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Department of Water Resources
Eastern Region

MINIMUM REQUIREMENTS CHECKLIST

TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

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

Name of Applicant(s) Shovelback Holdings 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 www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.
- ☒ ☐ #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: Memorandum of Understanding

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Shovelback Holdings LLC Phone 208-351-6236
Mailing address 1493 W 5000 N, Rexburg, ID, 83440 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]
Signature of Applicant or Authorized Representative

TREVER E INERSON
Print Name and Title if applicable

1-7-19
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use

☐ Change nature of use ☐ Change period of use ☐ Other _____
- 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.2**.
Applicant proposes to transfer 3.5 acres of a total 6.0 contracted acres for purchase to Redrock RV & Campground for the irrigation of lawn and open space. Ownership will be changed upon approval of the transfer.

Narrative of Application for Transfer*Shovelback Holdings LLC*

Water Right Nos. 35-2568 and 35-7769 are appurtenant to property owned by Todd and Jennifer Cook. They share a combined place of use but are not stacked. This transfer proposes to move a portion of water right 35-2568 independent of 35-7769. Other transfers may be pending from water right 35-2568 which could affect the total acres represented under the water right in this transfer.

The transferred water right will be paired with another portion of water right 35-2568 that was transferred under Transfer No. 82525, which is still pending. This first transfer was protested by Fremont Madison Irrigation District. The modeling described in Attachment #5 indicates that affects to the Henry's Fork from new pumping at the proposed well location are *de minimus*. However, to address the concerns of the protestants, applicant has entered into a Memorandum of Understanding, in which Fremont Madison Irrigation District and North Fork Reservoir Company help to provide mitigation for potential impacts to the Henrys Fork for Transfer No. 82525 and the proposed transfer. It is requested that this agreement, Instrument No. 573428 recorded in Fremont County, be referenced in the Conditions of Approval upon approval of this transfer. A copy of the agreement has been included as Attachment #10.

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	0.03	Irrigation	5/01 to 10/31	Ground water
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.03 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.03 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 #
			SW	SW	20	15N	43E	FREMONT	GROUND WATER	
			SW	SW	20	15N	43E	FREMONT	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	
15N	43E	20											3.5						3.5
Total Acres (for irrigation use)																			3.5

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:

Two wells will be connected to the water supply system and can be metered.

- 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: AXA Equitable Agrifinance, LLC holds a mortgage on the property. See Attachment #6.

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 proposed to be transferred is under end guns of a large pivot. The end guns will be removed and those acres 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:

Two commercial rights 21-13235 and 21-7360 at proposed POD/POU. Pending transfer of another portion of 35-2568 will provide additional irrigation for the property. Water right 35-7769 shares a permissible place of use at the existing POU, but does not overlap the same acres.

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

Yes No

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

If yes, describe:

IDAHO Department of Water Resources



WATER RIGHT REPORT

1/4/2019

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 4333 EDGEWOOD RD NE CEDAR RAPIDS, IA 52499-5223 3193558650

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

IRRIGATION Use:

Acre Limit: 489.1

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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

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

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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

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83237

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 26 day of May, 2018 (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 **Shovelback Holdings LLC**, an Idaho limited liability company, whose address is 1493 W. 5000 N., Rexburg, Idaho 83440 (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 6-acre portion of the Water Right. Buyer has agreed to purchase the 6-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):	0.06 cfs of the total authorized 5.25 cfs
Quantity (Volume):	24 acre-feet per annum
Place of Use (Acreage):	6 acres of the 509 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 6 acres, 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>	<u>Buyer</u>
Todd and Jennifer Cook 796 N. 1800 W. Blackfoot, Idaho 83221	Shovelback Holdings LLC 1493 W. 5000 N. Rexburg, Idaho 83440
<u>Seller's Representative</u>	<u>Buyer's Representative</u>
Robert L. Harris Holden, Kidwell, Hahn & Crapo, P.L.L.C. P.O. Box 50130 Idaho Falls, ID 83405	

- (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.

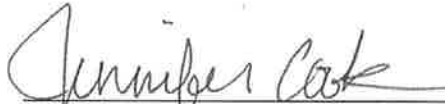
[SIGNATURES ON NEXT PAGE]

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

"SELLER"



Todd Cook



Jennifer Cook

"BUYER"

SHOVELBACK HOLDINGS LLC



By: TREVOR EMERSON
Its: OWNER

Exhibit 1 The "Water Right"

4/23/2018

Water Right Report

Close

IDAHO DEPARTMENT OF WATER RESOURCES Water Right Report

4/23/2018

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 4333 EDGEWOOD RD NE CEDAR RAPIDS, IA 52499-5223 3193558650

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	5.25 CFS	2036 AFA
Total Diversion			5.25 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

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

4/23/2018

Water Right Report

IRRIGATION Use:
Acre Limit: 509

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	33		NWNE	40		SWNE	40		SENE	33
				NENW	40		NWNW	40		SWNW	40		SENW	40
				NESW	40		NWSW	40		SWSW	40		SESW	40
				NESE	33		NWSE	40		SWSE	40		SESE	40

Total Acres: 619

Conditions of Approval:

1. X27 This right is limited to the irrigation of 509 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 2,476 af at the field headgate and the irrigation of 619 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

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

4/23/2018

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

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=2588&SplitSuffix=%20%20&TypeWaterRight=True>

Exhibit 2
Map of 6 Acres—the “Purchased Water Right”

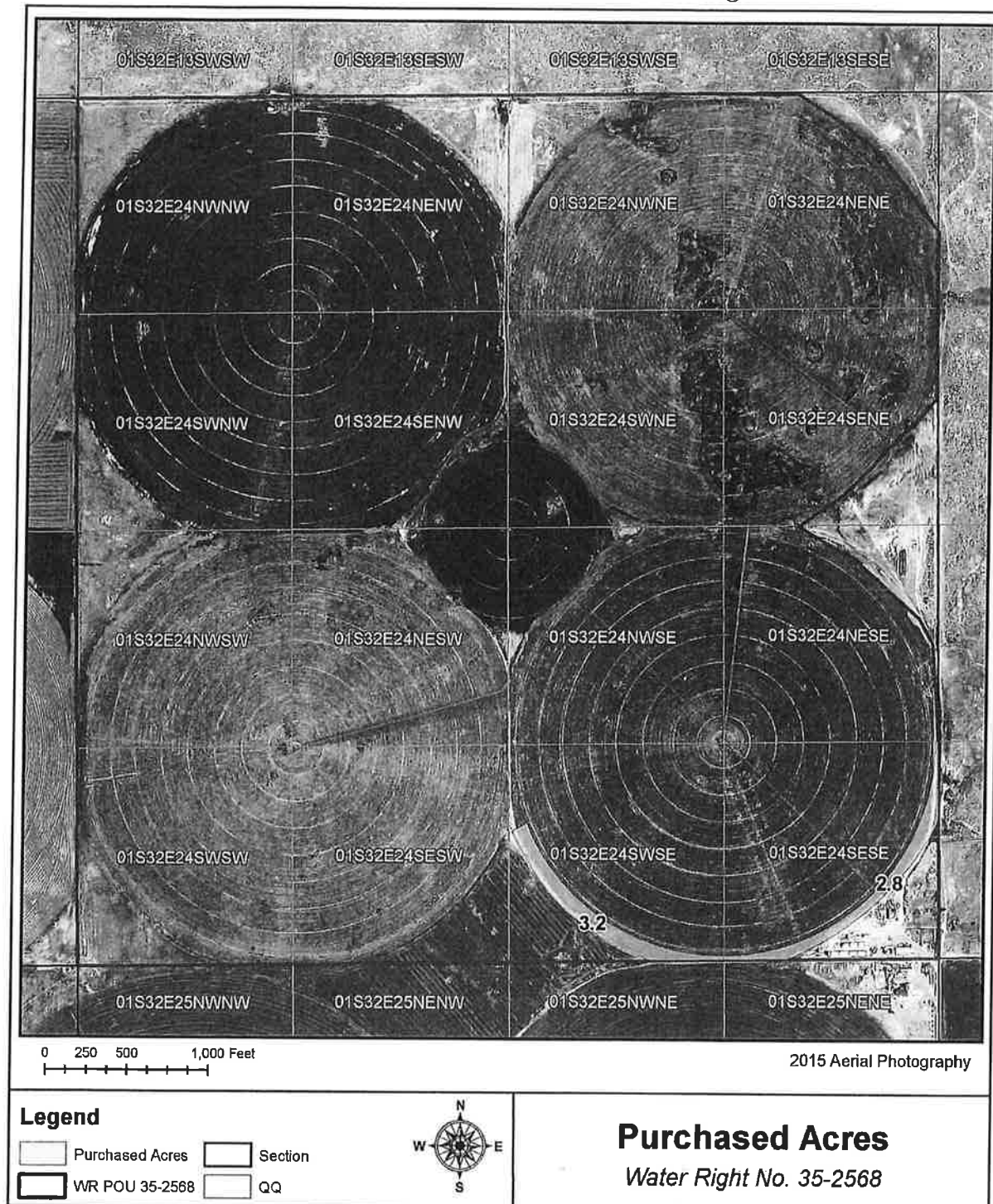


Exhibit 3
Form of the Deed

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 **Shovelback Holdings LLC**, an Idaho limited liability company, whose address is 1493 W. 5000 N., Rexburg, Idaho 83440 (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 _____,
2018, 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 _____,
2018, by **JENNIFER COOK**.

Notary Public for Idaho
My Commission Expires: _____

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

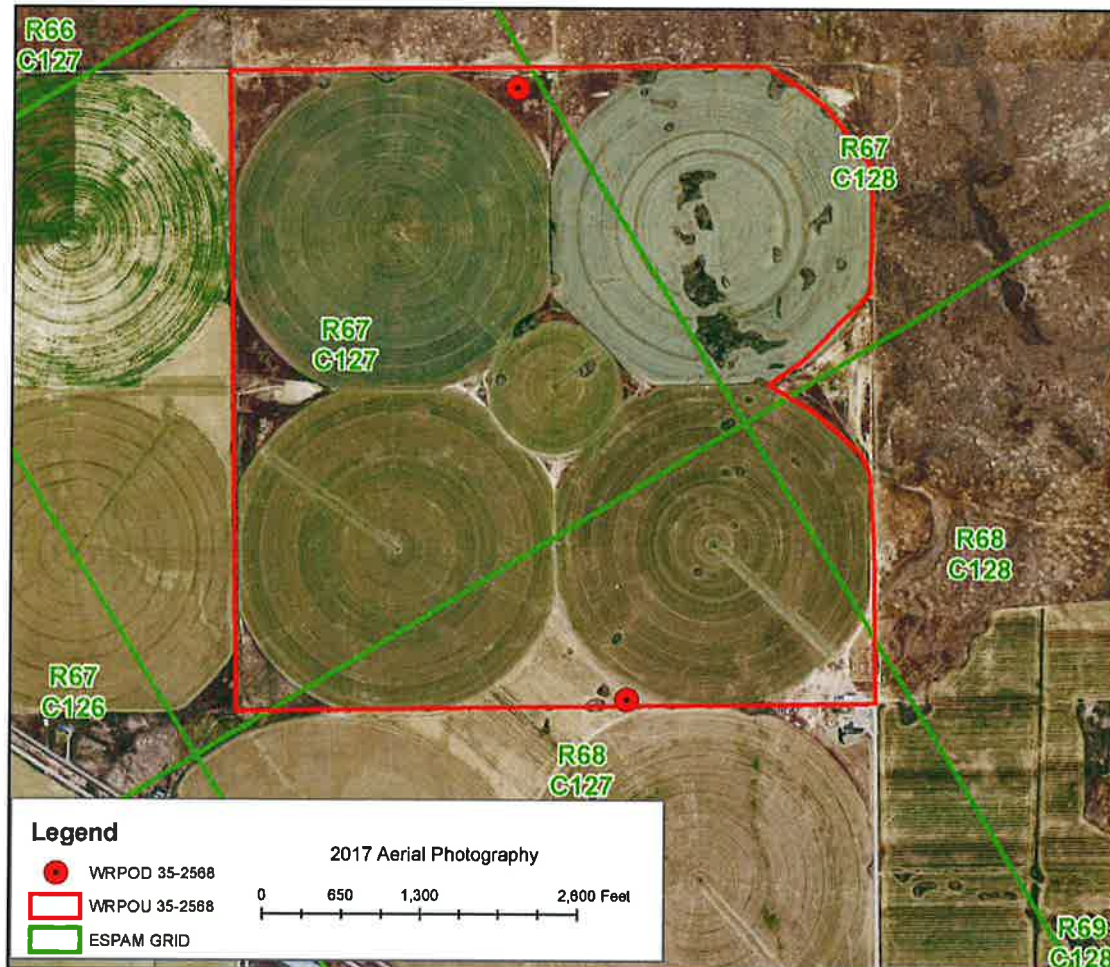
Hydrologic Analysis

Shovelback Holdings LLC

Applicant proposes to transfer 3.5 acres to an existing well in SWSW Section 20, T15N R43E. The TO Well location includes two wells within the campground that serve the current water system. They are treated as one point of diversion in this analysis. The property is located south of Henry's Lake, about 50 miles up Henry's Fork north of the model boundary near Ashton.

The FROM Well location is the farthest one of two wells pertaining to water right 35-2568. The well in R68 C127 was chosen to represent the greatest possible distance the water will be transferred from the FROM well to the TO well. See Figure A below.

Figure A. Existing well locations with ESPAM Grid cells



Analysis of Effects at TO Well Location

Due to the distance of the TO Well from the ESPA Model boundary, it was necessary to use an alternative method to evaluate the depletionary effects at the TO Well. Patrick Naylor, P.E. performed

an analysis of the well reach effects of the proposed ground water pumping. For methods, variables, well interference, and detailed results, see the attached copy of the analysis in Appendix A. The results of this analysis show that the anticipated depletions to the Henry's Fork from the proposed pumping are calculated to be 0.5 AFA, or 0.167 AF/trimester on average.

This analysis also includes a well interference analysis with a calculated maximum drawdown at the nearest well of 0.025 feet at the end of pumping in the first year. A negligible amount will be residual beginning the following irrigation season.

Analysis of Effects at FROM Well Location

To evaluate the beneficial effects of the cessation of pumping at the FROM Well, the ESPA Transfer Analysis Spreadsheet 3.2 was used. Excerpts of the model run are included as Figures B-D. The existing place of use of the 3.5 acres proposed to be transferred is allotted 4 AFA/acre for the field headgate requirement and 3 AFA/acre as a consumptive irrigation requirement. The TO Well analysis was performed based on consumptive use values. Therefore, the modeling simulation for the FROM Well location is also based upon consumptive use values. Input values for the FROM Well were determined as follows:

$$3.5 \text{ ac} \times 3.0 \text{ AFA/ac} / 3 \text{ trimesters} = 3.5 \text{ AF/trimester}$$

By retiring the proposed 3.5 acres at the FROM Well, a benefit is created in the reaches of the Snake River, including a benefit in the Henry's Fork. In the Ashton to Rexburg reach, transient effects begin at 0.0 AF/trimester and progress gradually to 0.08 AF/trimester benefit at steady state.

Net Effects of Proposed Transfer

Using both of the analyses described above, the net effects can be calculated by subtracting the benefits accrued from the impacts of the proposed pumping. Since 100% of the proposed pumping will accrue to the Henry's Fork, only net effects to the Henry's Fork are calculated. All net effects to other reaches of the Snake River are benefits. Table 1 below shows that net effects range from 0.15 AF/trimester to 0.087 AF/trimester, a *de minimus* amount that does not exceed the Idaho Department of Water Resources mitigation threshold.

Table 1. Net Effects to Henry's Fork

State	TO Well (AF/tri)	FROM Well (AF/tri)	Net Effects (AF/tri)
Transient	0.15	0.000	0.15
Steady	0.167	0.08	0.087

Figure B. Excerpt of Data Entry Page.

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

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

TRANSFER NO: 35-2568

YEAR: 1959

SEASON: SPRING

TRANSFER NAME: FROM Well

UPDATE DATES RUN MODEL GET OUTPUT

CALCULATE EFFECTS

ENTER CELL LOCATIONS:

	'TO' CELL	'FROM1' CELL	'FROM2' CELL	'FROM3' CELL
ROW	75	68	75	45
COLUMN	105	127	105	30

TRIMESTER OF ACTIVITY	TO WELL	FROM1 WELL		FROM2 WELL		FROM3 WELL	
	Projected Use AF/TRIMESTER	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	4	4	0	0	0	0
SUM 1959	0	4	4	0	0	0	0
WIN 1959	0	4	4	0	0	0	0
SPR 1960	0	4	4	0	0	0	0
SPR 2017	0	4	4	0	0	0	0
SUM 2017	0	4	4	0	0	0	0
WIN 2017	0	4	4	0	0	0	0
SPR 2018	0	4	4	0	0	0	0
SUM 2018	0	4	4	0	0	0	0
WIN 2018	0	4	4	0	0	0	0
SPR 2019	0	0	4	0	0	0	0
SUM 2019	0	0	4	0	0	0	0
WIN 2019	0	0	4	0	0	0	0
SPR 2020	0	0	4	0	0	0	0
SUM 2020	0	0	4	0	0	0	0
WIN 2020	0	0	4	0	0	0	0
SPR 2021	0	0	4	0	0	0	0
SUM 2021	0	0	4	0	0	0	0
WIN 2021	0	0	4	0	0	0	0
SPR 2022	0	0	4	0	0	0	0
SUM 2022	0	0	4	0	0	0	0
SPR 2106	0	0	4	0	0	0	0
SUM 2106	0	0	4	0	0	0	0
WIN 2106	0	0	4	0	0	0	0
SPR 2107	0	0	4	0	0	0	0
SUM 2107	0	0	4	0	0	0	0
WIN 2107	0	0	4	0	0	0	0
SPR 2108	0	0	4	0	0	0	0
SUM 2108	0	0	4	0	0	0	0
WIN 2108	0	0	4	0	0	0	0

Figure C. Net Transfer Graphs

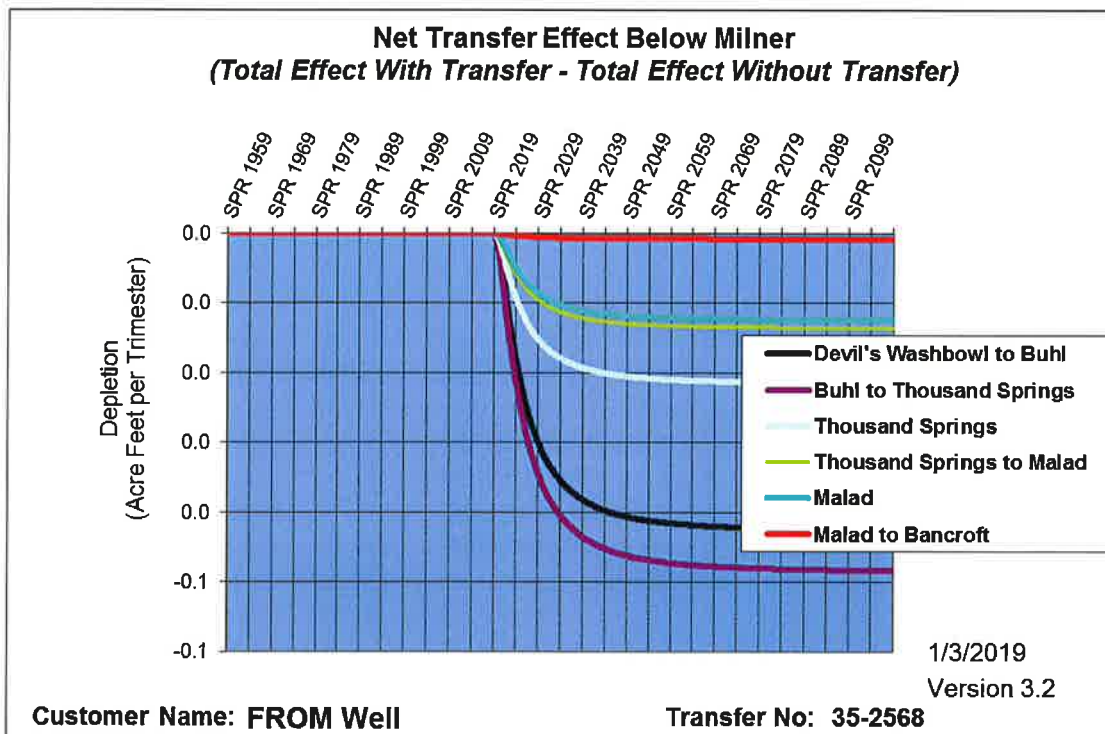
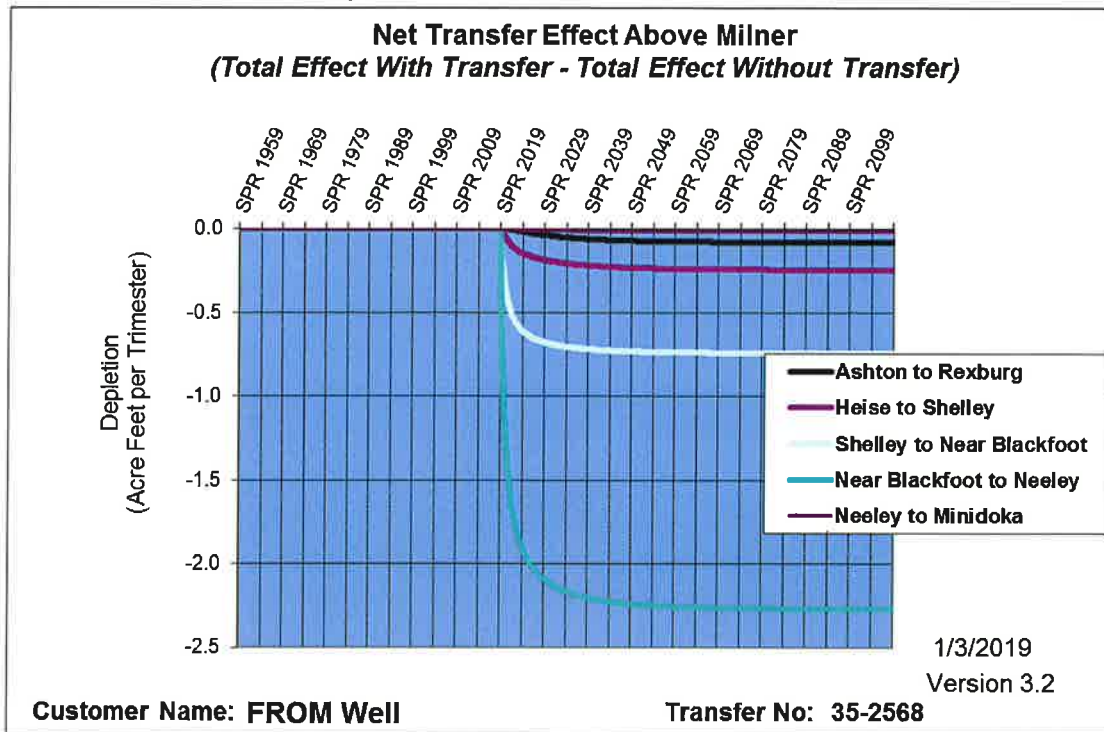


Figure D. Excerpt of Calculated Effects.

	Net Transfer Effect (AF/four months)								R80 C122	Verified	4/17/2018
	Ashton to	Heise to	Shelley to	Nr Bckft	Neeley to	Dev. Wbl.	Buhl to	Kspr	Kspr to	Malad	Malad to
	Rexburg	Shelley	Nr Bckft	Neeley	Minidoka	Buhl	Kspr		Malad		Bancroft
SPR 1959	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1959	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1959	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1960	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1960	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1960	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1961	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1961	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1961	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1962	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2018	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2018	0.000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2019	0.000	0.0	-0.2	-0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2019	0.000	0.0	-0.3	-0.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2019	-0.001	0.0	-0.3	-1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2020	-0.002	-0.1	-0.4	-1.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2020	-0.002	-0.1	-0.4	-1.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2020	-0.004	-0.1	-0.5	-1.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2021	-0.005	-0.1	-0.5	-1.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2021	-0.006	-0.1	-0.5	-1.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2021	-0.007	-0.1	-0.5	-1.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2022	-0.009	-0.1	-0.6	-1.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2022	-0.010	-0.1	-0.6	-1.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2022	-0.012	-0.1	-0.6	-1.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2023	-0.014	-0.1	-0.6	-1.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2023	-0.015	-0.1	-0.6	-1.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2023	-0.017	-0.1	-0.6	-1.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2024	-0.018	-0.1	-0.6	-1.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2024	-0.020	-0.2	-0.6	-1.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2024	-0.021	-0.2	-0.6	-2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2025	-0.023	-0.2	-0.6	-2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2025	-0.024	-0.2	-0.6	-2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2025	-0.026	-0.2	-0.6	-2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2026	-0.027	-0.2	-0.6	-2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2026	-0.028	-0.2	-0.7	-2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2026	-0.030	-0.2	-0.7	-2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2027	-0.031	-0.2	-0.7	-2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2107	-0.080	-0.2	-0.7	-2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2107	-0.080	-0.2	-0.7	-2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2107	-0.080	-0.2	-0.7	-2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 2108	-0.080	-0.2	-0.7	-2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 2108	-0.080	-0.2	-0.7	-2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 2108	-0.080	-0.2	-0.7	-2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0

[illegible]



“To” Well Reach Effects Analysis
of Proposed Increase in Groundwater Pumping
at the Shovelback Holdings, LLC Campground
T 15N R 43E Section 20 SWSW
Fremont County, Idaho
Transfer of Water Right No. 35-2568

Introduction

This analysis is prepared to support a water-rights transfer application to facilitate an increase of 3.5 acres of irrigation in addition to approximately 2.5 acres of existing irrigation of landscaping at a commercial campground located south of Henry’s Lake in Fremont County Idaho, in SWSW Section 20, T15N, R43E, Boise Meridian (“To” location). Reach Effects Figure 1 (attached) shows the location of the proposed Place of Use and Point of Diversion in relationship with the boundary of the Enhanced Snake Plain Aquifer Model Version 2.1 (ESPAM2.1) and the major rivers in Eastern Idaho. Figure 2 shows the “To” location in relationship to Henry’s Lake and Henry’s Lake Outlet, and Figure 3 shows the location superimposed upon a topographic map.

This analysis assesses the effects that groundwater pumping at the “To” location will have upon the local aquifer, the Eastern Snake Plain Aquifer, and surface water bodies hydraulically connected to these aquifers. It accompanies an analysis of the beneficial effects of cessation of pumping at the location where pumping will be reduced under the proposed transfer. The net effect of the transfer may be assessed by taking the difference between the effects of the proposed new pumping at the “To” location, and the effects of the proposed reduction in pumping at the “From” location.

Methods

Depletionary effects are considered on a volume basis, using a version of the Glover/Balmer/Jenkins Stream Depletion method (Glover and Balmer, 1954; Jenkins, 1968) adapted for bounded aquifers (Contor, 2011). Water level effects are based on an average pumping rate to satisfy the seasonal pumping volume, and evaluated using the Theis methodology with image well adjustments (Fetter, 1994). Figure 4 shows the boundaries used for both analyses, and the wells and image wells used in the Theis analysis. Given the proximity of the “To” location to Henry’s Lake and the Henry’s Fork, and its distance from the Snake Plain and from other surface water bodies, the analyses assume that for practical purposes, all effects will be expressed to the Henry’s Fork upstream of Island Park Reservoir.

The well-log data presented below indicate most static water elevations are lower than the full-pool elevation of the lake. This unexpected result could be in part influenced by imprecision in

calculating potentiometric-surface elevation, but the consistency and magnitude of the differences somewhat argues against this possibility. The other possibility is that the ridge to the south of the “To” location is permeable at depth, and does not constitute a hydrologic barrier. If this is so, the use of an impermeable boundary in the analyses will cause over estimation of drawdown effects to nearby wells, and over estimation of the seasonality of quantity effects on hydraulically connected surface water bodies.

All the methods used are linearly scalable, by the principle of hydrologic superposition (Reilly and others, 1987). For example, if the final transfer proposes moving water rights for 2.0 acres of irrigation rather than 3.5 acres, the results here may be multiplied by $2/3.5 = 0.57$ to obtain updated water-quantity effects. Similarly, if the average pumping rate is to be 0.0034 cubic feet per second (cfs) instead of the 0.0058 cfs used in calculations, the results here may be multiplied by 0.57 to obtain updated estimates of water-level effects.

Hydrologic Stress Evaluated

This analysis assumes 3.5 acres increase from the existing 2.5 acres of irrigation of turf grass (lawn and landscaping) at the “To” location. The analysis only considers the increase in irrigation pumping effects. Gross diversion volume is derived from ET_{Idaho} (Allen and Robison, 2012). For purposes of calculating reach-gain effects, consumptive use is evaluated as a hydrologic stress, because any pumpage in excess of the consumptive use will return to the source by percolation. For water-level effects to nearby well(s), gross pumping is applied as the hydrologic stress, calculated as daily average consumptive use divided by a consumptive-use fraction of 0.75. In the very short run and possibly the short run, this will accurately reflect pumping effects prior to transit of percolation through the vadose zone. In the long run, this simplification will cause the evaluation to over-estimate water-level effects.

Based on historic observation of vegetation growth, the applicant has determined that there will not be irrigation prior to June 1. Though ET_{Idaho} data do show a small amount of net consumptive use of irrigated turf grass prior to June, the analyses use the ET_{Idaho} estimated turf-grass consumptive use from June onward, based on the applicant’s decision for usage of the water right. The June mean “precipitation deficit” is 1.31 mm/day, or 0.13 feet for the 30 days in June. The July mean “precipitation deficit” is 0.21 mm/day, or 0.02 feet for the 31 days in July. The “precipitation deficit” for the balance of the year is negative, indicating that precipitation exceeds evapotranspiration and no irrigation is necessary. The total season consumptive use proposed to be satisfied by irrigation is therefore (0.13 ft plus 0.02 feet) or 0.15 feet. Multiplied by 3.5 acres of increased irrigation area gives a proposed increased consumptive use volume of 0.525 acre feet to be supplied by irrigation. Dividing by a consumptive-use fraction of 0.75 for applied irrigation water gives an annual increased pumping volume of 0.7 acre feet, to be entirely diverted in June and July. This volume over 61 days is equivalent to an average of 0.0058 cfs (2.6 gpm) increased pumping.

Aquifer Properties

Ten well logs in the vicinity of the “To” location were reviewed, focusing on the newer wells in each Public Land Survey Section. The most probable location of each well was determined from

the well-log legal description, the sketch map (if any) in the well log, and 2015 aerial imagery. Topographic-map elevations, driller-reported static water levels, and the topographic-map indication of a 6,472 lake-surface elevation were used to calculate the difference between potentiometric surface and the lake level. Negative numbers indicate a potentiometric surface below the water level in the lake. Table 1 summarizes the data obtained. Lithology reports have been abbreviated. Most of the logs provided additional detail on the texture and characteristics of each major interval repeated in Table 1. All the logs included some intervals mentioning fractures or broken rock.

Table 1
Summary of Well Log Data

PLS Section and QQ	Owner Name on Log	Potentiometric Surface minus Lake WL (ft)	Abbreviated Lithography (numbers are feet below ground surface)
19 SWSW	Boots Hodges	-57	0-18 overburden 18-223 rhyolite
19 SWSW	Rich Hunt	-64	0-14 topsoil 13-104 rhyolite 104-237 basalt
19 SWSW	Walter Trobee	-87	0-4 dirt 4-245 rhyolite
19 SE SW	Robert Weir	-10	0-13 top soil 12-180 rhyolite
20 SW SE	Matt McClaren	3	0-5 overburden 5-59 clay & sediment 59-240 rhyolite
20 SW SE	Rob Webster	-55	0-2 soil 2-12 clay & broken rock 12-177 tuff
20 SE SE	Kreg Davis	-4	0-4 top soil 4-300 rhyolite
20 SE SE	Steve Lawson	-21	0-3 top soil 2-187 sediments 187-300 basalt
21 SW SW	Farrell Davidson	-30	0-160 clay 160-238 rock and shale
21 SW SW	Lewis Webster	-40	0-9 top soil 9-267 rhyolite 267-270 cinders

The log for the Rob Webster well in the SW of the SE of Section 20 indicated a pumping test of 17 gallons per minute with one foot of drawdown. The Lewis Webster log in the SW of the SW of Section 21 indicated 100 gallons per minute. The Rich Hunt log indicated 50 gallons per minute, with other logs either omitted pumping rate or describing rates in the range of 17 to 20 gallons per minute.

Fetter (1994) provides Equation 1 for estimating approximate aquifer transmissivity from drawdown data:

$$T = 33.6 * (Q / s)^{0.67} \quad (1)$$

T = Aquifer transmissivity, ft²/day

Q = Pumping rate, ft³/day

s = Drawdown, ft

Using 17 gallons per minute (3,273 ft³/day) and one foot of drawdown from the Rob Webster well log (the only log that provided both flow rate and unambiguous drawdown data), the calculated transmissivity is 7,609 ft²/day. Transmissivity is defined as $T = Kb$, where K is the hydraulic conductivity (ft/day) and b is aquifer thickness (ft). Therefore, an estimated T of 7,600 ft²/day is compatible with the Domenico and Schwartz (1998) upper range of hydraulic conductivity for “fractured igneous and metamorphic rocks” of 3×10^{-4} meters per second (85 feet per day) times an assumed active aquifer thickness of 100 feet, or 8,500 ft² per day. These analyses use 7,600 ft² per day.

Storage coefficient was taken as 0.01, compatible with the lower ranges for volcanic materials used in the Idaho Department of Water Resources (IDWR) groundwater flow model of the Eastern Snake Plain Aquifer (ESPA) (IDWR, 2013) and the upper end of the range given by Domenico and Schwartz for “fractured crystalline rocks.”

Results

The Jenkins analysis of a two-month pumping event indicates that approximately 85% of consumptive-use effects will propagate to Henry’s Lake within four months of the start of pumping. An additional seven percent will propagate in the following four months, and two percent more by the end of the first year. The balance will be expressed more than a year after the start of pumping. For the proposed increase of 3.5 acres of irrigation, this translates into 0.45 acre feet of effect to Henry’s Lake during June through September of the first year. Small residual effects (approximately 0.05 acre feet) will be observed through the subsequent eight months, and added to the June to September effects during new pumping each year. If the effects are averaged, per typical practice in ESPA groundwater transfer evaluations, the effects will eventually equilibrate to 0.50 acre feet per year, or 0.167 acre feet per trimester on average.

Figure 5 shows the calculated drawdown effects at the nearest target well from two months of pumping, a maximum of 0.025 feet at the end of pumping, recovering to less than 0.01 feet of increased residual drawdown effects after 80 days from the start of the pumping event.

Patrick N. Naylor

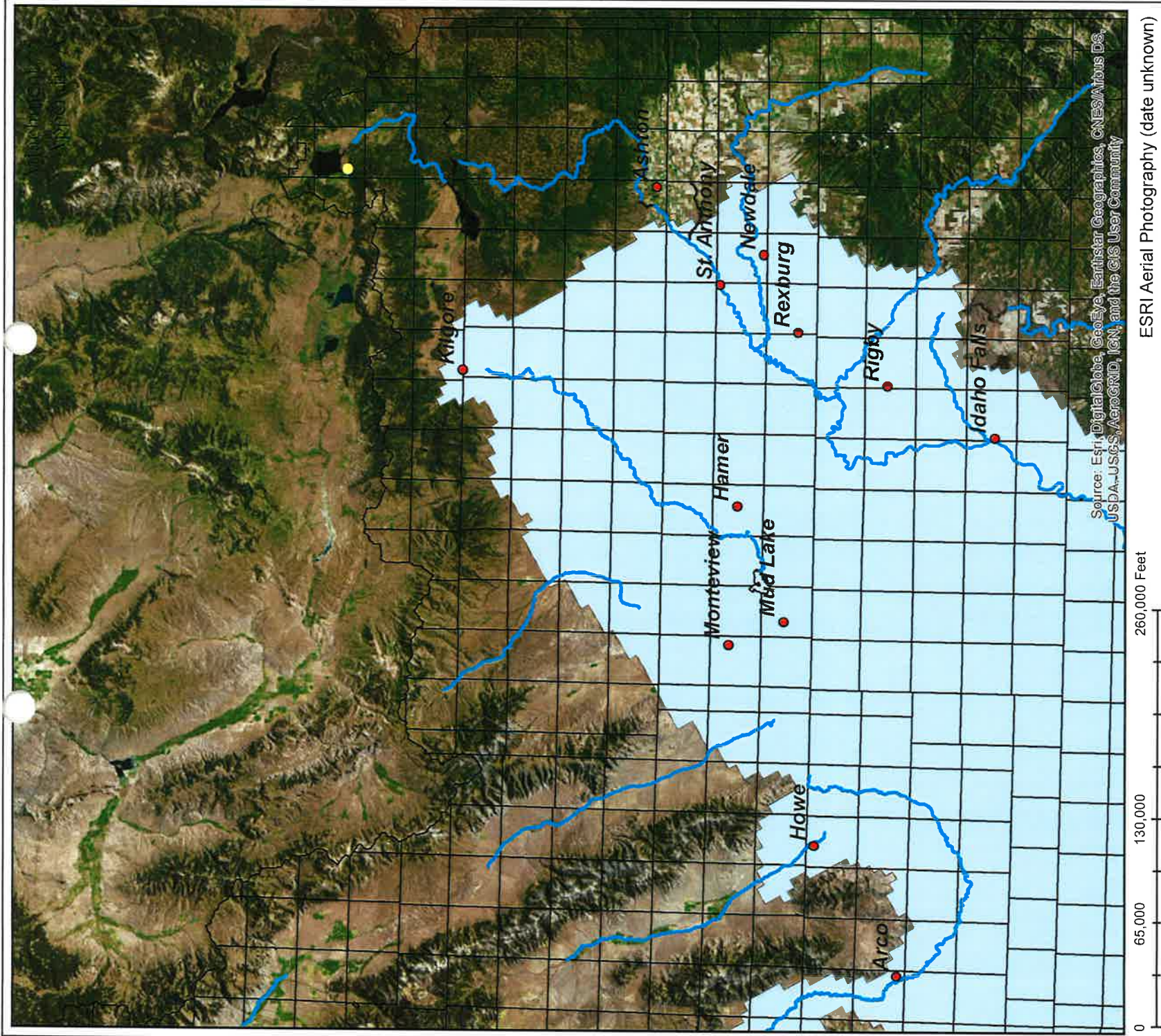
February 15, 2019

Patrick N. Naylor, P.E., P.G.
Senior Hydrogeologist

Reviewed by:

References

- Allen, Richard G. and Clarence W. Robison. Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho: Supplement updating the Time Series through December 2008, Research Technical Completion Report. Kimberly Research and Extension Center, University of Idaho, Moscow, ID
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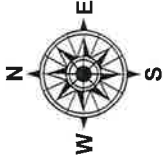
0 65,000 130,000 260,000 Feet

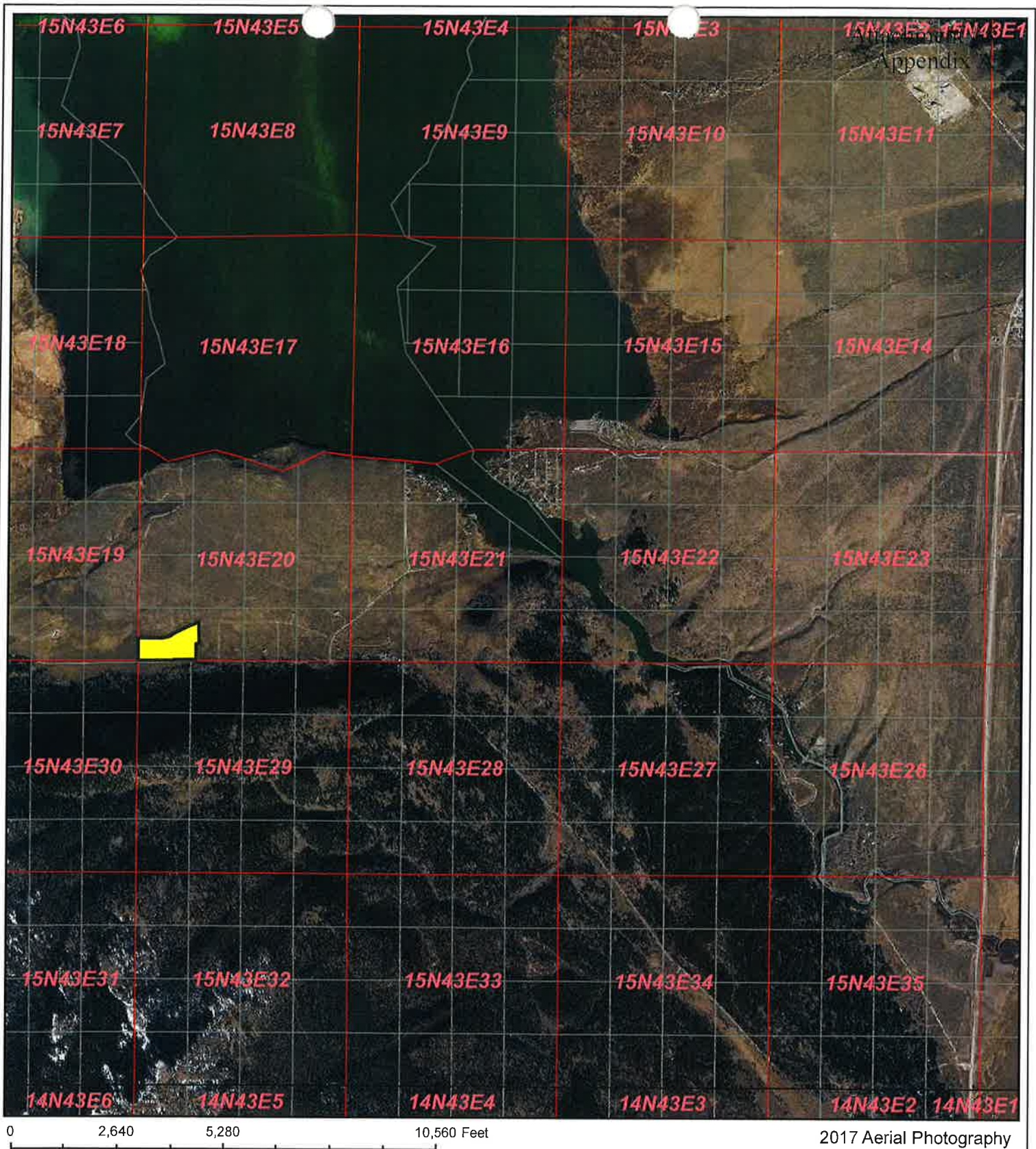
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Reach Effects Figure 1 Location Map		 Rocky Mountain ENVIRONMENTAL ASSOCIATES, INC.					
		<table border="1"> <tr> <td colspan="2">RMEA #17-0094</td> </tr> <tr> <td colspan="2">by: BAC</td> </tr> <tr> <td colspan="2">October 24, 2017</td> </tr> </table>		RMEA #17-0094		by: BAC	
RMEA #17-0094							
by: BAC							
October 24, 2017							

Legend

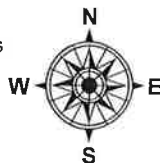
- Cities
- Major Rivers
- Township/Range
- ESPAM2.1 Model Domain
- Parcel





Legend

- Cities
- Parcel
- Township/Range
- PLS Sections
- PLS Quarter-Quarters



Reach Effects Figure 2 Site Map

RMEA #17-0094

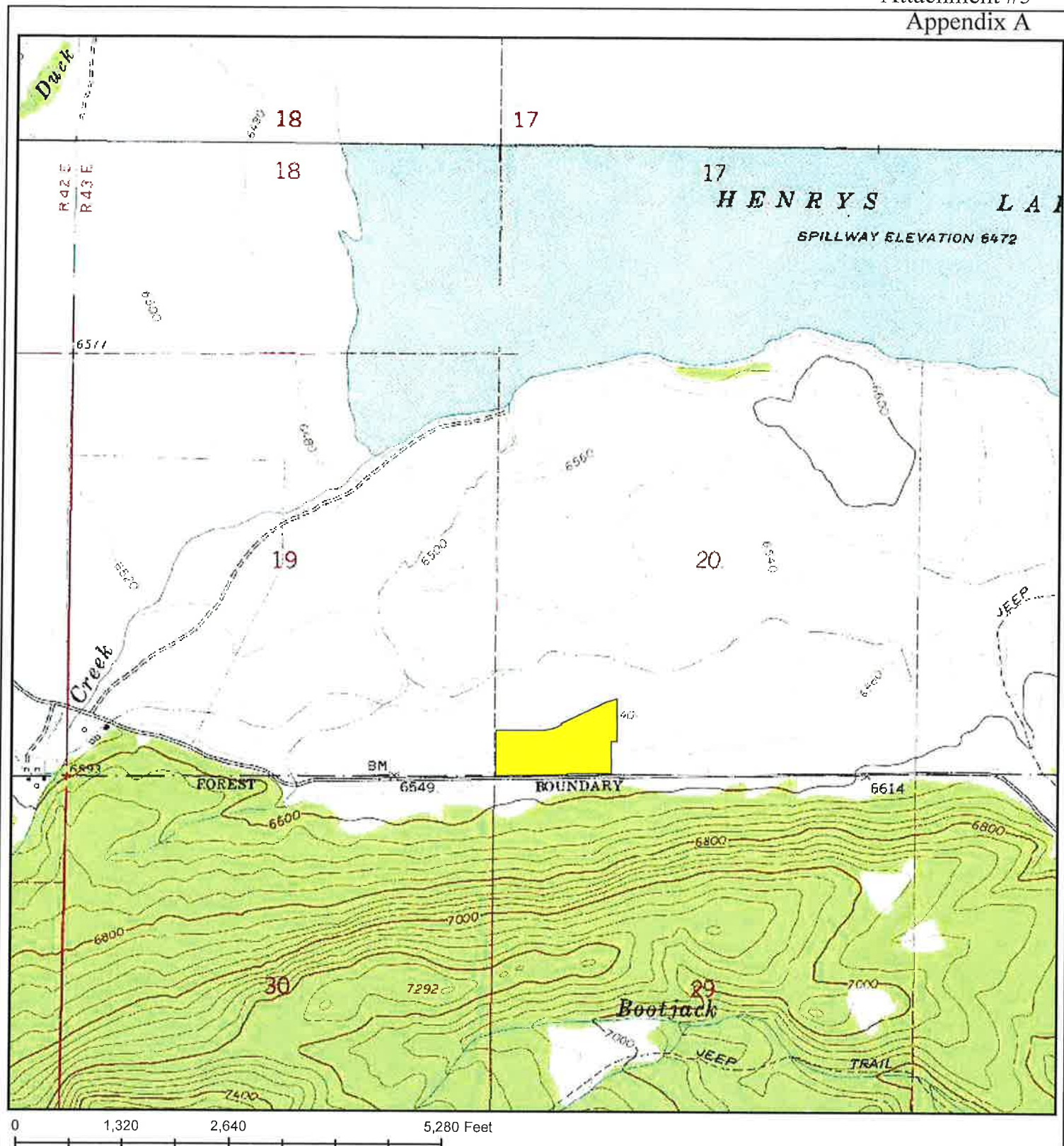
by: KM

February 19, 2019



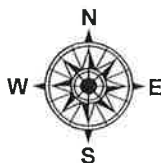
**Rocky Mountain
ENVIRONMENTAL**
ASSOCIATES, INC.

83237



Legend

 Parcel



Reach Effects Figure 3

USGS 7.5 minute topographic
quadrangle, Sawtelle Peak,
Idaho-Montana
1964, based on 1959 Image

RMEA #17-0094

by: KM

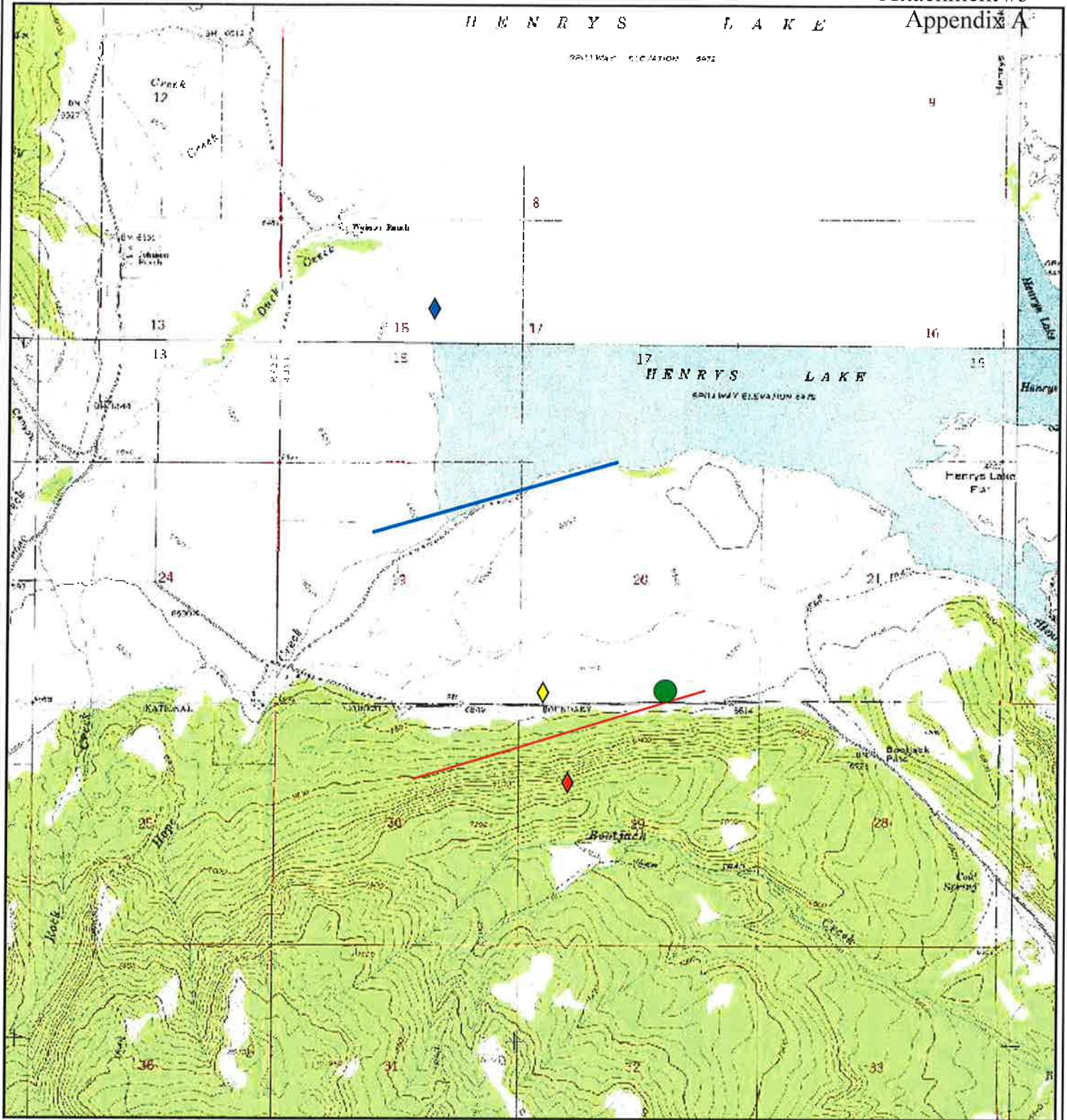
February 19, 2019



**Rocky Mountain
ENVIRONMENTAL**
ASSOCIATES, INC.

HENRYS LAKE

GRILL MAP ELEVATION 5072



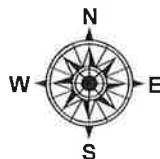
0 1,320 2,640 5,280 Feet

Theis Points

- Nearest Target
- ◆ Pump Image
- ◆ Rech. Image
- ◆ Well

Boundaries

- No Flow
- Recharge



Reach Effects
Figure 4

USGS 7.5 minute topographic quadrangle, Sawtelle Peak, Idaho-Montana 1964, based on 1959 Image

RMEA #17-0094

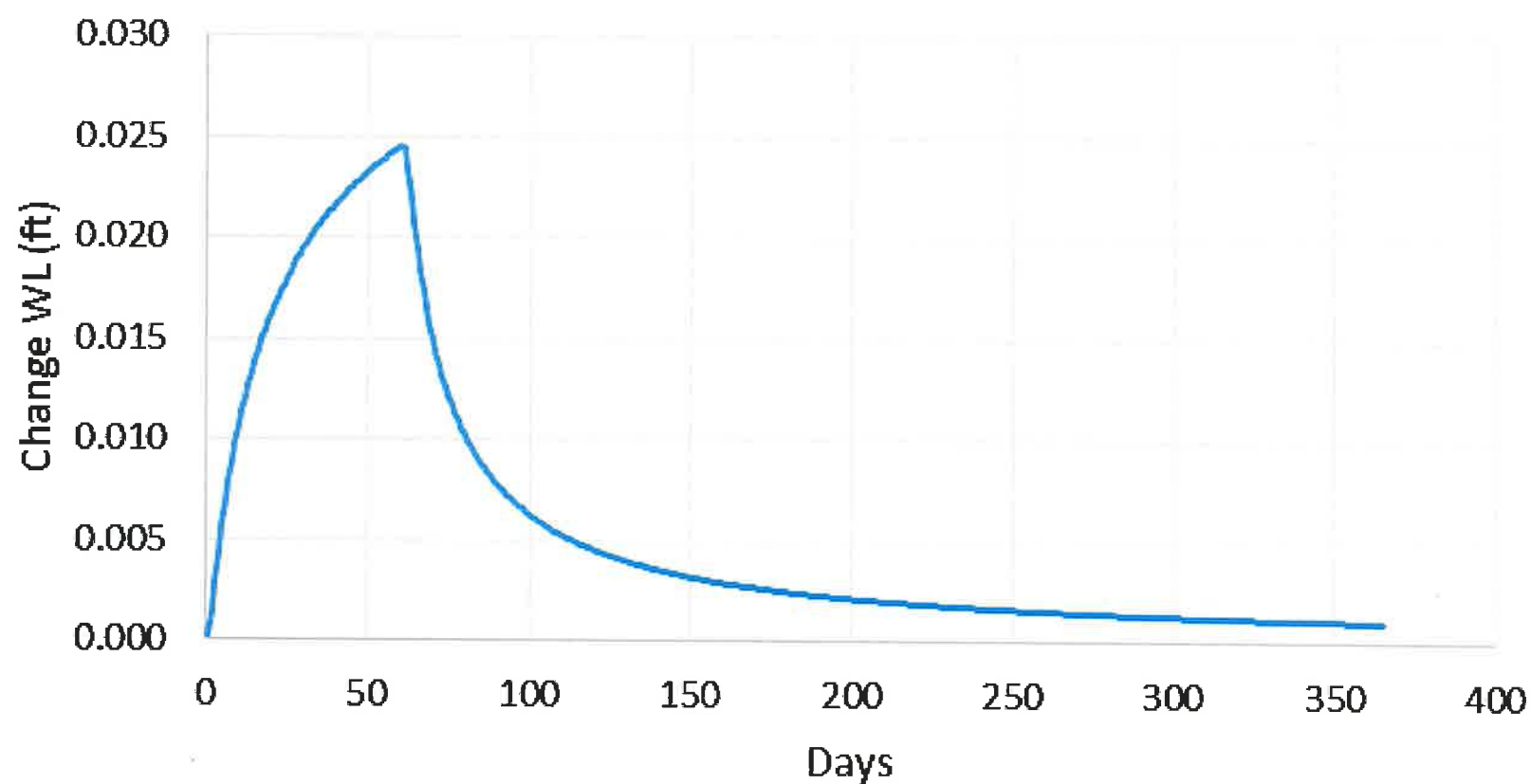
by: BAC

October 24, 2017



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Figure 5
Theis Calculation of Drawdown Effects
on Nearest Well



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September 10, 2018

To: Idaho Department of Water Resources

From: AXA Equitable Agrifinance, LLC

Subject: Transfer Application For 6 Acres Submitted By Shovelback Holdings LLC For Water Right Owned by Todd and Jennifer Cook (Water Right No. 35-2568).

AXA Equitable Life Insurance Company ("AXA") holds a *Mortgage, Security Agreement, Assignment or Rents and Fixture Filing* recorded as Instrument No. 678034 in the records of Bingham County, Idaho (the "Mortgage"), which encumbers certain farm ground and its appurtenances (including all water rights) owned by Todd and Jennifer Cook located in Bingham County, Idaho. The encumbered property is described as follows:

EXHIBIT A**LEGAL DESCRIPTION OF REAL ESTATE**

All of Section 24, Township 1 South, Range 32 East, Boise Meridian, Bingham County, Idaho

EXCEPTING THEREFROM: The following described parcel:

Part of the Northeast Quarter of Section 24, Township 1 South, Range 32 East, Boise Meridian, Bingham County, Idaho, described as:

Beginning at the NE corner of Section 24; thence South 00°00'00" West 220.00 feet along the Section line; thence North 89°55'00" West 220.00 feet parallel with the North line of Section 24; thence North 00°00'00" East 220.00 feet parallel with the North line of Section 24; thence South 89°55'00" East 220.00 feet to the Point of Beginning.

AXA is aware that Todd and Jennifer Cook intend to sell a 6-acre portion of Water Right No. 35-2568 to Shovelback Holdings LLC ("Shovelback"), once a transfer application is approved to move the 6-acre portion to property owned by Shovelback. AXA, by and through the undersigned authorized representative of AXA, hereby consents to processing and approval of the transfer application by the Idaho Department of Water Resources, recognizing that the 6-acre portion will remain subject to the Mortgage (and any conveyance of said 6-acre portion will remain subject to the Mortgage) unless and until AXA agrees to a partial release of the Mortgage.

AXA EQUITABLE LIFE INSURANCE COMPANY


 By: Michael Mercure
 Investment Officer
 AXA Equitable Life Insurance Company

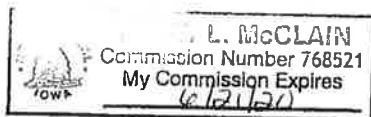
AWM

[NOTARY SIGNATURE BLOCK ON NEXT PAGE]

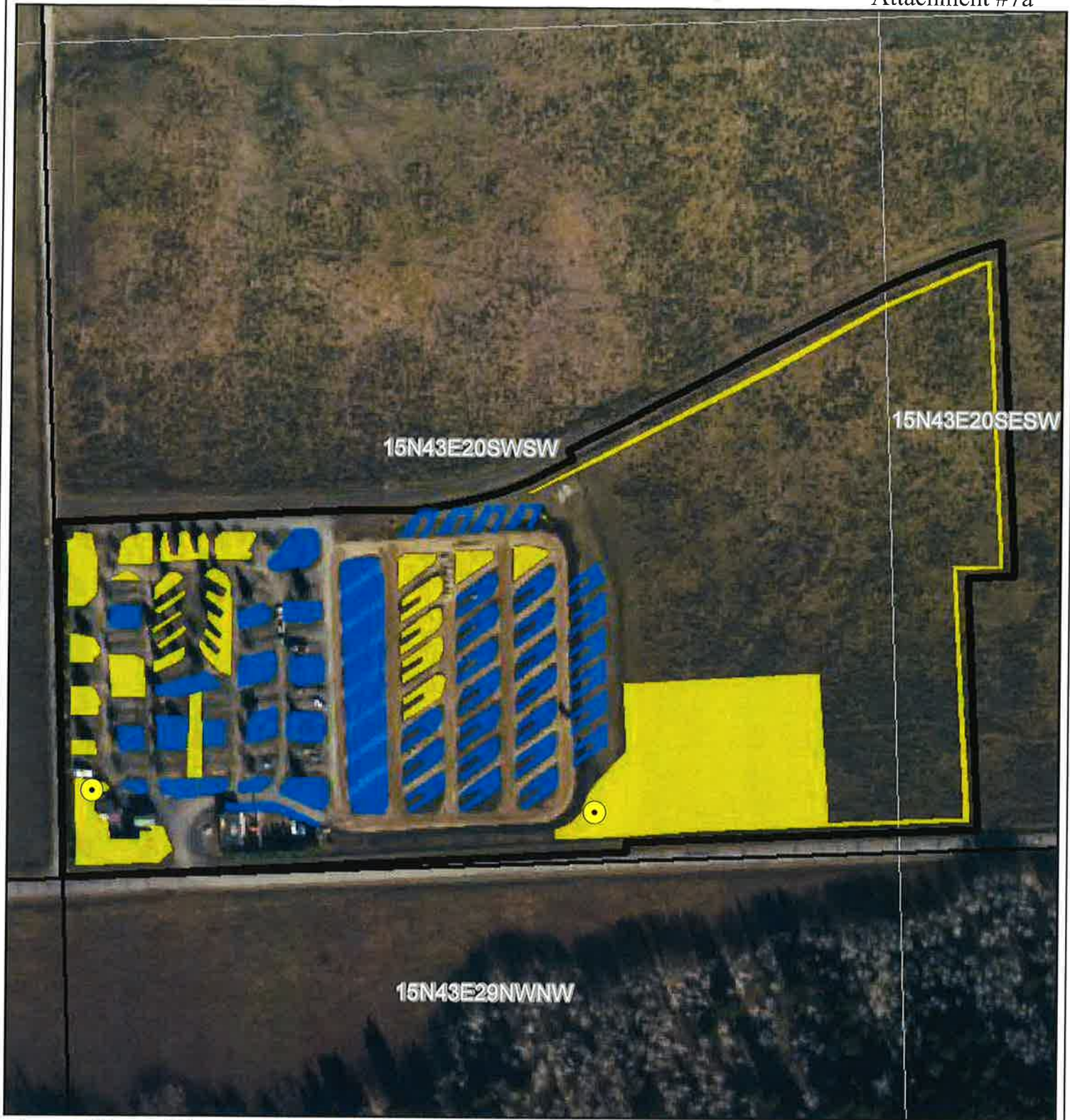
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STATE OF IOWA)
) ss.
COUNTY OF LINN)

This record was acknowledged before me on this 10th day of September, 2018, by **MICHAEL MERCURE** an investment officer and authorized representative of **AXA EQUITABLE LIFE INSURANCE COMPANY**, an Iowa corporation.



Derry L. McClain
NOTARY PUBLIC FOR STATE OF IOWA
My commission expires: 6/21/20

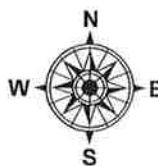


0 125 250 500 Feet

2017 Aerial Photography

Legend

- POD
- Proposed Irrigated Acres
- Acres from Tx 1 82525
- Redrock Campground
- Section
- QQ



Proposed Place of Use

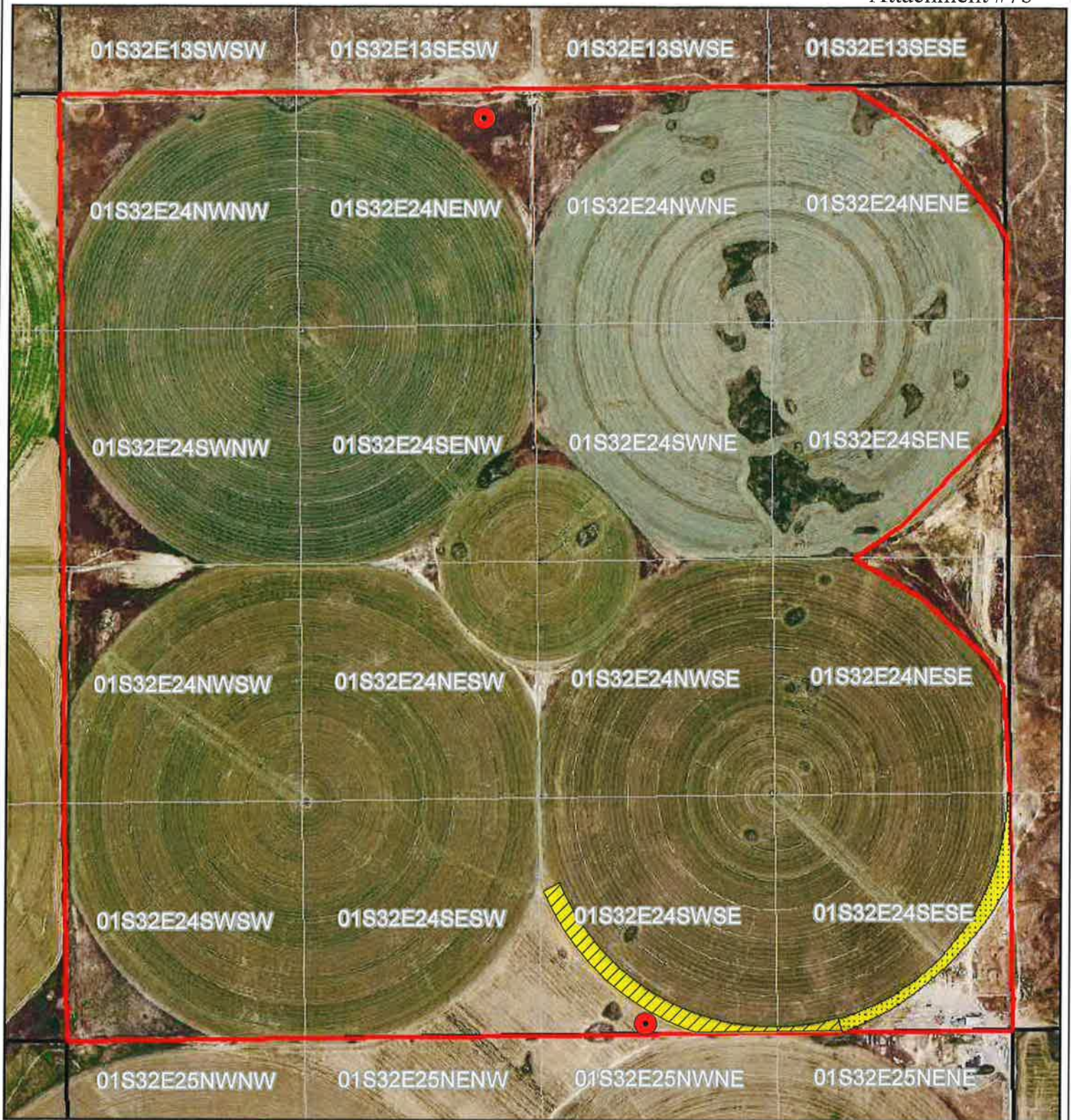
Shovelback Holdings LLC

RMEA #17-0094

by: KM

Date: 1/3/2019



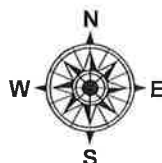


0 450 900 1,800 Feet

2017 Aerial Photography

Legend

-  WRPOD 35-2568
-  WRPOU 35-2568
-  Transfer Acres
-  Section
-  Pending Trans. No. 82525
-  QQ
-  Purchased Acres



Existing Place of Use

Shovelback Holdings LLC

RMEA #17-0094

by: KM

Date: 1/3/2019



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Microfilm No. **573428**
 At 10:30 Day May 2019
 O'Clock A M
 ABBIE MACE
 FREMONT CO RECORDER
 Fee \$22 - LL Deputy
 Recorded at Request of
Rigby, Francis & Rigby

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between NORTH FORK RESERVOIR COMPANY, an Idaho corporation, of P.O. Box 250, Rexburg, ID 83440 (hereinafter "NFRC") and FREMONT-MADISON IRRIGATION DISTRICT, an Idaho Irrigation District of P.O. Box 15, St. Anthony, ID 83445 (hereinafter "FMID") and Shovelback Holdings, LLC, an Idaho limited liability company with a mailing address of 1493 W. 5000 N., Rexburg, ID 83440 (hereinafter "Shovelback"), to-wit:

Recitals:

Whereas, Shovelback made an application for transfer as more fully described in that certain application No. 82525 which intends to transfer ground water appurtenant to 2.5 acres from Bingham County, Idaho to Fremont County, Idaho for the purpose of irrigating lawn and open space within what is known as the Redrock RV and Campground (hereinafter "Application"), and

Whereas, FMID filed a protest against the Application based upon NFRC's position that said transfer is an expansion of the original water rights, especially due to the extreme change in distance from the original point of diversion and thus will cause injury to NFRC and FMID's valid and decreed storage water rights; and

Whereas, Shovelback also intends to make an additional application for transfer as more fully described in that certain draft application attached hereto which intends to transfer ground water appurtenant to 3.5 acres from Bingham County, Idaho to Fremont County, Idaho also for the purpose of irrigating lawn and open space within what is known as the Redrock RV and Campground (hereinafter "Proposed Application"), and

Whereas, the parties desire to settle NFRC and FMID's protest in a manner which fully mitigates the impacts and injury to NFRC and FMID's valid water rights; and

Whereas, it is understood that IDWR may not add the terms of this Stipulation to the approved transfers to be granted to Shovelback (hereinafter "Licenses") except perhaps to refer to this Stipulation if it is recorded in Fremont County, where the changed diversion(s) are to take place;

Now Therefore, it is agreed by and between the Parties as follows:

Shovelback shall modify its Application and Proposed Application to comply with the following terms:

1. Shovelback agrees that it will require the approved transfers to refer to this Stipulation, which shall be recorded in the official records of Fremont County,

Memorandum of Understanding - Page - 1

sb/FremadShovelback.mou

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Idaho and that its terms and conditions shall apply to the use and diversion of any permit or eventual approved transfer resulting from the Application or Proposed Application.

2. Prior to any diversion to be made from either of the approved transfers, in addition to all other conditions required by IDWR, full mitigation must be made to NFRC and FMID as hereinafter determined:

- A. Mitigation shall be no less than the current E.T. data used in and around the area of proposed place of use or 1.5 acre feet per acre (1.5 af/ac), which mitigation shall be provided directly to NFRC and FMID for each acre watered under the Licenses.

- B. In order to account for changes in weather patterns over time, no less than each five year period from the grant of the transfers and resulting approved transfers by IDWR, an adjustment in af/ac shall occur which equals any adjustment made to the local E.T. af/ac by IDWR.

- C. Because Shovelback has not yet fully developed all of the acres it eventually intends to water under these transfers, it is agreed that Shovelback shall initially be required to mitigate for 3 acres or 4.5 acre feet for each year following the transfers and resulting approved transfers. Once Shovelback develops more than half of its proposed six (6) acre campground, then Shovelback shall be required to mitigate for all 6 acres which will result in 9 acre feet of water under the present E.T.

3. The source of the Mitigation shall be by whatever legal means available to Shovelback providing it results in what is deemed "wet water" to NFRC and FMID's storage rights. However, unless otherwise provided by Shovelback, it shall provided mitigation to NFRC and FMID as follows:

- A. Unless Shovelback obtains an additional source, Shovelback shall be granted the right to "rent" the mitigation required under this Agreement from NFRC and FMID under the following terms:

- i. The price per acre foot of water rented from NFRC and FMID by Shovelback shall be [REDACTED] times the current year's Water District 01 water supply procedures rental rate. Payment shall be made out to both NFRC and FMID jointly.

- ii. The minimum rental rate shall be [REDACTED] per acre foot rented.

- iii. Payment must be made directly to NFRC and FMID on or before April 1st of each year mitigation is required by check naming both NFRC and FMID.

- iv. Any division of said rental rate payment between NFRC and

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FMID shall be determined by NFRC and FMID following payment.

B. The above rental terms shall apply for a period of five (5) years from the date the Licenses are granted. After which, the rental terms shall be renegotiated or terminated by either party with the recognition that the 9 acre feet of mitigation shall continue to be required of Shovelback in order to divert any water under the approved transfers.

4. Upon all other Protestant's withdrawal of their protests/objections to Shovelback's Application and Proposed Application, and the recording of this Stipulation which shall be conditioned in any permit and approved transfer based upon the Application and/or Proposed Applications, NFRC and FMID shall withdraw its protest/objection.
5. Should Shovelback thereafter divert without providing the mitigation required herein, or otherwise fail to comply with the terms and limitation of acres required by this Stipulation, Shovelback shall be in default of this Stipulation and NFRC and FMID shall have the right to cause Shovelback's diversion to be curtailed immediately, by whatever legal means possible, including, but not limited to locking Shovelbacks' pumps either by IDWR or by NFRC and FMID's water master.
6. If either party defaults in performance of any of the terms of this Agreement, then the non-defaulting party, without in any manner limiting its legal and equitable remedies, may provide the defaulting party a telephonic followed by immediate written notice (including email) requiring it to cause such default to be corrected immediately. Unless within 5 days after such notice to the defaulting party, such default shall be corrected or arrangements for the correction shall be made, the non-defaulting party may immediately exercise its rights against the defaulting party, including but not limited to injunctive relief, and the defaulting party shall be liable to the non-defaulting party for any related costs or expenses. The non-defaulting party may exercise any rights, claims, or demands which the defaulting party may have against third persons in connection with its default and the defaulting party does hereby assign, transfer, and set over unto the non-defaulting party all such rights, claims, and demands it may have to assist the non-defaulting party to cure a default by the defaulting party.
7. Neither party may assign its rights or obligations within this Agreement to a third party without the express written consent of the other party.
8. This Agreement shall inure to and be binding upon the parties hereto and their successors and assignees, including the successors and assigns of the lands upon

573428

which the transfer is authorized as its place of use. The Parties represent that each has the right, power and authority to enter into this Agreement without further contingent requirements than those set forth hereinabove.

9. This Agreement and related documents specifically contemplated by this Agreement constitute and contain the entire agreement of the parties and supersedes and merge all other prior understandings and/or agreements between the parties, if any, whether verbal or written.
10. This Agreement shall be governed by and interpreted under the laws of the State of Idaho.

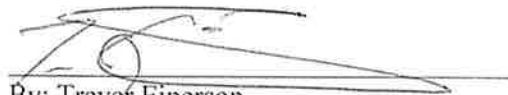
Dated this 28th day of April, 2019.

“NFRC”



By: Mike Rasmussen
Its: President

“Shovelback”



By: Treyer Einerson
Its: Manager

“FMID”

By: Jeff Raybould
Its: Chairman

573428

which the transfer is authorized as its place of use. The Parties represent that each has the right, power and authority to enter into this Agreement without further contingent requirements than those set forth hereinabove.

9. This Agreement and related documents specifically contemplated by this Agreement constitute and contain the entire agreement of the parties and supersedes and merge all other prior understandings and/or agreements between the parties, if any, whether verbal or written.
10. This Agreement shall be governed by and interpreted under the laws of the State of Idaho.

Dated this 22nd day of April, 2019.

"NFRFC"

"Shovelback"

By: Mike Rasmussen
Its: President

By: Trever Einerson
Its: Manager

"FMID"



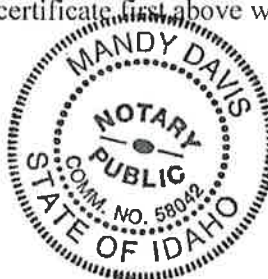
By: Jeff Raybould
Its: Chairman

573428

STATE OF IDAHO)
)ss.
 County of Madison)

On this 22nd day of April, 2019 before me a notary public in and for said State, personally appeared Jeff Raybould known to be the Chairman of the irrigation district that executed the instrument or the person who executed this instrument on behalf of said irrigation district and acknowledged to me that such irrigation district 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.



Mandy Davis
 Notary Public for Idaho
 Residing at: ST. Anthony
 My commission expires: 6/24/23

STATE OF IDAHO)
)ss.
 County of Madison)

On this 15th day of April, in the year 2019, before me, the undersigned, a Notary Public, personally appeared, **Trever Einerson**, known or identified to me, to be the manager or a member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.



Mandy Davis
 Notary Public for Idaho
 Residing at: ST. Anthony
 My Commission Expires: 6/24/23

573428

Corporate Acknowledgment

STATE OF IDAHO)

ss.

County of Madison)

On this 18th day of April, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **Mike Rasmussen**, known to me to be the President, of **North Fork Reservoir Company, Inc.**, an Idaho Corporation, the corporation that executed the foregoing document, and acknowledged to me that such corporation executed the same.



Mandy Davis
Notary Public for Idaho
Residing at: St. Anthony
My Commission expires: 6/24/23

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