

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

NOV 06 2017

Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant(s) Michael McMillan Phone 801 328 9919
Mailing address 3955 West Old Hwy Rd Morgan UT 84050 Email ann3248@msn.com

- ☐ 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 _____ Phone _____
Mailing address _____ Email _____

- ☐ 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.

Michael J McMillan
Signature of Applicant or Authorized Representative

Michael J McMillan
Print Name and Title if applicable owner

Nov 2, 2017
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

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 cfs/acre reallocation
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**.
Rearranging water rights on the Nuffer Ditch, in accordance with attached agreement.

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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
All or Part ☒ ☐	11-7614	0.13/0.09	Irrigation	04/15 to 09/30	Bear River
☒ ☐	Split 11-7600	0.01	Irrigation	04/15 to 10/31	Bear River
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.14/0.10 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.14 cubic feet per second and/or _____ acre-feet per year.

3. Point(s) of Diversion:

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

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
	2		NW	NE	06	15S	46E	Bear Lake	Bear River	Nuffer Ditch

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	
15S	45E	12												5.0					5.0
Total Acres (for irrigation use)																			5.0

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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:

Ditch to flood

- b. Who owns the property at the point(s) of diversion? N/A

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
Accurate description of the current point of diversion.

- 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: _____

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:

N/A

- 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:

11-7597, 11-7628 and 11-7600 will be manipulated as a result of this transfer and in conjunction with two other transfers submitted simultaneously

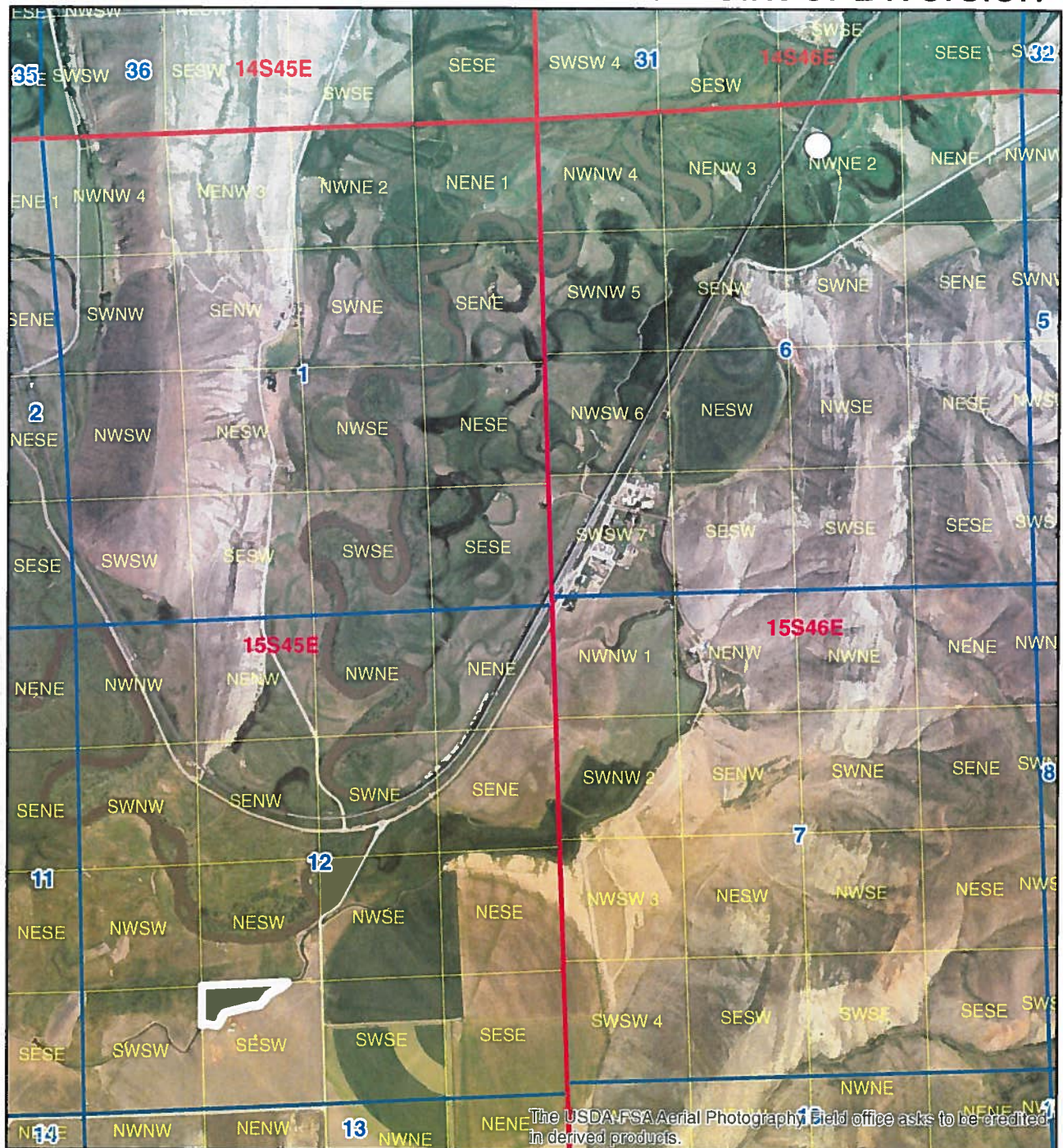
- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

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:

Post-Transfer Place of Use and Point of Diversion

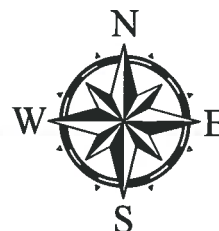


The USDA-FSA Aerial Photography Field office asks to be credited in derived products.

2015 Imagery

Legend

- Nuffer_Ditch_POD
- Post-Transfer_Place_of_Use
- Township/Range
- Sections
- QQ



0 0.275 0.55 1.1 Miles

82005

11/14/2017

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WILLIAM ROBISON PO BOX 13 DINGLE, ID 83233 (208) 847-0288

Status: Active

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	1.050 CFS	
	Total Diversion		1.050 CFS	

BEAR RIVER	SE	Sec. 31, Twp 14S, Rge 46E,	BEAR LAKE County
BEAR RIVER	NESW	Sec. 12, Twp 15S, Rge 45E,	BEAR LAKE County
BEAR RIVER	NE	Sec. 11, Twp 15S, Rge 45E,	BEAR LAKE County

[illegible]

1. P/D NUFFER DITCH.
P/U AC. IRR. = 52.5.
AGRICULTURAL RIGHT.

N/A

11/14/2017

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LANETTE R KIMBALL 311 POVERTY FLAT RD PEGRAM, ID 83254

Status: Active

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	07/01	0.380 CFS	
IRRIGATION	07/01	09/30	0.250 CFS	
	Total Diversion		0.380 CFS	

BEAR RIVER	NESW	Sec. 12, Twp 15S, Rge 45E,	BEAR LAKE County
BEAR RIVER	NE	Sec. 11, Twp 15S, Rge 45E,	BEAR LAKE County
BEAR RIVER	SE	Sec. 31, Twp 14S, Rge 46E,	BEAR LAKE County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
15S	45E	12												40.0					40.0

1. MEADOW RIGHT.
P/D NUFFER DITCH.
P/U AC. IRR. 37.2 acres.

N/A

WATER RIGHT ALLOCATION AGREEMENT

This Water Right Allocation Agreement is entered into between Private Capital Group, Inc., a Utah corporation ("PCG"), William Robinson, P.O. Box 13, Dingle, Idaho 83233 ("Robinson"), DeMar Romrell, 6000 N. Pegram Road, Montpelier, Idaho 83245 ("Romrell"), and Michael McMillan, 3955 West Old Highway Road, Morgan, UT 84050 ("McMillan"), referred to individually herein as a "Party" and collectively as the "Parties".

RECITALS

A. The Parties collectively own all of the land irrigated under Idaho water right nos. 11-924 and 11-929 (the "Ola Transtrum Water Rights") as defined in the Final Decree filed July 14, 1920, in *Utah Power & Light Company v. The Last Chance Canal Company Ltd. et al.*, District Court of the United States for the District of Idaho, Eastern Division, before the Honorable F.S. Dietrich, District Judge, commonly known as the "Dietrich Decree."

B. The place of use of the Ola Transtrum Water Rights is defined by the Dietrich Decree to the nearest 40 acre tract, without specifying how many acres are irrigated in each 40 acre tract.

C. The Dietrich Decree omits certain 40 acre tracts that were historically irrigated under the Ola Transtrum Water Rights and includes certain 40 acre tracts that have not historically been irrigated under the Ola Transtrum Water Rights.

D. Since the Dietrich Decree was entered in 1920, the land historically irrigated under the Ola Transtrum Water Rights has been divided and conveyed on multiple occasions and is now owned collectively by the Parties. The Ola Transtrum Water Rights have likewise been divided and conveyed and are presently defined in the records of the Idaho Department of Water Resources (IDWR) as set forth in Exhibit A attached hereto.

E. The water rights described in Exhibit A are now owned by the Parties to this Agreement; however, the errors and omissions in the Ola Transtrum Water Rights as defined in the Dietrich Decree have carried over into the water rights described in Exhibit A.

F. The Parties desire to reallocate the water rights identified in Exhibit A to accurately reflect the lands actually irrigated historically under the Ola Transtrum Water Rights.

AGREEMENT

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Reallocation.** The Ola Transtrum Water Rights shall be reallocated to reflect the diversion rate and acres set forth in Exhibit B attached hereto. Each Party hereby quitclaims to

the other Parties their respective interests in the Ola Transtrum Water Rights as needed to reallocate the water rights as set forth in Exhibit B.

2. Water Right Transfers. Each Party is responsible at their own expense to file a water right transfer application with the IDWR to change the elements of their individual water right(s) listed in Exhibit A to reflect the reallocation described in Exhibit B. To the extent necessary, the Parties will cooperate with each other to facilitate IDWR approval of such transfer applications. No Party will protest a water right transfer filed by any other Party so long as such application comports with Exhibit B. The Parties agree to sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.

3. Binding Effect. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the Parties.

4. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior oral or written agreements between them concerning the subject matter of this Agreement.

5. Amendment. No alteration, modification or amendment of this Agreement shall be valid except in writing signed by the Parties.

6. Attorney Fees. If any Party commences legal action to enforce this Agreement (or for damages by reason of an alleged breach thereof), the prevailing party therein shall be entitled to recover from the non-prevailing party, in addition to any other relief granted, its reasonable attorney fees and costs incurred therein.

7. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

8. Counterparts. This Agreement may be executed at any number of counterparts for the convenience of the Parties, all of which, when taken together, shall constitute one in the same agreement.

9. Time is of the Essence. Time is of the essence in this Agreement.

[end of agreement; signatures on following page]

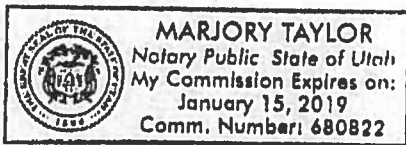
COUNTERPART SIGNATURE PAGE

PRIVATE CAPITAL GROUP, INC.

By: [Signature]

STATE OF UTAH)
: ss.
County of UTAH)

This record was acknowledged before me on 9/12/17
by BENJAMIN SCHRAMM, the VICE PRESIDENT of Private
Capital Group, Inc.



(SEAL)

[Signature]
NOTARY PUBLIC FOR STATE OF UTAH
My Commission Expires: 1/15/19

Robinson



(SEAL)

WATER RIGHT ALLOCATION AGREEMENT – 4

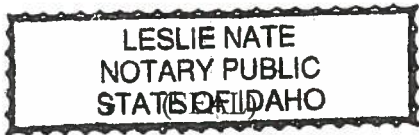
82005

COUNTERPART SIGNATURE PAGE

DeMar Romrell
DEMAR ROMRELL

STATE OF Idaho)
County of Bear Lake) : ss.

This record was acknowledged before me on September 14, 2017
by DeMar Romrell.



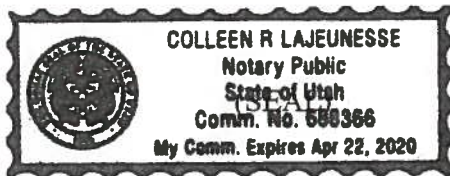
Leslie Nate
NOTARY PUBLIC FOR Idaho
My Commission Expires: 5/8/2020

COUNTERPART SIGNATURE PAGE

Michael J. McMillan
MICHAEL MCMILLAN

STATE OF UTAH)
County of MORGAN) : ss.

This record was acknowledged before me on July 31, 2017
by Michael McMillan.



Colleen R Lajeunesse
NOTARY PUBLIC FOR State of Utah - County of Morgan
My Commission Expires: 4-22-2020

EXHIBIT A

Ola Transtrum Water Rights - Current

Water Right 11-924	Early Rate (cfs) 4/15-7/1	Late Rate (cfs) 7/1-9/30	Acres
11-7597 (PCG)	11.5	7.67	154.3
11-7628 (Robinson)	2.63	1.75	256.5
11-7614 (McMillan)	0.38	0.25	37.2
11-7629 (Romrell)	0.38	0.25	40
11-7627 (BLM)	0.11	0.08	12
	15	10	500

Water Right 11-929	Early Rate (cfs) 4/15-7/1	Late Rate (cfs) 7/1-9/30	Acres
11-7601 (PCG)	0.35	0.35	17.5
11-7600 (Robinson)	1.05	1.05	52.5
New WR (McMillan)	0	0	0
	1.4	1.4	70

EXHIBIT B

Ola Transtrum Water Rights - Reallocated

Water Right 11-924	Early Rate (cfs) 4/15-7/1	Late Rate (cfs) 7/1-9/30	Acres
11-7597 (PCG)	10.03	6.69	284.2
11-7628 (Robinson)	4.84	3.23	211.4
11-7614 (McMillan)	0.13	0.09	4.4
11-7629 (Romrell)	0	0	0
11-7627 (BLM)	0	0	0
	15	10	500

Water Right 11-929	Early Rate (cfs) 4/15-7/1	Late Rate (cfs) 7/1-9/30	Acres
11-7601 (PCG)	0.8	0.8	39.8
11-7600 (Robinson)	0.59	0.59	29.6
New WR (McMillan)	0.01	0.01	0.6
	1.4	1.4	70