

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 83441

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

RECEIVED
JUL 09 2019
Department of Water Resources

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at idwr.idaho.gov.

Name of Applicant(s) Misty Valley LLC

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a [Part 2A](#) report describing each water right in the transfer as currently recorded.
- ☒ ☐ Complete and attach an Application for Transfer [Part 2B](#) for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. ([Fee schedule](#) is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). **
** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☒ ☐ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☒ ☐ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at idwr.idaho.gov/water-rights/transfers/resources.html.
- ☒ ☐ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System ([GIS](#)) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☒ ☐ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see [fee schedule](#).
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. ([Attachment WSB](#))
- ☐ ☐ #10 Other. Please describe: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Misty Valley LLC Phone _____

Mailing address 970 W Broadway, #446, Ste E, PO Box 30000, Jackson, WY 83001 Email _____

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☒ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

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

☐ No Representative

Name of Representative Rocky Mountain Environmental Associates, Inc. Phone 208-524-2353

Mailing address 482 Constitution Way Ste 303, Idaho Falls, ID 83402 Email kristin.rmea@gmail.com

☐ Send all correspondence for this application to the representative and not to the applicant.

OR

☒ Send original correspondence to the applicant and copies to the representative.

☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.

OR

☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

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


Signature of Applicant or Authorized Representative

Gary Schell, V.P. of Ops.
Print Name and Title if applicable

6-25-19
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
☒ Change nature of use

☐ Add diversion point(s)
☒ Change period of use

☒ Change place of use
☐ Other _____
- Is this a transfer for changes pursuant to [Idaho Code § 42-221.O.8?](#)
If yes, ☐ attach an explanation and any supporting documentation labeled as **Part 1A.2**.
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.3**.
Applicant is contracted to purchase 1 acre of water right for the purposes of maintaining two lined ponds totaling 1.4 acres surface area within a subdivision. First time fill will be provided by rental of water from the Rental Pool.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	<u>Right Number</u>	<u>Amount</u> (cfs/ac-ft)	<u>Nature of Use</u>	<u>Period of Use</u>	<u>Source & Tributary</u>
☐ All or Part	35-2568	0.01 cfs	Diversion to Storage	4/01 to 10/31	Ground Water
☒		2.5 afa	Aesthetic Storage	1/01 to 12/31	Ground Water
☐		2.5 afa	Fire Protection Storage	1/01 to 12/31	Ground Water
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	

Total authorized under rights 0.01 cfs and/or 2.5 acre-feet.

2. Total amount of water proposed to be transferred or changed 0.01 cubic feet per second and/or 2.5 acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- ☒ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
Y	4		SE	NW	3	6N	39E	MADISON	GROUND WATER	

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6N	39E	3								J,F				J,F					
										L4									
Total Acres (for irrigation use)																			

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued**

5. General Information:

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

A new well will be installed to deliver water directly to the north pond. Water will be conveyed from the north pond to the south pond through a pipeline for maintenance of the south pond.

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

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

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? If yes, ☒ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: Verbal authorization has been granted by AXA Equitable Life Insurance Company, similar to previous transfers. A letter from the lien holder is still in process.

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

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

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer: The land now irrigated will be retired from irrigation.

- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

Water right 35-7760 shares a permissible place of use at the existing POU/POD, but does not overlap the same acres. At proposed POU, the land is currently irrigated by canal shares in Consolidated Farmers Canal Co Ltd and Fremont Madison Irrigation District. There are no water rights at the proposed POD.

- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe:



WATER RIGHT REPORT

5/23/2019

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 35-2568

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JENNIFER COOK
Current Owner	TODD COOK 796 N 1800 W BLACKFOOT, ID 83221 2083514910
Original Owner	PATRICK O DONNELL 1012 DEEPWOOD PL WILMINGTON, NC 28405 9102562850
Security Interest	AXA EQUITABLE LIFE INSURANCE CO C/O AXA EQUITABLE AGRIFINANCE LLC 6300 C STREET SW CEDAR RAPIDS, IA 52499-0001 3193558063

Priority Date: 03/20/1959

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	10/31	5.01 CFS	1950 AFA
Total Diversion			5.01 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NENENW	Sec. 24	Township 01S	Range 32E	BINGHAM County
GROUND WATER	SWSE	Sec. 24	Township 01S	Range 32E	BINGHAM County

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IRRIGATION Use:

Acre Limit: 486.6

Place(s) of use:

Place of Use Legal Description: IRRIGATION BINGHAM County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	32E	24		NENE	30.5		NWNE	36.3		SWNE	36		SENE	30.4
				NENW	40		NWNW	40		SWNW	40		SENW	39.3
				NESW	40		NWSW	40		SWSW	40		SESW	40
				NESE	30.3		NWSE	36.9		SWSE	39.4		SESE	37.5

Total Acres: 596.6

Conditions of Approval:

1. X27 This right is limited to the irrigation of 486.6 acres within the authorized place of use in a single irrigation season.
2. X35 Rights 35-2568 and 35-7769 when combined shall not exceed a total annual maximum diversion volume of 2390 af at the field headgate and the irrigation of 596.6 acres.
3. 186 Diversion of water from the additional well authorized under Transfer 81535 located in the SWSE, Sec. 24, T01S, R32E shall not exceed a total combined maximum diversion rate of 3.00 cfs.
4. R05 Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
5. 212 Prior to diversion and use of water under Transfer approval 81535, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.
6. 213 Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
7. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
8. T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Dates:

Licensed Date:

Decreed Date: 04/30/2002

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Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

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: 120

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 4

Combined Acres Limit: 619

Combined Volume Limit: 2476

Combined Rate Limit: 7.47

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

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT (this "Agreement") is made and entered to be effective as of the 24th day of April, 2019 (the "Effective Date"), by and between **Todd Cook and Jennifer Cook**, husband and wife, whose address is 796 N. 1800 W., Blackfoot, Idaho 83221 (hereinafter "Seller"), and **Misty Valley, LLC**, an Idaho limited liability company, whose address is 970 W Broadway, #446, Ste E, PO Box 30000, Jackson, WY 83001 (hereinafter "Buyer"). Buyer and Seller are individually a "Party" and together the "Parties".

RECITALS:

- A. Seller owns Water Right No. 35-2568 (the "Water Right"), which was decreed on April 30, 2002 in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of Idaho for irrigation purposes with a priority date of March 20, 1959. The current description of the Water Right is more fully set forth in the report obtained from the Idaho Department of Water Resources ("IDWR" or the "Department") attached hereto as **Exhibit 1**.
- B. Seller desires to sell, and Buyer desires to buy, a 1.0-acre portion of the Water Right. Buyer has agreed to purchase the 1.0-acre portion of the Water Right from Seller as set forth in the terms and provisions of this Agreement.

AGREEMENT:

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, the following-described portion of the Water Right.

Source:	Ground water
Purpose:	Irrigation
Priority:	March 20, 1959
Quantity (Diversion Rate):	0.01 cfs of the total authorized 5.04 cfs
Quantity (Volume):	4.0 acre-feet per annum
Place of Use (Acreage):	1.0 acres of the 489.1 authorized acres identified on Exhibit 2 .

The above-described portion of the Water Right is referred to hereafter as the "Purchased Water Right."

2. Property Retained. Other than the Purchased Water Right, Seller reserves and retains unto Seller all remaining portions of the Water Right and any other water rights that may be appurtenant to the authorized place of use for the Water Right. No land, easements, or other property interests, other than the Purchased Water Right, are included in this Agreement.
3. Purchase Price. The purchase price for the Purchased Water Right is [REDACTED] (the "Purchase Price").
4. Earnest Money Deposit. Contemporaneous with the execution of this Agreement, Buyer shall deliver to Seller earnest money in the amount of 10% of the Purchase Price, which is [REDACTED] (the "Earnest Money"). The Earnest Money shall be applied towards the Purchase Price at closing, or otherwise disposed of as provided herein.
5. Transfer Application. Within 30 days after both Parties sign this Agreement, Buyer will file with IDWR an *Application for Transfer of Water Right* (the "Transfer") to amend and move the Purchased Water Right to Buyer's desired location. The Parties will cooperate in obtaining IDWR approval of the Transfer and will provide and execute any necessary documents requested by IDWR. Buyer will be responsible for the costs to file the Transfer, including all attorney fees, consultant fees, and filing fees associated with preparation of the Transfer. In the event this Agreement is terminated pursuant to paragraph 6 of this Agreement, Buyer shall at its sole expense take such action as may be required to void or reverse the Transfer in order to return the Purchased Water Right to the condition it existed on the Effective Date, upon completion of which the Earnest Money will be returned by Buyer within 14 days of such completion.
6. Transfer Contingencies.
 - (a) Unstacking of Water Rights. While the elements of the Water Right and an associated water right, Water Right No. 35-7769, are sufficiently described to allow IDWR to "unstack" these water rights, this Agreement shall be null and void and of no further effect if IDWR does not unstack the Purchased Water Right from Water Right No. 35-7769.
 - (b) Lien Release. If, after exercising commercially reasonable efforts, Seller is unable to obtain a lien release on the Water Right, this Agreement shall be null and void and of no further effect, and Buyer shall return the Earnest Money to Buyer.
 - (c) No Protests. If no protests or other objections to the Transfer are filed with IDWR, but the Transfer is (i) denied, (ii) approved by IDWR for less than 1.0 acre, or (iii) approved by IDWR with conditions that materially devalue the Purchased Water Right for Buyer's intended use thereof; then Buyer may terminate this Agreement within 14 days after the date of the IDWR approval

notice by providing written notice of termination to Seller. Within 14 days of receipt of the notice of termination, Seller shall refund the Earnest Money to Buyer. If Buyer does not terminate this Agreement as provided herein, the Parties shall proceed to Closing as set forth in paragraph 7.

- (d) Protest Filed. If a protest or other objection to the Transfer is filed with IDWR, then Buyer may terminate this Agreement within 180 days after the protest is filed with IDWR. If Buyer does elect to terminate this Agreement, Seller shall refund the Earnest Money to Buyer within 14 days of receipt of the notice of termination.

7. Closing.

- (a) Closing Date. If (1) the Water Right is unstacked from Water Right No. 35-7769; and (2) no protest to the Transfer is filed with IDWR and (3) IDWR issues a transfer approval consistent with paragraph 6(b), then Closing on the Purchased Water Right shall occur within 30 days after the date all the above items are satisfied. If a protest or other objection to the Transfer is filed with IDWR and Buyer does not exercise the contingency set forth in paragraph 6(b) of this Agreement, the Closing shall occur with 14 days after the 180-day termination period expires. Notwithstanding the above, the Parties may mutually agree to another date for the Closing.
- (b) Closing Location. The Closing shall occur at the offices of Holden, Kidwell, Hahn & Crapo, P.L.L.C., or at another location mutually agreed by the Parties.
- (c) Documents to be Delivered at Closing.
 - (1) At Closing, Buyer shall deliver the Purchase Price less the Earnest Money.
 - (2) At Closing, Seller shall deliver to Buyer the Special Warranty Deed (the "Deed") substantially in the form attached to this Agreement as **Exhibit 3** for the Purchased Water Right, and any lien release or other documents reasonably requested to confirm the conveyance of the Purchased Water Right free and clear of encumbrances.
- (d) Fees and Costs of Closing. The cost of recording the Deed after Closing shall be paid by Buyer. All other expenses not specifically referenced in this Agreement but related to the Transfer and incurred by Seller or Buyer with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.

- 8. Default. In addition to either Party's failure to perform any material term or condition of this Agreement or a Party's breach of any of such Party's representations or warranties (in which event the non-defaulting party may pursue any available remedy, including equitable relief), Buyer shall be deemed in default hereof if Buyer files a petition in bankruptcy or is adjudicated bankrupt or insolvent, Buyer makes an assignment for the

benefit of its creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization, in which case, in addition to any other remedies or rights Seller might have, Seller shall have the power and authority to notify the Department that the Application for Transfer has been withdrawn.

9. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the Effective Date and again as of the Closing as follows:
 - (a) Authority. Seller has the full legal right, power and authority to enter into and perform this Agreement, and will obtain good marketable title to the Purchased Water Right in fee simple, and Seller (at its expense) shall remove, or shall exercise commercially reasonable efforts to cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased Water Right on or before Closing. If, after exercising commercially reasonable efforts, the liens, claims, or encumbrances are not removed by Closing, Seller may terminate this Agreement.
 - (b) Conveyance. Seller shall then convey the Purchased Water Right free and clear of all liens, encumbrances and restrictions, except such restrictions on the use of water as may appear on the Water Right Report contained at **Exhibit 1**.
 - (c) Appurtenance. The Purchased Water Right is appurtenant to and has been beneficially used as the water source to irrigate its place of use and/or been properly preserved for future use consistent with Idaho law.
 - (d) Not Forfeited. No portion of the Purchased Water Right has not been forfeited or abandoned in whole or in part.
 - (e) No Representation or Warranty Concerning Suitability for Buyer's Intended Use. Seller has not made, and hereby makes, no representation or warranty to Buyer except as expressly contained in this Agreement.
10. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and again as of the Closing for the Purchased Water Right, as follows:
 - (a) Authority. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder.
 - (b) Buyer's Due Diligence. Buyer and Buyer's consultants and counsel have had a full opportunity to review all documents, records and other information made available to Buyer by Seller and/or otherwise reasonably available to Buyer through public or other sources, related to the nature and extent of the Purchased Water Right, the laws and rules affecting their transfer and use by Buyer, and the suitability or fitness of the Purchased Water Right for Buyer's intended purposes.
11. Warranties to Survive Closing. All representations and warranties made by the Parties herein are also covenants, and each Party shall take all such actions as may be required to

satisfy said covenants and to cause the representations and warranties to be true on and as of the Closing. The Parties' respective obligations to close and consummate the transaction contemplated herein are contingent upon the representations, warranties and covenants contained in this Agreement being true, valid and satisfied on and as of the Closing. All such representations and warranties shall survive the Closing.

12. Miscellaneous.

- (a) Attorneys' Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages because of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.
- (b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

<u>Seller</u> Todd and Jennifer Cook 796 N. 1800 W. Blackfoot, Idaho 83221	<u>Buyer</u> Misty Valley LLC 970 W Broadway, #446 Ste E PO Box 30000 Jackson, WY 83001
<u>Seller's Representative</u> Robert L. Harris Holden, Kidwell, Hahn & Crapo, P.L.L.C. P.O. Box 50130 Idaho Falls, ID 83405	<u>Buyer's Representative</u>

- (c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Purchased Water Right. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.
- (d) Broker.
- (1) Buyer shall and does hereby indemnify Seller against, and agrees to hold Seller harmless from, any claim, demand or suit for any brokerage commission, finder's fee or similar charge with respect to the execution of this Agreement or the transaction based on any act by or agreement or contract with Buyer, and for all losses, obligations, costs, expenses and fees (including attorneys' fees)

incurred by Seller on account of or arising from any such claim, demand or suit.

- (2) Seller shall and does hereby indemnify Buyer against, and agrees to hold Buyer harmless from, any claim, demand or suit for any brokerage commission, finder's fee or similar charge with respect to the execution of this Agreement or this transaction based on any act by or agreement or contract with Seller, and for all losses, obligations, costs, expenses and fees (including attorneys' fees) incurred by Buyer on account of or arising from any such claim, demand or suit.
- (e) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.
- (f) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.
- (g) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.
- (h) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.
- (i) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- (j) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.
- (k) Essence of Time. Time is of the essence in this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SELLER"



Todd Cook


Jennifer Cook

"BUYER"

MISTY VALLEY LLC


By: THOMAS GARLOCK
Its: Managing member

Exhibit 1 The "Water Right"

3/19/2019

Water Right Report

IDAHO Department of Water Resources



WATER RIGHT REPORT

3/19/2019

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 35-2568

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JENNIFER COOK
Current Owner	TODD COOK 796 N 1800 W BLACKFOOT, ID 83221 2083514910
Original Owner	PATRICK O DONNELL 1012 DEEPWOOD PL WILMINGTON, NC 28405 9102562850
Security Interest	AXA EQUITABLE LIFE INSURANCE CO C/O AXA EQUITABLE AGRIFINANCE LLC 6300 C STREET SW CEDAR RAPIDS, IA 52499-0001 3193558063

Priority Date: 03/20/1959

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	10/31	5.04 CFS	1960 AFA
Total Diversion			5.04 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NENENW	Sec. 24	Township 01S	Range 32E	BINGHAM County
GROUND WATER	SWSE	Sec. 24	Township 01S	Range 32E	BINGHAM County

3/19/2019

Water Right Report

IRRIGATION Use:

Acre Limit: 489.1

Place(s) of use:

Place of Use Legal Description: IRRIGATION BINGHAM County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	32E	24		NENE	30.5		NWNE	36.3		SWNE	36		SENE	30.4
				NENW	40		NWNW	40		SWNW	40		SENW	39.3
				NESW	40		NWSW	40		SWSW	40		SESW	40
				NESE	30.3		NWSE	36.9		SWSE	39.4		SESE	40

Total Acres: 599.1

Conditions of Approval:

1. X27 This right is limited to the irrigation of 489.1 acres within the authorized place of use in a single irrigation season.
2. X35 Rights 35-2568 and 35-7769 when combined shall not exceed a total annual maximum diversion volume of 2,400 af at the field headgate and the irrigation of 599.1 acres.
3. 186 Diversion of water from the additional well authorized under Transfer 81535 located in the SWSE, Sec. 24, T01S, R32E shall not exceed a total combined maximum diversion rate of 3.00 cfs.
4. R05 Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
5. 212 Prior to diversion and use of water under Transfer approval 81535, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.
6. 213 Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
7. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
8. T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Dates:

Licensed Date:

Decreed Date: 04/30/2002

<https://dwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=2568&SplitSuffix=%20%20&TypeWaterRight=True>

2/3

3/19/2019

Water Right Report

Permit Proof Due Date:
Permit Proof Made Date:
Permit Approved Date:
Permit Moratorium Expiration Date:
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: 120
Generic Max Rate per Acre: 0.02
Generic Max Volume per Acre: 4
Combined Acres Limit: 619
Combined Volume Limit: 2476
Combined Rate Limit: 7.47
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

<https://idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=2568&SplitSuffix=%20%20&TypeWaterRight=True>

3/3

Exhibit 2
Map of 1.0 Acres—the “Purchased Water Right”

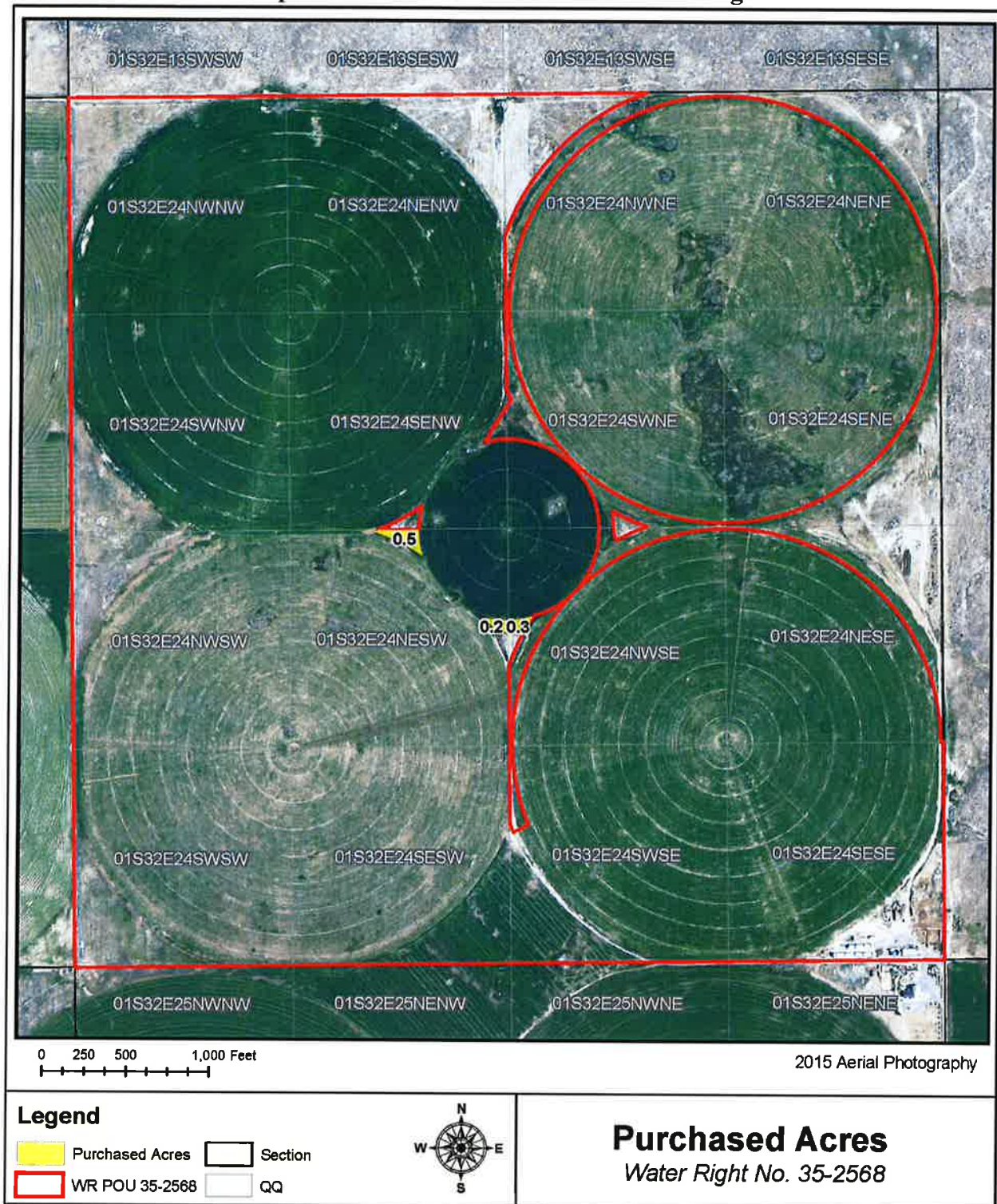


**Exhibit 3
Form of the Deed**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Robert L. Harris
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
PO Box 50130
Idaho Falls, ID 83405

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHTS

Todd Cook and Jennifer Cook, husband and wife, whose address is 796 N. 1800 W., Blackfoot, Idaho 83221 (hereinafter collectively "Grantor") does hereby grant, bargain, sell, assign, and convey unto **Misty Valley, LLC**, an Idaho limited liability company, whose address is 970 W Broadway, #446, Ste E, PO Box 30000, Jackson, WY 83001 (hereinafter "Grantee") and to Grantee's heirs and assigns forever, all of Grantor's right, title, and interest in water right described on Exhibit A attached hereto (hereinafter the "Water Right").

Grantor hereby covenants and warrants to Grantee as follows:

- (A) Grantor is the owner of the Water Right;
- (B) Grantor has not conveyed any of the Water Right to anyone other than Grantee;
- (C) The Water Right is free from all liens, claims, or encumbrances; and
- (D) Grantor has the authority to convey the Water Right to Grantee.

Grantor makes no other covenants or warranties as to the Water Right.

IN WITNESS WHEREOF, the undersigned authorized officer of Grantor, acting on behalf of Grantor, has caused his name to be hereunto subscribed.

DATED this _____ day of _____, 20_____.

"GRANTOR"

Todd Cook

Jennifer Cook

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2019, by **TODD COOK**.

Notary Public for Idaho
My Commission Expires: _____

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2019, by **JENNIFER COOK**.

Notary Public for Idaho
My Commission Expires: _____

EXHIBIT A
WATER RIGHT DESCRIPTION
(TO BE COMPLETED AFTER APPROVED TRANSFER)

Eastern Snake Plain Aquifer Modeling Analysis

Misty Valley LLC

The Applicant proposes to transfer 1.0 acre of water right 35-2568 to a new well located in Lot 4, SENW, Section 3, T6N R39E. The Enhanced Water Rights Transfer Spreadsheet 3.3 was used to simulate the depletions of transferring 4 AFA (1.3 AF/trimester) from the original point of diversion of 35-2568 to the proposed point of diversion.

The wells included in this modeling analysis are illustrated in Figure 1 and identified to be located in the following grid cells:

TO Well	R54 C182
FROM Well 1	R68 C127

The TO Well is a proposed well location for the applicant. The FROM Well 1 location is one of two points of diversion for water right 35-2568. The well farthest from the proposed transferred acres was used for this analysis.

Model results show that effects do not exceed the threshold of 2.0 af/trimester in any reach of the Snake River. No mitigation is required. Figures 2-4 include excerpts from the ESPAM simulation.

Figure 1. ESPAM Model Grids

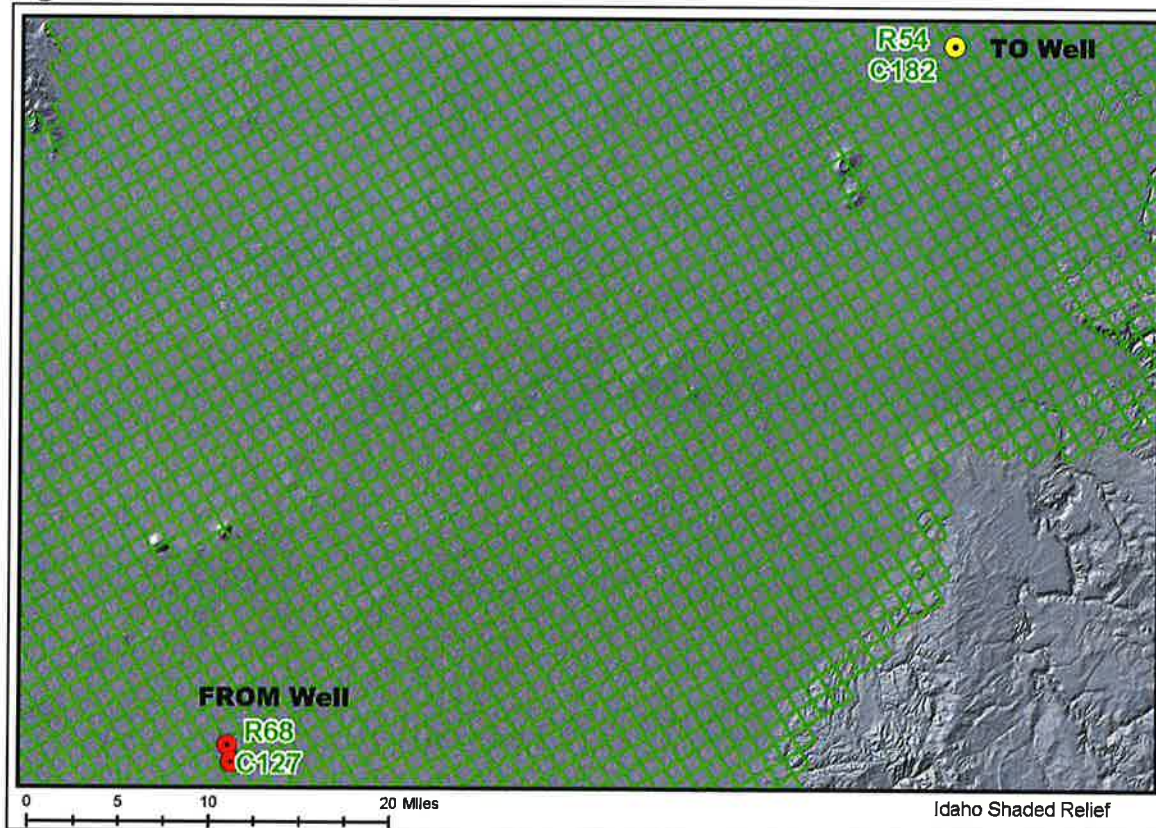


Figure 2. Data Entry

ENHANCED GROUND-WATER RIGHTS TRANSFER
UNIVERSITY OF IDAHO - IDAHO WATER RESOURCES RESEARCH INSTITUTE IDAHO DEPARTMENT OF AGRICULTURE

Cells this color are set up for user entries

UPDATE DATES

RUN MODEL

GET OUTPUT

ENTER STARTING DATE FOR SIMULATION. THEN PUSH "UPDATE DATES" BUTTON

TRANSFER NO: 35-2568

YEAR: 1959

SEASON: SPRING

TRANSFER NAME: Misty Valley

CALCULATE EFFECTS

ENTER CELL LOCATIONS:

	'TO' CELL	'FROM1' CELL	'FROM2' CELL	'FROM3' CELL
ROW	54	68	27	45
COLUMN	182	127	157	30

TRIMESTER OF ACTIVITY	TO WELL Projected Use AF/TRIMESTER	FROM1 WELL		FROM2 WELL		FROM3 WELL	
		With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER
SPR 1959	0	1	1	0	0	0	0
SUM 1959	0	1	1	0	0	0	0
WIN 1959	0	1	1	0	0	0	0
SPR 1960	0	1	1	0	0	0	0
SUM 1960	0	1	1	0	0	0	0
WIN 1960	0	1	1	0	0	0	0
SPR 1961	0	1	1	0	0	0	0
SPR 2018	0	1	1	0	0	0	0
SUM 2018	0	1	1	0	0	0	0
WIN 2018	0	1	1	0	0	0	0
SPR 2019	1	0	1	0	0	0	0
SUM 2019	1	0	1	0	0	0	0
WIN 2019	1	0	1	0	0	0	0
SPR 2020	1	0	1	0	0	0	0
SUM 2020	1	0	1	0	0	0	0
WIN 2020	1	0	1	0	0	0	0
SPR 2021	1	0	1	0	0	0	0
SUM 2021	1	0	1	0	0	0	0
WIN 2021	1	0	1	0	0	0	0
SPR 2022	1	0	1	0	0	0	0
SUM 2022	1	0	1	0	0	0	0
WIN 2022	1	0	1	0	0	0	0
SPR 2023	1	0	1	0	0	0	0
SPR 2106	1	0	1	0	0	0	0
SUM 2106	1	0	1	0	0	0	0
WIN 2106	1	0	1	0	0	0	0
SPR 2107	1	0	1	0	0	0	0
SUM 2107	1	0	1	0	0	0	0
WIN 2107	1	0	1	0	0	0	0
SPR 2108	1	0	1	0	0	0	0
SUM 2108	1	0	1	0	0	0	0
WIN 2108	1	0	1	0	0	0	0

Figure 3. Net Transfer Graphs

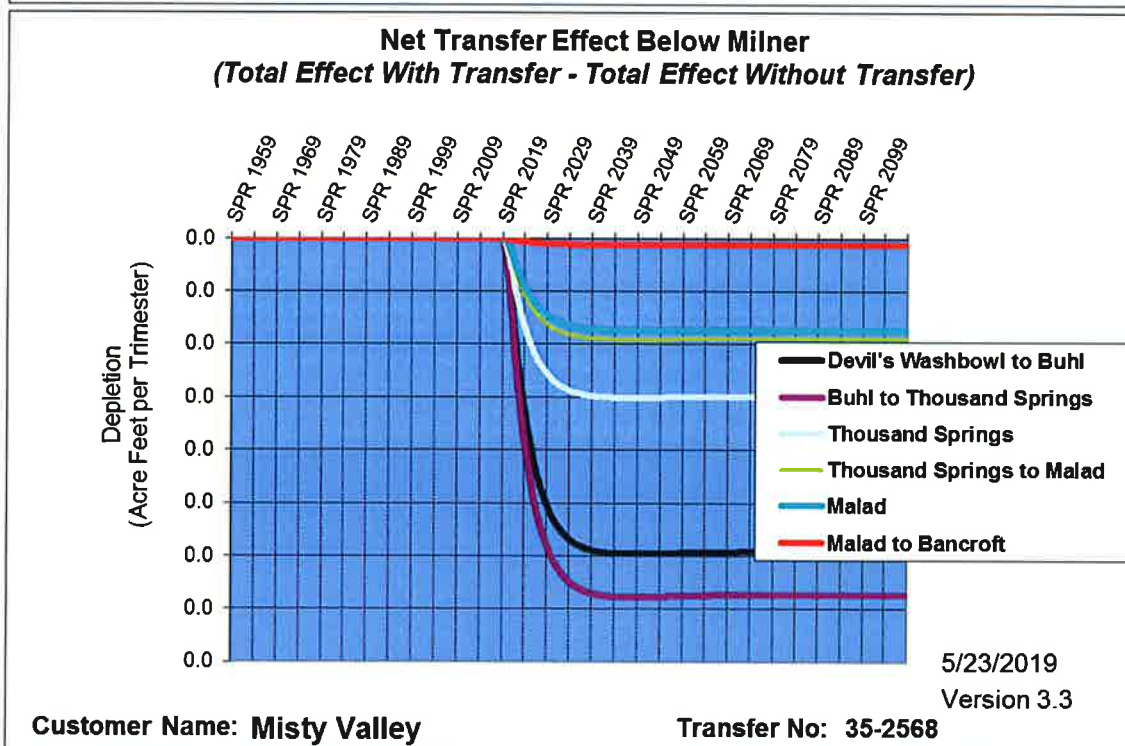
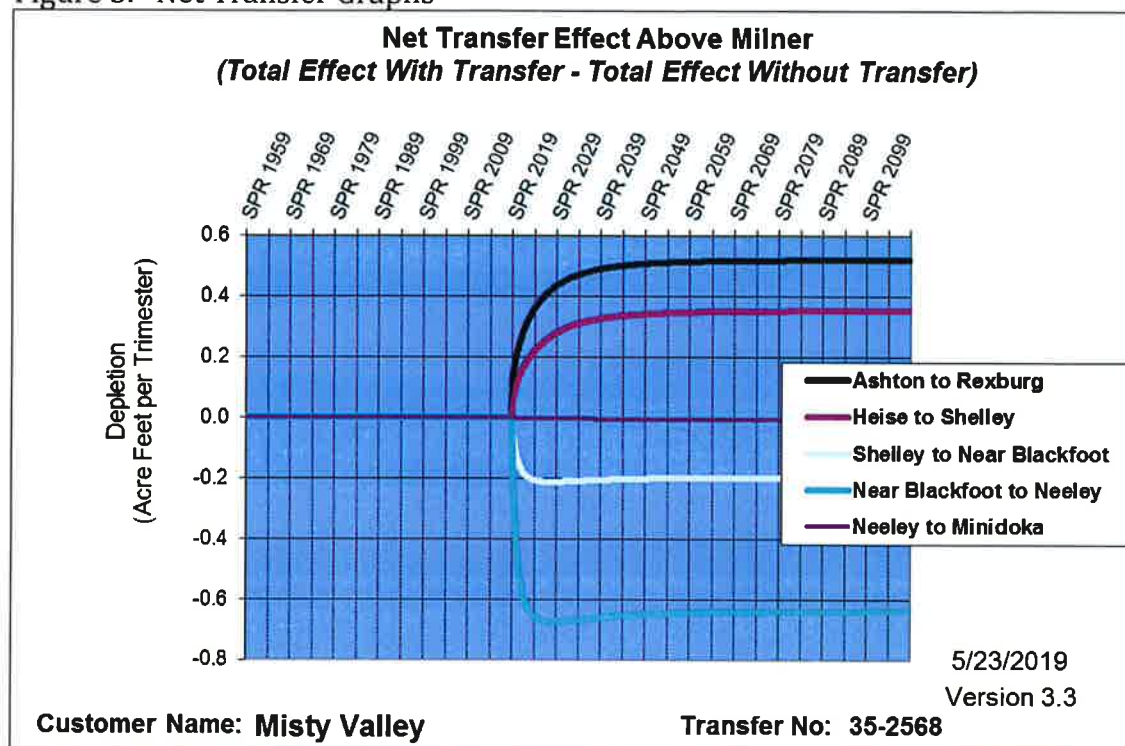
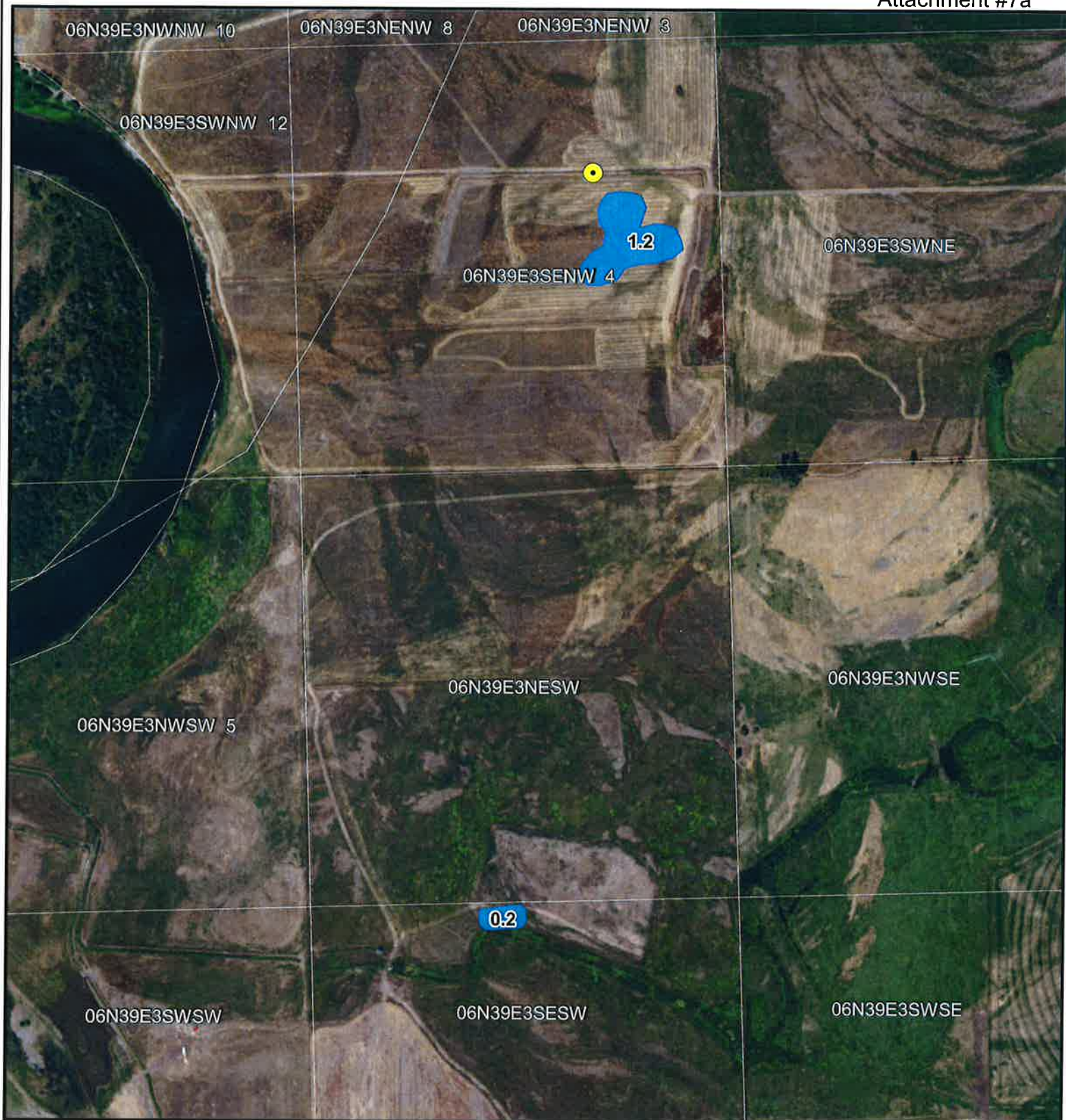


Figure 4. Calculated Effects.

	Net Transfer Effect (AF/four months)										
	Ashton to Rexburg	Heise to Shelley	Shelley to Nr. Bickft	Nr. Bickft Neeley	Neeley to Minidoka	Dev. Wbl. Buhl	Buhl to Kspr	Kspr Kspr	Kspr to Malad	Malad Malad	Malad to Bancroft
SPR 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1961	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2018	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2018	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2018	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2019	0.1	0.1	-0.1	-0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2019	0.2	0.1	-0.1	-0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2019	0.2	0.1	-0.1	-0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2020	0.2	0.1	-0.1	-0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2020	0.2	0.1	-0.2	-0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2020	0.3	0.1	-0.2	-0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2021	0.3	0.2	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2021	0.3	0.2	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2021	0.3	0.2	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2022	0.3	0.2	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2022	0.3	0.2	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2022	0.3	0.2	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2023	0.3	0.2	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2023	0.3	0.2	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2023	0.4	0.2	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2024	0.4	0.2	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2024	0.4	0.2	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2024	0.4	0.2	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2025	0.4	0.2	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2025	0.4	0.2	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2025	0.4	0.2	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2026	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2026	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2026	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2027	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2027	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2027	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2028	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2028	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2028	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2029	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2029	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2029	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2030	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2030	0.4	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2030	0.5	0.3	-0.2	-0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0

er First Time Step of Transfer: SPR 1959													
Match:	1	Match:	456										
	AIR	HIS	SINB	NBIN	NIM	DWIB	BITS	TS	TSM	M	MIB	Total	
Effects @ SS (Last Time Step):	0.03	0.09	0.28	0.84	0.00	0.02	0.02	0.01	0.01	0.00	0.00	1.30	Total Effect
Value of Dep. @ Last Time Step:	0.55	0.44	0.08	0.21	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.29	Total Effect
ent State (Max Value Timestep):	0.03	0.09	0.28	0.84	0.00	0.02	0.02	0.01	0.01	0.00	0.00	1.30	Total Effect
Max. Value of Dep. After Transfer:	0.55	0.44	0.27	0.84	0.00	0.02	0.02	0.01	0.00	0.00	0.00	2.17	Total Effect
Steady State Change:	0.52	0.35	-0.20	-0.64	0.00	-0.01	-0.01	-0.01	0.00	0.00	0.00		
Transient State Change:	0.52	0.35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		

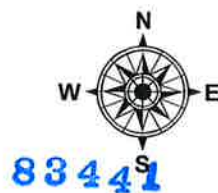


0 0.05 0.1 0.2 Miles

2017 Aerial Photography

Legend

-  Proposed POD
-  Ponds
-  Twp & Rng
-  Section
-  QQ



Proposed Water Right

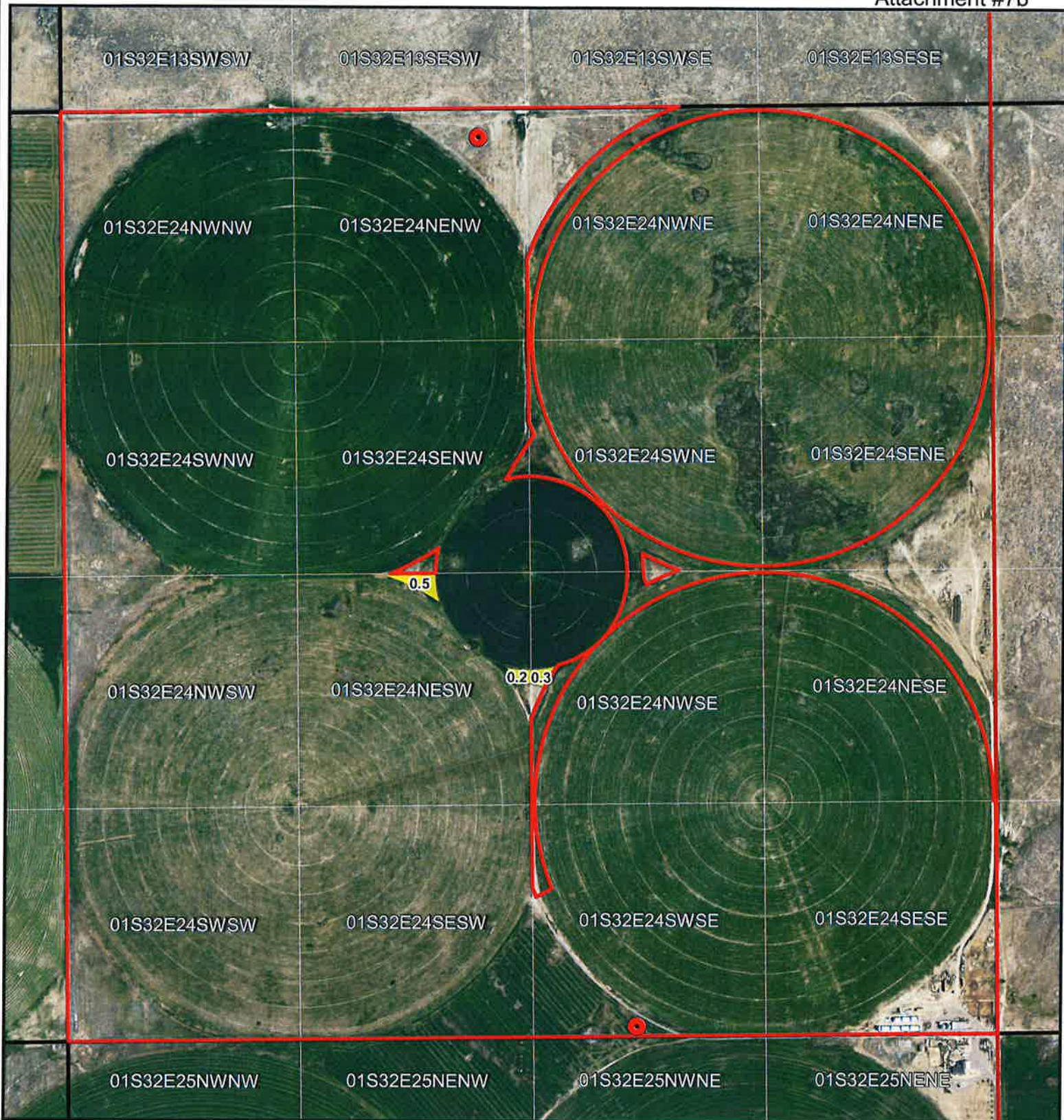
Misty Valley LLC

RMEA #18-0058

by: KM

Date: 5/23/2019

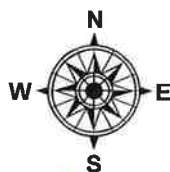




2015 Aerial Photography

Legend

- WR POD 35-2568
- WR POU 35-2568
- Purchased Acres
- Twp & Rng
- Section
- QQ



83441

Pre-Transfer Water Right

Misty Valley LLC

RMEA #18-0058

by: KM

Date: 5/23/2019



Conversion of Nature of Use

Misty Valley LLC

Applicant proposes to convert a portion of existing water right 35-2568 from irrigation to be used for maintenance of two lined ponds. Historically, 35-2568 has been used to irrigate alfalfa-less frequent cuttings. Using ET Idaho 2017, and based upon information gathered at the Blackfoot station (NWS USC00100915), alfalfa-less frequent cuttings has a precipitation deficit of 842 mm/year, or 2.76 af/year, for the growing season.

Mitigation of the evaporative losses are estimated to require 2.5 af/year, as determined using IDWR's Pond Loss Calculation spreadsheet. The evaporation values are based upon data collected at the Rexburg station (PN-AM – RXGI). An excerpt of the spreadsheet is shown below in Figure 1.

To provide the mitigation for the evaporative losses will require the transfer of 0.9 acres of water right as determined in the calculation below.

$$2.5 \text{ afa} / 2.76 \text{ afa/ac} = 0.9 \text{ ac}$$

Applicant has contracted to purchase 1.0 acre of water right to ensure adequate water rights for pond maintenance.

Figure 1. Excerpt of Pond Loss Calculation Spreadsheet

Station: Rexburg (PN-AM -- RXGI)			
Month	mm/day ¹	Days per month	mm/Month
Jan	-0.49	31	0.00
Feb	0.05	28	1.40
March	0.77	31	23.87
April	1.72	30	51.60
May	2.02	31	62.62
June	2.62	30	78.60
July	3.63	31	112.53
August	3.59	31	111.29
September	2.30	30	69.00
October	0.75	31	23.25
November	0.09	30	2.70
December	-0.41	31	0.00
Total mm/year =			536.86
[(mm/yr) ÷ (convert to feet)] X (Surface area of pond, in acres) = Evaporation Loss in Acre Feet			
(536.86	÷	304.8	) X 1.44 = 2.5 AFA

should not be used for calculations because precipitation often exceeds evaporation during wetter months of the year. If the pond is kept full, excess precipitation during wetter months does not serve to refill the pond during drier months.

For example, see Sandpoint KSPT (NWS -- 108137), the annual precipitation deficit is -106 mm. However, April through September have positive precipitation deficit values. To properly estimate the annual volume of water necessary to refill a pond due to evaporation losses, the table will automatically enter a zero (0) for each month that the precipitation value is reported as a negative value.

As described above, precipitation offsets evaporation in winter months, so the net effect is that wintertime precipitation deficit is usually zero.