

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 83234**

This is to certify that: JODY M WISNER AND
MARK WISNER
4500 CHALLIS CREEK RD
CHALLIS, ID 83226-4942

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
72-16976	WR/DECREED	5/1/1879	0.010 cfs	N/A	N/A	0.4	CHALLIS CREEK

Purpose of Transfer (Changes Proposed)

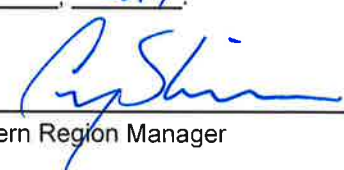
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
72-16976	NO	YES	YES	NO	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
72-16976	72-16976	0.010 cfs	N/A	N/A	0.4	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.010 cfs	N/A	N/A	0.4		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 19th day of June, 2019.


Southern Region Manager

WATER RIGHT NO. 72-16976
As Modified by Transfer No. 83234

In accordance with the approval of Transfer No. 83234, Water Right No. 72-16976 is now described as follows:

Right Holder: MARK WISNER AND
 JODY M WISNER
 4500 CHALLIS CREEK RD
 CHALLIS, ID 83226-4942

Priority Date: 5/1/1879

Source: CHALLIS CREEK

Tributary: SALMON RIVER

BENEFICIAL USE
 IRRIGATION

From 04/01 **To** 10/31

Diversion Rate
 0.010 cfs
 0.010 cfs

LOCATION OF POINT(S) OF DIVERSION

CHALLIS CREEK L10 (SWNWNW) Sec 7 Twp 14N Rge 19E CUSTER County
 CHALLIS CREEK NESW Sec 8 Twp 14N Rge 19E CUSTER County (R)

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14N	19E	8									0.4								0.4

POU Total Acres: 0.4

CONDITIONS OF APPROVAL

1. 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. 72A.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
3. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
4. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 83234

WATER RIGHT NO. 72-16976
As Modified by Transfer No. 83234

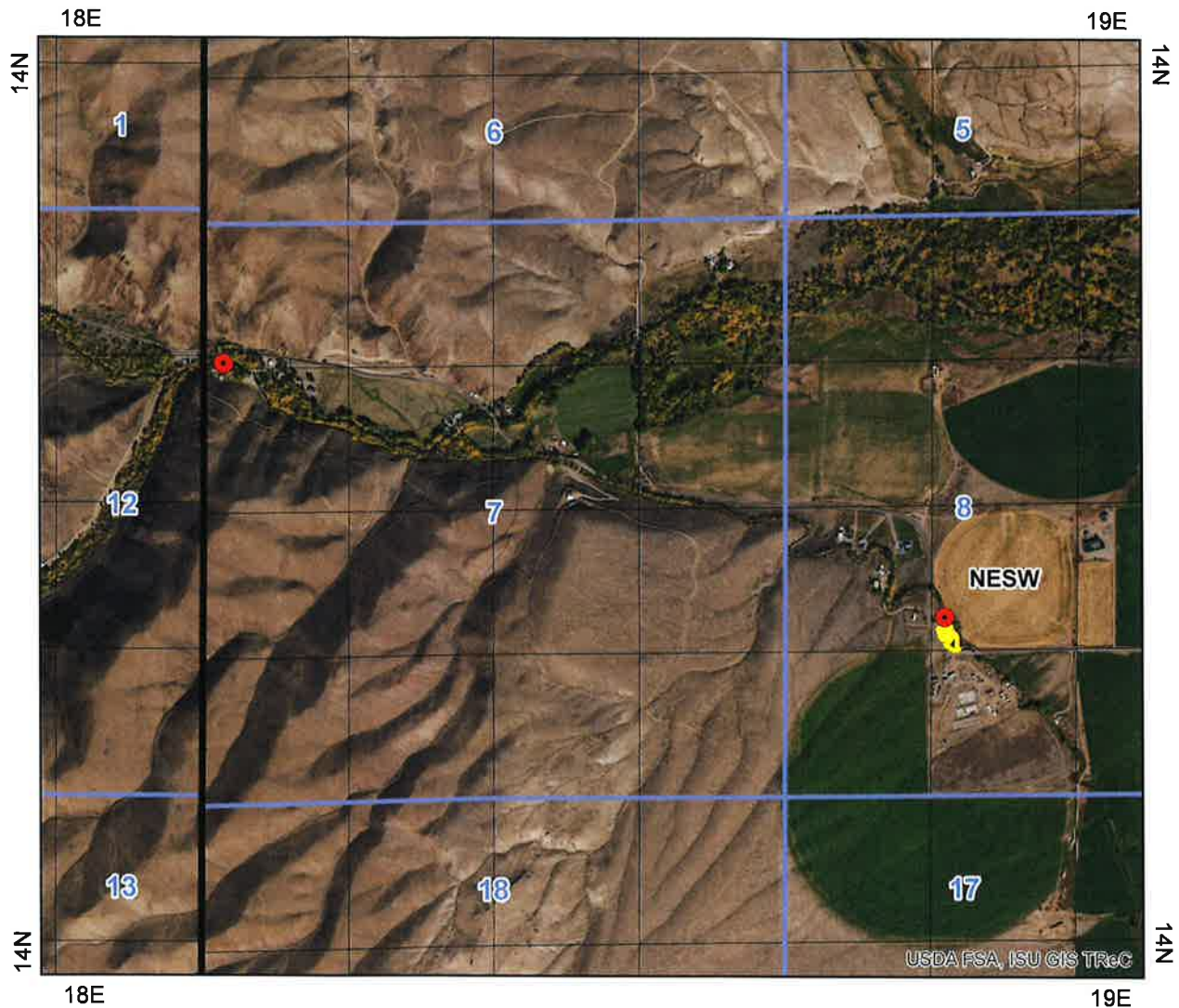
CONDITIONS OF APPROVAL

6. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.



State of Idaho
Department of Water Resources
Attachment to Transfer # 83234
72-16976

This map depicts the IRRIGATION place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



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

0 0.175 0.35 0.7 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

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

BRAD LITTLE
Governor

GARY SPACKMAN
Director

June 21, 2019

MARK WISNER
JODY M WISNER
4500 CHALLIS CREEK RD
CHALLIS ID 83226-4942

Re: Transfer No: 83234
Water Right No(s): 72-16976

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

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

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 736-3033.

Sincerely,

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

Corey Skinner
Southern Regional Manager

Enclosure

c:

WATER DISTRICT 72A
DAVID PHILPS
PO BOX 910
CHALLIS ID 83226-0910

WATER DISTRICT 170
CINDY YENTER
102 S WARPATH
SALMON ID 83467

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2019 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

Re: Transfer No.: 83234
Water Right No(s): 72-16976

MARK WISNER
JODY M WISNER
4500 CHALLIS CREEK RD
CHALLIS ID 83226-4942

WATER DISTRICT 72A
DAVID PHILPS
PO BOX 910
CHALLIS ID 83226-0910

WATER DISTRICT 170
CINDY YENTER
102 S WARPATH
SALMON ID 83467

A handwritten signature in blue ink, reading "Denise Maline", is written over a horizontal line.

Denise Maline
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

Date: June 17, 2019
To: Transfer 83234
From: Allison Inouye
Re: Evaluation of Sufficiency of Information Submitted

Application for transfer proposes to change the point of rediversion (POR) and place of use (POU) for Challis Creek water right 72-16976 which allows for the diversion of 0.01 cfs delivered through the Highline Canal for irrigation of 0.4 acre. This application follows a recently processed ownership change split. The proposed POR moves the location where the water is rediverted out of the Highline Canal approximately 300 feet upstream. The proposed place of use is approximately 1.1 miles west and 0.5 mile south of the current place of use. The proposed POR and POU are located approximately 3.5 miles north and 0.8 miles west of the center of Challis. The POR and POU are located within Water Districts 72A and 170 and watermaster comments were solicited.

- **Authority to File**

The application is filed in the names of Mark & Jody M Wisner, the current owners of the water right being transferred per IDWR records.

- **Water Right Validity**

Water right 72-16976 was recently split from right 72-10066, which was decreed through the SRBA in 2000. The new owners of right 72-16976 have filed this transfer application to move the portion of the right that they acquired to their property, and the application indicates that an equivalent area will no longer be irrigated at the old place of use if the transfer is approved. The application identified the area that is to be dried up. I spoke with the watermaster of Water District 72A by phone and he indicated that he has been delivering and assessing water right 72-10066 in full. The watermaster of Water District 170 noted that aerial photography may not clearly demonstrate irrigation of the acres proposed to be transferred during the past 5 years. I asked the applicants if they could provide any evidence of irrigation at the current place of use; Mr. Wisner indicated that it is a flood irrigated pasture and provided photos of the pasture showing land that is clearly watered adjacent to obviously un-irrigated land. Considering the conversation with the Water District 72A watermaster and the explanation and photographs provided by the applicants, I do not believe that forfeiture of this right is an issue.

- **Injury to Other Water Rights**

None anticipated. The transfer does propose to move the point of re-diversion out of a shared ditch; however, the amount in the transfer (0.01 cfs) is a small fraction of the total amount diverted into the shared ditch (10.61 cfs).

- **Enlargement of Use**

None anticipated. The transfer identified an equivalent number of acres that will be dried up at the current place of use. The right will be subject to Water District 72A measurement requirements.

- **Local Public Interest**

No issues anticipated. Application was subject to public notice. No protests were received. Comments were solicited from the Highline Canal Company, but no response was received. Comments were solicited from Water District 72A and 170. No written response was received from water district 72A. I spoke with the Watermaster by phone and he indicated that he did not have concerns with the proposed transfer and that the water right would require a measuring device.

- **Beneficial Use/Conservation of Water Resources**
Proposed uses are recognized as beneficial uses of water.
- **Effect on the Economy of the Local Area**
None anticipated.
- **Effect on the Agricultural Base of the Local Area**
None anticipated.

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

Inouye, Allison

From: ovis@custertel.net
Sent: Sunday, June 16, 2019 5:01 PM
To: Inouye, Allison
Cc: ovis@custertel.net
Subject: RE: Transfer
Attachments: IMG_0820.JPG; IMG_0822.JPG; IMG_0824.JPG; IMG_0826.JPG; IMG_0827.JPG; IMG_0828.JPG

> Hey Allison. I went down to the property that has our water right and took some pictures. The majority of the area is under flood irrigation. The northern tip of this water right is green with water coming from a couple of small flows. The last picture is going down from Stevens lane and shows the southern portion without water right as dry. Let me know if you need any other info or assistance. Thanks for the effort you give, Mark.

Attachment to 6/16/19 email from Mark Wisner



TRANSFER 83234

Attachment to 6/16/19 email from Mark Wisner



TRANSFER 83234

Attachment to 6/16/19 email from Mark Wisner



TRANSFER 83234

MEMORANDUM

Date: June 14, 2019
To: Transfer 83234
From: Allison Inouye
Re: Telephone Conversation with Watermaster of Water District 72A

On this day, I spoke with David Philps, the watermaster of Water District 72A. Mr. Philps indicated that the parent water right, 72-10066, from which the right in this transfer was recently split, has been delivered and assessed in recent years. We discussed the proposed transfer and Mr. Philps indicated that he did not oppose approval of the transfer, but did note that the water right will be subject to measurement requirements.

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, James M. Smirch, representing the Challis Messenger, a weekly newspaper, published ad Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated May 16th 2019 and ending with the issue dated May 23rd 2019

James M. Smirch

STATE OF IDAHO

COUNTY OF CUSTER

On this 23rd day of May in the year of 2019, before me, a Notary Public, personally appeared James Smirch, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that (s)he executed the same.

Veronica M. Weisbeck
Notary Public of Idaho
Residing at Challis, Idaho
My commission expires 1/9/21



RECEIVED

MAY 30 2019

DEPT OF WATER RESOURCES
SOUTHERN REGION

NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
TRANSFER NO. 83234

MARK WISNER and JODY M WISNER, 4500 CHALLIS CREEK RD, CHALLIS, ID 83226-4942; has filed Application No. 83234 for changes to the following water rights within CUSTER County(s): Right No(s). 72-16976; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change a portion of the above rights as follows: Application for transfer proposes to change the point of diversion (POR) and place of use (POU) for a Challis Creek water right that allows for the diversion of 0.01 cfs delivered through the Highline Canal for irrigation of 0.4 acre. The proposed POR out of the Highline Canal

is approximately 300 feet upstream of the current POR. The proposed POU is approximately 1.1 miles west and 0.5 mile south of the current POU. The proposed POR and POU are located approximately 3.5 miles north and 0.8 mile west of the center of Challis.

For additional information concerning the property location, contact Southern Region office at (208) 736-3033. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Southern Region, 650 ADDISON AVE W STE 500, TWIN FALLS ID 83301-5858 together with a protest fee of \$25.00 for each application on or before June 3, 2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published: May 16 and 23, 2019

(149391)

✓ dm 6/3/2019

Maline, Denise

From: Yenter, Cindy
Sent: Wednesday, May 29, 2019 2:24 PM
To: Maline, Denise
Cc: Inouye, Allison
Subject: Watermaster comment - Transfer 83234 Wisner

Aerial imagery does not conclusively show beneficial use under the transferred water right in the past 5 years. This land is near the creek and is separated from the obviously irrigated pasture by a dry spot. Vegetation visible in some years could be the result of shallow subwater from Challis creek, and not active irrigation.

If applicant or the seller of the water right can provide evidence of recent irrigation on the specific 0.4 acres, then I have no objection to the transfer. Otherwise, different acreage must be identified by Mr. Bachman, or the transfer may not be approvable

WD Flag = 72A. Measurement conditions apply since the right is diverted and re-diverted in a common conveyance. There is an existing measuring device at the head of the Highline Canal.

*Cindy Yenter
Watermaster, Water District 170
IDWR Salmon Field Office
102 S Warpath, Salmon ID 83467
cindy.yenter@idwr.idaho.gov
208-742-0655
208-731-0901 cell*

From: Maline, Denise
Sent: Friday, May 10, 2019 11:16 AM
To: Yenter, Cindy <Cindy.Yenter@idwr.idaho.gov>
Subject: Comment Letter - Transfer 83234

Good morning,

Attached is an application for transfer currently being processed within your Water District. Please review the information and provide any necessary comments within 21 days. Comments have also been solicited from Water District 72A.

This application is being published on May 16th & 23rd, 2019. Protest deadline will be Monday June 3, 2019.

Feel free to contact our office if you have any questions regarding this application.

Thank you in advance,

Denise

Allison, could you please replace these pages in my original transfer application with these amended pages. I have signed and dated each and agree to all changes made. Thanks for the help, Mark.

hlw 5-8-19

RECEIVED
MAY 13 2019
DEPT OF WATER RESOURCES
SOUTHERN REGION

Enclosed: Amended pages 3 & 5 (originals)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

RECEIVED
MAY 13 2019
DEPT OF WATER RESOURCES
SOUTHERN REGION

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

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☒ ☐	72-16976	.01	irrigation	04/01 to 10/31	Challis Creek-Salmon River
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights .01 cfs and/or acre-feet.

2. Total amount of water proposed to be transferred or changed .01 cubic feet per second and/or acre-feet per year.

3. Point(s) of Diversion:

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

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
	10				7	14N	19E	Custer	Challis creek	Challis Highline
yes		SW	NE	SW	8	14N	19E	Custer	Challis Creek	Challis Highline

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	
14N	19E	~~8~~ 8					~~0.4~~				0.4								.4
Total Acres (for irrigation use)																			.4

I agree to all changes made. alw - 5-8-19

