for mitigation reflects overall model uncertainty, of which one factor is the inherent error associated with measuring flows of water used as input to the model.

⁶ This exclusion from the mitigation requirement is consistent with the Department standard in various delivery calls against ground water users diverting water from the ESPA that establishes a minimum percentage of 10% below which ground water users are not required to mitigate or replace simulated depletions to the reach.

hydraulically-connected reach of the Snake River (including tributary springs), the attachment will be required to complete processing of the application for transfer. See the Department's August 13, 2007 memo entitled, "ESPA Transfer Spreadsheet Version 3.1 – Implementation and Use" for further guidelines on use of the ESPA transfer spreadsheet.⁷

If the applicant offers reduced ground water withdrawals as mitigation, any proposed schedule for adjusting reduced withdrawals must also be set forth in the application for transfer.

Increased reach gains from other proposed ESPA transfers (offsetting transfers) can be used to provide part or all of the mitigation necessary for reaches requiring mitigation due to increased depletions (as determined by a stand-alone analysis of each individual transfer as described above). If the applicant offers offsetting transfers as mitigation, the transfer applications shall be submitted together as part of a plan to mitigate the individual transfer effects.

- (13) Historic Beneficial Use. If the application for transfer proposes to change the nature or purpose of use or the season of use, the applicant must include an attachment documenting the historic extent of beneficial use under the right. For a transfer seeking to change a water right from irrigation, the attachment must provide sufficient data and information to determine historic consumptive water use. This can be satisfied by submitting records of cropping pattern or rotation, or records of water diverted and system efficiency, for at least the most recent, five consecutive years as described in Sections 5d.(5) and (6). If the application for transfer proposes to change the place of use for a supplemental water right, the applicant must include information to demonstrate that the supplemental right will not be enlarged (see Sections 5d.(3), (4) and (5) for definition and further discussion of supplemental rights).
- (14) Electronic Shape Files or Photographs Documenting Place of Use Changes. If the application for transfer proposes to change the purpose of use for a water right from irrigation to another use, or change the place of use for a water right for irrigation to another location, either of which requires the drying up of acres at the original place of use, the applicant must submit an attachment to the application for transfer. The attachment must provide a clear delineation of the location and extent of the irrigated acres prior to the proposed transfer, and must also

⁷ This memorandum supersedes portions of the Department's August 13, 2007 memo entitled, "ESPA Transfer Spreadsheet Version 3.1 – Implementation and Use" related to mitigation within 5 percent for transient and steady-state increases. The changes are being implemented to be consistent with use of the current ground water model for administration of water delivery calls in the ESPA. The remaining portions of the memo are still applicable.

provide a clear delineation of the location and extent of the irrigated acres, if any, after the transfer, if it is approved. This attachment may either consist of two electronic shape files in a format that is compatible with the department's GIS system or aerial photographs of sufficient detail acceptable to the department with the boundaries of the irrigated areas clearly shown and referenced to the Public Land Survey System. If a place of use involved with the application for transfer currently consists of a permissible place of use or a generally described place of use (see section 3(6)g above), then the applicable attachment is not required provided the application contains a clear statement that the boundaries for that place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly set forth.

- (15) Applications Involving Water Rights for Domestic Purposes. An application for transfer involving multiple water rights for domestic purposes as defined in Section 42-111, *Idaho Code*, even when evidenced by a decree, that proposes to establish a use, which itself would not be included within the scope of the definition for domestic purposes in Section 42-111, *Idaho Code*, is not approvable except as provided below. *Idaho Code* specifically prohibits the diversion and use of water under a combination of domestic uses to provide a supply of water for a use that does not meet the exemption of Section 42-227, *Idaho Code*, and is required to comply with the mandatory application and permit process for appropriating a right to the use of water pursuant to Chapter 2, Title 42, *Idaho Code*. An application for transfer filed for such a change is to be returned together and any associated application fee refunded.

An application for transfer involving multiple water rights for domestic purposes that is not proposing to change the nature of use or place of use may be approvable if the individual domestic uses will remain in place and the transfer is only intended to connect individual wells into a common system. Such transfer application may also include addition of a non-domestic right to add a use so long as the existing domestic uses will remain in place and will not be enlarged as a result of the transfer.

4. Changes to Applications for Transfer.

Amendment of Application. An applicant may revise or amend an acceptable application for transfer to clarify or correct information on the application. Significant changes to the place, period, or nature of the proposed use, amount of water, method or location of diversion, or other substantial changes from those shown on a pending application for transfer, will require filing a new application for transfer to replace the original application. If the revisions are not substantial, the application may be revised or amended with an initialed, dated endorsement by the applicant, or by the applicant's representative, on the original application, or by a letter describing the amendments in

sufficient detail. Changes initialed or signed by the applicant's representative must be accompanied by evidence providing authority to sign for the applicant if not previously provided. Changes to the application or supporting information are not to be made by staff under any circumstances. A replacement application must be identified as "changed," "amended" or "revised" on its face so that it can be distinguished from the original application, and the original application must be marked as "superseded." An additional filing fee may be required if the revised or replacement application involves more water than proposed in the original application for transfer. A re-advertisement fee, as provided in Section 42-221F, *Idaho Code*, will be required if notice of the original application has been published and changes to the original application are significant and warrant re-notice. (See Transfer Processing Memorandum No. 20 for additional information regarding changes to applications.)

Assignment of Application. An applicant may assign, in writing (must be notarized), an application for transfer to another entity while the application is pending before the department. An assignment does not require additional notice of the application to be published, and there is no fee for an assignment of an application. The assignment will change the name of the transfer applicant, but ownership of the water right(s) involved in the transfer cannot be changed without proper notice and documentation. Section 42-248, *Idaho Code*, provides that a transfer application can substitute for a notice of change in water right ownership if adequate documentation is provided with the application.

5. Processing an Application for Transfer Prior to Hearing.

Processing of an application for transfer consists of the steps outlined below. Flexibility is provided for some steps with the intent to streamline or expedite processing of routine or non-complex applications. Regional Managers have been delegated authority to sign routine water right approvals and denials and should continue to implement their signature authority as outlined in the Department's June 7, 2007 memo entitled, "Delegation of Authority for Water Right Approval/Denial" and other delegation that may be provided.

- (1) Initiating Processing – Data Entry. Once an application has been accepted and the application fee receipted pursuant to Section 3, Requirements for an Acceptable Application for Transfer, the Regional Office shall complete data entry of the basic information contained in the application and initiate working in parallel with the State Office to process non-routine or complex applications.
- (2) Additional Information. For those applications to be processed in parallel, the Regional Office and the State Office will determine what, if any, additional information is necessary to complete or supplement the application. For all applications, the Regional Office will correspond with the applicant to obtain the additional information, obtain watermaster recommendation as described below, and perform any field review that is also necessary in coordination with staff from the

Adjudication Bureau if the water right is claimed in a pending adjudication.

- (3) Administrative, Hydrologic, and Legal Review. For those applications to be processed in parallel, the Regional and State Offices will complete a review of all information submitted, in coordination with the Adjudication Bureau as needed, and forward appropriate information to the Hydrology Section and Administration for additional hydrologic, policy, and legal review as necessary.
- (4) Preparation of Staff Memorandum. Once the review is complete, the Regional Office will prepare a memorandum, with the concurrence of the State Office if necessary for parallel review, that documents the review and evaluation of the sufficiency of the information submitted and whether processing of the application can continue because there is no clear inconsistency with the criteria set forth in Section 42-222, *Idaho Code*. If it is determined that processing of the application can continue, the Regional Office will complete necessary GIS descriptions, finalize data entry, and draft conditions for entry into Work Flow.
- (5) Rejection or Denial of Application. If it is determined that the application for transfer should be rejected or can not be approved pursuant to Section 42-222, *Idaho Code*, the Regional Office or State Office (for parallel review) will prepare and issue a preliminary order rejecting or denying the application. An application for transfer may be rejected if the applicant fails to provide additional or adequate information pursuant to the requirements in this Section 5. An application for transfer that clearly does not satisfy the criteria set forth in Section 42-222, *Idaho Code*, must be denied. A rejected application may be re-filed when adequate information can be provided; a denied application can not generally be re-filed for substantially the same proposed transfer, unless a showing is made that substantial changes have subsequently occurred such that the criteria set forth in Section 42-222, *Idaho Code*, can potentially be satisfied. In either case, application fees will be retained. Note that notice of a rejected or denied application shall be sent to the applicant by certified mail pursuant to Section 42-222, *Idaho Code*.
- (6) Applicant Contest of Rejection or Denial. If the applicant contests the preliminary order rejecting or denying the application and requests a hearing pursuant to Section 42-1701A, *Idaho Code*, the Regional Office will publish notice of the application for transfer pursuant to Section 42-222, *Idaho Code*, including notice of the contested case, and provide opportunity to protest the application and intervene in the contested case unless published notice is not required for the application as described below.

- (7) Public Notice. If it is determined that processing of the application can continue consistent with the criteria set forth in Section 42-222, *Idaho Code*, the Regional Office will publish notice of the application for transfer. In some cases, published notice of the application may not be required. Pursuant to Section 42-222, *Idaho Code*, the Department has discretion to provide notice as deemed appropriate for applications proposing to change only the point of diversion or place of use in a manner that will not change the effect on the original or hydraulically-connected source or affect other water rights.

The timing of the public notice in these steps should remain flexible in order to streamline or expedite processing of the application. For example, processing time may be reduced by preparation of draft documents during the notice period. However, notice should not be provided prior to determining that the application meets the minimum requirements described in Section 3 and that there is a clear understanding by staff regarding the purpose of the transfer. Premature notice could result in the requirement to republish notice due to changes to an application or could result in unnecessary publication costs where an application is likely to be rejected or denied.

- (8) Preparation of Approval Document. If no protest to the application for transfer is filed under step (7) above, or all protests filed are withdrawn prior to hearing, the Regional Office will finalize an electronic approval document and issue an approved transfer, subject to appropriate conditions, as a preliminary order and complete data updates in Work Flow. For those applications processed in parallel, the Regional office will finalize an electronic approval document and forward the document to the State Office for final approval and data updates.
- (9) Contested Case Proceedings. If protest to the application for transfer is filed under either step (6) or (7) above, a contested case process will be completed. The hearing officer will forward electronically any final order that results from the contested case to appropriate staff to complete data updates in Work Flow.

Gathering Information Needed for Processing. In completing the steps outlined above, additional information may be needed for clarification of the purpose and intent of the proposed change, to further document the information on the application, or to provide a sufficient basis for determining whether the proposed change satisfies the statutory criteria for approval. **The applicant bears the burden of providing sufficient information.** However, staff should locate and assemble information available in the department's records that does not require compilation, interpretation, or analysis by an engineer, geologist, or other technical specialist.

Requests for Additional Information. Correspondence shall be prepared requesting any additional information needed and providing a reasonable period of time for response

(generally 30 days). When additional information is requested from the applicant, the applicant shall be informed of the need for a timely response to avoid delays in processing. The applicant shall also be informed that the application may be rejected if the additional information requested from the applicant is not timely received or is inadequate. The department can grant additional time to submit the required information if the applicant submits a written request for additional time and sufficient justification is provided.

Watermaster Recommendation. Section 42-222, *Idaho Code*, requires that the department shall advise the watermaster of any water district in which the water is used of any proposed change. The department shall not take final action on an application for transfer until the watermaster's recommendation has been received and considered.

Delays or non-response from watermasters results in delays in processing applications. The watermaster shall be informed that a non-response will be considered by the department to be the watermaster's recommendation not objecting to approval of the proposed transfer. Department staff should ensure that all watermasters understand their responsibility to provide recommendations.

Staff to Exercise Judgment. **Department staff has discretion to adapt the requirements set forth herein according to the nature and complexity of a proposed transfer.** While it is important that the information and documentation requirements are consistently applied, **staff is to use sound judgment to avoid asking the applicant for unnecessary information or seeking unnecessary review and comment from other state or local governmental entities as these guidelines are applied.**

5a. Evaluation of Authority to File an Application for Transfer.

- (1) Presumption Based Upon Department Ownership Records. For any application for transfer, the department must have sufficient information to determine that the applicant has the authority to seek the proposed change in use of the water right(s). The department can presume, absent information to the contrary, that the applicant is the owner of the right(s) if the department's ownership records maintained pursuant to Sections 42-248 or 42-1409(6), *Idaho Code*, list the applicant as the current owner. The department may need to seek documentation regarding ownership if there is reason to believe that the department's ownership records may be inaccurate. One situation where the department's records may not confirm current ownership is described below.

A transfer application filed to change a right (or part thereof) claimed in a pending adjudication, where the claimed place of use is based on an accomplished transfer pursuant to Section 42-1425, *Idaho Code*, must include adequate documentation demonstrating the applicant's ownership of the right or authority to make the change.

- (2) Other Acceptable Documentation. If the applicant's name does not match the name in the department's records for the current owner of the right(s) sought to be transferred, the applicant must provide evidence of current ownership or authority to make the proposed change(s). Adequate documentation can be a warranty or other deed, title policy, contract of sale or option for purchase by applicant (if contract or option allows the transfer), or other similar document confirming ownership of the water right(s) or the authority to change the water right. See Records Memorandum No. 9 for additional guidance on water right ownership documentation.
- (3) Applicant Does Not Own New Place of Use. If the application for transfer proposes to change the place of use authorized under the water right(s), and the applicant does not own the land at the proposed new place of use, then the applicant must provide documentation that authorizes the change on behalf of the current owner of the proposed new place of use, except when the applicant is a municipal provider, irrigation district, canal company, or other similar entity. Such entities may only need to provide evidence of their authority to provide water for the proposed place of use in instances where evidence of such authority is necessary.
- (4) Conditions on Associated Rights. If an application for transfer proposes a change from or to a system where there is an associated water right that is not listed on the application as a right being transferred, a change to conditions for that right is required (other than changes to conditions resulting from an ownership split), and that right is not owned by the applicant, then the applicant must provide documentation authorizing the change on behalf of the current owner of the associated right.
- (5) Authority to Sign on Behalf of an Applicant. If the application for transfer is signed by someone other than the applicant(s) as listed on the application, documentation is needed to establish that the signatory is a representative of the applicant and is authorized to sign on the applicant's behalf. The documentation can be a copy of a current "power of attorney" authorizing signature on behalf of the applicant, or other similar documentation. An application could also be signed by an officer of a corporation or company, an elected official of a municipality, or any individual authorized by an organization to sign the application for a corporation, company, or municipality (if accompanied by documentation confirming authorization). The signatory's title must be shown with the signature.
- (6) Corporation, Partnership, Joint Venture, Association, or other Business Entity. If the application for transfer is in the name of a corporation,

partnership, joint venture, association, or other business entity, department staff must verify that the organization is a viable and legally recognizable entity. Department staff will conduct a Business Entity Search at the Idaho Secretary of State's website: <http://www.sos.idaho.gov/>. If the Business Entity Search does not confirm that the corporation, partnership, joint venture, association, or other business entity is properly registered in the State of Idaho, department staff will request further clarification from the applicant. The intent of this search is to ensure that the organization is properly identified, including identification of individuals with signature authority and responsibility to conduct the organization's activity. Department staff may utilize other available resources to obtain the necessary information.

- (7) Approval of Irrigation Entity or Legislature. Section 42-108, *Idaho Code*, requires that if the right(s), diversion works, or irrigation system is represented by shares in a corporation, or owned by an irrigation district, no change can be made without the consent of such corporation or irrigation district. This includes the use of such right(s), diversion works, or irrigation system for mitigation purposes related to a proposed transfer. Any permanent or temporary change in period of use or nature of use, in or out-of-state, involving a quantity of water greater than fifty (50) cfs or a storage volume greater than five thousand (5,000) acre-feet must also be approved by the legislature if approved by the department, except that any temporary change within the State of Idaho for a period of less than three (3) years does not require legislative approval.
- (8) Liens, Mortgages, or Contract Restrictions. The department is required to provide notice to the holder of a security interest in any water right(s) proposed to be changed if the security interest holder has filed a request for notice pursuant to Section 42-248(6), *Idaho Code*. If the transfer proposes a change that might impact the value of the land such as moving the place of use or diversion facility to other land or changing the nature of use and the land from which the water right is proposed to be transferred is subject to liens, mortgages, or other contract restrictions affecting the right to transfer the water, a notarized statement or a statement on official letterhead signed by an authorized representative of a mortgage company or similar entity is required from the holder of each such lien, mortgage, or contract (see Transfer Processing Memorandum No. 10).
- (9) Municipal Provider. If an application for transfer proposes to change the nature of use of a water right to municipal purposes in the name of a municipal provider for reasonably anticipated future needs, the applicant must provide documentation to establish its qualifications as a municipal provider as defined in Section 42-202B, *Idaho Code*.

- (10) Agreement not to Divert. The applicant must describe any agreement or commitment not to divert water under the right(s) proposed for transfer such as a lease to the water supply bank (WSB), enrollment in the federal Conservation Reserve Enhancement Program (CREP) or dedication of the right for mitigation purposes.

5b. Evaluation of Water Right Validity.

For any application for transfer, the department must determine the validity of the water right(s), or part thereof, proposed to be changed. The following factors must be considered when processing an application for transfer and may require additional information from the applicant.

- (1) Department Records. For any application for transfer, the department must determine that a right, or part thereof, proposed to be transferred is valid and has not been lost by forfeiture or partial forfeiture. The department will presume, absent other information indicating forfeiture, that the right has not been forfeited if the department's water measurement records, aerial photography, remote sensing, or other information, shows use of water during the previous, consecutive, five-year period. The department will also presume that the right has not been forfeited when it is claimed in a pending adjudication or initially decreed in an adjudication within the previous five-year period. If staff makes a field inspection (all transfers seeking a change to a right evidenced only by a claim are to be field inspected or otherwise reviewed, see Transfer Processing Memorandum No. 1 as revised in Section 5b.(4) below), information must be gathered concerning the current status of diversion and delivery facilities and the apparent recent use of water.
- (2) Other Acceptable Documentation. If the records available to the department do not establish that a right has been used within the previous, consecutive, five-year period (except as provided in (1) above or for a right held by a municipal provider for reasonably anticipated future needs pursuant to Section 42-223(2), *Idaho Code*), the applicant must be asked to provide written documentation demonstrating that the right has been used within that time period. Examples of appropriate documentation include power records for pumps used to divert water under the right, Farm Service Agency (FSA) crop production records, receipts or other evidence of expenditures or revenue from the use of water under the right, and adequate affidavits of objective persons having actual knowledge of the uses of water under the right. Alternatively, if the right has not been used within the previous, consecutive, five-year period, then the applicant must be asked to provide information showing that exceptions or defenses to forfeiture are applicable. Exceptions or defenses to forfeiture include those set

forth in Section 42-223, *Idaho Code*; extensions provided for in Section 42-222, *Idaho Code*; and case law relating to factors such as resumption of use, unavailability of water when needed, or non-use when other water is available. Note that filing an application for transfer does not toll the statutory period for forfeiture of a water right due to non-use.

- (3) Validity of Unchanged Parts of a Water Right. For applications for transfer proposing to change part of a water right or rights, the remaining part(s) of the right(s) that are not involved in the proposed transfer are generally not subject to a finding of forfeiture as part of the transfer action by the department.⁸ In addition, the remaining part(s) of the right(s) are generally not subject to any additional conditions beyond the requirements of the original right(s). However, in some circumstances, department staff may be required to perform a comprehensive forfeiture analysis for the remaining part(s) of the right(s) to determine if a transfer can be approved. For example, a transfer application proposing to change part of the irrigated acres within a permissible place of use may require a comprehensive review of all the acres within the permissible place of use to determine if there are sufficient acres available to be transferred. When there has not been a comprehensive forfeiture analysis performed for the remaining, unchanged part(s) of the right(s), a remark will be included for any remaining part(s) of the right(s) to indicate that an approved transfer does not confirm the validity of the remaining, unchanged part(s) of the right(s).
- (4) Statutory or Beneficial Use Claims. Applications for transfer proposing to change a water right based on a statutory or beneficial use claim must be reviewed to determine the validity, priority date, and extent of beneficial use established under the claimed right. Review must include field verification or other means to verify the right. This memo effectively revises the means of verification as required in Transfer Processing Memorandum No. 1. In addition, the applicant must be asked to provide information confirming the priority date of the claim. Adjudication staff must also be consulted for questions regarding review of the priority date if the claim is filed in a pending adjudication. A transfer approval for the water right (or part thereof) based on a claim shall incorporate the department's findings regarding the validity of the right. If a statutory or beneficial use claim is the basis for a pending claim in an adjudication, adjudication staff shall be notified of the results of the validity review, and the claimant shall be informed of the findings.

⁸ Section 42-350, *Idaho Code* provides a process for revocation of a license at any time after issuance of the license upon a finding by the Director that the water has not been put to beneficial use for a period of five years.

5c. Injury to Other Water Rights

For any application for transfer, the department must determine whether the proposed change will injure any other rights, whether junior or senior in priority to the right being changed. The following factors must be considered when processing a transfer and may require additional information from the applicant.

- (1) Reduction in Quantity of Water Available to Other Water Rights. Whether the amount of water available under an existing water right, senior or junior in priority, will be reduced below the amount recorded by permit, license, decree, or valid claim, or the historical amount beneficially used by the right holder, whichever is less. Consideration of this factor may require an analysis of the timing and location of return flows both before and after a proposed change to determine if the change will reduce the supply available to other water rights.
- (2) Rotation. Whether a proposed change in the point of diversion of a water right that has been delivered in rotation with delivery of other water rights will result in significant additional losses borne by the water rights remaining in rotation.
- (3) Unreasonable Effort or Expense. Whether the holder of an existing water right will be forced to an unreasonable effort or expense to divert water under the existing water right.

Existing ground water rights are subject to reasonable pumping level provisions of Section 42-226, *Idaho Code*, as well as applicable court decisions (e.g., *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982), regarding in part the obligation to pay increased costs to divert an existing right).

An application for transfer that is approved to provide alternate points of diversion from ground water under one or more municipal water rights to develop or expand a common delivery system shall include conditions of approval to identify the point(s) of diversion authorized under each right prior to the transfer. The purpose of the condition is to provide for future administration of water rights in situations where increased municipal pumping over time is determined to cause injury through interference with other nearby wells.

- (4) Unusable Water Quality. Whether the quality of water available to the holder of an existing water right would be made unusable for the purposes of the existing right.
- (5) Mitigation. Whether mitigation would be needed to prevent injury to an existing water right that would be injured otherwise.

Unless agreed to in writing by the holder of an existing right, the only mitigation that can be considered acceptable by the department is the provision of replacement water in the full amount of the injury, at the same time injury would otherwise occur, and of acceptable water quality at the point of diversion for the existing right.

For applications that propose to move the point of diversion for a water right to divert and use ground water from one location to another within the ESPA, including any modeled tributary aquifers, mitigation is required for transfer approval when all of the following conditions occur: (a) the transfer would result in increased depletions (transient or steady state) greater than 10%, to any hydraulically-connected reach of the Snake River; (b) the increased depletion (transient or steady state) to the reach is greater than 2 acre-feet per trimester; and (c) the depletion, at steady-state conditions, to the reach is greater than 10% of the total depletion to all reaches resulting from the diversion under the proposed transfer. When greater increases in such depletions would occur, acceptable mitigation includes reduction in the quantity of ground water diverted and depleted such that there is no increase in depletions (for transient-state increases, no more than 5 percent over pre-transfer depletions so long as deficient mitigation is approximately equal to excess mitigation) for each hydraulically-connected reach of the Snake River requiring mitigation. When this form of mitigation is proposed, the quantity of ground water diverted may be increased periodically (no more frequently than annually) if supported by an analysis of the timing of calculated depletions (transient to steady-state) to reaches of the Snake River that are hydraulically-connected to the ESPA for the points of diversion both before and after the proposed transfer. However, the proposed schedule for increased diversions must be set forth in the application for transfer.⁹ See Section 3(12) for additional guidance.

Increased reach gains from other proposed ESPA transfers (offsetting transfers) can be used to provide part or all of the mitigation necessary for reaches requiring mitigation due to increased depletions (as determined by a stand-alone analysis of each individual transfer as described above). If approved, the transfers will not require mutual dependence for ongoing mitigation. However, any approval issued on the basis of offsetting transfers shall include conditions of approval to address future changes back to the original point(s) of diversion or future changes to a new location. In addition, conditions of approval

⁹ If the transfer is approved with mitigation by reducing the amount of ground water withdrawn, and as a result the reach gains to one or more other hydraulically-connected reaches of the Snake River increase, then the applicant shall retain the right to receive credit for the increased reach gains. Such credits can not currently be used because there is no administrative system in place to recognize such credits. In the event that an administrative system is created in the future whereby such credits available at that time can be recognized, the applicant shall retain the right to the possible future use of such credits, which shall be reflected in a condition of approval for the transfer.

shall be included to address changes that would result in increased impacts to reaches of the Snake River due to differences in priority date between the rights involved in the offsetting transfers. Such changes could result in injury to surface water rights in connected reaches of the Snake River in the event of a curtailment order affecting ground water rights in the ESPA. See the Department's August 13, 2007 memo entitled, "ESPA Transfer Spreadsheet Version 3.1 – Implementation and Use" for further guidance.

- (6) Ground Water Management Area or Critical Ground Water Area. Whether the point of diversion for a ground water right would move from outside the boundaries of a critical ground water area (CGWA) or ground water management area (GWMA) to within the boundaries of a CGWA or GWMA, or whether the point of diversion would move from within the boundaries of a GWMA to within the boundaries of a CGWA.

An application for transfer proposing such a change in the location of the point of diversion for a ground water right is not approvable unless the applicant proposes acceptable mitigation to prevent injury to other water rights. For cold water (85° F or less) GWMAs over the ESPA, mitigation beyond that satisfying condition (4) above will not be required at this time as a condition of approval, unless injury would occur to a water right to divert ground water or injury would occur to a water right to divert surface water that has not been offset by stipulated agreement or through a mitigation plan approved by the department,

- (7) Change of Source. Whether the source would be changed from ground water to surface water, or from surface water to ground water.

Section 42-222, *Idaho Code* does not provide for a change from a ground water to surface water source, or from a surface water to ground water source. An application for transfer proposing such a change in source is not approvable unless the ground water and surface water sources are so interconnected that they constitute the same source for purposes of a proposed change in point of diversion. The ground water and surface water sources must have a direct and immediate hydraulic connection (at least 50 percent depletion in original source from depletion at proposed point of diversion in one day). The existing point of diversion and proposed point of diversion must be proximate such that diversion and use of water from the proposed point of diversion would have substantially the same effect on the hydraulically-connected source as diversion and use of water from the original point of diversion. If such application for transfer is approved, the changed water right shall be administered no differently than any other water right from the surface water source. If approved, the source for a change from a surface water source to a ground water source should be listed as ground water tributary to the surface water source.

- (8) Changing Aquifer Source. Whether a proposed change in point of diversion for a ground water right is from one aquifer to another aquifer.

An application for transfer proposing to change the point of diversion from one distinct aquifer to a totally separate aquifer is not approvable, just as an application for transfer proposing to change the point of diversion for a surface water right from one distinct surface water source to a totally separate surface water source is not approvable.

- (9) Conveyance Losses. Whether the proposed change would move part or all of a right from a canal impacting conveyance losses associated with the delivery of multiple water rights in the canal.

If such application for transfer is otherwise approvable, the approval must require that the applicant retain an appropriate amount of water in the canal to prevent any additional reduction in the amount of water available from the canal to fill other water rights because of the portion of the conveyance losses that, prior to the transfer, were attributable to the right being transferred.

Additional Considerations. In addition to the considerations above, the following information may be needed to evaluate injury involving an application for transfer for a ground water right, depending on the specific circumstances of the proposed transfer. If the information is not available in the department's records, the applicant must provide the following information that department staff determines is necessary:

- (1) Location of Nearby Wells. The location of the nearest production well, including domestic wells, to the proposed point of diversion, and if different, the nearest production well down gradient from the proposed point of diversion (the location of other nearby production wells may also be required);
- (2) Location of Nearby Springs. The location of nearby springs from which water is diverted under existing rights, including domestic uses, that could be affected by ground water diversions from the proposed point of diversion;
- (3) Ground Water Levels. The depth to water, the stability of ground water levels, or the stability of confined aquifer pressures, in the area of the proposed point of diversion; and
- (4) Water-Bearing Zones. The depth and thickness of water-bearing zones, including identification of the zone or zones sought for the proposed use.

5d. Enlargement of Use

For any application for transfer, the department must determine whether the proposed change will enlarge the use of water under the water right(s). Enlargement will occur if the total diversion rate, annual diversion volume, or extent of beneficial use (except for nonconsumptive water rights), exceeds the amounts or beneficial use authorized under the water right(s) prior to the proposed transfer. The following factors must be considered when processing an application for transfer, which may require that additional information be provided by the applicant:

- (1) Diversion Rate, Annual Diversion Volume, and Number of Acres Licensed or Decreed. The authorized diversion rate, annual diversion volume (ground water rights only and certain surface water rights), and number of acres authorized for irrigation (if applicable), as licensed or decreed for the water right, shall not be increased. If the annual diversion volume is not specifically stated on the license or decree for a ground water right, then the amount will be based on the most current standards adopted by the department unless the applicant can show a larger amount has been reasonably diverted and beneficially used.
- (2) Beneficial Use. An application for transfer proposing to change the place of use or nature of use for all or part of a water right or water rights, which change would not result in an equivalent reduction in beneficial use under the original right(s), will be presumed to enlarge the water right(s). For example, hydropower use cannot be added to a right used for irrigation, even though no additional water would be diverted for the hydropower use. The irrigation use, or part thereof, could be changed to hydropower use by reducing the irrigation use by an equivalent amount, or the new use could be provided without reducing the irrigation use by obtaining a new permit to appropriate water for hydropower use.
- (3) Stacked Water Rights. Water rights are "stacked" when two or more water rights, generally of different priorities and often from different sources, are used for the same use and overlie the same place of use. Water rights for irrigating a permissible place of use are not necessarily stacked when the water rights in total provide for irrigating up to the maximum acreage authorized within a permissible place of use. An application for transfer proposing to "unstack" one or more water rights used for irrigation or other use, without changing all the rights for the same use, is presumed to enlarge the water right. However, the place of use for a supplemental irrigation right may be changed for continued use as a supplemental irrigation right at a different place of use without, by definition, enlarging the original right or the supplemental right proposed for transfer, so long as the primary rights at the original and proposed places of use provide comparable water supplies. In other words, use of the supplemental right at the proposed place of use can

not materially exceed use of the supplemental right at the current place of use.

- (4) Changing Supplemental Right to Primary Water Right. A supplemental irrigation right is a stacked water right authorizing the diversion of water for irrigation from a secondary source to provide a full supply for crops when used in combination with a primary right. A supplemental right can provide additional water in conjunction with a primary source, or at times when the primary source is unavailable. The use of a supplemental right is dependent on the supply available under the associated primary right and can be highly variable from year to year. An application for transfer proposing to change a supplemental irrigation right to a use as a primary water right for irrigation or other use will be presumed to enlarge the supplemental right. An exception is when the applicant can clearly demonstrate, using historic diversion records for the supplemental right as described in (5) below, or other convincing water use information, that there would be no enlargement of the water right being changed or other related water rights. Evidence of the quantity of water beneficially used under the primary right must be accompanied by some evidence of the quantity of water used under the supplemental right to qualify as "convincing water use information." The supplemental right must have been used on a regular basis (used more than 50 percent of the time). Insufficient data will be grounds to reject the application because the department will not be able to ascertain if the right will be enlarged.

If an application proposes to change only a portion of a supplemental irrigation right to a use as a primary water right, the application is not approvable unless the extent of beneficial use under all associated rights prior to the transfer will be proportionately reduced or transferred to another place of use to avoid enlargement of the remaining portion of the supplemental right. The associated right(s) will not need to be reduced if the entire supplemental right will be changed through the transfer.

A general exception to the presumption of enlargement when changing a supplemental right to a primary right applies when the supplemental right is a storage right. Section 42-222(1), *Idaho Code*, provides that a transfer of a water right for the use of stored water for irrigation purposes does not constitute an enlargement in the use of the original water right, even when more acres are irrigated, provided that no other water rights are injured.

- (5) Historic Beneficial Use. For an application for transfer seeking to change the nature or purpose of use, or season of use, including for a supplemental water right, the historic extent of beneficial use under the right must not be enlarged. The extent of historic beneficial use may

also have to be considered for other proposed changes in the place of use under some circumstances when there are other sources of water, such as natural subirrigation, even when the purpose of use or period of use are not proposed to be changed. For a transfer seeking to change a water right for irrigation, the consumptive water use based on the cropping pattern or rotation, or estimated from records of water diverted and system efficiency, for the most recent, five consecutive years is presumed to provide a reasonable basis to establish historic use under the water right proposed for transfer, unless information provided by the applicant supports using a longer historic period. Exceptions or defenses to forfeiture may also justify extending the time period considered in establishing the historic use prior to the proposed transfer. The highest-year historic consumptive use (i.e. highest-use crop rotation using a climatic average for crop water use estimates), except for supplemental rights, will be the basis for the annual volume of consumptive use available for transfer. When it is necessary to determine the historic consumptive use under a supplemental right, the average annual historic consumptive use, over an appropriately representative time period not less than five years but that may require greater than five years, will be the basis for the volume available for transfer. For supplemental irrigation rights, a representative time period will include years with both good and bad surface water supplies for the area. In some rare instances, the diversion rate, the annual diversion volume, and season of use could also be limited based on the extent of historic use.

For an application for transfer seeking to change the place of use under a supplemental water right for use in conjunction with a different primary right, the historic extent of beneficial use under the right must not be enlarged. For such changes, information regarding the historic availability or reliability of supply of the rights being supplemented (primary rights), both before and after the proposed change, is presumed to provide a reasonable basis to establish historic use under the supplemental right proposed for transfer.

- (6) Period of Use. An application for transfer, which proposes an increased period of use in connection with a changed nature of use for ground water, is presumed not to be an enlargement in use if the rate of diversion, total annual volume diverted, and annual volume of consumptive use are not increased. However, a change to an increased period of use for a surface water right is presumed to be an enlargement and would cause injury where there are junior priority rights that rely on surface water during the time period outside of the historic period of use for the right proposed to be changed.
- (7) Confined Animal Feeding Operations. For the purpose of quantifying the amount of water needed or used in connection with a confined

animal feeding operation, such as a feedlot or dairy, the water use will be considered fully (100 percent) consumptive.

- (8) Fish Propagation. An application for transfer, which proposes to increase the number or volume of raceways in a fish propagation facility, will not be presumed to be an enlargement of the water right, unless the diversion rate or annual volume of water diverted are proposed to be increased.
- (9) Disposal of Waste Water. An application for transfer filed to provide for the disposal of wastewater, by land application on cultivated fields or other beneficial use disposing of the wastewater, resulting from use of water under non-irrigation uses such as a dairy or other confined animal feeding operation, or "municipal" or "industrial" water rights where the use of water is considered to be fully consumptive, is not considered an enlargement of the commercial, municipal, or industrial water right. While not an enlargement of the water right, such use of wastewater must not injure other water rights (see Application Processing Memorandum No. 61 as revised under Section 1 of this memorandum) and must comply with best management practices required by the Idaho Department of Environmental Quality, the U. S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction.
- (10) Enhanced Water Supply. An application for transfer, which proposes to change a point of diversion from a surface water source to a new location where the water available is greater or more reliable, such as moving from the tributary of a stream downstream to the mainstem of the stream, is presumed to enlarge the water right, unless the proposed change is subject to conditions limiting diversion of water at the proposed new point of diversion to times when water is available and in priority at the original point of diversion.
- (11) Water Held for Reasonably Anticipated Future Needs. Section 42-222, *Idaho Code*, provides that when a water right, or part thereof, to be changed is held by a municipal provider for municipal purposes, that portion of the right held for reasonably anticipated future needs can not be changed to a new place of use outside the service area of the municipal provider or to a new nature of use. See Section 42-202B, *Idaho Code* for applicable definitions related to municipal water use.
- (12) Changing the Purpose of Use for a Water Right to Municipal Purposes. An application for transfer, which proposes to convey an established water right to a municipal provider and change the nature of use to municipal purposes, as defined in Section 42-202B, *Idaho Code*, shall not be approved without limiting the volume of water divertible under the right to the historic consumptive use under the water right prior to the

proposed change. If the proposed transfer involves a surface water right, the transfer shall not be approved without also limiting the right to the historic period of use under the right prior to the proposed change.

- (13) Historic Use Recognized for Municipal Purposes. An application for transfer, which proposes to change the nature of use to municipal purposes for a water right established and held by a municipality that lists the purpose(s) of use as some combination of domestic, commercial, industrial, or irrigation, where those uses have historically been essentially for municipal purposes, as defined in Section 42-202B, *Idaho Code*, will not be presumed to be an enlargement of the right and will not require limitation to the historic consumptive use under the right. However, the change will be subject to the annual diversion volume, if specifically stated on the water right license or decree.
- (14) Stored Water. Section 42-222(1), *Idaho Code*, provides that a transfer of a water right for the use of stored water for irrigation purposes does not constitute an enlargement in the use of the original water right, even when more acres are irrigated, provided that no other water rights are injured.
- (15) Conveyance Losses. An application for transfer, which proposes to change the purpose of use for a portion of a water right covering conveyance losses to a use that would provide for irrigating additional acres, or other additional use, is presumed to be an enlargement of the water right.
- (16) Measuring Requirements for Ground Water Diversions in the ESPA and Modeled Tributaries. Any water right transfer authorizing one or more changes to the diversion and use of ground water approved subsequent to the date of this memorandum shall include a condition of approval that requires the installation and maintenance of one or more measuring devices or means of measurement approved by the department. Until and unless changed pursuant to Section 42-701, *Idaho Code*, the following flow meter installation is required for the transferred right prior to diverting and using ground water under the transferred right:
 - a. One or more magnetic flow meters shall be installed, as required by the department, having an accuracy of 0.5 percent of rate of flow for flow velocities between 0.1 and 33 ft/sec in pipe sizes up to 4 inches in diameter and for flow velocities between 0.1 and 20 ft/sec in pipe sizes greater than 4 inches in diameter;
 - b. Each magnetic flow meter must be installed and maintained in accordance with the manufacture's specifications and

equipped with an LCD backlit display unit that displays instantaneous flow rate and total volume of water diverted in accordance with the department's requirements;

- c. Each magnetic flow meter must provide analog output for flow rate, scaled pulse frequency for total volume of water diverted, and an RS232 port for communications.

In any transfer approval, the department may require, prior to diversion under the approved transfer, that each magnetic flow meter must be equipped with a data logger specified by the department and capable of storing 120 days of data including dates and cumulative volume of ground water diverted updated daily, as a minimum. If installation of a data logger is not required at the time of transfer approval, the department will condition the transfer approval that installation of a data logger may be required in the future.

Detailed specifications for the above requirements will be provided by the Water Distribution Section of the department upon request. A municipal provider subject to other measurement provisions that satisfy the department's measuring and reporting requirements are exempt from the above condition. Wells used solely for domestic use as defined under Section 42-111, *Idaho Code* or stockwater use under Section 42-1401A, *Idaho Code* are also exempt from the above condition. Water use for domestic and/or stockwater purposes in addition to any other purpose (e.g. commercial use) in a common system is not exempt from the above condition. Holders of ground water rights seeking approval of a transfer for diversion through existing systems or for irrigation systems may request a variance from the above requirements (at any time before or after approval), which may or may not be granted.

5e. Local Public Interest

For any application for transfer, the department must consider whether the proposed change(s) are in the local public interest as defined in Section 42-202B(3), *Idaho Code*. Consistent with earlier guidance herein regarding use of discretion and sound judgment, department staff is to address pertinent items from the following list, as well as other issues that are pertinent to specific circumstances, in considering whether sufficient information has been provided regarding local public interest issues and effects on the public water resource. When there are one or more significant questions about whether a particular transfer would be in the local public interest, additional information from the applicant or comments from other state or local governmental entities that have germane expertise on local public interest issues must be sought. In most cases, the applicant should gather the information and submit it to the department rather than department staff sending a form letter to other agencies seeking comment, unless the

local agency requests direct contact with the department. Staff should inform the applicant of their responsibility to provide the information to the department.

- (1) Recreation, Fish, and Wildlife Impacts. The effect the proposed transfer could have on the public water resource in relation to recreation, fish, and wildlife resources in the local area that would be affected by the proposed change (Transfer Processing Memoranda Nos. 19 and 21 provide guidance related to state protected river reaches and minimum stream flow reaches);
- (2) Water, and Hazardous Substance Standards. Whether the proposed transfer would comply with applicable water and hazardous substance standards designed to protect the public water resource;
- (3) Local and State Requirements. Whether the proposed transfer would comply with local government and state government, if any, planning and zoning ordinances, regulations, records of decisions, or policies affecting the public water resource (e.g. requirement of a local government to use surface water for irrigation for developments involving land use changes pursuant to Section 67-6537, *Idaho Code* is considered an expression of local public interest);
- (4) Neighboring Jurisdictions. Whether the proposed transfer would comply with existing requirements for land use and other uses of natural resources affecting the public water resource, if any, adjacent to the place of use proposed by the transfer but beyond the jurisdiction of the local government having authority or control over the proposed place of use; and
- (5) State Water Plan. Whether the proposed transfer would be compatible with the objectives and policies of the State Water Plan pertaining to the local public interest.

5f. Beneficial Use and Conservation of Water Resources

For any application for transfer, the department must consider whether the proposed use of water is a beneficial use consistent with the conservation of water resources within the State of Idaho. The following factors must be considered when processing a transfer and may require additional information from the applicant:

- (1) Efficiency of Diversion and Use. Whether the water delivery and distribution/application systems for the use proposed by the transfer would be consistent with contemporary standards for reasonably efficient use of water.
- (2) Diversion Rates for Irrigation Use. Whether the proposed transfer, if involving irrigation, proposes a diversion rate in excess of 0.02 cfs per

acre of land irrigated (see Section 42-220, *Idaho Code*), and if the application for transfer proposes a higher diversion rate, whether the higher rate would be justified based on soils, crop types, irrigation system, climate, and reasonable conveyance losses from the point of diversion to the place of use. A higher diversion rate may also be justified for irrigating lands that because of public access can only be irrigated during certain times of the day (see Application Processing Memorandum No. 60). For the irrigation of five acres or less, justification is not necessary for a diversion rate of up to 0.03 cfs per acre (see Application Processing Memorandum No. 17). If the right proposed for transfer is based on a decree or license authorizing a diversion rate greater than 0.02 cfs per acre, then additional justification is not necessary unless:

- a. The proposed transfer would change the place of use to a new place of use, rather than simply rearranging acreage at the general location of the existing place of use;
 - b. The proposed transfer would change the point of diversion with the intent to abandon the existing conveyance system and replace it with a new conveyance system that would reduce conveyance losses; or
 - c. The proposed transfer would add additional rights to an existing place of use from the same source as the existing water right(s) at the place of use.
- (3) State Water Plan. Whether the proposed transfer would be compatible with the objectives and policies of the State Water Plan pertaining to beneficial use and conservation of water resources.

5g. Effect on Economy of Local Area

In the case where the proposed place of use is outside of the watershed or local area where the source of water originates, the department must consider whether the overall effects of the change proposed by the transfer would adversely impact the economy of the watershed or local area. The economic effect of the proposed transfer should be measured by assessing the following factors resulting from the change in use of water:

- (1) Changes in Employment. Estimated changes in current and projected short-term and long-term employment;
- (2) Changes in Economic Activity. Estimated changes to short-term and long-term changes in economic activity; and
- (3) Stability of Economic Activity.

5h. Effect on Agricultural Base of the Local Area

Section 42-222(1), *Idaho Code*, provides that a change in nature of use from agricultural use shall not be approved if it would significantly affect the agricultural base of the local area. Department staff should presume the phrase "change in nature of use from agricultural use" can only be significant if the application for transfer proposes a change in nature of use for irrigation rights. Other water rights may authorize use in a process that is related to agriculture, such as commercial use for a dairy or an industrial use for a potato processing plant, but these uses are usually small enough compared to irrigation uses that a proposed change in these uses is presumed to not be significant. It is possible that a change in nature of use of a fish propagation water right authorizing diversion of a large flow rate might invoke this provision if fish propagation is interpreted to be an agricultural use.

The boundaries of the "local area" may be determined by considering one or any combination of the following:

- (1) the boundaries of local government or the combined boundaries of local governments that cooperatively share plans for transportation, recreation, environmental quality, and similar water uses;
- (2) the boundaries of any taxing entities or districts created, including school districts, that rely directly upon tax receipts for businesses that might be affected by a reduction in agricultural production;
- (3) areas of common socio-economic values and operations, including those created by a) water delivery entities, b) similar agricultural crops grown, or c) the areas where agricultural processing facilities derive the agricultural products processed, or;
- (4) natural geographic features that separate various areas, particularly hydrologic basin separations.

Whether the change would significantly affect the local agricultural base may be determined by considering one or any of the following factors:

- (1) Financial Impacts on Local Governments. The financial impact the change will have on local governments, combinations of local governments, taxing entities, or districts within the local area that derived income from the agricultural use;
- (2) Financial Impacts on Others. The financial impact the change will have on water delivery entities, the ability of farmers to continue to grow and harvest the crops previously grown, and the ability of processors of agricultural products to obtain the products necessary for business viability;

- (3) Agricultural Job Displacement. The degree to which those working in agriculture will be displaced or will lose income resulting from the proposed change;
- (4) Agrarian Lands. The degree to which agrarian lands are taken out of production; or
- (5) Financial Impact on Overall Economy. The financial impact on the overall agricultural economy of a local area.