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DEPARTMENT OF
WATER RESOURCES

Laura A. Schroeder, ESQ (ISB #3799)
James Browitt (ISB #9016)
Schroeder Law Offices, P.C.
1915 N.E. Cesar E. Chavez Boulevard
Portland, Oregon 97212
PHONE – (503) 281-4100 FAX – (877) 600-4971
counsel@water-law.com

Attorneys for Protestant

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 81155 IN THE NAME OF CITY OF POCATELLO	BRIEF AND EXCEPTIONS TO PRELIMINARY ORDER DISMISSING PROTEST AND APPROVING TRANSFER

Protestant Spartan Portneuf, LLC ("Spartan Portneuf" or "Protestant"), by and through its counsel, Laura A. Schroeder and James Browitt of Schroeder Law Offices, P.C., and pursuant to Idaho Code Section 67-5245 and IDAPA 37.01.01.730, hereby appeals to the Director of the Idaho Department of Water Resources ("IDWR" or "Department") the *Preliminary Order Dismissing Protest and Approving Transfer* ("Preliminary Order") issued by Hearing Officer James Cefalo ("Hearing Officer"), dated August 8, 2017 with the filing of this brief and exceptions.

SUMMARY

The Preliminary Order is a manifestation of IDWR's willingness to accept City of Pocatello's ("Pocatello" or "City") incomplete and inaccurate characterization of Transfer-81155 and to pardon the myriad deficiencies in the City's application. This acceptance violates Idaho Code Section 42-222(1), that obligates the Department to "examine all the evidence and available information" related to the changes proposed by an application for transfer.

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BACKGROUND

Spartan Portneuf is the owner of water right No. 29-13425, under which 0.676 cubic feet per second ("cfs") may be appropriated for irrigation and stock water purposes. No. 29-13425 is one of three water rights sourced from a well located in the NWSWSW, Sec. 16, T07S, R35E, Bannock County, for ground water appropriation.[1]

In 1999, the City of Pocatello drilled Well No. 44 — approximately 300 feet from the well serving right No. 29-13425 — with the intention of adding Well No. 44 as an alternative point of diversion ("POD") for certain water rights served by Pocatello's interconnected well system. To accomplish this, the City filed Application for Transfer No. 5452 ("T-5452") with IDWR, proposing that Well No. 44 become one of 13 PODs used by water rights Nos. 29-2274, 29-2338 and 29-7375 ("Subject Water Rights"). IDWR approved T-5452, and the Subject Water Rights were decreed in the SRBA with conditions consistent with those delineated in T-5452.

Having recently decided to relocate another of its wells, Well No. 39, the City filed three applications for transfer seeking authorization to divert water from the new well site. IDWR approved two transfers, while the third, Application for Transfer No. 81155, filed July 25, 2016 ("T-81155"), that involved the Subject Water Rights and consequently Well No. 44, was protested by Spartan Portneuf via Notice of Protest, dated September 26, 2016 ("Protest"). Spartan Portneuf contended in the Protest that the proposed transfer "will exacerbate existing problem of City's operation of Well No. 44."

IDWR conducted a pre-hearing conference on June 9, 2017. The parties were unable to resolve the Protest's issues and requested that IDWR proceed with an administrative hearing. A hearing was scheduled for October 17, 2017.

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[1] These three rights descend from license No. 29-2039. A split necessitated by a change of ownership created 29-13424 and 29-13425, which were claimed in the Snake River Basin Adjudication ("SRBA"). A subsequent split of 29-13424 created 29-14148. All three rights were decreed in the SRBA with a priority date of September 5, 1951.

SCHROEDER LAW OFFICES, P.C.
1915 NE Cesar E. Chavez Boulevard
Portland, Oregon 97212
PHONE (503) 281-4100 FAX (877) 600-4971

On June 26, 2017, Pocatello filed a *Motion to Dismiss Protest and in the Alternative Motion in Limine* ("Motion"). Spartan Portneuf filed a *Response to City's Motion to Dismiss Protest and Objection to Alternative Motion in Limine* ("Response") on July 10, 2017, and Pocatello followed with a *Reply in Support of Motion to Dismiss Protest and in the Alternative Motion in Limine* ("Reply") on July 13, 2017.

Following the Hearing Officer's issuance of the Preliminary Order, Spartan Portneuf filed a *Petition for Reconsideration of Preliminary Order Dismissing Protest and Approving Transfer* ("Petition") on August 21, 2017. On September 5, 2017, the Hearing Officer issued an *Order Denying Petition for Reconsideration* ("Denying Order").

SPECIFIC EXCEPTIONS

Spartan Portneuf takes exceptions to the following findings, conclusions, analyses and interpretations in the Preliminary Order.

1. **Findings of Fact Nos. 1, 2, 4 and 9.** These findings, while substantively accurate, underscore the discrepancy between the City's description of the impact of T-81155 and its actual, much broader implications. Further, these findings reflect deficiencies in the application that should have required consideration by IDWR, if not correction, but which the Hearing Officer, at City's invitation, determined to overlook.

Throughout this matter, the City has insisted that the only change proposed in T-81155 is the relocation of Well No. 39, and therefore the only relevant issue is this sole relocation and how it will injure Spartan Portneuf's water right, No. 29-13425. The Hearing Officer flatly contradicted this in the Preliminary Order, acknowledging that T-81155 also proposed the removal of two PODs. Finding No. 4, p. 2. He alluded to an inconsistency wherein — "Pocatello asserts it does not intend to abandon any of its authorized points of diversion." *Id.* at n. 2. — implying that the facts stated in the application and the City's ongoing misrepresentation were immaterial as this discrepancy was not addressed by the Hearing Officer.

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SCHROEDER LAW OFFICES, P C
1915 NE Cesar E. Chavez Boulevard
Portland, Oregon 97212
PHONE (503) 281-4100 FAX (877) 600-4971

This failure is contrary to IDWR policy, as delineated in *Transfer Processing Memorandum No. 24,* dated December 21, 2009 ("Memo No. 24"). *See* Exhibit 1. First, this IDWR policy advises notification in instances of partial relinquishment, including the elimination of a POD. Although an application for transfer generally is not required in such instances, "[t]he water owner should provide a notarized statement of relinquishment including specific identification of the water right(s) and specific reduction(s)." Memo No. 24, p. 5. Had this notarized statement been included with the City's application, as it should have been, Spartan Portneuf certainly may have addressed it in the Protest. Nevertheless, it is a deficiency that IDWR can, should and is required to address given the impact of such abandonments.

Second, and more critically, it appears evident that one if not both of the PODs at issue **must** be removed by way of an outright transfer, that is the procedure required when a correction is made to any element of a decreed water right. *Id.* at p. 3. Partial decrees were entered for the Subject Water Rights on April 26, 2012, with elements and conditions consistent with those set forth in T-5452. However, the City stealthily continued its failure to disclose its actual appropriations because in fact the City had effectively abandoned the POD located at NESE Sec. 12, T06S, R33E long before the approval of T-5452 or the date of the decrees — the City sold the well and the property to which it was affixed in 1992. *See* Exhibit 2: *Claim File City of Pocatello,* p. 8 ("Claim File"). Moreover, as the Hearing Officer concluded, "There is no evidence in the record that a second city well **ever existed** in the SENE, Sec. 35, T06S, R34E." Preliminary Order, p. 2, n. 2 (emphasis added). Nevertheless, the decrees for the Subject Water Rights identify two PODs at that location. *Id.* at Finding No. 2.[2]

When one of the co-managers of Spartan Portneuf, who is not a water lawyer, protested T-81155 on the simple ground that, if approved, the change will exacerbate an ongoing problem, this provided the Hearing Officer with sufficient notice that resolving the Protest would require

[2] City Well No. 12 is located within SENE, Sec. 35, T06S, R34E. *See* Application T-81155 Map.

SCHROEDER LAW OFFICES, P.C.
1915 NE Cesar E. Chavez Boulevard
Portland, Oregon 97212
PHONE (503) 281-4100 FAX (877) 600-4971

considering the application and that protest issue in light of the City's appropriation **as it actually exists** and once making those findings concluding how the City's application would make the problem worse. But, the Hearing Officer chose not to do that, even though it was apparent that the appropriation as it relates to the Subject Water Rights does not match the City's portrayal of the matter, and has not for some time.

Consider the Hearing Officer's reference to dubious claims made by the City in its application for T-5452: "Twelve of the thirteen proposed points of diversion were **purportedly** for existing wells." Preliminary Order, Finding of Fact 9, p. 3 (emphasis added). Based on the above-stated facts regarding the two PODs omitted from T-81155, this was clearly not true.

Still, Pocatello has attempted to perpetuate this myth: "Although there are 13 possible points of ground water diversion authorized under T-5452, the City only has **existing wells** at 12 of the points of diversion." Motion, p. 3, n. 1 (emphasis added). But this is another exaggeration, if not an outright misrepresentation. In addition to the two PODs in question, evidence indicates that five other PODs did not have operating wells at the time T-5452 was approved. *See* Exhibit 3: Claim File, p. 50. Further, those five wells, identified by the City as Wells Nos. 4, 6, 7, 8 and 9, are still not in use, and it is unclear if they are operational or even exist. *See* Exhibit 4: *City of Pocatello Well Production Values for 2015 and 2016.* Yet all five are listed in the application for T-81155, each specifically associated with a certain POD. Application, sec. 5.

When this discrepancy was addressed, Response, pp. 2-4, the City's reaction was telling: "[T]he fact that decreed points of diversion do not currently have an operating well is irrelevant to the transfer at hand — the relocation of Well #39". Reply, p. 2.

But even though IDWR chose to downplay these discrepancies as negligible technicalities, T-81155 is still tainted by ambiguity. As referenced to above, the City has argued, and presumably will continue to argue, that it did not intend to abandon any of its authorized PODs through the proposed transfer. Pocatello maintains that the only change contemplated was

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1915 NE Cesar E. Chavez Boulevard
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the relocation of Well No. 39, a stance that is reflected in a letter dated July 7, 2016, from City Water Superintendent Justin Armstrong ("Armstrong Letter") that accompanied the application:

> These water rights are currently associated with several listed points of diversion (POD) throughout the City of Pocatello. Due to the recent relocation and replacement of Well No. 39 (POD T06S, R33E, SW ¼ NE ¼, Section 15), the former well will be properly decommissioned and this point of diversion no longer utilized. **The City of Pocatello desires to update any formerly associated water rights at the previous location to include the new point of diversion of Well 39**, now located within T06S, R33E, SW ¼ SE ¼.

(Emphasis added). What is irrelevant here is the veracity of the statement made in Armstrong's Letter and whether it expresses Pocatello's actual intentions with T-81155. In either light, the application is deficient.

If Pocatello intended to maintain 13 PODs for the Subject Water Rights, then 13 PODs should have been listed in T-81155. But the application only included 11 PODs, among them the relocated Well No. 39 — which was clearly marked as "new" on the application. While the Hearing Officer found the City's explanation for omitting the other two PODs unpersuasive, *see* Preliminary Order, p. 2, n. 2, there is no indication he pursued the matter further. He therefore **assumed** the City intended to abandon the two PODs, and approved T-81155 thusly.

But this treatment does not correspond with how the City handled the obvious abandonment in T-81155, that of the POD for the original Well No. 39. Considering the statement made in this regard in the Armstrong Letter — "the former well will be properly decommissioned and [its] point of diversion no longer utilized" — it is likely that the City would address any relinquished POD with similarly unequivocal language, if abandonment were the City's intent.

Regardless of the interpretation, T-81155 does not adequately express what it precisely entails. Granted, IDWR does not require an unreasonable amount of exactitude in its applications for transfer. But the Department has established that "[t]he application must list the purpose for

SCHROEDER LAW OFFICES, P.C.
1915 NE Cesar E. Chavez Boulevard
Portland, Oregon 97212
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and a general statement of the reason for the proposed change." Memo No. 24, p. 9.[3] T-81155 plainly did not satisfy that standard, and for that reason should have been subjected to closer scrutiny, if not rejected outright.

Indeed, rejection was an option available to the Hearing Officer. As set forth in Memo No. 24, an application for transfer may be rejected if the applicant fails to provide adequate information. *Id.* at p. 17. But in this instance, and in spite of T-81155's obvious flaws, there is no indication IDWR or the Hearing Officer ever requested information beyond what was provided with the application. Curiously, the Hearing Officer dismissed Spartan Portneuf's Protest as defective, yet was willing to overlook the application's conspicuous defects.

2. Analysis of Spartan Portneuf's Protest. The Hearing Officer implied that Spartan Portneuf's Protest inappropriately focused on the City's operation of its interconnected well system because IDWR "cannot predict how a water user will operate its system in the future." Preliminary Order, p. 5, ¶ 3. Yet that is essentially what the Department has done here. IDWR has prophesied that T-81155 will not exacerbate the problem alleged by Spartan Portneuf, and reached that conclusion by evaluating the issue as Pocatello has presented it, not as how **it currently exists**.

As abundantly demonstrated above, T-81155 does not fully or accurately reflect the present-day status of the Subject Water Rights, nor does it precisely identify what impacts would result — especially since Pocatello is adamant that the only change contemplated is the relocation of Well No. 39. "The question … is whether other users … are injured or will be injured by the change." *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 7, 154 P.2d 507, 508 (1944), and , pursuant to Idaho Code Section 42-222(1), the burden is upon Pocatello to show that injury will not occur.

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[3] Interestingly, IDWR's Application for Transfer of Water Right — Point(s) of Diversion form does not provide a space "for a general statement of the reason for the proposed change."

SCHROEDER LAW OFFICES, P.C.
1915 NE Cesar E. Chavez Boulevard
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Being that the application and supporting information for T-81155 did not adequately demonstrate that the proposed change would not result in injury, the City should have been compelled to supplement the record. Requiring an applicant to provide evidence of non-injury is what enables the department to discharge its statutory obligation. *Barron v. Idaho Dep't of Water Res. (in Re Transfer No. 5116)*, 135 Idaho 414, 420, 18 P.3d 219, 225 (2001).

3. Conclusions of Law. The Hearing Officer ruled that Spartan Portneuf's Protest was defective and therefore should be dismissed pursuant to IDAPA 37.01.01.304. The rule states that "[d]efective, insufficient or late pleadings may be returned or dismissed." IDAPA 37.01.01.210 and 220 specify that pleadings in contested cases include applications, so Rule 304 also applies to the City's application for T-81155. As thoroughly expressed in Subsection 1 above, the City's application was replete with defects and insufficiencies, and therefore should have been returned or dismissed. By ignoring the defects of the application while finding them irreparable in the Protest, the Hearing Officer arbitrarily applied the standard required by Rule 304.

ADDITIONAL POINTS OF EXCEPTION

In addition to the above-listed findings, conclusions, analyses and interpretations, Spartan Portneuf takes exception to the following findings, analyses and conclusions in the Denying Order.

The Hearing Officer stated that, upon issuance of the Preliminary Order, Spartan Portneuf was no longer a party to the contested case concerning T-81155 because its Protest was dismissed, and therefore it was precluded from challenging the approval of T-81155. Denying Order, p.7, ¶ 7. Accordingly, the Hearing Officer determined that Spartan Portneuf did not have standing to raise arguments regarding the administrative record or the sufficiency of IDWR's review of T-81155. *Id.*

This is circuitous reasoning. In issuing the Preliminary Order, the Hearing Officer effectively ruled contemporaneously on the Motion and the approval of T-81155, which is

SCHROEDER LAW OFFICES, P.C.
1915 NE Cesar E. Chavez Boulevard
Portland, Oregon 97212
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underscored by the fact the rulings were jointly announced **in the same order**. The Hearing Officer's attempt to segregate these rulings is not only illogical, it runs contrary to IDAPA 37.01.01.730.02(a), which says "[a]ny party may file a petition for reconsideration of this preliminary order." The rule does not seem to contemplate that a preliminary order can be issued in segments and that a party to a contested case, such as Spartan Portneuf, would have standing for one portion of an order but not the other.

Therefore, Spartan Portneuf was entitled to petition the Hearing Officer to reconsider the approval of T-81155 on the ground that IDWR did not fulfill its obligation under Idaho Code Section 42-222(1) to evaluate "all the evidence and available information."

REQUEST FOR HEARING

To the extent the Protestant has not been afforded a hearing on this matter, Spartan Portneuf requests, pursuant to Idaho Code Section 42-1701A(3), that a hearing be held.

CONCLUSION

Based on the foregoing, Spartan Portneuf respectively requests the Director set aside the Preliminary Order, reinstate the Protest and allow the contested case for T-81155 to proceed.

DATED this 19th day of September, 2017.

SCHROEDER LAW OFFICES, P.C.

Laura A. Schroeder
James Browitt

Attorneys for Protestant

SCHROEDER LAW OFFICES, P.C.
1915 NE Cesar E. Chavez Boulevard
Portland, Oregon 97212
PHONE (503) 281-4100 FAX (877) 600-4971

EXHIBIT 1

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ADMINISTRATOR'S MEMORANDUM

Transfer Processing No. 24

To: Water Management Division Staff

From: Jeff Peppersack

RE: **TRANSFER PROCESSING POLICIES & PROCEDURES**

Date: December 21, 2009

This memorandum supersedes Transfer Processing Memorandum No. 24 dated January 21, 2009.

The purpose of this memorandum is to provide policy guidance for processing applications for transfers of water rights pursuant to Section 42-222, *Idaho Code*, and other applicable law. The revisions to the October 30, 2002 memorandum are provided to recognize statewide application of this memorandum, to clarify the guidance based on updates to statutes and Department policy, and to streamline transfer processing to reduce application processing time and existing application backlogs. These policies and procedures are to be followed until rescinded or amended, or superseded by statute or rule or court decision, to assure that applications are processed efficiently and with consistency.

Regardless of whether or not an application for transfer is protested, Section 42-222, *Idaho Code*, requires that the department evaluate whether there would be injury to other water rights, there would be an enlargement in use of the original right, the proposed use would be a beneficial use, the proposed use would be in the local public interest, the proposed use would be consistent with the conservation of water resources within the State of Idaho, and whether the proposed change would impact the agricultural base of the local area. In the case where the place of use is outside of the watershed or local area where the source of water originates, the department must also evaluate whether the change would adversely impact the local economy of the watershed or local area. The department must also evaluate the validity of the right (or part thereof) being changed and must assure that the applicant owns the right or otherwise has the authority to apply for the transfer.

1. When a Transfer is Required.

Section 42-222, *Idaho Code*, requires the holder of a water right to obtain approval from the department prior to changing: (1) the point of diversion, (2) the place of use, (3) the period of use, or (4) the nature of use of an established water right. An established water right is a licensed right, a decreed right, or a right established by diversion and beneficial use. Approval is sought by filing an application for transfer with the department. A claim in an adjudication or a statutory claim must be filed to allow a transfer application to be processed for a right based upon diversion and beneficial use.

Changes to Elements of a Water Right. An application for transfer is required if a proposed change would alter any of the four elements of the water right listed above that can be changed pursuant to Section 42-222, *Idaho Code*, as recorded with the department or by decree. Conditions or other provisions of a water right may further define or limit a recorded element of a water right; an application for transfer is required for a proposed change that could alter such a condition. For example, a proposed change of use under a water right for an industrial use, which includes a condition limiting the quantity of water that can be consumptively used, to a different industrial use that would increase the quantity of water that would be consumptively used can not be made unless enlargement is prevented.

If a proposed change has the potential to injure other rights or the potential to enlarge the right, even when there would be no change in any of the recorded elements of the right, an application for transfer should be filed to provide for evaluation of injury and enlargement issues before the change is made. For example, if the point of diversion from a fully appropriated creek is proposed to be moved where additional water would be available for diversion or if the proposed point of diversion as changed would move upstream of the points of diversion for other rights, the change can not be made unless other conditions are imposed, such as mitigation, to prevent injury.

Changes to Points of Diversion. If a point of diversion is proposed to be moved to a different tract than described as an element under an established water right, then a transfer application is required. This includes a change from one 10-acre legal subdivision to another if the point of diversion has been previously described as a 10-acre legal subdivision. An application for transfer is also required when a point of diversion is proposed to be added for a water right, even when the existing authorized point of diversion is recorded as a 10-acre legal subdivision and the additional diversion would be within the same 10-acre legal subdivision.

If a point of diversion is proposed to be moved from a tributary to a location downstream from the confluence of the tributary and the surface water stream to which the tributary is joined, then an application for transfer is required. If a point of diversion is proposed to be moved from a stream to the stream to which it is tributary at a location upstream of the confluence between them, or moved from one tributary to another tributary, an application for exchange is required pursuant to Section 42-240, *Idaho Code* rather than an application for transfer.

Changes in Place of Use. An application for transfer is required if a change in the location of use between 40-acre legal subdivisions is proposed that would result in an increase in the number of acres within a 40-acre legal subdivision or in use of water at a new 40-acre legal subdivision that is not included within the recorded place of use element for the right. An application for transfer is also required for a proposed change in location of use under a water right for irrigation to a location outside of prescribed boundaries such as those provided under Section 42-219, *Idaho Code*, with or without a proposed change in purpose of use, except for those rights held by irrigation districts or municipal providers, even when the change in location would be included within the same 40-acre legal subdivisions existing prior to the proposed change. A proposed change to any water right held for irrigation involving a change in the number of irrigated acres of less than one acre at the original place of use or at a proposed new place of use is not approvable unless the proposed change involves a new purpose of use within the original place of use or the applicant provides a verification procedure approved by the Director that can be practically administered to prevent injury or enlargement.

Consolidation of Acreage. An application for transfer is required for proposed consolidation of water use for irrigation by permanently reducing the number of acres authorized for irrigation under a water right, while maintaining the original diversion rate or annual diversion volume.

Land Application of Wastewater. An application for transfer is required for a proposed change in the place of use under a water right for uses such as industrial, dairy, or confined animal feeding operations that would allow land application of wastewater from that use or change the location of lands used for application of wastewater, when there is not a full existing water right for irrigation of the place of use receiving wastewater.[1]

Correction of Errors. An application for transfer may also be required to correct errors in licenses or decrees. For example, a transfer application may be required to correct the location of the place of use of a water right decreed by a court if the decree is later determined to be in error. However, a transfer action is not always required to correct such errors. For example, if a water right claim is determined to be in error, the claim can be amended to correct the error. Similarly, some clerical errors in a license or decree may be corrected by issuance of an amended license or decree (by the jurisdictional court) without using the transfer process. Also, a change to a description of the location of the place of use or point of diversion, as used by the department for administration of water rights, resulting from improved methodology does not require an application for transfer, as described below. In addition, conditions that are no longer applicable may be modified or removed from a license without a transfer, provided other rights are not materially affected. For decrees, conditions that are no longer applicable should be noted in comments on the department's electronic record for the right. However, a change to any element of a decreed water right requires filing an application for transfer, unless the appropriate court makes the change by amending the decree.

[1] The guidance provided here effectively revises the guidance to staff for filing an application for transfer as provided in Application Processing Memorandum No. 61 concerning wastewater from industrial uses.

2. When a Transfer Is not Required.

An application for transfer is not required if a proposed change will not alter any of the elements of a water right as licensed or decreed, except that even when the recorded elements of a water right are not changed an application should be filed under such circumstances described in Section 1 above. In addition, an application for transfer is not needed when an accomplished change to a water right or an enlargement of a right has been claimed in an adjudication in accordance with the provisions of Sections 42-1425 or 42-1426, *Idaho Code*.

Changes in Consumptive Use. Consumptive use of water under a water right is not, by itself, an element of the water right subject to the requirements to file an application for transfer. Unless there is a specific condition of the water right limiting the amount of consumptive use, changes in water use under a water right for the authorized purpose of use that simply change the amount of consumptive use do not require an application for transfer provided that no element of the water right is changed. However, when determining the amount of water that can be transferred pursuant to an application for transfer proposing to change the nature or purpose of use, and for certain other circumstances as described herein, historical consumptive use is considered.

Change in Ownership. An application for transfer is not required to change the owner of record for a water right or address of record for a right holder. Changes in ownership or address are to be filed in accordance with Section 42-248, *Idaho Code*, or for adjudication claims in accordance with Section 42-1409(6), *Idaho Code*. However, a transfer application filed pursuant to Section 42-222, *Idaho Code*, accompanied by evidence documenting a change in ownership for a water right, or showing a change in the address of the owner of a water right, satisfies the requirements of Section 42-248, *Idaho Code*.

An application for transfer is not required to change the owner of record of one or more water rights, or portions thereof, that are part of a larger group of water rights authorized for use within and appurtenant to a permissible place of use[2] if the conveyance documents provide evidence of the change in ownership and appurtenance of each of the rights and if other elements of the rights will not be changed.

An application for transfer is not required to eliminate one or more points of diversion authorized under a water right through a change in ownership if the conveyance

[2] A permissible place of use is defined as a legal description of the authorized location where water may be applied under a water right for irrigation use, but the use in any year is limited to a specified number of acres which is less than the larger described location. For example, a water right may describe a permissible place of use as four 40-acre legal subdivisions totaling 160 acres, but the water right also limits the acreage that may be irrigated to 40 acres. The water right owner cannot irrigate more than 40 acres in a given year under the right. A permissible place of use is typically, but not always, irrigated by multiple rights with separate acreage limitations that, when used together, provide for irrigation of the entire permissible place of use in the same year.

documents provide evidence of the limitation and if other elements of the rights will not be changed.

Partial Relinquishment. An application for transfer is not required to relinquish a portion of a water right such as elimination of a purpose of use or a point of diversion or a reduction in acres and proportional rate. The water right owner should provide a notarized statement of relinquishment including specific identification of the water right(s) and the specific reduction(s).

Split Rights. An application for transfer is not required when a water right for irrigation is proposed to be split, with notice to the department pursuant to the provisions of Section 42-248, *Idaho Code*, such that a disproportionate per acre share of the right would be conveyed to another party provided that the resulting diversion rates do not exceed 0.02 cfs per acre, the amount of water historically applied per acre, or the amount of water diverted at a particular point of diversion, whichever is greater, for that part of the right conveyed or retained, and provided no other changes are made.

Changes to Points of Diversion within Recorded Location. An application for transfer is not required if a change in point of diversion is proposed to be moved to a location within the same legal public land survey subdivision as currently recorded on the water right and the change will not enlarge the right or injure other rights (if within a recorded legal public land survey subdivision, a transfer is required if injury is likely when moving the point of diversion to bypass another point of diversion or when moving a well significantly closer to another well or surface water source).

An application for transfer is not required for the situation described in the preceding paragraph, even when the point of diversion is described by a shapefile in the department's GIS database. The department will not initiate an enforcement action against the water right owner due to a discrepancy between the department's shape file and the physical location of use within the recorded legal subdivision if the discrepancy is limited to the situation described in the preceding paragraph. The department may update the shapefile in its GIS database from its own information or information provided by the water right owner.

Replacement of Point of Diversion. An application for transfer is not required to replace a point of diversion if the new point of diversion is constructed at the same location as described in the license or decree for the water right, and the change will not enlarge the right or injure other rights.

Refined Descriptions. An application for transfer is not required when a change in the description of the location of the point of diversion or place of use is only the result of improved methodology for referencing and displaying the location, which results in a more accurate description of the same physical location. The department will not initiate an enforcement action against the water right owner due to the discrepancy between the water right record and the referenced location if the discrepancy is created by better methodology and is not due to a change in the physical location. However, if the water right owner wishes to correct the water right record, an application for transfer

or an appropriate amendment will be required, as previously described for correction of errors.

Changes in Place of Use within Recorded Location. An application for transfer is not required if a change in the location of use within 40-acre legal subdivisions is proposed that would not result in an increase in the number of acres within any 40-acre legal subdivision nor use of water at a new 40-acre legal subdivision (except for a proposed change in location outside of prescribed boundaries such as those provided for irrigation use under Section 42-219, *Idaho Code* or by court decree, even when the change in location would be included within the same 40-acre legal subdivisions existing prior to the proposed change).

An application for transfer is not required for the situation described in the preceding paragraph, even when the place of use is described by a shapefile in the department's GIS database. The department will not initiate an enforcement action against the water right owner due to a discrepancy between the department's shape file and the physical location of use within the 40-acre legal subdivisions if the discrepancy is limited to the situation described in the preceding paragraph. The department may update the shapefile in its GIS database from its own information or information provided by the water right owner.

Generally Described Place of Use. As provided in Section 42-219, *Idaho Code*, an application for transfer is not required to change the place of use within a generally described place of use. A generally described place of use may be by court decree or as provided in Section 42-219(5) and (6). Pursuant to Section 42-219(7), any change within a generally described place of use can not result in an increase in the diversion rate, or in the total number of acres irrigated under the water right, and can not cause injury to other water rights. Any change to the boundaries of a generally described place of use requires an application for transfer, except for a municipal provider as described below or for an irrigation district where changes in boundaries must be documented by a map of the revised boundaries filed with the department in accordance with Section 43-323(2), *Idaho Code*.

Municipal Places of Use. An application for transfer is not required to change or add a place of use for "municipal purposes" within the "service area" of a "municipal provider." See Sections 42-202B and 42-222(1), *Idaho Code*, for appropriate definitions and provisions governing use of municipal water rights. The ownership of a portion of a municipal water right held by a municipal provider for reasonably anticipated future needs can be changed to a different municipal provider subject to the provisions of Section 42-248, *Idaho Code*. However, the right can not be changed to a place of use outside the service area of a municipal provider or to a new nature of use, and an application filed for such a change is to be returned and any associated application fee refunded.

In-stream Stock Watering. An application for transfer is not required to divert water away from a stream for stock watering purposes provided the diversion is added and used in conjunction with an in-stream stockwater right and provided the diversion meets

certain conditions pursuant to Section 42-113(3), *Idaho Code*. See guidance memorandum for in-stream stock diversions dated June 26, 2000, for additional information.

Intensified Use of Water. An application for transfer is not required to increase production under an authorized use of water, unless the proposed change would also result in a change to one or more of the elements of the water right(s) as licensed or decreed. For example, an application for transfer is not required to increase the number or volume of raceways in a fish propagation facility, increase the number of cows at a dairy, change irrigation to a more water consumptive crop, or increase the generating capacity of hydroelectric generators, so long as none of the elements of the associated water rights are changed.

Mitigation Through Non-Use of a Right. An application for transfer is not required to mitigate for the diversion and use of water under another right if the mitigation is accomplished through non-use of water under an existing valid water right, except under specific circumstances where a transfer is required as part of the Department's approval of the mitigation plan (see Section 42-223 (10), *Idaho Code* for reference to mitigation approvals where non-use of water may apply).

Land Application of Wastewater to Replace Existing Supply. An application for transfer is not required for a proposed change in the place of use under a water right for uses such as industrial, dairy, or confined animal feeding operations that would allow land application of wastewater from that use or change the location of lands used for application of wastewater, when there is a full existing water right for irrigation of the place of use receiving wastewater.[1]

3. Requirements for an Acceptable Application for Transfer.

The department is a public service oriented agency, and department employees traditionally have helped applicants complete transfer application forms. The existing transfer backlog, together with the increasing number and complexity of new applications for transfer, requires that staff focus their time on processing existing acceptable applications. Department employees are encouraged to provide general assistance to applicants but should refrain from completing application forms on behalf of applicants.

An applicant or qualified consultant must prepare and submit an application for transfer in accordance with the minimum requirements enumerated below to be acceptable for initiating the processing of the application by the department. An application that does not comply with these minimum requirements is to be considered incomplete and is to be returned to the applicant along with a letter or checklist identifying the deficiencies. The letter shall state that unless the application is resubmitted within 30 days of its return, the application fee will be refunded. An application for transfer that satisfies the minimum requirements will be processed in accordance with Section 5, Information Needed to Complete Processing of a Transfer Application.

(1) Application Forms. An application for transfer must be submitted on a current form provided by the department entitled, "Application for Transfer of Water Right." The current form is available from the department's Internet homepage at:

http://www.idwr.idaho.gov/water/rights/water_rights_forms.htm

(2) Name and Address. An application for transfer must include the name and address of the applicant. In addition, the application must include the name and address of any new right holder(s) for the water rights (or parts thereof) being transferred, if different than the applicant. The applicant's name must match the department's current record of ownership for the water rights (or parts thereof) being transferred. Otherwise, adequate documentation must be included to show that a change in ownership or authority to make the change has legally occurred. Adequate documentation can be a warranty or other deed, title policy, contract of sale or option for purchase by applicant (if the contract or option allows the transfer), or other similar document confirming ownership of the water right(s) or the authority to change the water right. See Records Memorandum No. 9 for additional guidance on water right ownership documentation.

A transfer application filed to change a right (or part thereof) claimed in a pending adjudication, where the claimed place of use is based on an accomplished transfer pursuant to Section 42-1425, *Idaho Code*, must include adequate documentation demonstrating the applicant's ownership of the right or authority to make the change.

(3) List of Water Rights to be Changed. An application for transfer must list all water rights for use in a common system of diversion and distribution for which the point of diversion, place of use, period of use, or nature of use are proposed to be changed (the water rights to be transferred). Proposed changes which involve separate diversion and distribution systems must be filed as separate applications. A proposed change to the remaining portion of an existing water right subsequent to a proposed transfer requires a separate application for transfer.

(4) Associated Water Rights or Water Supply. The application must include a separate list of individual water rights, other than those proposed to be changed, and a description of water supplied by a canal company, irrigation district, or municipality, that provide water currently used in the same diversion system or at the same place of use as the right(s) proposed to be transferred (associated water rights or water supply). In addition, the application must include a separate list of associated water rights or water supply proposed to be used in the same system or at a new place of use. If the associated water rights or water supply are not owned by the applicant and changes to conditions

for those rights are necessary, documentation must be submitted confirming that the applicant has the legal authority to make such changes on behalf of the current owner of the other rights.

Changes to conditions or remarks for associated water rights that are necessary as a result of an approved transfer and that do not affect the rights of other persons or entities can be made without a separate transfer application or process. Such changes usually result from a division in ownership and should be included in the transfer approval document.

(5) Reason for Change. The application must list the purpose for and a general statement of the reason for the proposed change.

(6) Description of Proposed Change. The application must describe in writing the proposed changes, which must include the following:

a. The right number(s) assigned by the department for the right(s) proposed to be changed must be identified. If the right was established by a beneficial use for which a claim has not been filed, a claim must be filed before or together with the transfer application. If the right is represented by a decree and the department has not assigned a number to the right, a copy of the decree must be included with a description of the right that is proposed to be changed.

b. The amount of water proposed to be diverted, as a rate of flow in cubic feet per second and as acre-feet per year, if the transferred water right has a volume limitation, for natural flow and ground water rights must be set forth. The amount of any stored water involved in a transfer must be identified in terms of acre-feet per year for each purpose of use listed.

c. The proposed nature or purpose of use must be stated. For non-irrigation uses such as "industrial" or "commercial," a more detailed description of the proposed use(s) must be provided under the "Remarks" section of the application, or as an attachment to the application. For applications proposing to change the nature of use to municipal purposes for reasonably anticipated future needs (RAFN), the applicant shall provide information to establish that the applicant qualifies as a municipal provider and that the RAFN, service area, and planning horizon are consistent with the definitions and requirements specified in Section 42-202B, *Idaho Code*.

d. The period of each year during which water is proposed to be diverted, or diverted and stored, and beneficially used must be set forth for each use listed.

e. The source of water for the proposed changes must be listed. An application proposing a diversion, injection, and re-diversion of water must list the source for the original diversion as the source for the injection and re-diversion. An application proposing to change the point of diversion to a location resulting in a change from ground water to surface water or from surface water to ground water shall include an analysis confirming a direct and immediate hydraulic connection (at least 50 percent depletion in original source from depletion at proposed point of diversion in one day). See Section 5c. (7) for further details.

f. The legal description of the point(s) of diversion must be described. The description must be to the nearest 40–acre subdivision or U. S. Government Lot of the Public Land Survey System. Existing point(s) of diversion should be described to the nearest 10-acre tract, if based on a previously recorded 10-acre description or other accurate means such as GPS or a detailed and accurate map. Proposed point(s) of diversion need only be described to the nearest 40-acre tract. The location of springs must be described to the nearest 10–acre tract. Subdivision names, lot and block numbers, and any name in common usage for the point of diversion should be included in the "Remarks" section of the application form.

g. Except as provided herein, the legal description of the place of use must be set forth to the nearest 40-acre subdivision or U. S. Government Lot of the Public Land Survey System. Subdivision names, block and lot numbers, and any name in common usage for the place of use should be included in the "Remarks" section of the application form. For water rights held by irrigation districts, municipal providers, and others included under the provisions of Sections 42-202B or 42-219, *Idaho Code*, the place of use may be generally described even if previously described to the nearest 40-acre subdivision or government lot.

    i. If irrigation is a purpose of use, the number of acres in each 40-acre tract of the place of use or within a generally described place of use must be shown. The location of uses, other than for municipal providers or

for irrigation, must be identified in the appropriate 40-acre tract(s).

ii. Except for wastewater when there is a full existing water right for irrigation of the place of use receiving wastewater, if a proposed change includes disposal or use of wastewater by land application to growing crops the application must identify the location of the waste disposal area by legal description under the use from which the wastewater originates.

h. An adequate description of the proposed diversion, delivery and application system(s) must be provided. This may include preliminary sizes and dimensions of pumps, pipelines, headgates, ditches, dams, impoundments, and application equipment. The type and location of measuring devices might also be required for applications providing for measurement of water to address specific injury or enlargement concerns. For large existing systems, such as those owned by municipal providers, irrigation districts, and canal companies, only those features proposed to be added or modified need to be described.

(7) Map of System. A map corresponding to the written description above must be included showing the location of points of diversion, reservoirs, dams, canals, ditches, pipelines, and other works proposed to be used in the diversion and conveyance of water. The map must clearly show the location of the place of use including lands to be irrigated, if any. If only a part of the water right(s) is proposed to be changed, the map must include the location of the part of the existing recorded right(s) proposed to be removed (or changed). Legal descriptions including townships, ranges, sections, quarter-quarters, and government lots must be evident or labeled unless other reference information is evident on the map to identify the specific location. In lieu of creating a map, a copy of a published map, such as a U. S. Geological Survey quadrangle map, or an aerial photograph, can be attached to the application with the required identification shown thereon. For large existing systems, such as those owned by municipal providers, irrigation districts, and canal companies, only those features proposed to be added or modified need to be shown.

(8) Response to Questions on the Form. The application for transfer must include responses to the questions on the application form concerning the validity of the right, the proposed use of the land from which the right is proposed to be removed (if applicable) and the existence of mortgages or liens. In addition, the application should address any agreements or commitments not to divert water under the right(s)

proposed for transfer such as a lease to the water supply bank (WSB), enrollment in the federal Conservation Reserve Enhancement Program (CREP) or dedication of the right(s) for mitigation purposes.

(9) Changes to Part of a Right. If only a part of a right is being changed, the application for transfer must define that part by describing each of the elements, as currently licensed or decreed or otherwise recorded, for the part of the right being changed.

(10) Signature. The application for transfer must include the signature of the applicant or the applicant's authorized representative. If a representative signs the application, evidence of authority to sign for the applicant must accompany the application. An application in more than one name must be signed by each applicant unless the right is held in the name of one joint owner "or" other joint owner(s), or the right is held in the name of one joint owner "and/or" other joint owner(s).

(11) Filing Fee. The filing fee provided in Section 42-221, *Idaho Code*, must be submitted with the application for transfer. If the applicant is a governmental agency, a purchase order for the required amount is acceptable. (See the memorandum titled "Guidance on SB 1337 Amending Section 42-221, I.C.," dated June 26, 2000, and Transfer Processing Memorandum No. 23 for further guidance on application fees.)

(12) Changes to Point of Diversion from Eastern Snake Plain Aquifer. Except as provided below, if the application for transfer proposes to move the point of diversion for a water right to divert and use ground water from one location to another within the Eastern Snake Plain Aquifer (ESPA) including any modeled tributary aquifers, the applicant must submit an attachment with the application that sets forth the time series of calculated depletions (transient to steady-state) to reaches of the Snake River that are hydraulically-connected to the ESPA using or based on the department's current ground water model for the ESPA, or other equivalent analysis acceptable to the department. When using results from or based on the department's ground water model, the time series of calculated depletions must be for the cells containing the points of diversion both before and after the proposed transfer (initiating at the date of priority of the water right and ending at future steady state condition). If the cells are the same, the attachment is not required except as described below. A copy of the department's ESPA ground water model, or associated transfer spreadsheet[3] can be obtained by contacting the department or visiting the department's web site.

[3] The Department's ESPA transfer spreadsheet has a fixed 150-year analysis period which may not reach a true steady-state condition in all instances; however, the analysis period provided by the spreadsheet is acceptable to the Department for purposes of the required attachment. For purposes of this

The purpose of the time series of depletion attachment is to provide a basis for evaluating whether the proposed transfer will increase depletions to hydraulically-connected reaches of the Snake River.[4] Increases in such depletions are presumed to cause injury to existing water rights because all of the hydraulically-connected reaches of the Snake River (including tributary springs) have water rights that are not fully satisfied at certain times. Increased depletions greater than 10 percent for any reach are presumed to cause injury and must be fully mitigated such that there are no increases in depletion to those reaches except as described below.[5]

Increased depletions greater than 10% in any reach are considered insignificant under either of the following conditions and will not require mitigation for the proposed transfer to be approvable:

a. Increased depletions (transient to steady-state) to the reach are two acre-feet or less per trimester; or

b. The reach, at steady-state conditions, will not be depleted by an amount greater than 10% of the total depletion to all reaches caused by the diversion under the proposed transfer.[6]

Where mitigation is necessary for increased transient-state depletions, variance from the requirement for full mitigation during the transient state is allowed to provide for periods of static mitigation within the period of change. Mitigation for increased transient-state depletion to a reach is acceptable if the resultant depletion to a reach is no more than 5% over the simulated pre-transfer depletion to the reach and any deficient mitigation is approximately the same as excess mitigation during the transient state.

If the application for transfer proposes to move or add a point of diversion within or adjacent to the model cell for the existing point(s) of diversion, the attachment described above is not required when the application is submitted. However, if the department determines that the proposed change may significantly increase depletions to a

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memorandum, the transient state is the initial period of significant change to calculated depletions prior to approaching steady-state conditions.

[4] Increased depletions are based on the depletion volume that will be transferred through the change in point of diversion (i.e. not to include any volume for unchanged portions of rights or other associated rights not part of the change in point of diversion).

[5] This 10% threshold for mitigation reflects overall model uncertainty, of which one factor is the inherent error associated with measuring flows of water used as input to the model.

[6] This exclusion from the mitigation requirement is consistent with the Department standard in various delivery calls against ground water users diverting water from the ESPA that establishes a minimum percentage of 10% below which ground water users are not required to mitigate or replace simulated depletions to the reach.

hydraulically-connected reach of the Snake River (including tributary springs), the attachment will be required to complete processing of the application for transfer. See the Department's August 13, 2007 memo entitled, "ESPA Transfer Spreadsheet Version 3.1 – Implementation and Use" for further guidelines on use of the ESPA transfer spreadsheet.[7]

If the applicant offers reduced ground water withdrawals as mitigation, any proposed schedule for adjusting reduced withdrawals must also be set forth in the application for transfer.

Increased reach gains from other proposed ESPA transfers (offsetting transfers) can be used to provide part or all of the mitigation necessary for reaches requiring mitigation due to increased depletions (as determined by a stand-alone analysis of each individual transfer as described above). If the applicant offers offsetting transfers as mitigation, the transfer applications shall be submitted together as part of a plan to mitigate the individual transfer effects.

(13) Historic Beneficial Use. If the application for transfer proposes to change the nature or purpose of use or the season of use, the applicant must include an attachment documenting the historic extent of beneficial use under the right. For a transfer seeking to change a water right from irrigation, the attachment must provide sufficient data and information to determine historic consumptive water use. This can be satisfied by submitting records of cropping pattern or rotation, or records of water diverted and system efficiency, for at least the most recent, five consecutive years as described in Sections 5d.(5) and (6). If the application for transfer proposes to change the place of use for a supplemental water right, the applicant must include information to demonstrate that the supplemental right will not be enlarged (see Sections 5d.(3), (4) and (5) for definition and further discussion of supplemental rights).

(14) Electronic Shape Files or Photographs Documenting Place of Use Changes. If the application for transfer proposes to change the purpose of use for a water right from irrigation to another use, or change the place of use for a water right for irrigation to another location, either of which requires the drying up of acres at the original place of use, the applicant must submit an attachment to the application for transfer. The attachment must provide a clear delineation of the location and extent of the irrigated acres prior to the proposed transfer, and must also

[7] This memorandum supersedes portions of the Department's August 13, 2007 memo entitled, "ESPA Transfer Spreadsheet Version 3.1 – Implementation and Use" related to mitigation within 5 percent for transient and steady-state increases. The changes are being implemented to be consistent with use of the current ground water model for administration of water delivery calls in the ESPA. The remaining portions of the memo are still applicable.

provide a clear delineation of the location and extent of the irrigated acres, if any, after the transfer, if it is approved. This attachment may either consist of two electronic shape files in a format that is compatible with the department's GIS system or aerial photographs of sufficient detail acceptable to the department with the boundaries of the irrigated areas clearly shown and referenced to the Public Land Survey System. If a place of use involved with the application for transfer currently consists of a permissible place of use or a generally described place of use (see section 3(6)g above), then the applicable attachment is not required provided the application contains a clear statement that the boundaries for that 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 set forth.

(15) Applications Involving Water Rights for Domestic Purposes. An application for transfer involving multiple water rights for domestic purposes as defined in Section 42-111, *Idaho Code*, even when evidenced by a decree, that proposes to establish a use, which itself would not be included within the scope of the definition for domestic purposes in Section 42-111, *Idaho Code*, is not approvable except as provided below. *Idaho Code* specifically prohibits the diversion and use of water under a combination of domestic uses to provide a supply of water for a use that does not meet the exemption of Section 42-227, *Idaho Code*, and is required to comply with the mandatory application and permit process for appropriating a right to the use of water pursuant to Chapter 2, Title 42, *Idaho Code*. An application for transfer filed for such a change is to be returned together and any associated application fee refunded.

An application for transfer involving multiple water rights for domestic purposes that is not proposing to change the nature of use or place of use may be approvable if the individual domestic uses will remain in place and the transfer is only intended to connect individual wells into a common system. Such transfer application may also include addition of a non-domestic right to add a use so long as the existing domestic uses will remain in place and will not be enlarged as a result of the transfer.

4. Changes to Applications for Transfer.

Amendment of Application. An applicant may revise or amend an acceptable application for transfer to clarify or correct information on the application. Significant changes to the place, period, or nature of the proposed use, amount of water, method or location of diversion, or other substantial changes from those shown on a pending application for transfer, will require filing a new application for transfer to replace the original application. If the revisions are not substantial, the application may be revised or amended with an initialed, dated endorsement by the applicant, or by the applicant's representative, on the original application, or by a letter describing the amendments in

sufficient detail. Changes initialed or signed by the applicant's representative must be accompanied by evidence providing authority to sign for the applicant if not previously provided. Changes to the application or supporting information are not to be made by staff under any circumstances. A replacement application must be identified as "changed," "amended" or "revised" on its face so that it can be distinguished from the original application, and the original application must be marked as "superseded." An additional filing fee may be required if the revised or replacement application involves more water than proposed in the original application for transfer. A re-advertisement fee, as provided in Section 42-221F, *Idaho Code*, will be required if notice of the original application has been published and changes to the original application are significant and warrant re-notice. (See Transfer Processing Memorandum No. 20 for additional information regarding changes to applications.)

Assignment of Application. An applicant may assign, in writing (must be notarized), an application for transfer to another entity while the application is pending before the department. An assignment does not require additional notice of the application to be published, and there is no fee for an assignment of an application. The assignment will change the name of the transfer applicant, but ownership of the water right(s) involved in the transfer cannot be changed without proper notice and documentation. Section 42-248, *Idaho Code*, provides that a transfer application can substitute for a notice of change in water right ownership if adequate documentation is provided with the application.

5. Processing an Application for Transfer Prior to Hearing.

Processing of an application for transfer consists of the steps outlined below. Flexibility is provided for some steps with the intent to streamline or expedite processing of routine or non-complex applications. Regional Managers have been delegated authority to sign routine water right approvals and denials and should continue to implement their signature authority as outlined in the Department's June 7, 2007 memo entitled, "Delegation of Authority for Water Right Approval/Denial" and other delegation that may be provided.

(1) Initiating Processing – Data Entry. Once an application has been accepted and the application fee receipted pursuant to Section 3, Requirements for an Acceptable Application for Transfer, the Regional Office shall complete data entry of the basic information contained in the application and initiate working in parallel with the State Office to process non-routine or complex applications.

(2) Additional Information. For those applications to be processed in parallel, the Regional Office and the State Office will determine what, if any, additional information is necessary to complete or supplement the application. For all applications, the Regional Office will correspond with the applicant to obtain the additional information, obtain watermaster recommendation as described below, and perform any field review that is also necessary in coordination with staff from the

Adjudication Bureau if the water right is claimed in a pending adjudication.

(3) Administrative, Hydrologic, and Legal Review. For those applications to be processed in parallel, the Regional and State Offices will complete a review of all information submitted, in coordination with the Adjudication Bureau as needed, and forward appropriate information to the Hydrology Section and Administration for additional hydrologic, policy, and legal review as necessary.

(4) Preparation of Staff Memorandum. Once the review is complete, the Regional Office will prepare a memorandum, with the concurrence of the State Office if necessary for parallel review, that documents the review and evaluation of the sufficiency of the information submitted and whether processing of the application can continue because there is no clear inconsistency with the criteria set forth in Section 42-222, *Idaho Code*. If it is determined that processing of the application can continue, the Regional Office will complete necessary GIS descriptions, finalize data entry, and draft conditions for entry into Work Flow.

(5) Rejection or Denial of Application. If it is determined that the application for transfer should be rejected or can not be approved pursuant to Section 42-222, *Idaho Code*, the Regional Office or State Office (for parallel review) will prepare and issue a preliminary order rejecting or denying the application. An application for transfer may be rejected if the applicant fails to provide additional or adequate information pursuant to the requirements in this Section 5. An application for transfer that clearly does not satisfy the criteria set forth in Section 42-222, *Idaho Code*, must be denied. A rejected application may be re-filed when adequate information can be provided; a denied application can not generally be re-filed for substantially the same proposed transfer, unless a showing is made that substantial changes have subsequently occurred such that the criteria set forth in Section 42-222, *Idaho Code*, can potentially be satisfied. In either case, application fees will be retained. Note that notice of a rejected or denied application shall be sent to the applicant by certified mail pursuant to Section 42-222, *Idaho Code*.

(6) Applicant Contest of Rejection or Denial. If the applicant contests the preliminary order rejecting or denying the application and requests a hearing pursuant to Section 42-1701A, *Idaho Code*, the Regional Office will publish notice of the application for transfer pursuant to Section 42-222, *Idaho Code*, including notice of the contested case, and provide opportunity to protest the application and intervene in the contested case unless published notice is not required for the application as described below.

(7) Public Notice. If it is determined that processing of the application can continue consistent with the criteria set forth in Section 42-222, *Idaho Code*, the Regional Office will publish notice of the application for transfer. In some cases, published notice of the application may not be required. Pursuant to Section 42-222, *Idaho Code*, the Department has discretion to provide notice as deemed appropriate for applications proposing to change only the point of diversion or place of use in a manner that will not change the effect on the original or hydraulically-connected source or affect other water rights.

The timing of the public notice in these steps should remain flexible in order to streamline or expedite processing of the application. For example, processing time may be reduced by preparation of draft documents during the notice period. However, notice should not be provided prior to determining that the application meets the minimum requirements described in Section 3 and that there is a clear understanding by staff regarding the purpose of the transfer. Premature notice could result in the requirement to republish notice due to changes to an application or could result in unnecessary publication costs where an application is likely to be rejected or denied.

(8) Preparation of Approval Document. If no protest to the application for transfer is filed under step (7) above, or all protests filed are withdrawn prior to hearing, the Regional Office will finalize an electronic approval document and issue an approved transfer, subject to appropriate conditions, as a preliminary order and complete data updates in Work Flow. For those applications processed in parallel, the Regional office will finalize an electronic approval document and forward the document to the State Office for final approval and data updates.

(9) Contested Case Proceedings. If protest to the application for transfer is filed under either step (6) or (7) above, a contested case process will be completed. The hearing officer will forward electronically any final order that results from the contested case to appropriate staff to complete data updates in Work Flow.

Gathering Information Needed for Processing. In completing the steps outlined above, additional information may be needed for clarification of the purpose and intent of the proposed change, to further document the information on the application, or to provide a sufficient basis for determining whether the proposed change satisfies the statutory criteria for approval. **The applicant bears the burden of providing sufficient information.** However, staff should locate and assemble information available in the department's records that does not require compilation, interpretation, or analysis by an engineer, geologist, or other technical specialist.

Requests for Additional Information. Correspondence shall be prepared requesting any additional information needed and providing a reasonable period of time for response

(generally 30 days). When additional information is requested from the applicant, the applicant shall be informed of the need for a timely response to avoid delays in processing. The applicant shall also be informed that the application may be rejected if the additional information requested from the applicant is not timely received or is inadequate. The department can grant additional time to submit the required information if the applicant submits a written request for additional time and sufficient justification is provided.

Watermaster Recommendation. Section 42-222, *Idaho Code*, requires that the department shall advise the watermaster of any water district in which the water is used of any proposed change. The department shall not take final action on an application for transfer until the watermaster's recommendation has been received and considered.

Delays or non-response from watermasters results in delays in processing applications. The watermaster shall be informed that a non-response will be considered by the department to be the watermaster's recommendation not objecting to approval of the proposed transfer. Department staff should ensure that all watermasters understand their responsibility to provide recommendations.

Staff to Exercise Judgment. **Department staff has discretion to adapt the requirements set forth herein according to the nature and complexity of a proposed transfer**. While it is important that the information and documentation requirements are consistently applied, **staff is to use sound judgment to avoid asking the applicant for unnecessary information or seeking unnecessary review and comment from other state or local governmental entities as these guidelines are applied**.

5a. Evaluation of Authority to File an Application for Transfer.

(1) Presumption Based Upon Department Ownership Records. For any application for transfer, the department must have sufficient information to determine that the applicant has the authority to seek the proposed change in use of the water right(s). The department can presume, absent information to the contrary, that the applicant is the owner of the right(s) if the department's ownership records maintained pursuant to Sections 42-248 or 42-1409(6), *Idaho Code*, list the applicant as the current owner. The department may need to seek documentation regarding ownership if there is reason to believe that the department's ownership records may be inaccurate. One situation where the department's records may not confirm current ownership is described below.

A transfer application filed to change a right (or part thereof) claimed in a pending adjudication, where the claimed place of use is based on an accomplished transfer pursuant to Section 42-1425, *Idaho Code*, must include adequate documentation demonstrating the applicant's ownership of the right or authority to make the change.

(2) Other Acceptable Documentation. If the applicant's name does not match the name in the department's records for the current owner of the right(s) sought to be transferred, the applicant must provide evidence of current ownership or authority to make the proposed change(s). Adequate documentation can be a warranty or other deed, title policy, contract of sale or option for purchase by applicant (if contract or option allows the transfer), or other similar document confirming ownership of the water right(s) or the authority to change the water right. See Records Memorandum No. 9 for additional guidance on water right ownership documentation.

(3) Applicant Does Not Own New Place of Use. If the application for transfer proposes to change the place of use authorized under the water right(s), and the applicant does not own the land at the proposed new place of use, then the applicant must provide documentation that authorizes the change on behalf of the current owner of the proposed new place of use, except when the applicant is a municipal provider, irrigation district, canal company, or other similar entity. Such entities may only need to provide evidence of their authority to provide water for the proposed place of use in instances where evidence of such authority is necessary.

(4) Conditions on Associated Rights. If an application for transfer proposes a change from or to a system where there is an associated water right that is not listed on the application as a right being transferred, a change to conditions for that right is required (other than changes to conditions resulting from an ownership split), and that right is not owned by the applicant, then the applicant must provide documentation authorizing the change on behalf of the current owner of the associated right.

(5) Authority to Sign on Behalf of an Applicant. If the application for transfer is signed by someone other than the applicant(s) as listed on the application, documentation is needed to establish that the signatory is a representative of the applicant and is authorized to sign on the applicant's behalf. The documentation can be a copy of a current "power of attorney" authorizing signature on behalf of the applicant, or other similar documentation. An application could also be signed by an officer of a corporation or company, an elected official of a municipality, or any individual authorized by an organization to sign the application for a corporation, company, or municipality (if accompanied by documentation confirming authorization). The signatory's title must be shown with the signature.

(6) Corporation, Partnership, Joint Venture, Association, or other Business Entity. If the application for transfer is in the name of a corporation,

partnership, joint venture, association, or other business entity, department staff must verify that the organization is a viable and legally recognizable entity. Department staff will conduct a Business Entity Search at the Idaho Secretary of State's website: http://www.sos.idaho.gov/. If the Business Entity Search does not confirm that the corporation, partnership, joint venture, association, or other business entity is properly registered in the State of Idaho, department staff will request further clarification from the applicant. The intent of this search is to ensure that the organization is properly identified, including identification of individuals with signature authority and responsibility to conduct the organization's activity. Department staff may utilize other available resources to obtain the necessary information.

(7) Approval of Irrigation Entity or Legislature. Section 42-108, *Idaho Code*, requires that if the right(s), diversion works, or irrigation system is represented by shares in a corporation, or owned by an irrigation district, no change can be made without the consent of such corporation or irrigation district. This includes the use of such right(s), diversion works, or irrigation system for mitigation purposes related to a proposed transfer. Any permanent or temporary change in period of use or nature of use, in or out-of-state, involving a quantity of water greater than fifty (50) cfs or a storage volume greater than five thousand (5,000) acre-feet must also be approved by the legislature if approved by the department, except that any temporary change within the State of Idaho for a period of less than three (3) years does not require legislative approval.

(8) Liens, Mortgages, or Contract Restrictions. The department is required to provide notice to the holder of a security interest in any water right(s) proposed to be changed if the security interest holder has filed a request for notice pursuant to Section 42-248(6), *Idaho Code*. If the transfer proposes a change that might impact the value of the land such as moving the place of use or diversion facility to other land or changing the nature of use and the land from which the water right is proposed to be transferred is subject to liens, mortgages, or other contract restrictions affecting the right to transfer the water, a notarized statement or a statement on official letterhead signed by an authorized representative of a mortgage company or similar entity is required from the holder of each such lien, mortgage, or contract (see Transfer Processing Memorandum No. 10).

(9) Municipal Provider. If an application for transfer proposes to change the nature of use of a water right to municipal purposes in the name of a municipal provider for reasonably anticipated future needs, the applicant must provide documentation to establish its qualifications as a municipal provider as defined in Section 42-202B, *Idaho Code*.

(10) Agreement not to Divert. The applicant must describe any agreement or commitment not to divert water under the right(s) proposed for transfer such as a lease to the water supply bank (WSB), enrollment in the federal Conservation Reserve Enhancement Program (CREP) or dedication of the right for mitigation purposes.

5b. Evaluation of Water Right Validity.

For any application for transfer, the department must determine the validity of the water right(s), or part thereof, proposed to be changed. The following factors must be considered when processing an application for transfer and may require additional information from the applicant.

(1) Department Records. For any application for transfer, the department must determine that a right, or part thereof, proposed to be transferred is valid and has not been lost by forfeiture or partial forfeiture. The department will presume, absent other information indicating forfeiture, that the right has not been forfeited if the department's water measurement records, aerial photography, remote sensing, or other information, shows use of water during the previous, consecutive, five-year period. The department will also presume that the right has not been forfeited when it is claimed in a pending adjudication or initially decreed in an adjudication within the previous five-year period. If staff makes a field inspection (all transfers seeking a change to a right evidenced only by a claim are to be field inspected or otherwise reviewed, see Transfer Processing Memorandum No. 1 as revised in Section 5b.(4) below), information must be gathered concerning the current status of diversion and delivery facilities and the apparent recent use of water.

(2) Other Acceptable Documentation. If the records available to the department do not establish that a right has been used within the previous, consecutive, five-year period (except as provided in (1) above or for a right held by a municipal provider for reasonably anticipated future needs pursuant to Section 42-223(2), *Idaho Code*), the applicant must be asked to provide written documentation demonstrating that the right has been used within that time period. Examples of appropriate documentation include power records for pumps used to divert water under the right, Farm Service Agency (FSA) crop production records, receipts or other evidence of expenditures or revenue from the use of water under the right, and adequate affidavits of objective persons having actual knowledge of the uses of water under the right. Alternatively, if the right has not been used within the previous, consecutive, five-year period, then the applicant must be asked to provide information showing that exceptions or defenses to forfeiture are applicable. Exceptions or defenses to forfeiture include those set

forth in Section 42-223, *Idaho Code*; extensions provided for in Section 42-222, *Idaho Code*; and case law relating to factors such as resumption of use, unavailability of water when needed, or non-use when other water is available. Note that filing an application for transfer does not toll the statutory period for forfeiture of a water right due to non-use.

(3) Validity of Unchanged Parts of a Water Right. For applications for transfer proposing to change part of a water right or rights, the remaining part(s) of the right(s) that are not involved in the proposed transfer are generally not subject to a finding of forfeiture as part of the transfer action by the department.[8] In addition, the remaining part(s) of the right(s) are generally not subject to any additional conditions beyond the requirements of the original right(s). However, in some circumstances, department staff may be required to perform a comprehensive forfeiture analysis for the remaining part(s) of the right(s) to determine if a transfer can be approved. For example, a transfer application proposing to change part of the irrigated acres within a permissible place of use may require a comprehensive review of all the acres within the permissible place of use to determine if there are sufficient acres available to be transferred. When there has not been a comprehensive forfeiture analysis performed for the remaining, unchanged part(s) of the right(s), a remark will be included for any remaining part(s) of the right(s) to indicate that an approved transfer does not confirm the validity of the remaining, unchanged part(s) of the right(s).

(4) Statutory or Beneficial Use Claims. Applications for transfer proposing to change a water right based on a statutory or beneficial use claim must be reviewed to determine the validity, priority date, and extent of beneficial use established under the claimed right. Review must include field verification or other means to verify the right. This memo effectively revises the means of verification as required in Transfer Processing Memorandum No. 1. In addition, the applicant must be asked to provide information confirming the priority date of the claim. Adjudication staff must also be consulted for questions regarding review of the priority date if the claim is filed in a pending adjudication. A transfer approval for the water right (or part thereof) based on a claim shall incorporate the department's findings regarding the validity of the right. If a statutory or beneficial use claim is the basis for a pending claim in an adjudication, adjudication staff shall be notified of the results of the validity review, and the claimant shall be informed of the findings.

[8] Section 42-350, Idaho Code provides a process for revocation of a license at any time after issuance of the license upon a finding by the Director that the water has not been put to beneficial use for a period of five years.

5c. Injury to Other Water Rights

For any application for transfer, the department must determine whether the proposed change will injure any other rights, whether junior or senior in priority to the right being changed. The following factors must be considered when processing a transfer and may require additional information from the applicant.

(1) Reduction in Quantity of Water Available to Other Water Rights. Whether the amount of water available under an existing water right, senior or junior in priority, will be reduced below the amount recorded by permit, license, decree, or valid claim, or the historical amount beneficially used by the right holder, whichever is less. Consideration of this factor may require an analysis of the timing and location of return flows both before and after a proposed change to determine if the change will reduce the supply available to other water rights.

(2) Rotation. Whether a proposed change in the point of diversion of a water right that has been delivered in rotation with delivery of other water rights will result in significant additional losses borne by the water rights remaining in rotation.

(3) Unreasonable Effort or Expense. Whether the holder of an existing water right will be forced to an unreasonable effort or expense to divert water under the existing water right.

Existing ground water rights are subject to reasonable pumping level provisions of Section 42-226, *Idaho Code*, as well as applicable court decisions (e.g., Parker v. Wallentine, 103 Idaho 506, 650 P.2d 648 (1982), regarding in part the obligation to pay increased costs to divert an existing right).

An application for transfer that is approved to provide alternate points of diversion from ground water under one or more municipal water rights to develop or expand a common delivery system shall include conditions of approval to identify the point(s) of diversion authorized under each right prior to the transfer. The purpose of the condition is to provide for future administration of water rights in situations where increased municipal pumping over time is determined to cause injury through interference with other nearby wells.

(4) Unusable Water Quality. Whether the quality of water available to the holder of an existing water right would be made unusable for the purposes of the existing right.

(5) Mitigation. Whether mitigation would be needed to prevent injury to an existing water right that would be injured otherwise.

Unless agreed to in writing by the holder of an existing right, the only mitigation that can be considered acceptable by the department is the provision of replacement water in the full amount of the injury, at the same time injury would otherwise occur, and of acceptable water quality at the point of diversion for the existing right.

For applications that propose to move the point of diversion for a water right to divert and use ground water from one location to another within the ESPA, including any modeled tributary aquifers, mitigation is required for transfer approval when all of the following conditions occur: (a) the transfer would result in increased depletions (transient or steady state) greater than 10%, to any hydraulically-connected reach of the Snake River; (b) the increased depletion (transient or steady state) to the reach is greater than 2 acre-feet per trimester; and (c) the depletion, at steady-state conditions, to the reach is greater than 10% of the total depletion to all reaches resulting from the diversion under the proposed transfer. When greater increases in such depletions would occur, acceptable mitigation includes reduction in the quantity of ground water diverted and depleted such that there is no increase in depletions (for transient-state increases, no more than 5 percent over pre-transfer depletions so long as de ficient mitigation is approximately equal to excess mitigation) for each hydraulically-connected reach of the Snake River requiring mitigation. When this form of mitigation is proposed, the quantity of ground water diverted may be increased periodically (no more frequently than annually) if supported by an analysis of the timing of calculated depletions (transient to steady-state) to reaches of the Snake River that are hydraulically-connected to the ESPA for the points of diversion both before and after the proposed transfer. However, the proposed schedule for increased diversions must be set forth in the application for transfer.[9] See Section 3(12) for additional guidance.

Increased reach gains from other proposed ESPA transfers (offsetting transfers) can be used to provide part or all of the mitigation necessary for reaches requiring mitigation due to increased depletions (as determined by a stand-alone analysis of each individual transfer as described above). If approved, the transfers will not require mutual dependence for ongoing mitigation. However, any approval issued on the basis of offsetting transfers shall include conditions of approval to address future changes back to the original point(s) of diversion or future changes to a new location. In addition, conditions of approval

[9] If the transfer is approved with mitigation by reducing the amount of ground water withdrawn, and as a result the reach gains to one or more other hydraulically-connected reaches of the Snake River increase, then the applicant shall retain the right to receive credit for the increased reach gains. Such credits can not currently be used because there is no administrative system in place to recognize such credits. In the event that an administrative system is created in the future whereby such credits available at that time can be recognized, the applicant shall retain the right to the possible future use of such credits, which shall be reflected in a condition of approval for the transfer.

shall be included to address changes that would result in increased impacts to reaches of the Snake River due to differences in priority date between the rights involved in the offsetting transfers. Such changes could result in injury to surface water rights in connected reaches of the Snake River in the event of a curtailment order affecting ground water rights in the ESPA. See the Department's August 13, 2007 memo entitled, "ESPA Transfer Spreadsheet Version 3.1 – Implementation and Use" for further guidance.

(6) Ground Water Management Area or Critical Ground Water Area. Whether the point of diversion for a ground water right would move from outside the boundaries of a critical ground water area (CGWA) or ground water management area (GWMA) to within the boundaries of a CGWA or GWMA, or whether the point of diversion would move from within the boundaries of a GWMA to within the boundaries of a CGWA.

An application for transfer proposing such a change in the location of the point of diversion for a ground water right is not approvable unless the applicant proposes acceptable mitigation to prevent injury to other water rights. For cold water (85° F or less) GWMAs over the ESPA, mitigation beyond that satisfying condition (4) above will not be required at this time as a condition of approval, unless injury would occur to a water right to divert ground water or injury would occur to a water right to divert surface water that has not been offset by stipulated agreement or through a mitigation plan approved by the department,

(7) Change of Source. Whether the source would be changed from ground water to surface water, or from surface water to ground water.

Section 42-222, *Idaho Code* does not provide for a change from a ground water to surface water source, or from a surface water to ground water source. An application for transfer proposing such a change in source is not approvable unless the ground water and surface water sources are so interconnected that they constitute the same source for purposes of a proposed change in point of diversion. The ground water and surface water sources must have a direct and immediate hydraulic connection (at least 50 percent depletion in original source from depletion at proposed point of diversion in one day). The existing point of diversion and proposed point of diversion must be proximate such that diversion and use of water from the proposed point of diversion would have substantially the same effect on the hydraulically-connected source as diversion and use of water from the original point of diversion. If such application for transfer is approved, the changed water right shall be administered no differently than any other water right from the surface water source. If approved, the source for a change from a surface water source to a ground water source should be listed as ground water tributary to the surface water source.

(8) Changing Aquifer Source. Whether a proposed change in point of diversion for a ground water right is from one aquifer to another aquifer.

An application for transfer proposing to change the point of diversion from one distinct aquifer to a totally separate aquifer is not approvable, just as an application for transfer proposing to change the point of diversion for a surface water right from one distinct surface water source to a totally separate surface water source is not approvable.

(9) Conveyance Losses. Whether the proposed change would move part or all of a right from a canal impacting conveyance losses associated with the delivery of multiple water rights in the canal.

If such application for transfer is otherwise approvable, the approval must require that the applicant retain an appropriate amount of water in the canal to prevent any additional reduction in the amount of water available from the canal to fill other water rights because of the portion of the conveyance losses that, prior to the transfer, were attributable to the right being transferred.

Additional Considerations. In addition to the considerations above, the following information may be needed to evaluate injury involving an application for transfer for a ground water right, depending on the specific circumstances of the proposed transfer. If the information is not available in the department's records, the applicant must provide the following information that department staff determines is necessary:

(1) Location of Nearby Wells. The location of the nearest production well, including domestic wells, to the proposed point of diversion, and if different, the nearest production well down gradient from the proposed point of diversion (the location of other nearby production wells may also be required);

(2) Location of Nearby Springs. The location of nearby springs from which water is diverted under existing rights, including domestic uses, that could be affected by ground water diversions from the proposed point of diversion;

(3) Ground Water Levels. The depth to water, the stability of ground water levels, or the stability of confined aquifer pressures, in the area of the proposed point of diversion; and

(4) Water-Bearing Zones. The depth and thickness of water-bearing zones, including identification of the zone or zones sought for the proposed use.

5d. Enlargement of Use

For any application for transfer, the department must determine whether the proposed change will enlarge the use of water under the water right(s). Enlargement will occur if the total diversion rate, annual diversion volume, or extent of beneficial use (except for nonconsumptive water rights), exceeds the amounts or beneficial use authorized under the water right(s) prior to the proposed transfer. The following factors must be considered when processing an application for transfer, which may require that additional information be provided by the applicant:

(1) Diversion Rate, Annual Diversion Volume, and Number of Acres Licensed or Decreed. The authorized diversion rate, annual diversion volume (ground water rights only and certain surface water rights), and number of acres authorized for irrigation (if applicable), as licensed or decreed for the water right, shall not be increased. If the annual diversion volume is not specifically stated on the license or decree for a ground water right, then the amount will be based on the most current standards adopted by the department unless the applicant can show a larger amount has been reasonably diverted and beneficially used.

(2) Beneficial Use. An application for transfer proposing to change the place of use or nature of use for all or part of a water right or water rights, which change would not result in an equivalent reduction in beneficial use under the original right(s), will be presumed to enlarge the water right(s). For example, hydropower use cannot be added to a right used for irrigation, even though no additional water would be diverted for the hydropower use. The irrigation use, or part thereof, could be changed to hydropower use by reducing the irrigation use by an equivalent amount, or the new use could be provided without reducing the irrigation use by obtaining a new permit to appropriate water for hydropower use.

(3) Stacked Water Rights. Water rights are "stacked" when two or more water rights, generally of different priorities and often from different sources, are used for the same use and overlie the same place of use. Water rights for irrigating a permissible place of use are not necessarily stacked when the water rights in total provide for irrigating up to the maximum acreage authorized within a permissible place of use. An application for transfer proposing to "unstack" one or more water rights used for irrigation or other use, without changing all the rights for the same use, is presumed to enlarge the water right. However, the place of use for a supplemental irrigation right may be changed for continued use as a supplemental irrigation right at a different place of use without, by definition, enlarging the original right or the supplemental right proposed for transfer, so long as the primary rights at the original and proposed places of use provide comparable water supplies. In other words, use of the supplemental right at the proposed place of use can

not materially exceed use of the supplemental right at the current place of use.

(4) Changing Supplemental Right to Primary Water Right. A supplemental irrigation right is a stacked water right authorizing the diversion of water for irrigation from a secondary source to provide a full supply for crops when used in combination with a primary right. A supplemental right can provide additional water in conjunction with a primary source, or at times when the primary source is unavailable. The use of a supplemental right is dependent on the supply available under the associated primary right and can be highly variable from year to year. An application for transfer proposing to change a supplemental irrigation right to a use as a primary water right for irrigation or other use will be presumed to enlarge the supplemental right. An exception is when the applicant can clearly demonstrate, using historic diversion records for the supplemental right as described in (5) below, or other convincing water use information, that there would be no enlargement of the water right being changed or other related water rights. Evidence of the quantity of water beneficially used under the primary right must be accompanied by some evidence of the quantity of water used under the supplemental right to qualify as "convincing water use information." The supplemental right must have been used on a regular basis (used more than 50 percent of the time). Insufficient data will be grounds to reject the application because the department will not be able to ascertain if the right will be enlarged.

If an application proposes to change only a portion of a supplemental irrigation right to a use as a primary water right, the application is not approvable unless the extent of beneficial use under all associated rights prior to the transfer will be proportionately reduced or transferred to another place of use to avoid enlargement of the remaining portion of the supplemental right. The associated right(s) will not need to be reduced if the entire supplemental right will be changed through the transfer.

A general exception to the presumption of enlargement when changing a supplemental right to a primary right applies when the supplemental right is a storage right. Section 42-222(1), *Idaho Code*, provides that a transfer of a water right for the use of stored water for irrigation purposes does not constitute an enlargement in the use of the original water right, even when more acres are irrigated, provided that no other water rights are injured.

(5) Historic Beneficial Use. For an application for transfer seeking to change the nature or purpose of use, or season of use, including for a supplemental water right, the historic extent of beneficial use under the right must not be enlarged. The extent of historic beneficial use may

also have to be considered for other proposed changes in the place of use under some circumstances when there are other sources of water, such as natural subirrigation, even when the purpose of use or period of use are not proposed to be changed. For a transfer seeking to change a water right for irrigation, the consumptive water use based on the cropping pattern or rotation, or estimated from records of water diverted and system efficiency, for the most recent, five consecutive years is presumed to provide a reasonable basis to establish historic use under the water right proposed for transfer, unless information provided by the applicant supports using a longer historic period. Exceptions or defenses to forfeiture may also justify extending the time period considered in establishing the historic use prior to the proposed transfer. The highest-year historic consumptive use (i.e. highest-use crop rotation using a climatic average for crop water use estimates), except for supplemental rights, will be the basis for the annual volume of consumptive use available for transfer. When it is necessary to determine the historic consumptive use under a supplemental right, the average annual historic consumptive use, over an appropriately representative time period not less than five years but that may require greater than five years, will be the basis for the volume available for transfer. For supplemental irrigation rights, a representative time period will include years with both good and bad surface water supplies for the area. In some rare instances, the diversion rate, the annual diversion volume, and season of use could also be limited based on the extent of historic use.

For an application for transfer seeking to change the place of use under a supplemental water right for use in conjunction with a different primary right, the historic extent of beneficial use under the right must not be enlarged. For such changes, information regarding the historic availability or reliability of supply of the rights being supplemented (primary rights), both before and after the proposed change, is presumed to provide a reasonable basis to establish historic use under the supplemental right proposed for transfer.

(6) Period of Use. An application for transfer, which proposes an increased period of use in connection with a changed nature of use for ground water, is presumed not to be an enlargement in use if the rate of diversion, total annual volume diverted, and annual volume of consumptive use are not increased. However, a change to an increased period of use for a surface water right is presumed to be an enlargement and would cause injury where there are junior priority rights that rely on surface water during the time period outside of the historic period of use for the right proposed to be changed.

(7) Confined Animal Feeding Operations. For the purpose of quantifying the amount of water needed or used in connection with a confined

animal feeding operation, such as a feedlot or dairy, the water use will be considered fully (100 percent) consumptive.

(8) Fish Propagation. An application for transfer, which proposes to increase the number or volume of raceways in a fish propagation facility, will not be presumed to be an enlargement of the water right, unless the diversion rate or annual volume of water diverted are proposed to be increased.

(9) Disposal of Waste Water. An application for transfer filed to provide for the disposal of wastewater, by land application on cultivated fields or other beneficial use disposing of the wastewater, resulting from use of water under non-irrigation uses such as a dairy or other confined animal feeding operation, or "municipal" or "industrial" water rights where the use of water is considered to be fully consumptive, is not considered an enlargement of the commercial, municipal, or industrial water right. While not an enlargement of the water right, such use of wastewater must not injure other water rights (see Application Processing Memorandum No. 61 as revised under Section 1 of this memorandum) and must comply with best management practices required by the Idaho Department of Environmental Quality, the U. S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction.

(10) Enhanced Water Supply. An application for transfer, which proposes to change a point of diversion from a surface water source to a new location where the water available is greater or more reliable, such as moving from the tributary of a stream downstream to the mainstem of the stream, is presumed to enlarge the water right, unless the proposed change is subject to conditions limiting diversion of water at the proposed new point of diversion to times when water is available and in priority at the original point of diversion.

(11) Water Held for Reasonably Anticipated Future Needs. Section 42-222, *Idaho Code*, provides that when a water right, or part thereof, to be changed is held by a municipal provider for municipal purposes, that portion of the right held for reasonably anticipated future needs can not be changed to a new place of use outside the service area of the municipal provider or to a new nature of use. See Section 42-202B, *Idaho Code* for applicable definitions related to municipal water use.

(12) Changing the Purpose of Use for a Water Right to Municipal Purposes. An application for transfer, which proposes to convey an established water right to a municipal provider and change the nature of use to municipal purposes, as defined in Section 42-202B, *Idaho Code*, shall not be approved without limiting the volume of water divertible under the right to the historic consumptive use under the water right prior to the

proposed change. If the proposed transfer involves a surface water right, the transfer shall not be approved without also limiting the right to the historic period of use under the right prior to the proposed change.

(13) Historic Use Recognized for Municipal Purposes. An application for transfer, which proposes to change the nature of use to municipal purposes for a water right established and held by a municipality that lists the purpose(s) of use as some combination of domestic, commercial, industrial, or irrigation, where those uses have historically been essentially for municipal purposes, as defined in Section 42-202B, *Idaho Code*, will not be presumed to be an enlargement of the right and will not require limitation to the historic consumptive use under the right. However, the change will be subject to the annual diversion volume, if specifically stated on the water right license or decree.

(14) Stored Water. Section 42-222(1), *Idaho Code*, provides that a transfer of a water right for the use of stored water for irrigation purposes does not constitute an enlargement in the use of the original water right, even when more acres are irrigated, provided that no other water rights are injured.

(15) Conveyance Losses. An application for transfer, which proposes to change the purpose of use for a portion of a water right covering conveyance losses to a use that would provide for irrigating additional acres, or other additional use, is presumed to be an enlargement of the water right.

(16) Measuring Requirements for Ground Water Diversions in the ESPA and Modeled Tributaries. Any water right transfer authorizing one or more changes to the diversion and use of ground water approved subsequent to the date of this memorandum shall include a condition of approval that requires the installation and maintenance of one or more measuring devices or means of measurement approved by the department. Until and unless changed pursuant to Section 42-701, *Idaho Code*, the following flow meter installation is required for the transferred right prior to diverting and using ground water under the transferred right:

a. One or more magnetic flow meters shall be installed, as required by the department, having an accuracy of 0.5 percent of rate of flow for flow velocities between 0.1 and 33 ft/sec in pipe sizes up to 4 inches in diameter and for flow velocities between 0.1 and 20 ft/sec in pipe sizes greater than 4 inches in diameter;

b. Each magnetic flow meter must be installed and maintained in accordance with the manufacture's specifications and

equipped with an LCD backlit display unit that displays instantaneous flow rate and total volume of water diverted in accordance with the department's requirements;

c. Each magnetic flow meter must provide analog output for flow rate, scaled pulse frequency for total volume of water diverted, and an RS232 port for communications.

In any transfer approval, the department may require, prior to diversion under the approved transfer, that each magnetic flow meter must be equipped with a data logger specified by the department and capable of storing 120 days of data including dates and cumulative volume of ground water diverted updated daily, as a minimum. If installation of a data logger is not required at the time of transfer approval, the department will condition the transfer approval that installation of a data logger may be required in the future.

Detailed specifications for the above requirements will be provided by the Water Distribution Section of the department upon request. A municipal provider subject to other measurement provisions that satisfy the department's measuring and reporting requirements are exempt from the above condition. Wells used solely for domestic use as defined under Section 42-111, *Idaho Code* or stockwater use under Section 42-1401A, *Idaho Code* are also exempt from the above condition. Water use for domestic and/or stockwater purposes in addition to any other purpose (e.g. commercial use) in a common system is not exempt from the above condition. Holders of ground water rights seeking approval of a transfer for diversion through existing systems or for irrigation systems may request a variance from the above requirements (at any time before or after approval), which may or may not be granted.

5e. Local Public Interest

For any application for transfer, the department must consider whether the proposed change(s) are in the local public interest as defined in Section 42-202B(3), *Idaho Code*. Consistent with earlier guidance herein regarding use of discretion and sound judgment, department staff is to address pertinent items from the following list, as well as other issues that are pertinent to specific circumstances, in considering whether sufficient information has been provided regarding local public interest issues and effects on the public water resource. When there are one or more significant questions about whether a particular transfer would be in the local public interest, additional information from the applicant or comments from other state or local governmental entities that have germane expertise on local public interest issues must be sought. In most cases, the applicant should gather the information and submit it to the department rather than department staff sending a form letter to other agencies seeking comment, unless the

local agency requests direct contact with the department. Staff should inform the applicant of their responsibility to provide the information to the department.

(1) Recreation, Fish, and Wildlife Impacts. The effect the proposed transfer could have on the public water resource in relation to recreation, fish, and wildlife resources in the local area that would be affected by the proposed change (Transfer Processing Memoranda Nos. 19 and 21 provide guidance related to state protected river reaches and minimum stream flow reaches);

(2) Water, and Hazardous Substance Standards. Whether the proposed transfer would comply with applicable water and hazardous substance standards designed to protect the public water resource;

(3) Local and State Requirements. Whether the proposed transfer would comply with local government and state government, if any, planning and zoning ordinances, regulations, records of decisions, or policies affecting the public water resource (e.g. requirement of a local government to use surface water for irrigation for developments involving land use changes pursuant to Section 67-6537, *Idaho Code* is considered an expression of local public interest);

(4) Neighboring Jurisdictions. Whether the proposed transfer would comply with existing requirements for land use and other uses of natural resources affecting the public water resource, if any, adjacent to the place of use proposed by the transfer but beyond the jurisdiction of the local government having authority or control over the proposed place of use; and

(5) State Water Plan. Whether the proposed transfer would be compatible with the objectives and policies of the State Water Plan pertaining to the local public interest.

5f. Beneficial Use and Conservation of Water Resources

For any application for transfer, the department must consider whether the proposed use of water is a beneficial use consistent with the conservation of water resources within the State of Idaho. The following factors must be considered when processing a transfer and may require additional information from the applicant:

(1) Efficiency of Diversion and Use. Whether the water delivery and distribution/application systems for the use proposed by the transfer would be consistent with contemporary standards for reasonably efficient use of water.

(2) Diversion Rates for Irrigation Use. Whether the proposed transfer, if involving irrigation, proposes a diversion rate in excess of 0.02 cfs per

acre of land irrigated (see Section 42-220, *Idaho Code*), and if the application for transfer proposes a higher diversion rate, whether the higher rate would be justified based on soils, crop types, irrigation system, climate, and reasonable conveyance losses from the point of diversion to the place of use. A higher diversion rate may also be justified for irrigating lands that because of public access can only be irrigated during certain times of the day (see Application Processing Memorandum No. 60). For the irrigation of five acres or less, justification is not necessary for a diversion rate of up to 0.03 cfs per acre (see Application Processing Memorandum No. 17). If the right proposed for transfer is based on a decree or license authorizing a diversion rate greater than 0.02 cfs per acre, then additional justification is not necessary unless:

a. The proposed transfer would change the place of use to a new place of use, rather than simply rearranging acreage at the general location of the existing place of use;

b. The proposed transfer would change the point of diversion with the intent to abandon the existing conveyance system and replace it with a new conveyance system that would reduce conveyance losses; or

c. The proposed transfer would add additional rights to an existing place of use from the same source as the existing water right(s) at the place of use.

(3) State Water Plan. Whether the proposed transfer would be compatible with the objectives and policies of the State Water Plan pertaining to beneficial use and conservation of water resources.

5g. Effect on Economy of Local Area

In the case where the proposed place of use is outside of the watershed or local area where the source of water originates, the department must consider whether the overall effects of the change proposed by the transfer would adversely impact the economy of the watershed or local area. The economic effect of the proposed transfer should be measured by assessing the following factors resulting from the change in use of water:

(1) Changes in Employment. Estimated changes in current and projected short-term and long-term employment;

(2) Changes in Economic Activity. Estimated changes to short-term and long-term changes in economic activity; and

(3) Stability of Economic Activity.

5h. Effect on Agricultural Base of the Local Area

Section 42-222(1), *Idaho Code*, provides that a change in nature of use from agricultural use shall not be approved if it would significantly affect the agricultural base of the local area. Department staff should presume the phrase "change in nature of use from agricultural use" can only be significant if the application for transfer proposes a change in nature of use for irrigation rights. Other water rights may authorize use in a process that is related to agriculture, such as commercial use for a dairy or an industrial use for a potato processing plant, but these uses are usually small enough compared to irrigation uses that a proposed change in these uses is presumed to not be significant. It is possible that a change in nature of use of a fish propagation water right authorizing diversion of a large flow rate might invoke this provision if fish propagation is interpreted to be an agricultural use.

The boundaries of the "local area" may be determined by considering one or any combination of the following:

(1) the boundaries of local government or the combined boundaries of local governments that cooperatively share plans for transportation, recreation, environmental quality, and similar water uses;

(2) the boundaries of any taxing entities or districts created, including school districts, that rely directly upon tax receipts for businesses that might be affected by a reduction in agricultural production;

(3) areas of common socio-economic values and operations, including those created by a) water delivery entities, b) similar agricultural crops grown, or c) the areas where agricultural processing facilities derive the agricultural products processed, or;

(4) natural geographic features that separate various areas, particularly hydrologic basin separations.

Whether the change would significantly affect the local agricultural base may be determined by considering one or any of the following factors:

(1) Financial Impacts on Local Governments. The financial impact the change will have on local governments, combinations of local governments, taxing entities, or districts within the local area that derived income from the agricultural use;

(2) Financial Impacts on Others. The financial impact the change will have on water delivery entities, the ability of farmers to continue to grow and harvest the crops previously grown, and the ability of processors of agricultural products to obtain the products necessary for business viability;

(3) Agricultural Job Displacement. The degree to which those working in agriculture will be displaced or will lose income resulting from the proposed change;

(4) Agrarian Lands. The degree to which agrarian lands are taken out of production; or

(5) Financial Impact on Overall Economy. The financial impact on the overall agricultural economy of a local area.

EXHIBIT 2

EXHIBIT 2

Priority date		Amount by priority (cfs)	Cumulative amount (cfs)	IDWR Reference	Well #	Explanation showing ground water use development over time
	1905	1.34	1.34	29-2324	A 1	Alameda well 1 (replaced by well #29 in 1972)
	1925	0.96	2.3	29-2324	A 2	Alameda well 2 (replaced by well #29 in 1972)
	1926	9.13	11.43	29-2274	1, 2, 3	Establish capacity and demonstrate use of facilities on Pocatello wells # 1 (2.45 cfs), 2 (2.45 cfs), 3 (4.23 cfs)
Aug. 31	1931	4.23	15.66	29-2274	4	Establish additional capacity: Pocatello well # 4 (4.23 cfs, using pump from # 3 with no intent to abandon well #3). Continue use of Pocatello wells # 1, 2
	1934-1936	0	15.66	29-2274	5	No change in capacity: abandon well # 1 and replace with well # 5; using wells # 4 (transfer pump # 1), 5 (transfer pump # 2 with no intent to abandon well # 2); pump 3 sold to Idaho Falls
	1936	2.45	18.11	29-2274	6	Establish additional capacity: well # 6 (2.45 cfs with new pump); continue use of wells # 4, 5
	1939	0	18.11			No change in capacity: well # 3 reactivated
Dec. 31	1940	10.34	28.45	29-2274 29-2338 29-2324	7, 39 (Ph 1), 22 (A 3)	Establish additional capacity: well # 7 completed (pump capacity of 2000 gpm or 4.46 cfs); well #39 or Phillips 1 (2.2 cfs); well #22 or Alameda well 3 (3.68 cfs)
Dec. 31	1942	1.92	30.37	29-2338	40 (Ph 2)	Establish additional capacity. Well #40 or Phillips 2 (1.92 cfs; Report of Eng for amount. Evidence binder supports priority date)
June 1	1943	2.67	33.04	29-4221	PIP	Establish additional capacity: well PIP (2.67 cfs; Evidence binder supports priority date)
	1947	0	33.04			No change in capacity: well # 8 drilled but infrastructure completed and well put into use in 1948
June 15	1948	9.69	42.73	29-2274; 1948 Permit; 1953 Proof of CIW due; 1959 Notice of BU due; 1954 Field Report	2 (add'l cfs) 8 9 10	Establish additional capacity: well # 2 reactivated (additional .67 cfs for total of 3.12 cfs), well # 8 (2.67 cfs; larger pump installed before Notice of Completion of Works due [4/25/53] on 1948 permit; see 1954 field exam); well # 9 drilled in 1948 (450 gpm pump by 1952 = 1 cfs), well # 10 (5.35 cfs pump capacity). Well # 3 redrilled; no change in capacity.
Aug.	1951	4.9	47.63	29-7106	28 (aka 20/Turner)	Well # 28 (also # 20 and Turner well) drilled in August 1951, license 29-7106 (erroneous 1972 priority date) establishes 1951 use.
Sept. 1	1953	9.53	57.16	29-2338	11, 12, 15 13 (Riverside GC)	Well # 11 (0 cfs; well and property sold in 1992); well # 12 (6.2 cfs); well # 13 (Riverside Golf Course, 2.22 cfs); well # 15 (1.11 cfs); Phillips 1 @ 1940; Phillips 2 @ 1942
Aug. 27	1954	0.28	57.44	29-2354	Restlawn	Restlawn Cemetery well
Sept. 15	1955	3.89	61.33	29-4224	21 (A 4)	Well # 21 (Alameda 4) for 3.89 cfs
Oct. 1	1955	1.22	62.55	29-4226	14 /CREE	Well #14 or Cree for 1.22 cfs
Aug. 15	1956	4.44	66.99	29-4225	23 (A 5)	Well # 23 (Alameda 5) for 4.44 cfs
Dec. 21	1956	3.82	70.81	29-2382	17 (Highland GC)	Well # 17 (3.82 cfs; Highland Golf Course; land & well purchased by city in 1973; not to be confused with well #17 at Riverside Golf Course)
Oct. 16	1958	13.02	83.83	29-2401 for 15.63	16, 18, 19 13 (add'l cfs at RGC)	Well # 16 (6.67 cfs); well #17 is actually Riverside Golf Course well # 13 (increased capacity, .89 cfs), well # 18 (4.66 cfs); well # 19 (0.8 cfs); well 3 claimed in 1926
July	1961	3.36	87.19	29-2383 29-2384	A 6 A 7	Alameda 6, 29-2383 (1.70 cfs) and Alameda 7, 29-2384 (1.66 cfs)
Oct. 1	1962	2.67	89.86	29-4223	33	Well # 33 for 2.67 cfs (Evidence binder)
Dec 10	1964	4.1	93.96	29-2499	27	Well # 27 for 4.1 cfs
Nov. 6	1972	3.9	97.86	29-7106	29	Well # 29 for 3.9 cfs (3.9 cfs: 6.2 cfs less 2.3 cfs for replacement of Alameda 1 and 2 wells; 6.2 cfs: licensed amount 11.1 cfs less 4.9 cfs for well # 28 claimed with 1951 priority date)
Apr. 11	1973	10.01	107.87	29-7118, 29-7119	42, 41 (Airport 1 and 2)	Well #42 or airport 1 (4.01 cfs) and #41 or airport 2 (6 cfs)
Aug. 22	1974	1	108.87	29-7222	43	Well #43 or Ward Park for 1 cfs
Apr. 25	1976	17.07	125.94	29-7322	30, 31, 32	Well # 30 (5.57 cfs); well # 31 (8.02 cfs); well # 32 (3.45 cfs)
Feb. 24	1977	2.23	128.17	29-7375	15 (add'l cfs)	Well #15 redrilled, 2.23 cfs (well capacity is 3.34 cfs, less 1.11 cfs claimed on earlier license, 29-2338)
Dec. 29	1977	9.28	137.45	29-7431		Reuse of municipal water, irrigation season only (9.28 cfs)
June 13	1978	3.34	140.79	29-7450	35 (Ph 3)	Well # 35 or Phillips 3 (3.34 cfs)
July 6	1979	.1	140.89	29-7502	Restlawn	Restlawn Cemetery well (.1 cfs)
May 21	1984	4.46	145.35	29-7770	WPC	Well # WPC: Does Pocatello have evidence of 5.72 cfs?
Jan. 18	1985	7	152.35	29-7782	34	Well #34 (7 cfs)
	2001	0	152.35	Transfer 5452	44	POD added to 29-2274, 29-2338, and 29-7375
TOTAL		152.35				

EXHIBIT 3

EXHIBIT 3

TRANSFER NO. 5452 POINTS OF DIVERSION

T06S R33E S10 NESE Within POWER County	Well No. 35 (Phillips 3)
T06S R33E S12 NESE Within POWER County	No well at this location
T06S R33E S15 SWNE Within POWER County	Well No. 39
T06S R34E S15 NWSW Within BANNOCK County	No well at this location
T06S R34E S26 NENW Within BANNOCK County	Well No. 10
T06S R34E S27 NWSE Within BANNOCK County	No well at this location
T06S R34E S35 SENE Within BANNOCK County	Well No. 12
T06S R34E S35 SENE Within BANNOCK County	Only Well No. 12 at this location
T06S R34E S35 NWSE Within BANNOCK County	Well No. 7 (Well No. 7 is not in use)
T06S R34E S35 NWSE Within BANNOCK County	Only Well No. 7 at this location
T06S R34E S35 NWSE Within BANNOCK County	Only Well No. 7 at this location
T07S R34E S1 SESE Within BANNOCK County	Well No. 13 or 17 (Riverside G.C.)
T07S R35E S16 SWSW Within BANNOCK County	Well No. 44

EXHIBIT 4

EXHIBIT 4

City of Pocatello
Water Department

2015
WELL PRODUCTION VALUES

	Well #2	Well #3	Well #10	Well #12	Well #13	Well #16	Well #18	Well #21	Well #26	Well #27	Well #28	Well #29	Well #31	Well #32	Well #34	Well #35	Well #36	Well #39	Well #44	Total Well
January	18,425,000	,000	,000	,000	8,787,000	689,000	,000	86,996,000	3,437,000	58,697,000	,000	1,427,000	,000	9,000	,000	1,045,000	,000	,000	17,743,000	197,255,000
February	,000	,000	,000	,000	7,372,000	,000	,000	78,284,000	1,331,000	50,281,000	,000	1,426,000	,000	,000	,000	693,000	,000	,000	36,154,000	175,541,000
March	,000	,000	,000	,000	18,501,000	3,061,000	,000	86,537,000	6,387,000	62,451,000	,000	22,000	,000	312,000	,000	803,000	1,073,000	,000	40,250,000	219,397,000
April	,000	5,684,000	,000	,000	15,204,000	19,806,000	,000	84,953,000	27,403,000	77,511,000	,000	29,435,000	,000	7,760,000	11,020,000	2,839,000	21,486,000	,000	33,112,000	335,613,000
May	19,550,000	47,167,000	,000	,000	21,918,000	11,828,000	53,443,000	87,781,000	16,045,000	71,878,000	,000	18,777,000	,000	3,536,000	25,252,000	8,375,000	11,923,000	8,000	16,951,000	411,440,000
June	39,571,000	60,282,000	72,118,000	11,477,000	33,164,000	14,978,000	67,341,000	85,155,000	24,576,000	82,664,000	,000	44,902,000	38,231,000	6,363,000	24,808,000	5,815,000	28,635,000	,000	11,978,000	651,632,000
July	44,214,000	56,764,000	55,087,000	21,529,000	34,928,000	42,252,000	56,163,000	88,270,000	30,008,000	78,197,000	,000	35,304,000	82,335,000	5,199,000	79,372,000	8,638,000	19,046,000	,000	34,284,000	748,561,000
August	45,750,000	52,266,000	70,642,000	31,911,000	33,318,000	2,083,000	52,534,000	86,912,000	28,252,000	85,905,000	,000	8,526,000	93,809,000	6,552,000	,000	7,950,000	12,317,000	,000	44,869,000	661,809,000
September	39,178,000	42,044,000	49,558,000	21,835,000	23,810,000	642,000	48,833,000	84,859,000	18,345,000	76,560,000	,000	3,367,000	99,209,000	2,348,000	,000	5,303,000	6,141,000	,000	38,852,000	559,895,000
October	40,435,000	17,929,000	4,288,000	4,136,000	9,036,000	,000	22,367,000	85,473,000	566,000	59,515,000	,000	,000	75,832,000	,000	,000	7,027,000	,000	,000	31,478,000	358,082,000
November	27,072,000	,000	,000	,000	8,478,000	,000	,000	82,921,000	353,000	58,456,000	,000	,000	,000	2,563,000	,000	678,000	,000	,000	5,528,000	182,145,000
December	13,923,000	,000	,000	,000	8,883,000	,000	,000	85,905,000	369,000	67,242,000	,000	,000	,000	,000	,000	650,000	,000	,000	6,759,000	183,741,000
Total	288,118,000	281,118,000	251,691,000	96,079,000	221,399,000	94,337,000	392,681,000	1,023,226,000	167,072,000	826,275,000	,000	141,186,000	369,407,000	34,742,000	148,252,000	45,624,000	100,821,000	8,000	317,794,000	4,685,630,000

City of Pocatello
Water Department

2016
WELL PRODUCTION VALUES

	Well #36	36 Chlor	Well #13	13 Chlor	Well #28	28 Chlor	Well #2	2 Chlor	Well #3	3 Chlor	Well #12	12 Chlor	Well #16	16 Chlor	Well #44	44 Chlor
January	,000	0	16,706,000	77	,000	0	19,342,000	74	,000	0	,000	0	149,000	1	6,894,000	33
February	,000	0	12,765,000	64	,000	0	15,340,000	58	,000	0	,000	0	,000	0	6,460,000	31
March	,000	0	12,476,000	58	,000	0	11,706,000	44	,000	0	,000	0	,000	0	8,012,000	36
April	1,757,000	10	21,739,000	87	,000	0	29,960,000	94	,000	0	,000	0	,000	0	8,711,000	36
May	11,055,000	52	919,000	3	,000	0	30,624,000	146	,000	0	5,645,000	27	64,308,000	224	14,181,000	63
June	27,992,000	129	42,581,000	211	,000	0	32,547,000	202	37,724,000	61	32,897,000	148	52,773,000	217	39,906,000	163
July	25,126,000	117	43,396,000	130	,000	0	34,937,000	186	61,818,000	137	29,350,000	187	48,748,000	9	42,385,000	154
August	26,826,000	113	42,052,000	213	,000	0	37,617,000	169	56,578,000	131	34,678,000	157	82,808,000	348	42,644,000	151
September	8,961,000	33	26,338,000	92	,000	0	37,750,000	155	28,249,000	66	22,837,000	95	61,773,000	260	29,348,000	104
October	,000	0	8,379,000	27	,000	0	23,397,000	97	1,213,000	4	299,000	2	30,874,000	142	14,471,000	50
November	,000	0	3,635,000	13	,000	0	19,505,000	97	,000	0	,000	0	2,975,000	13	9,051,000	30
December	,000	0	376,000	5	,000	0	19,783,000	112	,000	0	,000	0	,000	0	9,774,000	31
Total	101,417,000	454	231,362,000	970	,000	0	312,518,000	1,434	185,582,000	439	125,706,000	816	344,408,000	1,212	231,838,000	884
	Well #36	36 Chlor	Well #13	13 Chlor	Well #28	28 Chlor	Well #2	2 Chlor	Well #3	3 Chlor	Well #12	12 Chlor	Well #16	16 Chlor	Well #44	44 Chlor

	Well #10	10 Chlor	Well #29	29 Chlor	Well #21	21 Chlor	Well #27	27 Chlor	Well #34	34 Chlor	Well #31	31 Chlor	Well #18	18 Chlor	Well #26	26 Chlor
January	,000	0	,000	0	86,638,000	346	63,269,000	232	,000	0	,000	0	,000	0	348,000	1
February	,000	0	,000	0	80,314,000	342	64,850,000	269	,000	0	,000	0	,000	0	,000	0
March	,000	0	,000	0	85,500,000	353	69,735,000	284	,000	0	,000	0	,000	0	,000	0
April	,000	0	,000	0	83,459,000	352	75,039,000	256	,000	0	,000	0	,000	0	4,747,000	20
May	,000	0	56,902,000	165	85,541,000	357	83,087,000	279	3,459,000	10	,000	0	,000	0	27,546,000	122
June	60,095,000	154	49,386,000	122	83,888,000	351	77,232,000	226	4,803,000	15	123,721,000	309	8,044,000	36	37,468,000	207
July	82,314,000	214	69,352,000	181	85,387,000	331	76,841,000	203	9,954,000	31	132,887,000	331	47,008,000	228	42,226,000	226
August	71,266,000	182	37,124,000	91	86,392,000	326	78,684,000	194	,000	0	134,584,000	327	29,678,000	129	39,340,000	212
September	17,534,000	40	8,881,000	24	82,817,000	308	57,421,000	134	,000	0	97,725,000	220	3,051,000	9	15,674,000	69
October	99,000	0	,000	0	84,543,000	317	61,631,000	157	,000	0	28,308,000	55	,000	0	,000	0
November	,000	0	,000	0	82,721,000	306	63,404,000	204	,000	0	,000	0	,000	0	,000	0
December	,000	0	,000	0	85,347,000	320	70,058,000	198	,000	0	,000	0	,000	0	3,827,000	32
Total	231,308,000	590	221,655,000	583	1,012,747,000	4,018	841,251,000	2,616	18,216,000	56	517,023,000	1,242	87,782,000	402	171,176,000	911
	Well #10	10 Chlor	Well #29	29 Chlor	Well #21	21 Chlor	Well #27	27 Chlor	Well #34	34 Chlor	Well #31	31 Chlor	Well #18	18 Chlor	Well #26	26 Chlor

	Well #32	32 Chlor	Well #35	35 Chlor	Well #39	39 Chlor	Total Well	Total Chlorine	Highland	Spaulding	Riverside	Feed Line	FL Chlor	West Bench	WB Chlor
January	,000	0	1,037,000	4	,000	0	194,383,000	782	3,504,000	17,085,000	,000			5,000,000	15
February	,000	0	1,066,000	4	,000	0	180,825,000	770	3,884,000	16,008,000	,000	10,901,000	41	4,346,000	12
March	485,000	0	1,023,000	4	,000	0	188,937,000	771	5,238,000	16,859,000	,000	10,384,000	39	4,812,000	12
April	,000	0	2,659,000	9	,000	0	226,071,000	980	6,178,000	28,778,000	,000	18,450,000	75	5,473,000	14
May	3,295,000	10	479,000	2	4,858,000	18	391,697,000	1,486	10,027,000	61,621,000	,000	,000	0	9,097,000	0
June	11,650,000	36	567,000	2	5,822,000	19	726,586,000	2,714	,000	,000	,000	35,957,000	104	22,250,000	84
July	3,016,000	10	689,000	2	10,290,000	32	845,514,000	2,954	21,699,000	135,700,000	,000	32,940,000	131	26,843,000	74
August	4,461,000	16	457,000	2	7,843,000	25	813,033,000	2,862	22,963,000	133,864,000	,000	34,060,000	136	25,982,000	76
September	630,000	2	121,000	0	6,394,000	20	505,615,000	1,713	13,544,000	75,362,000	,000	20,380,000	92	14,915,000	42
October	,000	0	458,000	1	3,958,000	11	250,717,000	847	4,372,000	29,750,000	,000	5,819,000	29	6,293,000	16
November	,000	0	307,000	1	450,000	1	182,048,000	688	2,684,000	17,322,000	,000	7,769,000	32	4,242,000	23
December	,000	0	342,000	1	2,190,000	10	191,707,000	733	3,569,000	17,856,000	,000	10,014,000	47	4,606,000	24
Total	23,537,000	74	9,225,000	32	41,693,000	134	4,701,133,000	17,200	97,642,000	550,015,000	,000	186,674,000	726,000	186,674,000	726
	Well #32	32 Chlor	Well #35	35 Chlor	Well #39	39 Chlor	Total Well	Total Chlorine	Highland	Spaulding	Riverside	Feed Line	FL Chlor	West Bench	WB Chlor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 2017, I caused a true and correct copy of the *BRIEF AND EXCEPTIONS TO PRELIMINARY ORDER DISMISSING PROTEST AND APPROVING TRANSFER* to be delivered to the following by U.S. Mail.

Kirk Bybee
City of Pocatello
P.O. Box 4169
Pocatello, ID 83201

Sarah A. Klahn
White & Jankowski LLP
511 Sixteenth Street, Suite 500
Denver CO 80202



Laura A. Schroeder, ESQ (ISB #3799)
James Browitt (ISB #9016)
Schroeder Law Offices, P.C.
1915 N.E. Cesar E. Chavez Boulevard
Portland, Oregon 97212
PHONE – (503) 281-4100
FAX – (877) 600-4971
counsel@water-law.com

SCHROEDER LAW OFFICES, P.C.
1915 NE Cesar E. Chavez Boulevard
Portland, Oregon 97212
PHONE (503) 281-4100 FAX (877) 600-4971