

RECEIVED

OCT 26 2018

Department of Water Resources
Eastern RegionSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 82834**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 idwr.idaho.gov.

Name of Applicant(s) The City of Iona

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

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

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

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

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) The City of IonaPhone (208) 523-5600Mailing address P.O. Box 487, Iona, Idaho 83427Email cityclerk@cityofiona.org

- ☐ 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 D. Andrew RawlingsPhone (208) 523-0620Mailing address 1000 Riverwalk Dr., Ste. 200, Idaho Falls, Idaho 83402Email arawlings@holdenlegal.com

- ☐ Send all correspondence for this application to the representative and not to the applicant.
OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

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


Signature of Applicant or Authorized Representative

Dan Gubler, Mayor

Print Name and Title if applicable

10/25/2018
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
☐ Change nature of use
 ☐ Add diversion point(s)
☐ Change period of use
 ☒ Change place of use
☐ Other _____
- Is this a transfer for changes pursuant to Idaho Code § 42-221.0.8?
If yes, ☐ attach an explanation and any supporting documentation labeled as **Part 1A.2**.
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.3**.
 The City of Iona is in the process of acquiring Water Right No. 25-14392 to add to the City's water right portfolio.
 25-14392 will be used within Iona's municipal boundary.

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:

The diversion system consists of the City of Iona's current wells and existing municipal system.

- b. Who owns the property at the point(s) of diversion? The City of Iona, Idaho

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: No.

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 pre-transfer place of use will no longer have appurtenant water rights and will no longer be irrigated.

- 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:

The City of Iona currently owns Water Right Nos. 25-4091, 25-4092, 25-7014, 25-7623, and Application No.

73437 (re: Water Right No. 25-14193), all of which are ground water rights for municipal uses in the City limits.

This irrigation water right is being added to the City's other water rights for use in City limits.

- 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:

See attached Application for Extension of Time to Avoid Forfeiture of a Water Right, at Attachment #10.

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Attachment #2a

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

Current Water Right No.: 25-14392

Current Owner: DARREL KER
Priority Date: 12/16/1977
Origin: Water Right
Status: Active
Basis: Decreed

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 10/31	1.58 CFS	316.1 AF
	<u>Total Diversion</u>	1.58 CFS	316.1 AF

Location of Point(s) of Diversion

GROUND WATER	NW1/4SW1/4NE1/4	Sec. 31,	Twp 03N,	Rge 39E B.M.
BONNEVILLE County				
GROUND WATER	SW1/4SW1/4NW1/4	Sec. 32,	Twp 03N,	Rge 39E B.M.
BONNEVILLE County				

Place of Use

IRRIGATION Within BONNEVILLE County

T03N R39E S29	NWSW	40.00	T03N R39E S29	SWSW	39.00
Total Acres: 79					

Conditions of Approval:

1. 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 lands above.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Decreed Date: 9/19/2007

Attachment #2b

NEW PLACE OF USE PER THE PROPOSED TRANSFER

The City of Iona (the "City") owns and operates a municipal water system (the "System") for the use of the properties within City boundaries that are connected to the System (the "Properties"). Upon approval of this Transfer and conveyance of Water Right No. 25-14392 (the "Water Right") to the City, the Water Right will be diverted into the City's System for the use of the Properties.

Attachment #3

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 ____ day of October, 2018 (the "Effective Date"), by and between **Darrel Ker**, an individual, whose address is 4851 N. 44th E., Idaho Falls, Idaho 83401 (hereinafter "Seller"), and the **City of Iona**, an Idaho municipal corporation, whose address is 3548 N. Main St., Iona, Idaho 83427 (hereinafter "Buyer"). Buyer and Seller are individually a "Party" and together the "Parties".

RECITALS:

- A. Seller owns Water Right No. 25-14392 (the "Water Right"). The current description of the Water Right is more fully set forth in the report obtained from the Idaho Department of Water Resources ("IDWR") attached hereto as **Exhibit 1**, which is incorporated herein by reference.
- B. The Water Right was split from Water Right No. 25-7100 (the "Parent Right"), which was decreed on September 19, 2007, in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of Idaho (the "SRBA") with a priority date of December 16, 1977. A copy of the Parent Right's Partial Decree in the SRBA is attached hereto as **Exhibit 2**, which is incorporated herein by reference.
- C. Seller desires to sell, and Buyer desires to buy the Water Right. Buyer has agreed to purchase the Water Right from Seller pursuant to 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 Water Right, additionally described as follows:

Source:	Ground water
Purpose:	Irrigation
Priority:	December 16, 1977
Quantity (Diversion Rate):	1.58 cfs
Quantity (Volume):	316.1 acre-feet per annum
Place of Use (Acreage):	79 authorized acres identified on Exhibit 1.

2. **Property Retained.** Other than the Water Right, Seller reserves and retains 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 Water Right, are included in this Agreement.

3. **Purchase Price.** [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The Purchase Price shall be payable to Seller as described in Section 4 below.

4. **Payment of the Purchase Price.**

- (a) **Earnest Money Deposit.** [REDACTED]

- (b) **Payments on the Remainder of the Purchase Price.** [REDACTED]

[REDACTED]

[REDACTED]

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 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 Section 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 Water Right to the condition it existed on the Effective Date, after which the Earnest Money will be returned by Buyer within 14 days of the completion of such actions to void or reverse the Transfer.

6. Transfer Contingencies.

- (a) **Lien Release.** If, after exercising commercially reasonable efforts, Seller is unable to obtain a lien release on the Water Right of any existing lien, so as to convey clear title thereto, this Agreement shall be null and void and of no further effect, and Buyer shall immediately return the Earnest Money to Seller.
- (b) **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 79 acres, or (iii) approved by IDWR with conditions that materially devalue the 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 (and any other part of the Purchase Price received by Seller) to Buyer. If Buyer does not terminate this Agreement as provided herein, the Parties shall proceed to Closing as set forth in Section 7.
- (c) **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 (i) no protest to the Transfer is filed with IDWR and (ii) IDWR issues a transfer approval consistent with Section 6(b), then Closing on the 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 Section 6(c) 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) **Closing Deliveries.**
 - (i) At Closing, Buyer shall deliver the first Payment, unless the first Payment is due at a later date pursuant to Section 4(b)(i), above.

- (ii) 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 Water Right, and any lien release or other documents reasonably requested to confirm the conveyance of the 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 the event of 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, the non-defaulting Party may pursue any available remedy, including equitable relief (including specific performance).
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 holds good marketable title to the 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 Water Right on or before Closing.
 - (b) **Conveyance.** Seller shall then convey the 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 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 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 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 Water Right, the laws and rules affecting their transfer and use by Buyer, and the suitability or fitness of the 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. **Notices.** Any notice, request, or other communication given under this Agreement shall be in writing and (a) delivered personally, effective immediately; (b) sent by telecopy or facsimile; (c) delivered by overnight express mail (charges prepaid), effective upon receipt; (d) sent by registered or certified mail, postage prepaid, effective upon receipt; or (e) sent by email, effective upon being sent, addressed to the address, fax number, and/or email address provided on the signature page hereto. Notwithstanding any other provision of this Agreement, either Party may at any time change its address for such notices by delivering or mailing to the other Party, in the manner set forth herein, a notice of such change.
13. **Additional Acts.** The Parties agree to execute promptly all other documents and perform all other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.
14. **Miscellaneous.**
 - (a) **Essence of Time.** Time is of the essence in this Agreement.
 - (b) **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.
 - (c) **Broker.**
 - (i) 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.

- (ii) 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.
- (d) **Successors and Assigns; Assignment.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Consultant may not assign any rights or delegate any obligations under this Agreement without the prior written consent of the Company. The Company may assign its rights or delegate its obligations under this Agreement at any time, with such assignment becoming effective upon notice to Consultant.
- (e) **No Third-Party Beneficiary.** No term or provision of this Agreement is intended to be, nor may any term or provision be construed to be, for the benefit of any person, firm, corporation, or other entity not a party to this Agreement, and no other person, firm, corporation, or entity has any right or cause of action under this Agreement.
- (f) **Waiver.** Failure of either Party to require performance of any provision of the Agreement shall not affect either Party's right to require full performance thereof at any time thereafter and the waiver by either party of a breach of any provisions hereof shall not constitute a waiver of a similar breach in the future or of any other breach or nullify the effectiveness of such provision.
- (g) **Attorneys' Fees.** If any Party engages an attorney to enforce or interpret any provisions of or rights arising under this Agreement, the defaulting Party shall, in addition to any other relief to which the prevailing party is or may be entitled, pay to the non-defaulting Parties all costs and expenses, including, but not limited to, reasonable attorneys' fees and costs, which the non-defaulting Parties may incur in enforcing this Agreement or in pursuing any remedy allowed by law, whether such is incurred by the filing of suit, on appeal, or otherwise.
- (h) **Choice of Law, Venue, and Forum.** This Agreement is governed by, and construed and enforced in accordance with, the laws of the State of Idaho. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought against any of the parties in the state in the State of Idaho in and for Bonneville County, Idaho, or in such federal courts as have jurisdiction over Bonneville County, Idaho, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objections to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

- (i) **Headings.** The headings in this Agreement are for reference only and do not limit or define the meaning of any provision of this Agreement.
- (j) **Interpretation.** Each party has participated fully in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
- (k) **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties with respect to the matters set forth in this Agreement as of the Effective Date; it supersedes all prior oral or written agreements of the Parties as to the matters set forth in this Agreement; and it cannot be altered or amended except by an instrument in writing, signed by both Parties.
- (l) **Severability.** If any provision of this Agreement or any portion of any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the invalidity, illegality, or unenforceability may not alter the remaining portion of such provision, or any other provision of this Agreement, as each provision of this Agreement is deemed severable from all other provisions of this Agreement.
- (m) **Obligation and Authority.** This Agreement and the Exhibits attached hereto constitute the legal, valid, and binding obligation of the parties, enforceable against the Parties in accordance with its terms. Each Party has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and to perform its obligations hereunder
- (n) **Counterparts; Electronic Delivery.** This Agreement may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument. This Agreement may be signed and delivered electronically (fax or e-mail), a printed copy of which shall be effective as an original. Any Party so delivering such a copy via electronic communication shall deliver an executed original of this Agreement to the other Parties upon request.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Buyer

City of Iona

By: [Signature]

Name: Dan Gubler

Title: Mayor

ATTEST:

[Signature]

Keri West, City Clerk

Address: 3548 N. Main St.
Iona, ID 83427

Tel.: 208-523-5600

Fax:

Email: cityclerk@cityofiona.org

Seller

[Signature]
Darrel Ker

Address: 4861 N. 44th East
Idaho Falls, ID
83401

Tel.: 208-313-3492

Fax:

Email: darrelker@Gowal.com

With a Copy to:

D. Andrew Rawlings

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

1000 Riverwalk Dr., Ste. 200

Idaho Falls, Idaho 83402

Tel.: (208) 523-0620

Fax: (208) 523-9518

Email: arawlings@holdenlegal.com

Exhibit 1 The "Water Right"

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

9/25/2018

WATER RIGHT NO. 25-14392

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	DARREL KER 4851 N 44TH E IDAHO FALLS, ID 83401 2083133492
Original Owner	PANORAMA HILLS WATER CO PO BOX 252 IONA, ID 83427

Priority Date: 12/16/1977
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	04/01	10/31	1.58 CFS	316.1 AFA
Total Diversion			1.58 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NWSWNE	Sec. 31	Township 03N	Range 39E	BONNEVILLE County
GROUND WATER	SWSWNW	Sec. 32	Township 03N	Range 39E	BONNEVILLE County

Place(s) of use:

Place of Use Legal Description: IRRIGATION BONNEVILLE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
03N	39E	29		NWSW	40		SWSW	39						

Total Acres: 79

Conditions of Approval:

1. C 18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. R 64 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 lands above.

Dates:

Licensed Date:

Decreed Date: 09/19/2007

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 120

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

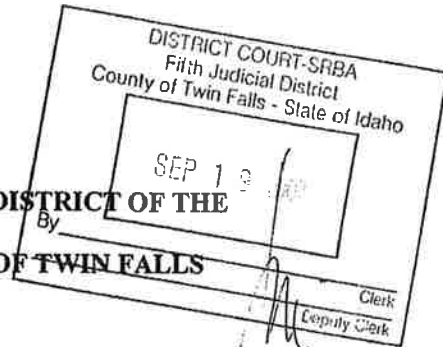
DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

Exhibit 2
SRBA Partial Decree of the "Parent Right"



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

In Re SRBA

Case No. 39576

)
) **ORDER OF PARTIAL DECREE**
)
)
) **For water right: 25-07100**
)
)

On June 26, 2005, the Idaho Department of Water Resources filed its *Director's Report for Basin 25, Reporting Area 14, for Irrigation and Other Water Rights*, which included recommendations for the above named water right. No objections were filed and the time period for filing objections has expired.

On October 3, 2005, the Idaho Department of Water Resources filed a *Notice of Completed Administrative Proceeding and Amended Director's Report* notifying the Court the issuance of a license. No objections were filed to the *Amended Director's Report* and the time period for filing objections has expired. On August 16, 2007, the Idaho Department of Water Resources sent correspondence to the Court regarding certain clerical errors in the *Notice of Completed Administrative Proceeding and Amended Director's Report*.

Therefore, IT IS ORDERED that the above-captioned water right be decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED Sept. 19, 2007



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

ORDER OF PARTIAL DECREE

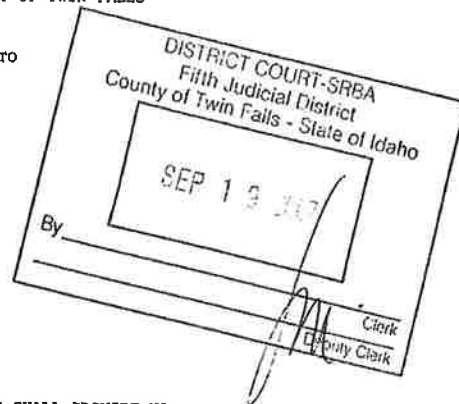
AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT - 11

82834

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

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 25-07100



NAME AND ADDRESS: PANORAMA HILLS WATER CO
ATTN: BRADY BELLISTON
1009 WEST 500 SOUTH
WEST BOUNTIFUL, UT 84087

SOURCE: GROUND WATER

QUANTITY: 2.97 CFS
633.00 AFY

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 LANDS ABOVE.

PRIORITY DATE: 12/16/1977

POINT OF DIVERSION: T03N R39E S31 NWSWNE Within Bonneville County
S32 SWSWNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	2.34 CFS 469.00 AFY
	Domestic	01-01 TO 12-31	1.87 CFS 164.00 AFY

DOMESTIC USE IS FOR 137 HOMES INCLUDING UP TO 1/2 ACRE OF
LAWN &/OR GARDEN IRRIGATION PER SUBDIVISION LOT UPON WHICH A
HOME HAS BEEN CONSTRUCTED.

PLACE OF USE:	Irrigation	Within Bonneville County
	T03N R39E S29 NWSW 40.0	SWSW 39.0
	S32 NWNW 34.0	SWNW 4.2
	117.2 Acres Total	
	Domestic	Within Bonneville County
	T03N R39E S31 SWNE	SENE
	S32 SWNE	SENE
	NWNW	SWNW
	SENW	NESW
	NWSW	NESE
	NWSE	

PLACE OF USE IS LOCATED WITHIN LOTS 1-16, BLK. 1; LOTS 1-10,
12-19 BLK. 2; LOTS 1-7, BLK. 3; LOTS 15-20, BLK. 4; LOTS 1-5, 9,
BLK. 5; LOTS 1-4, 11-12, BLK. 6; PANORAMA HILLS ALPHA AREA;
LOTS 1-3, 5-19, BLK. 7; LOTS 1-3, 15-16, BLK. 8; LOT 1, BLK. 9;
LOTS 1-8, 10-13, BLK. 10; LOTS 1-7, BLK. 11; LOTS 5-8, 12-13, BLK.
12; LOTS 6-9, BLK. 13; PANORAMA HILLS BETA AREA; LOTS 14-15, BLK.
12; LOT 13, BLK. 13; LOT 7, BLK. 14; FIRST AMENDED PANORAMA HILLS
BETA II AREA; LOTS 1-5, BLK. 1; LOTS 1-12, BLK. 2; LOTS 2-3, 6-7,
BLK. 3; ALTURA VERDE.

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 25-07100 File Number: 00234

PAGE 1
Aug-20-2007

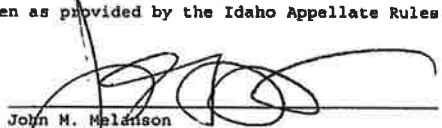
SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

OTHER PROVISIONS (continued)

DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

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



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

2007 SEP 19 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 25-07100

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 25-07100 was mailed
on September 19, 2007, with sufficient first-class postage prepaid
to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

PANORAMA HILLS WATER CO
ATTN: BRADY BELLISTON
1009 WEST 500 SOUTH
WEST BOUNTIFUL, UT 84087

JULIE MURPHY
Chief Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
09/19/07

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT - 14

82834

**Exhibit 3
Form of the Deed**

*RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:*

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHTS

Darrel Ker, an individual, whose address is 4851 N. 44th E., Idaho Falls, Idaho 83401 (hereinafter collectively "Grantor") does hereby grant, bargain, sell, assign, and convey unto the **City of Iona**, an Idaho municipal corporation, whose address is 3548 N. Main St., Iona, Idaho 83427 (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"

Darrel Ker

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____, 2018,
by **DARREL KER**.

Notary Public for Idaho
My Commission Expires: _____

EXHIBIT A
WATER RIGHT DESCRIPTION

[TO BE COMPLETED AFTER APPROVED TRANSFER]

Attachment #5

ENTER CELL LOCATIONS:				
	'TO' CELL	'FROM1' CELL	'FROM2' CELL	'FROM3' CELL
ROW	73	73	0	0
COLUMN	166	168	0	0

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 1977	0	105	0	0	0	0	0
SUM 1977	0	105	105	0	0	0	0
WIN 1977	0	105	105	0	0	0	0
SPR 1978	0	105	105	0	0	0	0
SUM 1978	0	105	105	0	0	0	0
WIN 1978	0	105	105	0	0	0	0
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SUM 1979	0	105	105	0	0	0	0
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SPR 1996	0	105	105	0	0	0	0
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WIN 2068	105	0	105	0	0	0	0
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SUM 2069	105	0	105	0	0	0	0
WIN 2069	105	0	105	0	0	0	0

SPR 2070	105	0	105	0	0	0	0
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WIN 2070	105	0	105	0	0	0	0
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SUM 2071	105	0	105	0	0	0	0
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SPR 2072	105	0	105	0	0	0	0
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WIN 2072	105	0	105	0	0	0	0
SPR 2073	105	0	105	0	0	0	0
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SPR 2094	105	0	105	0	0	0	0
SUM 2094	105	0	105	0	0	0	0

WIN 2094	105	0	105	0	0	0	0
SPR 2095	105	0	105	0	0	0	0
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WIN 2095	105	0	105	0	0	0	0
SPR 2096	105	0	105	0	0	0	0
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WIN 2098	105	0	105	0	0	0	0
SPR 2099	105	0	105	0	0	0	0
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WIN 2099	105	0	105	0	0	0	0
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WIN 2118	105	0	105	0	0	0	0
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SUM 2119	105	0	105	0	0	0	0
WIN 2119	105	0	105	0	0	0	0
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SPR 2126	105	0	105	0	0	0	0
SUM 2126	105	0	105	0	0	0	0
WIN 2126	105	0	105	0	0	0	0

Enter First Time Step of Transfer: **SPR 2010**

Match: 100 Match: 456

	AIR	HIS	SINB	NBtN	NtM	DWtB	BtTS	TS	TStM	M	MtB	Total	
Preexisting Effects @ SS (Last Time Step):	2.95	43.99	19.95	35.56	0.21	0.66	0.76	0.34	0.21	0.19	0.01	104.83	Total Effects without Transfer - Last Time Step
Steady State - Value of Dep. @ Last Time Step:	2.95	43.99	20.07	35.75	0.21	0.67	0.76	0.34	0.21	0.19	0.01	105.16	Total Effects with Transfer - Last Time Step
Preexisting Effects @ Transient State (Max Value Time Step):	2.95	43.99	19.95	35.56	0.21	0.66	0.76	0.34	0.21	0.19	0.01	104.83	Total Effects without Transfer - Correlates to Max Value from Total Effects with Transfer
Transient State - Max. Value of Dep. After Transfer:	2.95	44.54	20.07	35.75	0.21	0.67	0.76	0.34	0.21	0.19	0.01	105.71	Total Effects with Transfer - Max Value from Start of Transfer to Last Time Step

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WR No.	Div. Rate (CFS)	Con. Vol. (AFA)	No. of Irr. Acres	Priority Date	POD Location	Dedicated Vol. AFA/ AFT		Model Node
Transfer: Proposed Steady State Impacts following Transfer								
Transfer 1: Worst Case Transient State Impacts following Transfer								
0	0	0	0	1/0/1900	0	0.0	0	0
0	0	0	0	1/0/1900	0	0.0	0	0

Ashton to Rexburg	Heise to Shelley	Shelley to Nr Bickft	Nr Bickft To Neeley	Neeley to Minidoka	Dev. Wbl. To Buhl	Buhl to Kspr	Kspr	Kspr to Malad	Malad	Malad to Bancroft
3.0	44.0	19.9	35.6	0.2	0.7	0.8	0.3	0.2	0.2	0.0
3.0	44.0	20.1	35.8	0.2	0.7	0.8	0.3	0.2	0.2	0.0
3.0	44.0	19.9	35.6	0.2	0.7	0.8	0.3	0.2	0.2	0.0
3.0	44.5	20.1	35.8	0.2	0.7	0.8	0.3	0.2	0.2	0.0

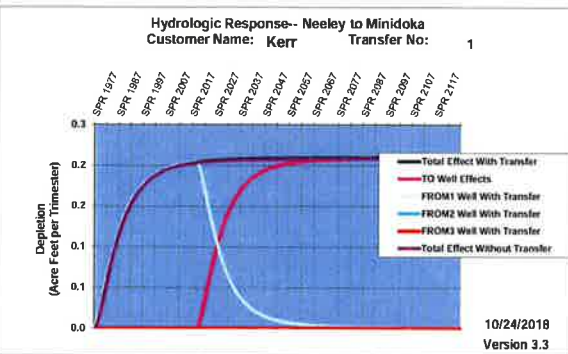
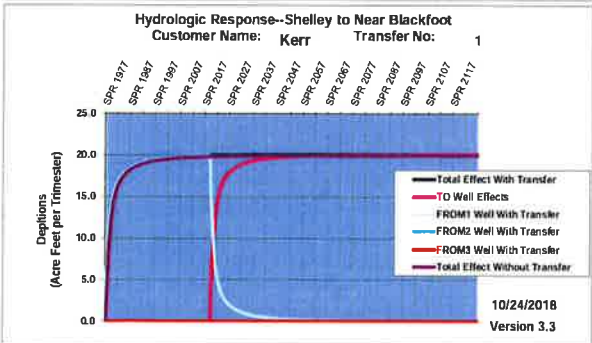
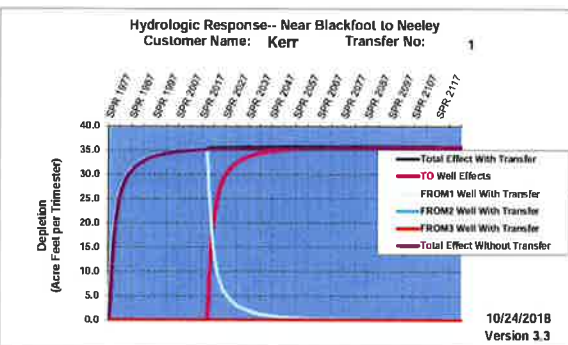
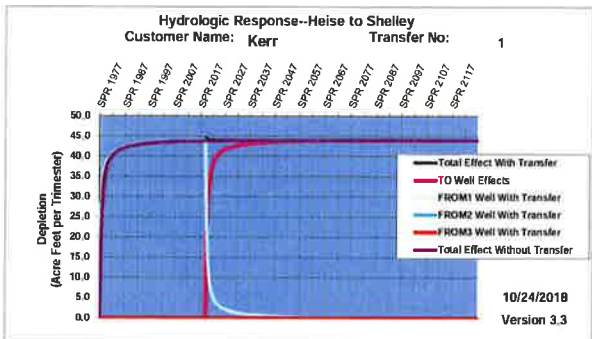
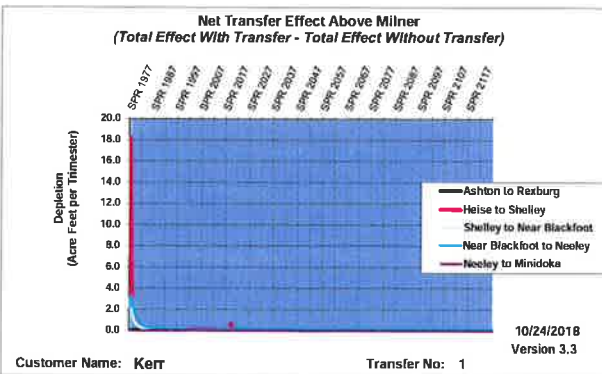
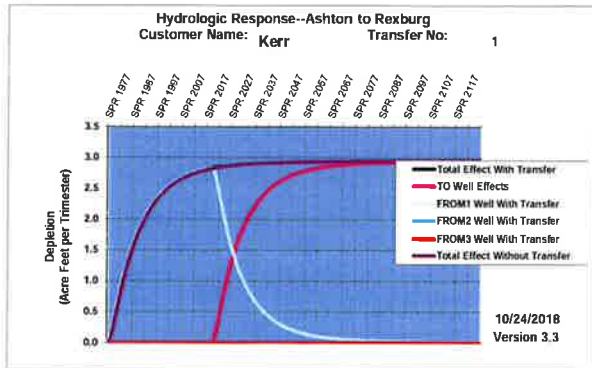
Steady State Analysis

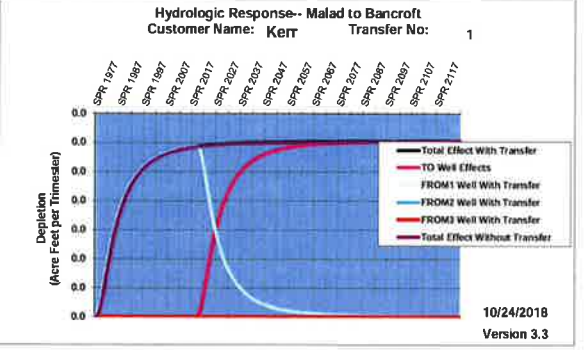
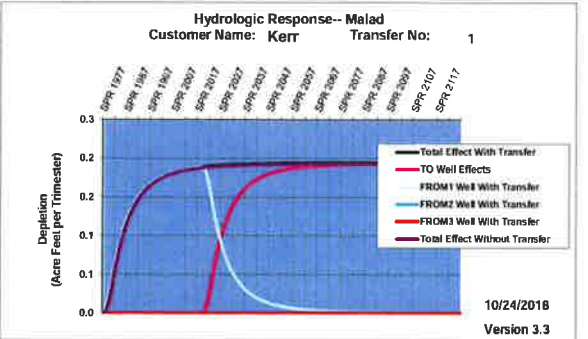
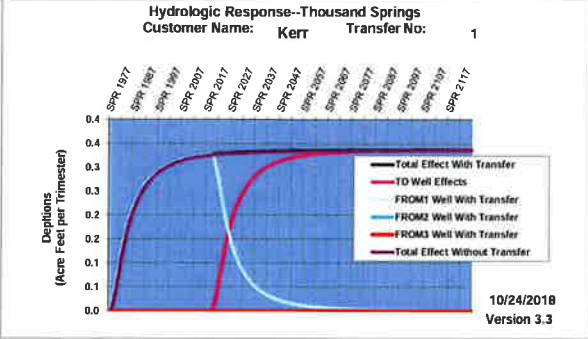
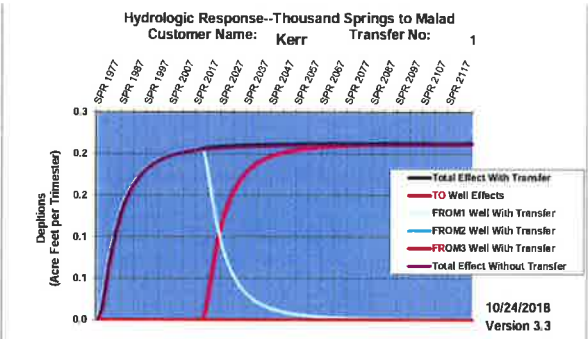
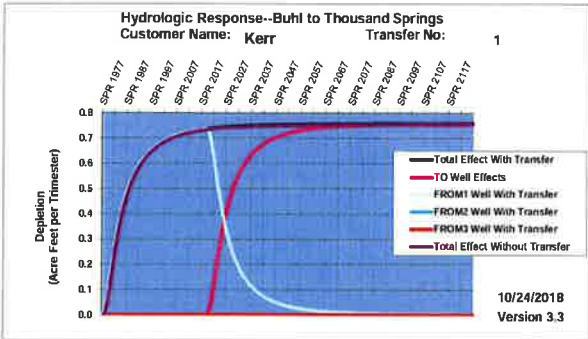
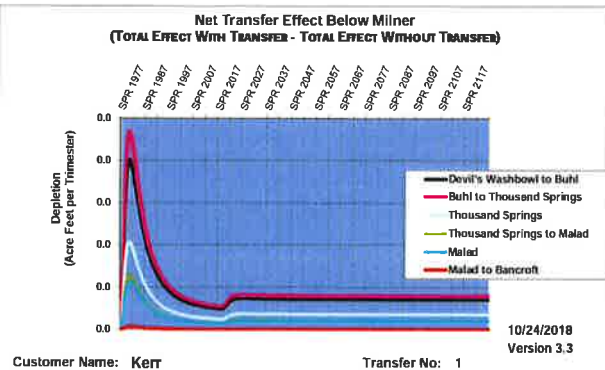
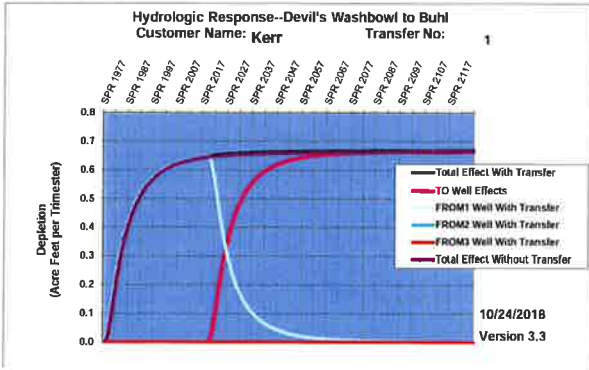
Mitigation Check 1 - >10% of Historical:	0.0%	0.0%	0.6%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
Mitigation Check 2: > 6 AF/A:	0.0	0.0	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.0
Mitigation Check 3 - >10% of Total:	2.8%	41.8%	19.1%	34.0%	0.2%	0.6%	0.7%	0.3%	0.2%	0.0%
Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Mitigation Vol. Req'd (ac-ft):	0.0	0.0	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.0

Transient State Analysis

Mitigation Check 1 - >10% of Historical:	0.0%	1.3%	0.6%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
Mitigation Check 2: > 6 AF/A:	0.0	0.6	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.0
Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Mitigation Vol. Req'd (ac-ft):	0.0	0.6	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.0

82834





Attachment #7a

CITY OF IONA

N

W

E

S

Legend

25-14392_PODs

Iona_VWells

Cities

modelgrid

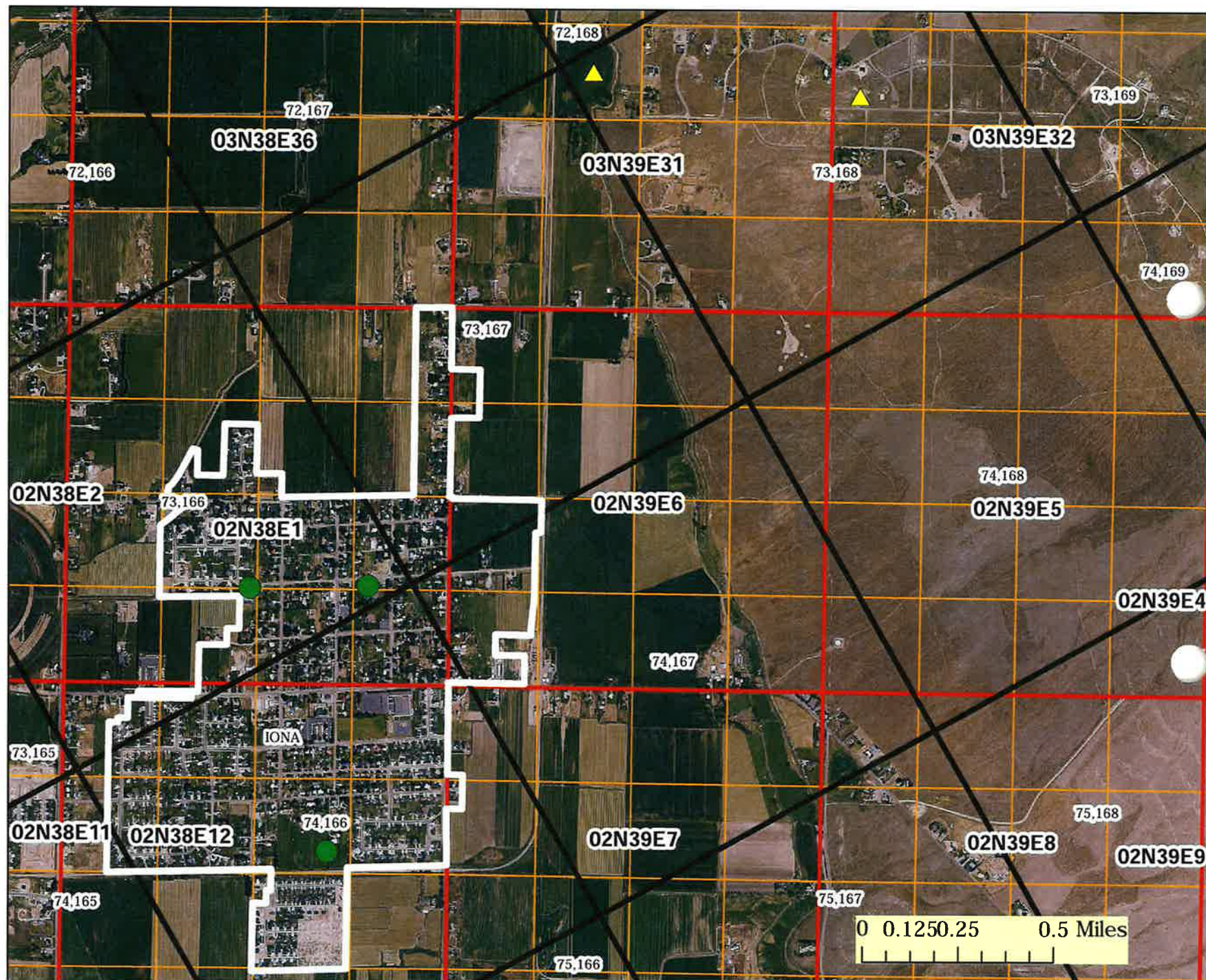
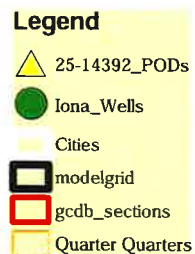
gcdb_sections

Quarter Quarters

82834

Attachment #7b

826



Attachment #10

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 09 2015

Department of Water Resources
Eastern Region

APPLICATION FOR EXTENSION OF TIME TO AVOID
FORFEITURE OF A WATER RIGHT

Section 42-222(4), Idaho Code, provides that a water right holder may apply to protect a valid water right from forfeiture. Upon a showing of reasonable cause, the Director may grant one (1) extension of five (5) years in which to resume use.

1. Water Right No. 25-14392 (one right per application)
☐ Attach a copy of the water right record, available at <http://www.idwr.idaho.gov>, Water Right Transfers, Step 1, or by contacting any Department office.
2. Applicant Darrel Ker Phone (208)313-3492
3. Are you the current water right holder of record? Yes ☒ No ☐
☐ If no, provide documentation of your authority to sign on behalf of the right holder -- OR -- attach a Notice of Change in Water Right Ownership form along with the required documentation and fee.
4. Mailing address ☐ Same as water right record -- OR -- complete the following information:
Address 4861 N 44 E City Idaho Falls
State ID Zip code 83401 Email _____
5. Give the last date water was beneficially used Water right was accepted into the WSB for the 2014 irrigation season.
6. Explain your reasons for non-use of the water right and your reasons for requesting an extension of time.
Attach additional documentation if needed.
Water right was leased to the WSB but was not rented. This extension is being filed to protect the water right from forfeiture.

The information contained in this application is true to the best of my knowledge.

Darrel Ker
Signature of applicant or authorized agent

Darrel Ker
Print name (and title, if applicable)

4/9/15
Date

Signature of applicant or authorized agent

Print name (and title, if applicable)

Date

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby approve said application, subject to the following conditions or reasons:

The right holder shall resume beneficial use of water on or before April 22, 2020

Signed this 22nd day of April, 2015

[Signature]
Title: Water Resources Program Manager
- Eastern Region

Stamped received ☐ Fee receipted by sc

Date

4/9/15

Receipt #

E040876

82834

Nield, Jeff

From: Andrew Rawlings <ARawlings@holdenlegal.com>
Sent: Monday, November 12, 2018 2:36 PM
To: Nield, Jeff
Subject: RE: City of Iona - Application for Water Right Transfer
Attachments: Water Right Transfer FINAL flat AMpg3.pdf

Mr. Nield;

I have attached an amended copy of page 3 of the Transfer to address the problem you spotted. Please substitute it for the page 3 that you currently have, so that IDWR can continue processing the Transfer.

If you have any other questions, please contact me.

Thank you,



D. Andrew Rawlings
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
<http://www.holdenlegal.com>
P.O. Box 50130
Idaho Falls, Idaho 83405
Phone: (208) 523-0620
Fax: (208) 523-9518
Email: arawlings@holdenlegal.com

Physical Address:
1000 Riverwalk Drive, Suite 200
Idaho Falls, Idaho 83402

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From: Nield, Jeff <Jeff.Nield@idwr.idaho.gov>
Sent: Tuesday, November 6, 2018 9:50 AM
To: Andrew Rawlings <ARawlings@holdenlegal.com>
Subject: City of Iona - Application for Water Right Transfer

Mr. Rawlings,

Attached is a copy of page 3 of the Application for Water Right Transfer for the City of Iona that was submitted on October 26, 2018. Page 3 of the application suggests there is a point of diversion in Township 02N, Range 38E, Section 5, SWSW. This legal description for one of the points of diversion appears to be incorrect. If the legal description provided

is incorrect an amended page 3 of the application needs to be submitted in order to continue processing the application. If you have any questions or concerns, or if you feel my analysis is in error, please feel free to contact me.

Thank you,

Jeff Nield

Stream Channel Protection Specialist/Water Resource Agent

Idaho Dept. of Water Resources

900 N Skyline Dr, Suite A

Idaho Falls, ID 83402-1718

(208) 525-7161

