

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 81934

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

RECEIVED
SEP 25 2017

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) Jim and Pinky Landon Trust

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: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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SEP 25 2017

Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Jim and Pinky Landon Trust Phone 208-588-2653Mailing address PO Box 104 Mackay, Idaho 83251 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 RepresentativeName of Representative Greg Sullivan Phone 208-736-8543Mailing address 2016 North Washington St Ste 4, Twin Falls, Idaho 83301 greg.sullivan@brockwayeng.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.

James C Landon
Signature of Applicant or Authorized Representative

James C Landon - TRUSTEE
Print Name and Title if applicable

9/19/17
Date

Pinky Landon
Signature of Applicant or Authorized Representative

Pinky Landon, TRUSTEE
Print Name and Title if applicable

9-19-17
Date

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

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.2**.

This application proposes to update the irrigation place of use.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

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JAN 29 2018
Department of Water Resources
Eastern Region

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

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☒ ☐	34-14420	0.22/39.2	Irrigation	4/01 to 10/31	Ground Water
☒ ☐	34-14421	0.38/66.5	Irrigation	4/01 to 10/31	Ground Water
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.60 cfs and/or 105.7 acre-feet.

2. Total amount of water proposed to be transferred or changed 0.60 cubic feet per second and/or 105.7 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 #

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	
06N	25E	6								28.8	1.4								30.2
Total Acres (for irrigation use)																			30.2

AMENDED

JLH
gsh 1-19-2018

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.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
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☒ ☐	34-14421	0.38/66.5	Irrigation	4/01 to 10/31	Ground Water
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.60 cfs and/or 105.7 acre-feet.

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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	
06N	25E	6							6.6	22.2	1.4								30.2
Total Acres (for irrigation use)																			30.2

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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DEC 01 2017

Department of Water Resources
Eastern Region

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:

Existing well, mainlines and delivery system.

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

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

LANDON, JIM & LANDON, PINKY TRUST and LANDON REVOCABLE LIVING TRST & LANDON, JAMES a
agreement has been signed between the entities.

- 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: N/A

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:

Irrigation will continue. 34-14420 will irrigate 11.2 acres and 34-14421 will irrigate 19.0 acres for a total of 30.2
acres.

- 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:

34-13940, 34-14420, 34-14421, 34-13941,

- 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:

The property in which the authorized POD was purchased by Blue Spruce Ranch LP. The owners of 34-14420
and 34-14421 did not have access to the POD until 2017 when an agreement between the two entities was
discussed and verbally approved.

AMENDED

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:

Existing well, mainlines and delivery system.

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

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

LANDON, JIM & LANDON, PINKY TRUST and LANDON REVOCABLE LIVING TRST & LANDON, JAMES a agreement has been signed between the entities.

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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: N/A

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34-13940, 34-14420, 34-14421, 34-13941,

- 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:

N/A

Page _____ of _____

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

Current Water Right No.: 34-14420

Current Owner: JIM & PINKY LONDON TRUST

Priority Date: 12/19/1950

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	0.22 CFS	39.2 AF
	<u>Total Diversion</u>	0.22 CFS	39.2 AF

Location of Point(s) of Diversion

GROUND WATER

NW1/4NW1/4NW1/4

Sec. 6, Twp 06N, Rge 25E B.M.

CUSTER County

Place of Use

IRRIGATION Within CUSTER County

T06N R25E S6	NENW	2.20	T06N R25E S6	SEnw	9.00
Total Acres: 11.2					

Conditions of Approval:

1. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
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: 12/14/2001

81934

Page _____ of _____

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

Current Water Right No.: 34-14421

Current Owner: JAMES LANDON
VERA L PINKY LANDON

Priority Date: 12/19/1950

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	0.38 CFS	66.5 AF
	<u>Total Diversion</u>	0.38 CFS	66.5 AF

Location of Point(s) of Diversion

GROUND WATER
CUSTER County

NW1/4NW1/4NW1/4 Sec. 6, Twp 06N, Rge 25E B.M.

Place of Use

IRRIGATION Within CUSTER County

T06N R25E S6	NENW	11.00	T06N R25E S6	SEnw	8.00
Total Acres: 19					

Conditions of Approval:

1. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE
PURSUANT TO SECTION 42-1425, IDAHO CODE.
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: 12/14/2001

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 3

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- ☒ Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.
- ☐ 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. Label it **Attachment #7b**.

If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

If any part of the irrigation water right is leased to the Water Supply Bank, you must also specify the location and number of acres that will remain idled for the duration of the lease contract at the new, proposed place of use.

B. CHANGES IN NATURE OF USE (Water Balance)

- ☐ If you propose to change the nature of use or period of use of all or part of the right(s) listed in this application, attach documentation describing the extent of historic beneficial use of the portion of the right(s) proposed to be changed. Also attach documentation showing that the portion of the right(s) to be changed will not be enlarged in rate, volume, or consumptive use through the proposed change. Label it **Attachment #8a**.

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- ☐ If you propose to change the place of use of a supplemental irrigation right, answer below and attach supporting documentation. Label it **Attachment #8b**.

Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above:

[illegible]

FOR DEPARTMENT USE ONLY

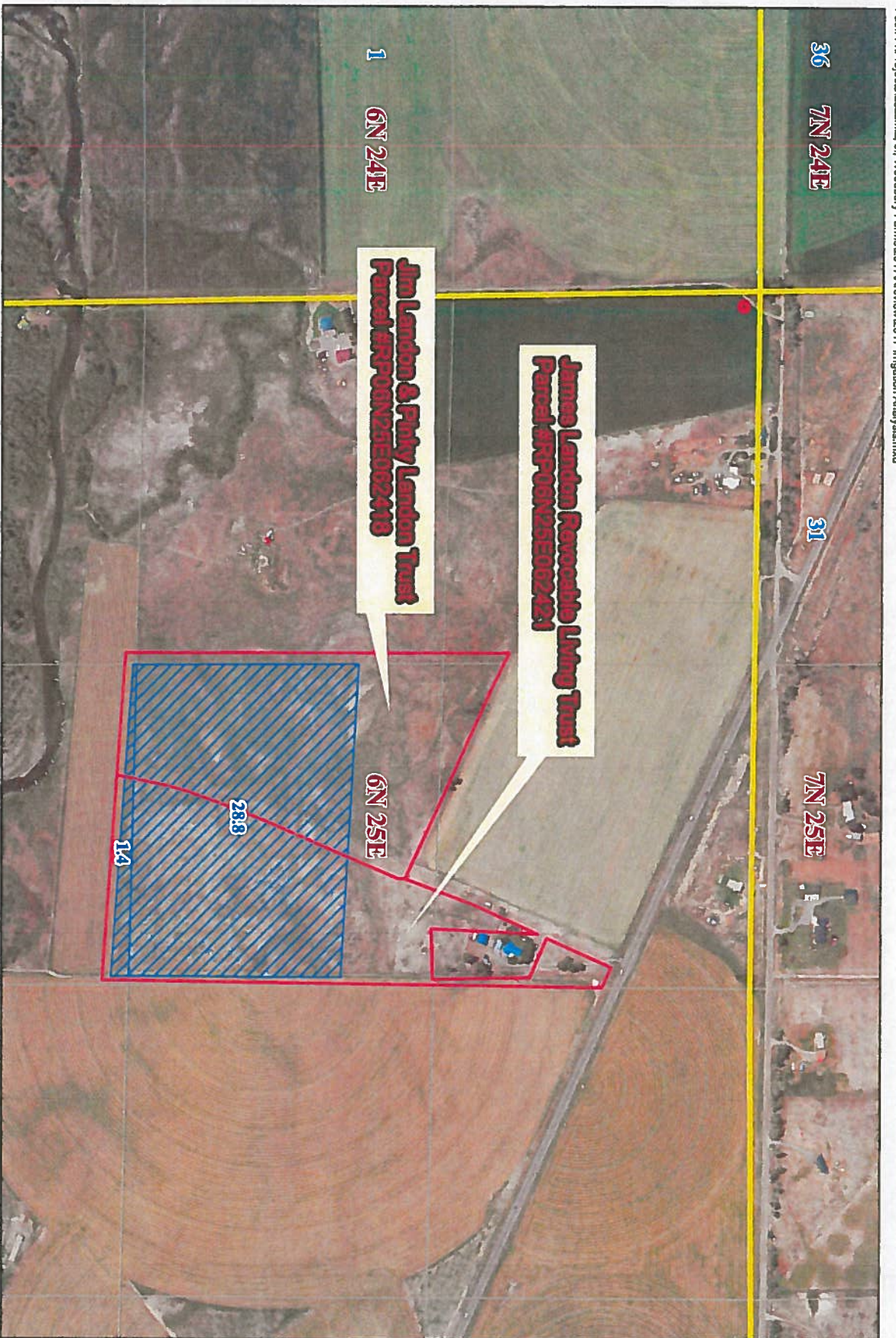
Transfer contains _____ pages and _____ attachments.

Received by SC Date 9/25/17 Preliminary check by _____ Date _____

Fee paid 500⁰⁰ Date 9/25/17 Received by SC Receipt # E043419

Add'l fee paid _____ Date _____ Received by _____ Receipt # _____

Check all that apply: Attachment WSB ☐ (copy sent to state office) Lessor Designation form ☐ &/or W-9 ☐ (originals to state office)



0 125 250 500 Feet

JIM AND PINKY LANDON

POU TRANSFER 34-14420 AND 34-14421
2015 NAIP Aerial

- Legend
- Wells
 - Parcels2
 - ▨ Jim and Pinky WRS

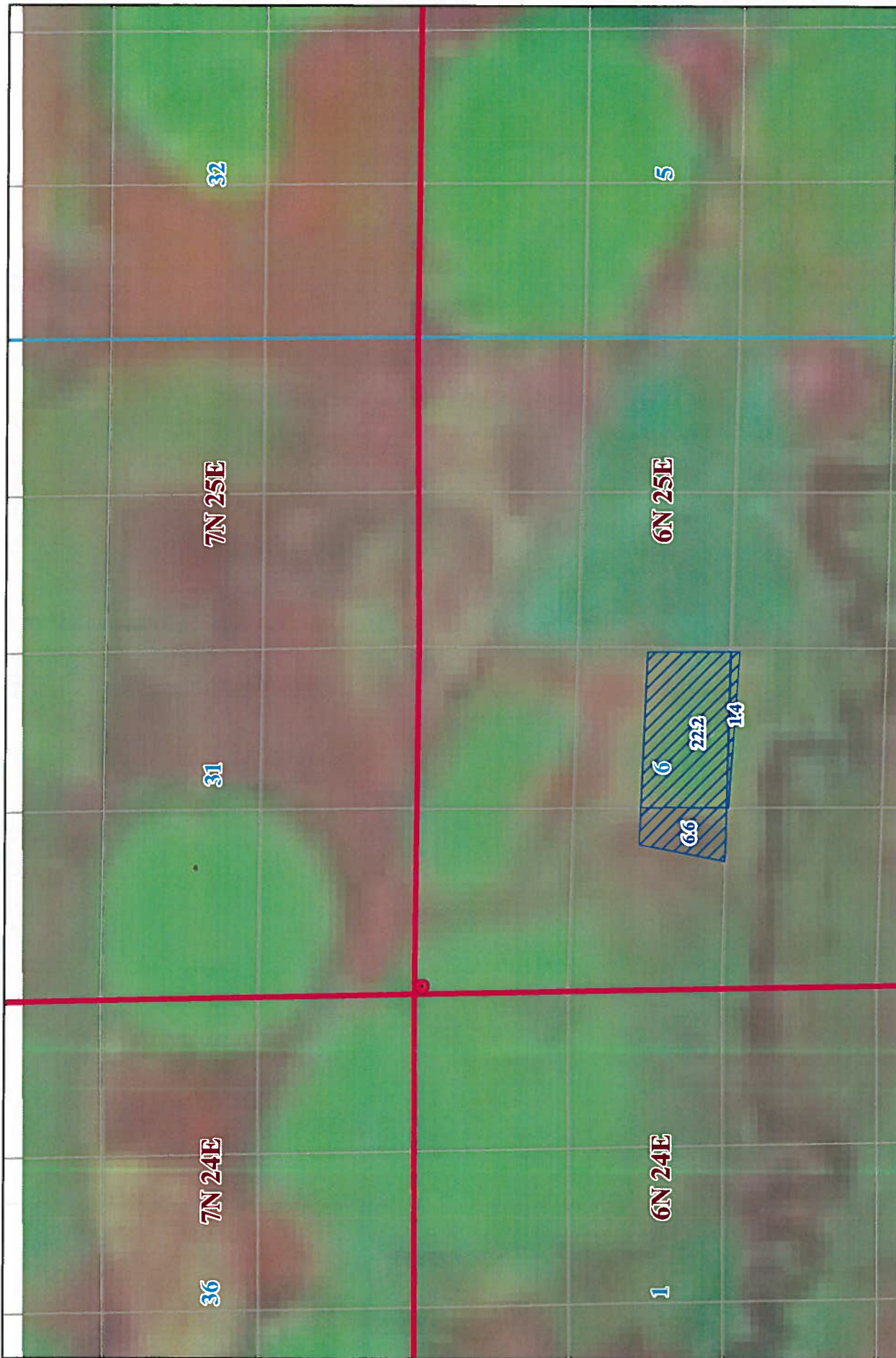


0 250 500 1,000 Feet

JIM AND PINKY LANDON
POU TRANSFER 34-14420 AND 34-14421
2015 NAIP Aerial

Legend
● Wells
▨ Jim and Pinky WRs





0 250 500 1,000 Feet

JIM AND PINKY LONDON

POU TRANSFER 34-14420 AND 34-14421
2015 NAIP Aerial

Legend
Wells

Landsat 8_5_17.tif

RGB

Red: Band_1
Green: Band_2
Blue: Band_3

N

RECEIVED

JUL 11 2006

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
168 West Pacific/P.O. Box 868
Blackfoot, ID 83221

DEPARTMENT OF
WATER RESOURCES

234339

Custer County Rec. of
FIRST AMERICAN TITLE
Time 4:10 P M Date 6/22/06
Ethel M. Peck, Clerk
Ruth Swank \$12.00
Deputy

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 151689-B (Id)

Date: May 25, 2006

For Value Received, **Thresa Landon, an unmarried woman**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Warner C Lusardi, Trustee of the Warner C Lusardi Family Trust dated June 11, 1993**, hereinafter called the Grantee, whose current address is **1570 Linda Vista Drive, San Marcos, CA 92078-3808**, the following described premises, situated in Custer County, Idaho, to-wit:

PARCEL 1:

PART OF THE NW¼ OF SECTION 6 TOWNSHIP 6 NORTH, RANGE 25 E.B.M., CUSTER COUNTY, IDAHO, DESCRIBED AS: BEGINNING AT A POINT THAT IS S. 88°55'49" E. 996.91 FEET ALONG THE SECTION LINE TO THE TRUE POINT OF BEGINNING FROM THE NW CORNER OF SECTION 6, AND RUNNING THENCE S. 88°55'49" E. 486.43 FEET ALONG SAID SECTION LINE TO THE SOUTHERLY RIGHT-OF-WAY OF U.S. HIGHWAY NO. 93; THENCE S. 65°04'01" E. 1570.40 FEET ALONG SAID RIGHT-OF-WAY; THENCE FOLLOWING AN EXISTING FENCE LINE THE FOLLOWING SEVEN (7) COURSES: (1) S. 23°53'27" W. 652.44 FEET; THENCE (2) S. 22°47'27" W. 322.18 FEET; THENCE (3) N. 65°17'13" W. 916.03 FEET; THENCE (4) N. 63°44'48" W. 744.36 FEET; THENCE (5) N. 27°36'30" E. 42.37 FEET; THENCE (6) N. 54°27'25" W. 108.88 FEET; THENCE (7) N. 03°36'10" E. 753.08 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

AN EASEMENT FOR IRRIGATION PUMP AND MAINLINE DESCRIBED AS PART OF THE NW¼ OF SECTION 6, TOWNSHIP 6 NORTH, RANGE 25 E.B.M., CUSTER COUNTY, IDAHO, DESCRIBED AS: COMMENCING AT THE NW CORNER OF SECTION 6; THENCE S. 01°11'40" E. 25.02 FEET ALONG THE SECTION LINE TO THE SOUTHERLY RIGHT-OF-WAY LINE OF A COUNTY ROAD AND THE POINT OF BEGINNING. THENCE S. 88°55'49" E. 994.81 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE S. 03°36'10" W. 20.02 FEET; THENCE N. 88°55'49" W. 811.06 FEET PARALLEL WITH AND 20 FEET SOUTH OF SAID RIGHT-OF-WAY LINE; THENCE S. 01°11'40" E. 35.03 FEET; THENCE N. 88°55'49" W. 182.07 FEET TO A POINT ON THE WEST LINE OF SECTION 6; THENCE N. 01°11'40" W. 55.04 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH all appurtenances thereto, including but not limited to water rights, including but not limited to Water Right Number 32-2513.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

81934

234339

Date: 05/25/2006

Warranty Deed
- continued

File No.: 151689-B (Id)

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

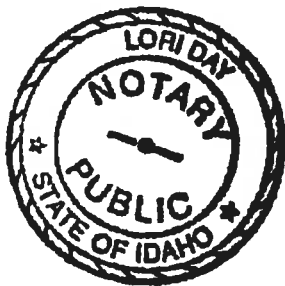

Thresa Landon

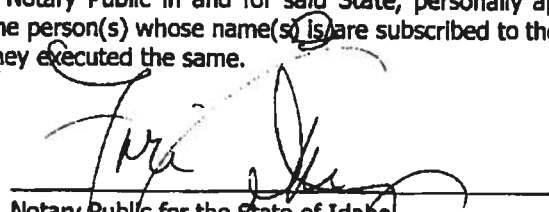
Grantees signature provided as acknowledgement of conveyance of water rights.

Warner C Lusardi, Trustee of the Warner C Lusardi
Family Trust

STATE OF Idaho)
COUNTY OF ~~Custer~~ *Bingham*) ss.

On this 20th day of ~~May~~ *June*, 2006, before me, a Notary Public in and for said State, personally appeared **Thresa Landon**, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.




Notary Public for the State of Idaho
Residing at: Blackfoot, Idaho
My Commission Expires: 10/21/2009

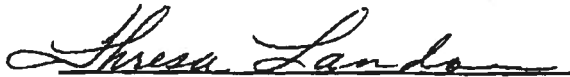
234339

Date: 05/25/2006

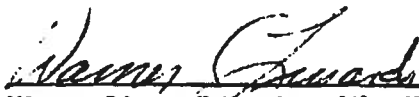
Warranty Deed
- continued

File No.: 151689-B (Id)

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.


Thresa Landon

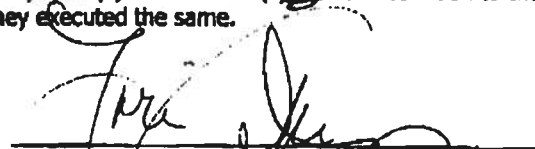
Grantees signature provided as acknowledgement of conveyance of water rights.


Warner C Lusardi, Trustee of the Warner C Lusardi
Family Trust

STATE OF Idaho)
COUNTY OF ~~Euster~~ *Bingham*) ss.

On this 20th day of ~~May~~ *June*, 2006, before me, a Notary Public in and for said State, personally appeared Thresa Landon, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.




Notary Public for the State of Idaho
Residing at: Blackfoot, Idaho
My Commission Expires: 10/21/2009

WHEN RECORDED MAIL TO

Blue Spruce Ranch, LP
c/o Lusardi Land Company
1570 Linda Vista Drive
San Marcos CA 92078-3808

234558

Custer County Reg. of

Lusardi Land Company

Time *10:45 A.M.* Date *8/1/2006*

Ethel M. Peck, Clerk

Ruth Brunken \$ *9.00*
Deputy

Space above this line for Recorder's use

WARRANTY DEED

For Value Received, Warner C. Lusardi, Trustee of the Warner C. Lusardi Family Trust dated June 11, 1993 as to an undivided 50% interest; Diversified Engineering, a California corporation as to an undivided 1% interest; Scott Free and Frances Lee Free, Trustees of the Free Family Trust dated February 10, 1997 as to an undivided 40% interest; and Kyle Denning and Christeen Denning, Trustees of the Kyle and Christeen Denning Family Trust dated July 31, 1997 as to an undivided 9% interest, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto Blue Spruce Ranch, LP, a California limited partnership, hereinafter called the Grantee, whose current address is 1570 Linda Vista Drive, San Marcos CA 92078-3808, the following described premises, situated in Custer County, Idaho, to wit:

An undivided interest as set forth above in and to:

Parcel A: Approximately 41.4 acres legally described as:

PARCEL 1:

PART OF THE NW¼ OF SECTION 6 TOWNSHIP 6 NORTH, RANGE 25 E.B.M., CUSTER COUNTY, IDAHO, DESCRIBED AS: BEGINNING AT A POINT THAT IS S. 88°55'49" E. 996.91 FEET ALONG THE SECTION LINE TO THE TRUE POINT OF BEGINNING FROM THE NW CORNER OF SECTION 6, AND RUNNING THENCE S. 88°55'49" E. 486.43 FEET ALONG SAID SECTION LINE TO THE SOUTHERLY RIGHT-OF-WAY OF U.S. HIGHWAY NO. 93; THENCE S. 65°04'01" E. 1570.40 FEET ALONG SAID RIGHT-OF-WAY; THENCE FOLLOWING AN EXISTING FENCE LINE THE FOLLOWING SEVEN (7) COURSES: (1) S. 23°53'27" W. 652.44 FEET; THENCE (2) S. 22°47'27" W. 322.18 FEET; THENCE (3) N. 65°17'13" W. 916.03 FEET; THENCE (4) N. 63°44'48" W. 744.36 FEET; THENCE (5) N. 27°36'30" E. 42.37 FEET; THENCE (6) N. 54°27'25" W. 108.88 FEET; THENCE (7) N. 03°36'10" E. 753.08 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

AN EASEMENT FOR IRRIGATION PUMP AND MAINLINE DESCRIBED AS PART OF THE NW¼ OF SECTION 6, TOWNSHIP 6 NORTH, RANGE 25 E.B.M., CUSTER COUNTY, IDAHO, DESCRIBED AS: COMMENCING AT THE NW CORNER OF SECTION 6; THENCE S. 01°11'40" E. 25.02 FEET ALONG THE SECTION LINE TO THE SOUTHERLY RIGHT-OF-WAY LINE OF A COUNTY ROAD AND THE POINT OF BEGINNING. THENCE S. 88°55'49" E. 994.81 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE S. 03°36'10" W. 20.02 FEET; THENCE N. 88°55'49" W. 811.06 FEET PARALLEL WITH AND 20 FEET SOUTH OF SAID RIGHT-OF-WAY LINE; THENCE S. 01°11'40" E. 35.03 FEET; THENCE N. 88°55'49" W. 182.07 FEET TO A POINT ON THE WEST LINE OF SECTION 6; THENCE N. 01°11'40" W. 55.04 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH all appurtenances thereto, including but not limited to water rights, including but not limited to Water Right Number 32-2513.

Continued on page 2.

81934

234558

Parcel B: Approximately 280.99 acres legally described as:

Township 6 North, Range 24 E.B.M., Custer County, Idaho
Section 1: Lots 1, Lot 2, S1/2NE1/4, NE1/4SE1/4

Township 7 North, Range 24 E.B.M., Custer County Idaho
Section 36: That portion of the S1/2SE1/4SE1/4 that lies south of the Highway and Railroad right-of-way.

Township 7 North, Range 25 E.B.M., Custer County, Idaho
Section 31: That portion of Lot 4 that lies south of the Highway and Railroad right-of-way.

TOGETHER WILL all appurtenances thereto, including but not limited to, water rights, including but not limited to Water Right Numbers 34-777, 34-2433 and 34-10580.

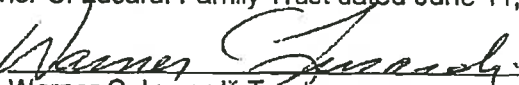
SUBJECT TO all easements, rights of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: July 18, 2006

Warner C. Lusardi Family Trust dated June 11, 1993

BY:


Warner C. Lusardi, Trustee

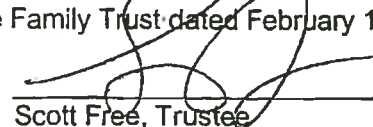
Diversified Engineering, a California corporation

BY:


Warner C. Lusardi, CEO/President

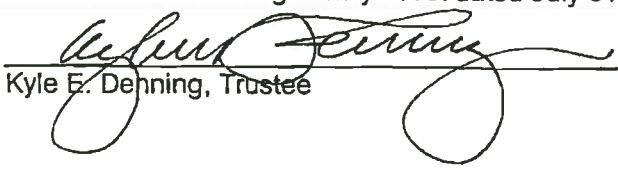
Free Family Trust dated February 10, 1997

BY:


Scott Free, Trustee

Kyle and Christeen Denning Family Trust dated July 31, 1997

BY:


Kyle E. Denning, Trustee

81934

234558

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

}
}ss
}

On July 26, 2006 before me, Elaine M. Regan, Notary Public, personally appeared Warner C. Lusardi and Scott Free and Kyle E. Denning personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Elaine M. Regan

Name: Elaine M. Regan

My Commission Expires: June 24, 2010



81934



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

December 7, 2017

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

Lucas Yockey
Watermaster 34
PO Box 53
Mackay, ID 83251

RE: Application for Transfer 81934

Dear Watermaster:

A copy of the above referenced application is enclosed. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

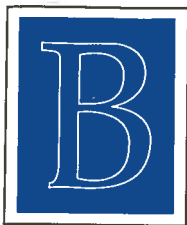
IDWR's regional offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered during regional review. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.

Sincerely,


Sharla Cox
Administrative Assistant

Enclosure(s)



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED
DEC 01 2017

Department of Water Resources
Eastern Region

November 27, 2017

Cooper Fritz
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Water Rights 34-14420 and 34-14421 Transfer

Dear Mr. Fritz:

A letter prepared by Mr. Fritz Haemmerle has been prepared in response to your letter dated October 2, 2017 regarding water rights 34-14420 and 34-14421.

An amended Page 4 of the transfer application for 34-14420 and 34-14421 is also attached to this letter.

Please let me know if there is any additional information that is required by IDWR.

Sincerely,

Greg Sullivan, M.S., Engineer

Enc: Fritz Haemmerle Letter, Page 4 of the Transfer Application

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506



HAEMMERLE LAW, P.L.L.C

Attorney & Counselor at Law

Fritz X. Haemmerle
fxh@haemlaw.com

P.O. Box 1800
Hailey, ID 83333

400 South Main Street, Suite 102
Tel: (208) 578-0520
Fax: (208) 578-0564

November 22 2017

State of Idaho
Department of Water Resources
Attn: Cooper Fritz
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

RECEIVED

DEC 01 2017

Department of Water Resources
Eastern Region

Re: Landon Application for Water Right Transfer

Dear Cooper:

This letter is submitted in support of the application for water right transfer submitted on behalf of the James and Pinky Landon Trust, and the Landon Revocable Living Trust; this letter is also in reply to your letter dated October 2, 2017, concerning the validity of the Landon water transfer application.

As you know the Landons have fully resumed beneficial use of water rights 34-14420, and 34-14421. In my earlier correspondence, I had submitted information regarding their 2017 resumption of beneficial use consisting of disking the land in question, planting perennial grasses, and their irrigation of the property, plus harvesting their 2017 grass crop. I am enclosing additional photographs regarding their 2017 resumption of use of their water rights for your review.

I am having difficulty understanding the relevance of your comments concerning forfeiture for nonuse in light of the Landon's resumption of beneficial use of their water rights. The Idaho Supreme Court has long held that forfeiture of water rights are not favored in Idaho. See e.g. *Zezi v. Lightfoot*, 57 I 707, 68 P2d 5c (1937). According to the Supreme Court in *Sagewillow, Inc., v. Idaho Department of Water Resources* (2003), resumption of beneficial use is a valid defense to statutory forfeiture regardless of the period of nonuse. The *Sagewillow* case discusses in depth the fact that resumption of use disposes of any claimed statutory forfeiture; and/or partial forfeiture resumption of use is a valid defense to any claim of forfeiture based on nonuse. The *Sagewillow* court cited *Carrington v. Crandall*, 65 I 525, 147 P2d 1009 (1944) stating "although statutory abandonment did actually occur, the forfeiture is not effective if, after the five years period, the original owner or appropriator resumed the use of the water right prior to the claim of right by a third party."

The *Sagewillow* court specifically rejected the argument that resumption of use had somehow been overruled by the codification and adoption of §IC 42-222. The court in *Sagewillow* cited and reaffirmed a long line of Idaho cases in which resumption of use was held to be a valid defense to any claim of forfeiture based on nonuse. See for example: *Zezi v. Lightfoot*, 57 I 707,

State of Idaho
Department of Water Resources
Attn: Cooper Fritz
November 22, 2017
Page 2

68 P.2d 50 (1934); *Wagoner v. Jeffery*, 66 I 455, 162 P.2d 400 (1945); *In re Boyer*, 73 I 152, 248 P.2d 540 (1952). More recent cases affirming resumption of use as a valid defense to forfeiture include: *Jenkins v. IDWR*, 103 I 384, 847 P.2d 1256 (1982); and *Dovel v. Dobson*, 122 I 59, 831 P.2d 507 (1992).

You state in your October 2, 2017, letter, "If no evidence is provided that the rights are valid, or no defense is received, the rights could be subject [to] loss and forfeiture through the transfer process." (Emphasis added).

As the above cases, including specifically the *Willowcreek v. IDWR* case, make it clear that resumption of beneficial use is a valid and complete defense to any claim of forfeiture. Your letter states that I should provide the requested answer and evidence by November 1, 2017 and you go on to state that "if the question remains unanswered and no evidence is provided, [you] will assume that the water right is not valid for transfer. I have previously provided you with considerable evidence concerning the Landons' resumption of beneficial use. I am also enclosing with this correspondence various additional photographs documenting that resumption of use. I trust that this is sufficient "evidence" that the Landons not only have a valid defense to any claim of forfeiture, but also that this evidence clearly establishes that water rights 34-4420 and 34-14221 are valid and the Landons' requested transfer should be approved.

If you require additional evidence regarding the Landons' resumption of beneficial use, please feel free to contact me. I trust that this letter satisfies your October 2, 2017 inquiry, but if you have any other questions relevant to approving their transfer request, please let me know.

Sincerely,

HAEMMERLE LAW, P.L.L.C.

A handwritten signature in black ink, appearing to read "Fritz X. Haemmerle", written in a cursive style.

Fritz X. Haemmerle



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 North Skyline Drive, Suite A • Idaho Falls, ID 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

10/2/2017

Jim and Pinky Landon Trust
PO Box 104
Mackay, ID 83251

Dear James and Pinky,

I have received your transfer proposal to change the place of use for water rights 34-14420 and 34-14421.

A review of the application notes that question 5g is unanswered. The question relates specifically to the validity of the water rights. I have enclosed a copy of page 4, on which question 5g is located, from your transfer application. In order for the application to be considered for approval, all questions concerning the validity of the water right must be answered (Transfer Processing Memo No. 24, Section 3(8)). This letter serves as a formal request for you to answer question 5g.

Despite the incomplete application, I have cursorily reviewed the proposal. Idaho Code 42-222 governs the analysis of transfer applications. Specifically, Section 2 of Idaho Code 42-222 states in relevant part that

"[a]ll rights to the use of water acquired under [Idaho law]...shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated..."

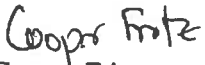
Typically, the department relies on aerial photography to determine whether or not a right has been used. An initial review of satellite imagery between 2002 and 2016 yielded unconvincing evidence that the right was utilized during any year examined.

However, there could be an important piece of missing information regarding the rights' validity. That information could be any evidence of irrigation, or a defense to forfeiture as provided under Idaho Code 42-223. This letter thus also serves as a formal request for evidence that the right is valid for transfer.

If no evidence is provided that the rights are valid, or no defense is received, the rights could be subject loss and forfeiture through the transfer process.

Please provide the requested answer and evidence by 11/1/2017. If the question remains unanswered and no evidence is provided, I will assume that the water right is not valid for transfer and will proceed with processing the transfer accordingly.

Sincerely,


Cooper Fritz
Water Resources Agent



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 North Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

10/2/2017

Greg Sullivan
2016 North Washington Street, Suite 4
Twin Falls, ID 83301

Dear Greg,

I have received your transfer proposal to change the place of use for water rights 34-14420 and 34-14421.

A review of the application notes that question 5g is unanswered. The question relates specifically to the validity of the water rights. I have enclosed a copy of page 4, on which question 5g is located, from your transfer application. In order for the application to be considered for approval, all questions concerning the validity of the water right must be answered (Transfer Processing Memo No. 24, Section 3(8)). This letter serves as a formal request for you to answer question 5g.

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Sincerely,

Cooper Fritz
Water Resources Agent



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED

SEP 25 2017

Department of Water Resources
Eastern Region

September 21, 2017

James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Water Rights 34-14420 and 34-14421

Dear Mr. Cefalo:

Jim and Pinky Landon desires to update the irrigation place of use of water right 34-14420 and 34-14421. The ownership, beneficial use, period of use and the point of diversion will not be changing with this transfer.

The Landon's have recently changed management practices for their water rights and would like IDWR's records to reflect the changes that have occurred. Irrigation under water rights 34-14420 and 34-14421 provided a nice 30.2 acre crop of grass hay in which Landon's were able to harvest 1,200 80 pound bales during the 2017 irrigation season.

No ESPA Model analysis is required for this transfer because the POD will not be changing.

Please copy our office on all correspondence regarding this application.

Sincerely,

Greg Sullivan, M.S., Engineer

Cc: Jim Landon

Enc: Transfer Application, Aerial Maps, Brockway Engineering Check # 14251 for
\$500.00

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506