

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

OCT 04 2017

Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Private Capital Group, Inc. Phone 775-220-0861
Mailing address 160 W. Canyon Crest Road, Alpine, Utah 84004 Email mackenzie@privatecapitalgro

- ☒ 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 T.J. Budge, Attorney Phone 208-232-6101
Mailing address P.O. Box 1391, Pocatello, Idaho 83204-1391 Email tjb@racinelaw.net

- ☒ 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

[Signature]
Signature of Applicant or Authorized Representative

T.J. Budge, Attorney

Print Name and Title if applicable

Date

Benjamin Schramm, Vice President
Print Name and Title if applicable

9/28/17
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 cfs 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**.
Change place of use of water rights 11-7597 and 11-7601 to reflect actual irrigation practices in accordance with the Water Right Allocation Agreement enclosed as Attachment #10.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1 Continued

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

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☒ ☐	11-7597	10.03/6.69	Irrigation	04/15 to 09/30	Bear River & Salt Lake
☒ ☐	11-7601	0.8/0.8	Irrigation	04/15 to 10/31	Bear River & Salt Lake
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 10.83/7.49 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 10.83 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	2									27			39.4		4.9	38.4	12.5	122.2
		11	21.5	30.4	39.7	33.9	39.6	3.6		18.3									187
		12						14.8											14.8
Total Acres (for irrigation use)																			324

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:

Nuffer Ditch

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

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
Right-of-way per Idaho Code 42-1102.

- 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:

No change to the land now 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:

None.

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

Yes No

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

If yes, describe:

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

Current Water Right No.: 11-7601

Current Owner: PRIVATE CAPITAL GROUP INC
Priority Date: 4/15/1885
Origin: Water Right
Status: Active
Basis: Decreed

Source

BEAR RIVER

Tributary

GREAT SALT LAKE

Beneficial Use

IRRIGATION

From To

04/15 to 10/31

Total Diversion

Diversion Rate

0.35 CFS

0.35 CFS

Annual Volume

Location of Point(s) of Diversion

BEAR RIVER

SE1/4

Sec. 31, Twp 14S, Rge 46E B.M.

BEAR LAKE County

BEAR RIVER

NE1/4SW1/4

Sec. 12, Twp 15S, Rge 45E B.M.

BEAR LAKE County

BEAR RIVER

NE1/4

Sec. 11, Twp 15S, Rge 45E B.M.

BEAR LAKE County

Place of Use

IRRIGATION Within BEAR LAKE County

T15S R45E S12

NWNW

40.00

Total Acres: 40

Conditions of Approval:

1. P/D NUFFER DITCH.
P/U AC. IRR. = 17.5 acres.
AGRICULTURAL RIGHT.

Decreed Date: 3/7/1924

Page _____ of _____

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

Current Water Right No.: 11-7597

Current Owner: PRIVATE CAPITAL GROUP INC
Priority Date: 4/15/1877
Origin: Water Right
Status: Active
Basis: Decreed

Source

BEAR RIVER

Tributary

GREAT SALT LAKE

Beneficial Use

From To

Diversion Rate

Annual Volume

IRRIGATION	04/15 to 07/01
IRRIGATION	07/01 to 09/30
	<u>Total Diversion</u>

11.5 CFS
7.67 CFS
11.5 CFS

Location of Point(s) of Diversion

BEAR RIVER	NE1/4SW1/4	Sec. 12,	Twp 15S,	Rge 45E B.M.
BEAR LAKE County				
BEAR RIVER	NE1/4	Sec. 11,	Twp 15S,	Rge 45E B.M.
BEAR LAKE County				
BEAR RIVER	SE1/4	Sec. 31,	Twp 14S,	Rge 46E B.M.
BEAR LAKE County				

Place of Use

IRRIGATION Within BEAR LAKE County

T15S R45E S2	SESW	39.00	T15S R45E S2	SWSE	41.00
T15S R45E S11	SWNE	40.00	T15S R45E S11	NWNW	22.00
T15S R45E S11	SENW	24.00			

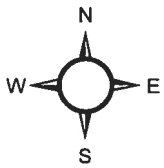
Total Acres: 166

Conditions of Approval:

1. MEADOW RIGHT.
P/D NUFFER DITCH.
P/U AC. IRR. 154.3 acres.

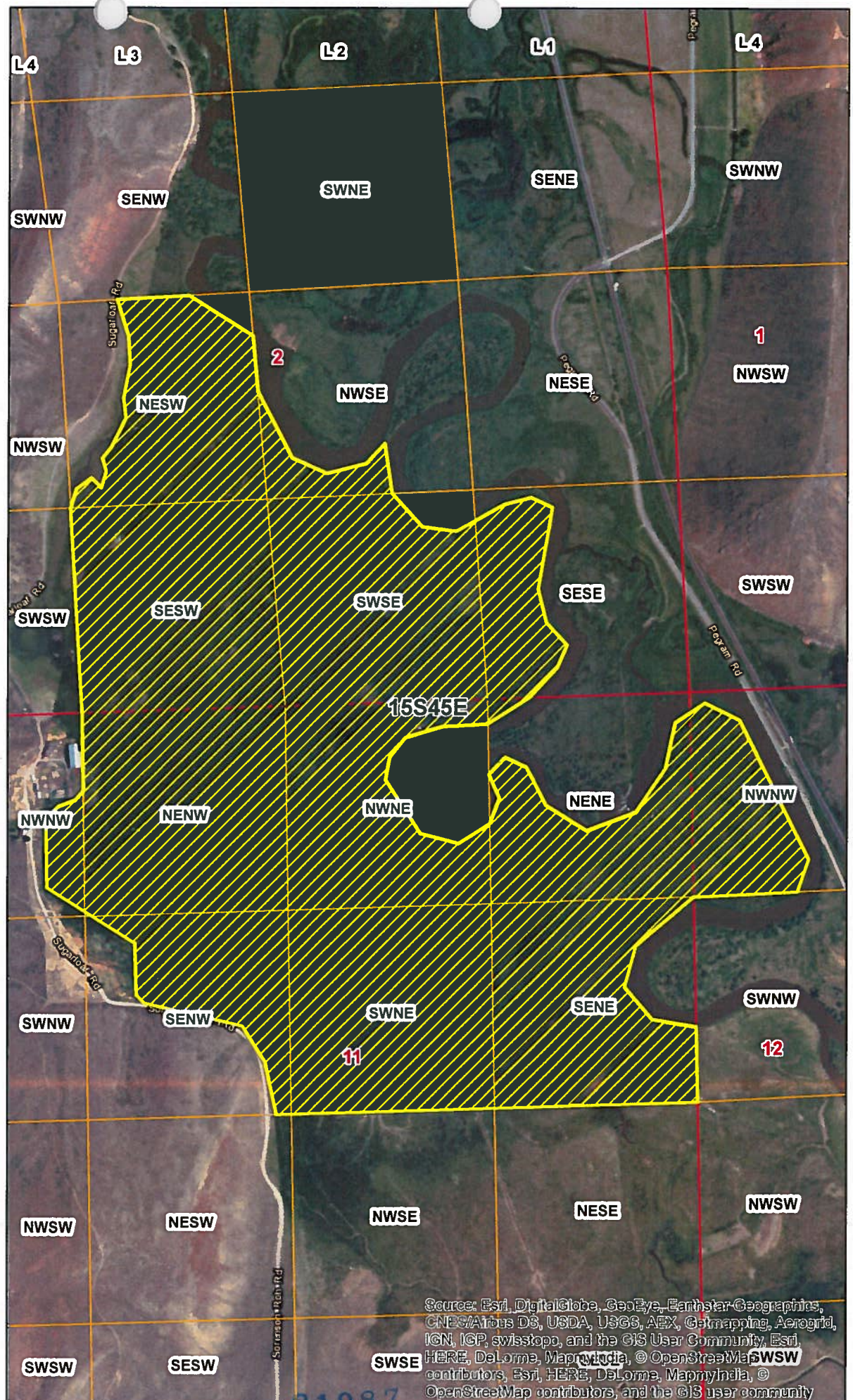
Decreed Date: 3/7/1924

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Legend

- New POU
- TR Lines
- Section Lines
- Quarter Quarters



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, G-Imaging, AeroGRID, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, Mapbox, and the OpenStreetMap contributors, Esri, HERE, DeLorme, Mapbox, and the OpenStreetMap contributors, and the GIS user community



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UNANIMOUS WRITTEN CONSENT & RESOLUTION OF THE BOARD OF
DIRECTORS OF PRIVATE CAPITAL GROUP, INC.,
A UTAH CORPORATION, TO ACTION WITHOUT A MEETING

(Removal and Appointment of Various Officers of the Corporation)

Pursuant to and in accordance with the provisions of Utah Code and the Code of Bylaws of Private Capital Group, Inc., a Utah corporation, (the "**Corporation**"), the undersigned, being all of the Board of Directors (the "**Board**") do hereby consent to and adopt the following resolutions by written consent as of February 26, 2016 (this "**Resolution**");

RECITALS:

WHEREAS, prior to this Resolution, the Company was managed by Jared Lucero as President, and Eric Enloe as Secretary and Treasurer ("**Enloe**");

WHEREAS, pursuant to the powers vested in them under Section 5.01 of the Amended and Restated Code of Bylaws of Private Capital Group, Inc. ("**Section 5.01**"), the Board of Directors desire to remove Enloe as the Secretary and Treasurer of the Corporation; and

WHEREAS, pursuant to the powers vested in them under Section 5.02 of the Second Amended and Restated Code of Bylaws of Private Capital Group, Inc. ("**Section 5.02**"), the Board desires to appoint various individuals to be officers of the Corporation.

RESOLUTIONS:

RESOLVED, that the Board does hereby remove Enloe as Secretary and Treasurer of the Corporation.

FURTHER RESOLVED, the Board does hereby appoint Jed Robinson to the office of Vice President of Borrower Relations.

FURTHER RESOLVED, the Board does hereby appoint Mike Pedersen to the office of Vice President of Lender Relations.

FURTHER RESOLVED, the Board does hereby appoint Chris Wallace to the office of Vice President of Underwriting.

FURTHER RESOLVED, the Board does hereby appoint Benjamin Schramm to the office of Vice President of Project Management.

FURTHER RESOLVED, the Board does hereby appoint Michelle Kinkade to the office of Secretary.

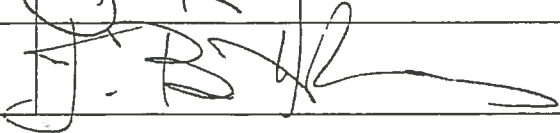
FURTHER RESOLVED, the Board does hereby appoint Lorraine Gerber to the office of Treasurer.

This Unanimous Written Consent and Resolution of the Board of Directors shall have the same force and effect as a vote of the Directors at a meeting which has been duly called, convened, and held in accordance with law, the Articles of Incorporation, and the Code of Bylaws of the Corporation.

IN TESTIMONY WHEREOF, the undersigned certify that each is a duly elected, qualified, and acting member of the Board of the Corporation, and that the signatures of the Directors contained on the following pages are the genuine signatures of all the Directors of the Corporation.

**APPROVAL OF DIRECTORS
OF
PRIVATE CAPITAL GROUP, INC.**

We, the undersigned, being all the directors of the Corporation have read this Unanimous Written Consent and Resolution of the Directors and do hereby agree and consent to all actions contained herein.

DIRECTOR:	SIGNATURE:
JARED L. LUCERO	
JED E. ROBINSON	
J. BRETT BOREN	

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]

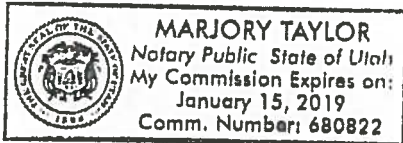
COUNTERPART SIGNATURE PAGE

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)

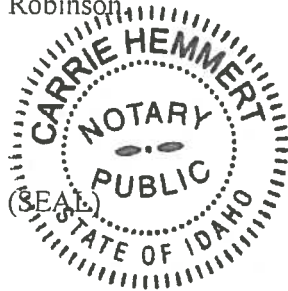
[Signature]
NOTARY PUBLIC FOR STATE OF UTAH
My Commission Expires: 1/15/19

COUNTERPART SIGNATURE PAGE

William B Robinson
WILLIAM ROBINSON

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

This record was acknowledged before me on 24 August 2017
by William Robinson



Carrie Hunt
NOTARY PUBLIC FOR St. Idaho
My Commission Expires: 11-3-2018

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.



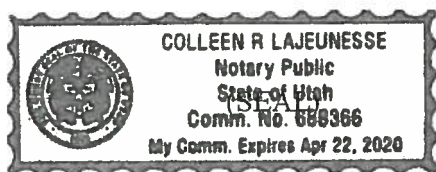
Leslie Nate
NOTARY PUBLIC FOR Idaho
My Commission Expires: 5/8/2020

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

Pre-Transfer

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