

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 79468

RECEIVED

JUN 19 2014

Department of Water Resources
Eastern Region

MINIMUM REQUIREMENTS CHECKLIST

TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at www.idwr.idaho.gov.

Name of Applicant(s) Idaho Water Company, LLC

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

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

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

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-9.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).**
** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☒ ☐ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☒ ☐ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.
- ☐ ☐ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use.
- ☐ ☒ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see fee schedule.
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Other. Please describe: _____

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Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of Applicant(s) Idaho Water Company, LLC Phone (208) 312-1135

Mailing address 1135 Valley Rd. South Eden, Idaho 83325 Email delkohtzidwc@mindspring.com

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☒ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Jason C. Helms, P.E. Phone (208) 308-2109

Mailing address 6755 N. Albert Lane Idaho Falls, ID 83401 Email jasoncivil@alumni.nd.edu

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

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

Signature of Applicant or Authorized Representative: Felipe Water Company LLC
 Print Name and Title if applicable: _____
 Date: 2/21/14

Signature of Applicant or Authorized Representative Delbert Kolitz Print Name and Title if applicable 2/21/14 Date

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
☒ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2.**

Transfer of existing water right 25-14381 (priority 7/19/1973) to municipal irrigation use within the service area of the City of Ammon water supply system. Total changes to ESPA reach impacts are less than 2 acre-ft per trimester - See attachment #5 for details.

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

- Total authorized under rights 0.19 cfs and/or 51.2 acre-feet.

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

☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

79 46 8

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued**

3. Point(s) of Diversion

New	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Source	Local name or tag #
no		SE	SE	NW	22	02N	38E	BONNEVILLE	GROUND WATER	Well #8
no		SE	SW	SE	22	02N	38E	BONNEVILLE	GROUND WATER	Well #7
no		SE	NE	NW	25	02N	38E	BONNEVILLE	GROUND WATER	Well #11
no		NW	SE	NW	26	02N	38E	BONNEVILLE	GROUND WATER	Well #5
no		SW	SW	NE	27	02N	38E	BONNEVILLE	GROUND WATER	Well #6
no		NW	NE	NW	27	02N	38E	BONNEVILLE	GROUND WATER	Well #3
no		NE	SE	NW	27	02N	38E	BONNEVILLE	GROUND WATER	Well #2
no		NW	SE	SE	27	02N	38E	BONNEVILLE	GROUND WATER	Well #1
no		SW	NW	SW	34	02N	38E	BONNEVILLE	GROUND WATER	Well #10
no		NE	SE	NW	30	02N	39E	BONNEVILLE	GROUND WATER	Well #9

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Existing wells, mainlines and flow meters.

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

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
See attached agreement allowing Idaho Water Co. to transfer the water rights to the City of Ammon municipal water supply system. Ownership change contemplated upon transfer approval.

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
If yes, ☐ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: _____

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:
This water right currently held in the Idaho Water Supply Bank. Remaining total irrigation use at existing location will be reduced to provide water for this transfer. This transfer removes water right 25-14381 from the existing PPU but will likely remain in the water supply bank to preserve it for future municipal needs.
- e. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:
25-14383 and 25-14385 also at existing POU. City of Ammon water rights 25-4294, 4295, 4297, 7023, 7168, 7498, 7634, 13964, 14331, 14333, 14380, 14396 & 14397 also authorized for diversion from the wells identified in this application.

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

Yes No

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

If yes, describe:

25-14381 is currently leased to the water supply bank through 12/31/2014 in the name of Idaho Water Co., LLC

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

Current Water Right No.: 25-14381

Current Owner: IDAHO WATER COMPANY, LLC
Priority Date: 7/19/1973
Origin: Water Right
Status: Active
Basis: Decreed

Source**Tributary**

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 10/31	0.19 CFS	51.2 AF
	<u>Total Diversion</u>	0.19 CFS	51.2 AF

Location of Point(s) of Diversion

GROUND WATER	NW1/4SW1/4SE1/4	Sec. 21,	Twp 01N,	Rge 38E B.M.
BONNEVILLE County				
GROUND WATER	SE1/4SW1/4NE1/4	Sec. 28,	Twp 01N,	Rge 38E B.M.
BONNEVILLE County				
GROUND WATER	SE1/4SE1/4NE1/4	Sec. 28,	Twp 01N,	Rge 38E B.M.
BONNEVILLE County				
GROUND WATER	NE1/4SE1/4NW1/4	Sec. 28,	Twp 01N,	Rge 38E B.M.
BONNEVILLE County				

Place of Use**IRRIGATION Within BONNEVILLE County**

T01N R38E S27	SWNW	40.00	T01N R38E S27	NWSW	40.00
T01N R38E S28	NENE	14.00	T01N R38E S28	SENE	22.00
T01N R38E S28	NENW	3.00	T01N R38E S28	SENW	27.00
T01N R38E S28	NESE	24.00	T01N R38E S28	NWSE	18.00
T01N R38E S28	SWSE	34.00	T01N R38E S28	SESE	39.00

Total Acres: 261

Conditions of Approval:

1. T07 The right holder shall accomplish the change authorized by this transfer within one years of the date of this approval.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

3. 214 Prior to the diversion and use of water under Transfer approval 78979, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
4. 004 This right does not grant any right-of-way or easement across the land of another.
5. X27 This right is limited to the irrigation of 12.8 acres within the authorized place of use in a single irrigation season.
6. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
7. R02 A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
8. 213 Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
9. 206 Rights 25-14381, 25-14383, 25-14385 are limited to the irrigation of a specific 21.6 acres within the 261.0 acre place of use authorized by this right in a single irrigation season. The specific 21.6 acres to be irrigated by the right holder shall be identified prior to use by submittal of a land list and a representative electronic shape file or by submittal of a land list and a map sufficiently detailed to allow creation of an electronic shape file to be associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 21.6 acres to be irrigated within the 261.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
10. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
11. 201 The combination of changes under:
Transfer approval 78016 as described under right 25-14380
Transfer approval 78017 as described under right 35-14280
Transfer approval 78018 as described under right 25-14381
Transfer approval 78019 as described under right 25-14382

provide the necessary mitigation for any increased depletion to connected reaches of the Snake River that would result from each individual transfer. These transfer approvals shall not require mutual dependence for ongoing mitigation.

Any future action, including a subsequent transfer of this right or an order rescinding a transfer approval, which would result in a change to the point(s) of diversion under this right may require mitigation for the effects of the change. Such future action to change the point(s) of diversion under this right shall be analyzed for effects to connected reaches of the Snake River based on the priority date, point(s) of diversion and steady-state quantity as authorized for this right under Transfer approval 78018.
12. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
13. X35 Rights 25-14381, 25-14383, 25-14385 when combined shall not exceed the irrigation of 21.6 acres.

Decreed Date: 6/7/2002

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

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

- ☒ Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.
- ☒ If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it **Attachment #7b**. If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

B. CHANGES IN NATURE OF USE (Water Balance)

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

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

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

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

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments.

Received by SC Date 6/19/16 Preliminary check by _____ Date _____

Fee paid 200- Date 10/20/16 Received by SC Receipt # E029953

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

ESPA Ground Water Rights Transfer Spreadsheet Data Summary

TRANSFER NO: 25-14381	PREPARED BY: Jason C. Helms, P.E.
TRANSFER NAME: City of Ammon	DATE: 2/21/2014
	Transfer Tool Version: Version 3.1

BLUE CELLS ARE SET UP FOR USER ENTRIES

WATER RIGHTS INVOLVED:

Group 1		Group 2	
Transfer Rights	Additional Mitigation Rights	Transfer Rights	Additional Mitigation Rights
Right No.	Priority Date	Right No.	Priority Date
25-14381	7/19/1973		

HISTORIC BENEFICIAL USE:

Trans/Mit. Rights (group no.)	Acres to Dry Up (ac)	Beneficial Use (af/yr)	Total (af/yr)
25-14381	12.8	51.2	51.2

MODEL CELL LOCATIONS:

	TO WELL	FROM1 WELL	FROM2 WELL	FROM3 WELL
ROW	75	80	0	0
COLUMN	163	159	0	0

	Start Date		End Date		Water Use			Acres Authorized (acres)	Notes
	Season	Year	Season	Year	Annual (af/yr)	Trimester (af/trimester)			
TO Well (Projected Use)	Spring 1973	1973	Winter 2013	2013	0.0	0.0		0.0	No use prior to transfer
	Spring 2014	2014	Winter 2122	2122	51.2	17.1		12.8	New use begins spring 2014
FROM1 Well (With Transfer)	Spring 1973	1973	Winter 2013	2013	51.2	17.1		12.8	Historical use
	Spring 2014	2014	Winter 2122	2122	0	0.0		0.0	Use ceases with transfer spring 2014
FROM1 Well (Without Transfer)	Spring 1973	1973	Winter 2013	2013	51.2	17.1		12.8	Historical use
	Spring 2014	2014	Winter 2122	2122	51.2	17.1		12.8	Use continues without transfer
FROM2 Well (With Transfer)									not used
FROM2 Well (Without Transfer)									not used
FROM3 Well (With Transfer)									not used
FROM3 Well (Without Transfer)									not used

MITIGATION NOTES:
This model represents the transfer of 25-14381 (0.19 cfs, 51.2 afa, 12.8 ac)

ENHANCED GROUND-WATER RIGHTS TRANS

UNIVERSITY OF IDAHO - IDAHO WATER RESOURCES RESEARCH INSTITUTE

IDAHO DEPA

Cells this color are
set up for user entries

ENTER STARTING DATE FOR

SIMULATION. THEN PUSH

"UPDATE DATES" BUTTON

YEAR

1973

SEASON

SPRING

TRANSFER NO:

25-14381

TRANSFER NAME:

City of Ammon

ENTER CELL LOCATIONS:

	'TO' CELL	'FROM1' CELL	'FROM2' CELL	'FROM3' CELL
ROW	75	80		
COLUMN	163	159		

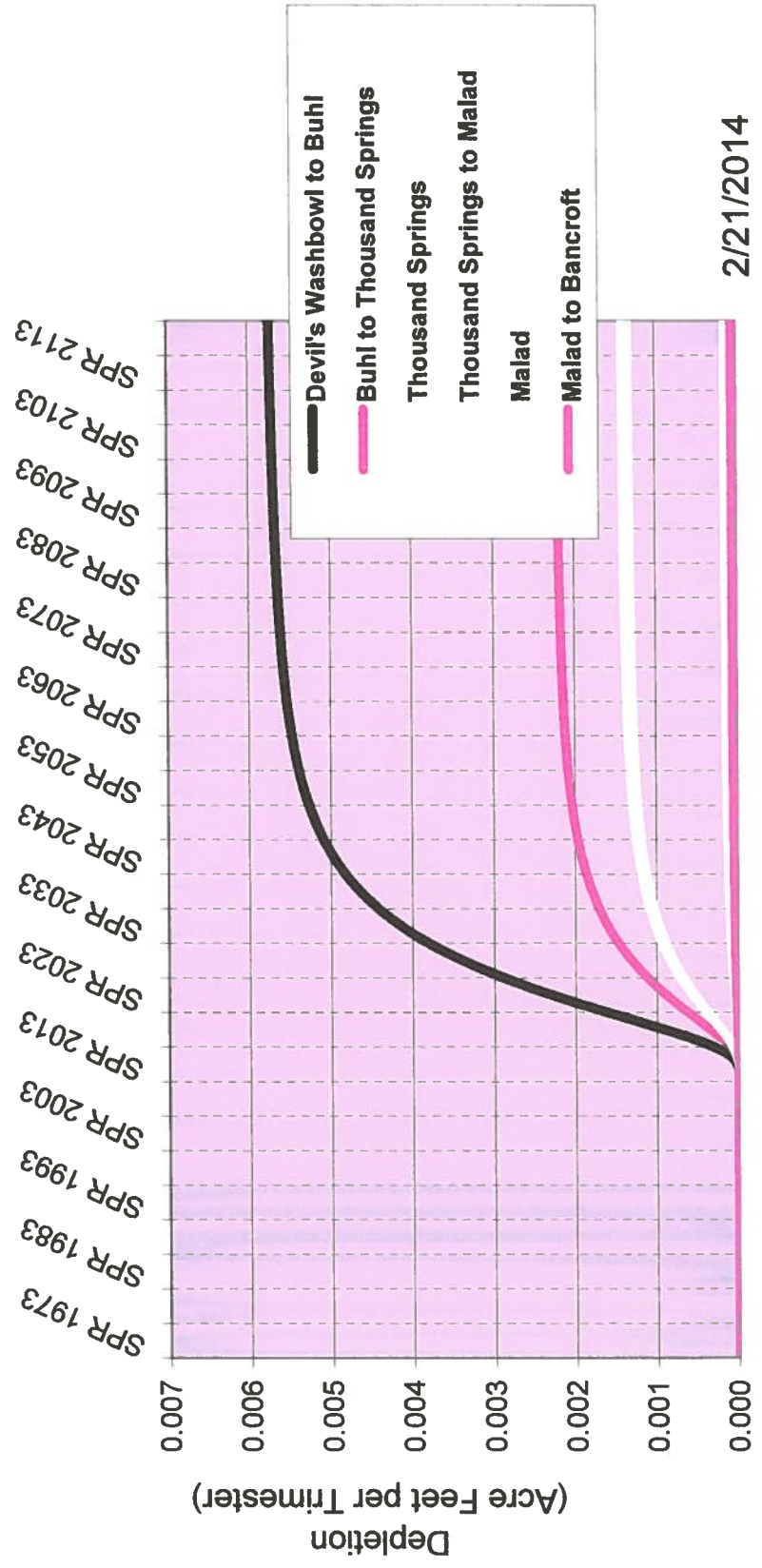
25-14381

7/19/1973

51.2

City of Ammon		CC Hills		Total		51.2	
TRIMESTER OF ACTIVITY	TO WELL Projected Use AF/TRIMESTER	FROM1 WELL With Transfer AF/TRIMESTER	FROM1 WELL Without Transfer AF/TRIMESTER	FROM2 WELL With Transfer AF/TRIMESTER	FROM2 WELL Without Transfer AF/TRIMESTER	FROM3 WELL With Transfer AF/TRIMESTER	FROM3 WELL Without Transfer AF/TRIMESTER
SPR 1973	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SUM 1973	0.00	17.07	17.07	0.00	0.00	0.00	0.00
WIN 1973	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SPR 1974	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SUM 1974	0.00	17.07	17.07	0.00	0.00	0.00	0.00
WIN 1974	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SPR 1975	0.00	17.07	17.07	0.00	0.00	0.00	0.00
WIN 2010	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SPR 2011	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SUM 2011	0.00	17.07	17.07	0.00	0.00	0.00	0.00
WIN 2011	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SPR 2012	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SUM 2012	0.00	17.07	17.07	0.00	0.00	0.00	0.00
WIN 2012	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SPR 2013	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SUM 2013	0.00	17.07	17.07	0.00	0.00	0.00	0.00
WIN 2013	0.00	17.07	17.07	0.00	0.00	0.00	0.00
SPR 2014	17.07	0.00	17.07	0.00	0.00	0.00	0.00
SUM 2014	17.07	0.00	17.07	0.00	0.00	0.00	0.00
WIN 2014	17.07	0.00	17.07	0.00	0.00	0.00	0.00
SPR 2015	17.07	0.00	17.07	0.00	0.00	0.00	0.00
SUM 2015	17.07	0.00	17.07	0.00	0.00	0.00	0.00
WIN 2015	17.07	0.00	17.07	0.00	0.00	0.00	0.00
SPR 2016	17.07	0.00	17.07	0.00	0.00	0.00	0.00
WIN 2121	17.07	0.00	17.07	0.00	0.00	0.00	0.00
SPR 2122	17.07	0.00	17.07	0.00	0.00	0.00	0.00
SUM 2122	17.07	0.00	17.07	0.00	0.00	0.00	0.00
WIN 2122	17.07	0.00	17.07	0.00	0.00	0.00	0.00

Net Transfer Effect Below Milner
(Total Effect With Transfer - Total Effect Without Transfer)



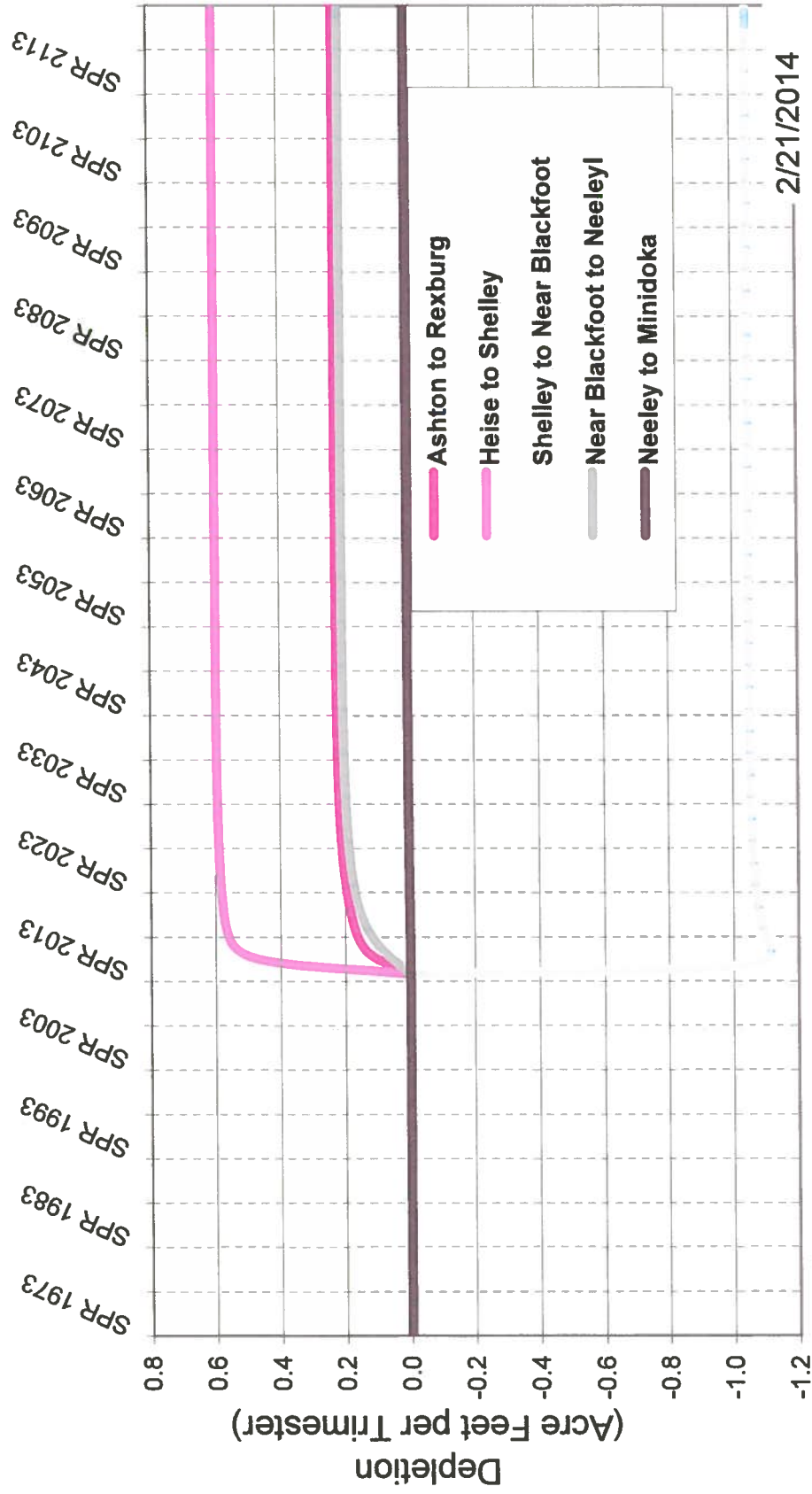
2/21/2014

Version 3.1

Transfer No: 25-14381

Customer Name: City of Ammon

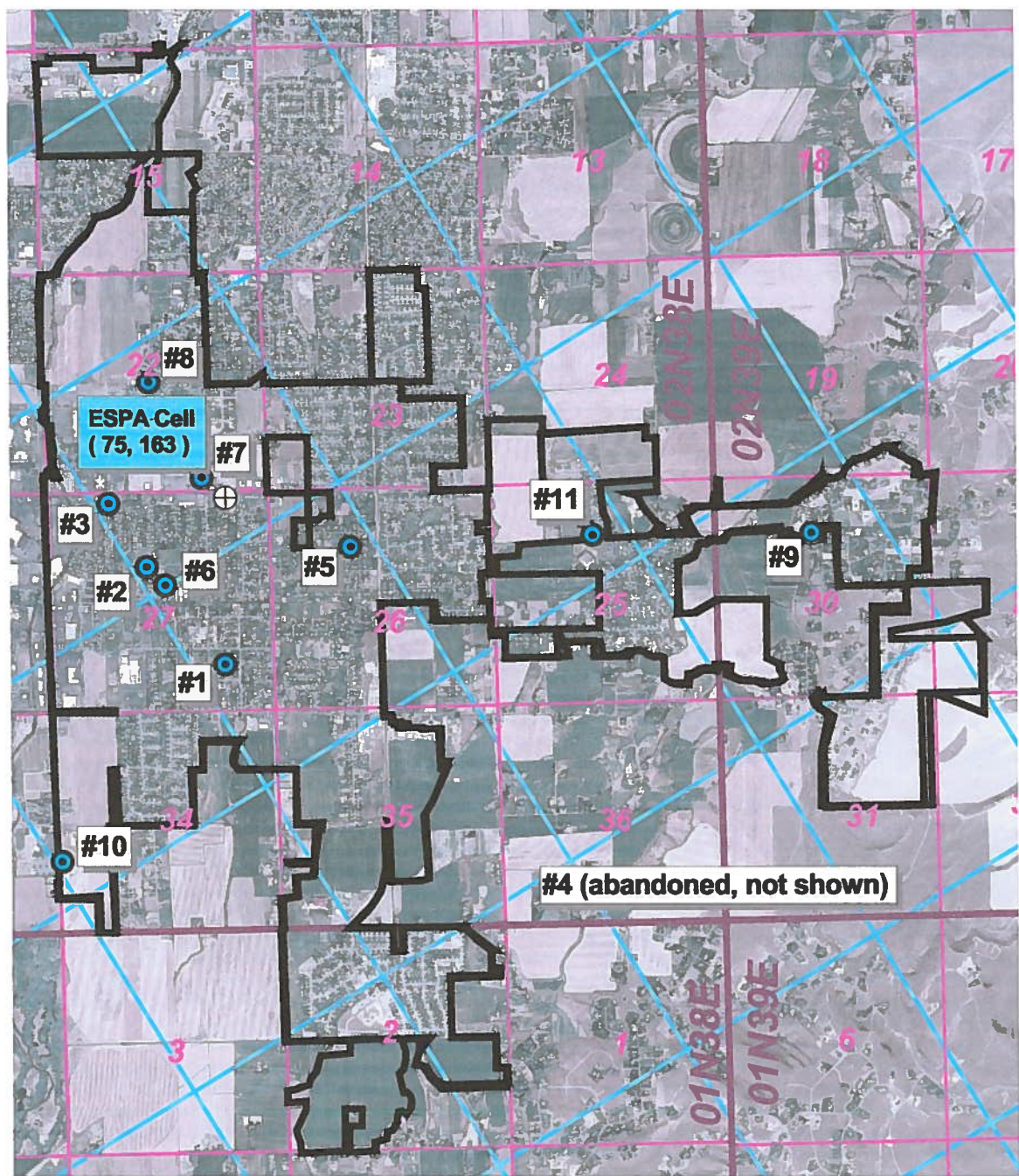
Net Transfer Effect Above Milner (Total Effect With Transfer - Total Effect Without Transfer)



Version 3.1

Transfer No: 25-14381

Customer Name: City of Ammon



JCH 2/21/2014

0.5 0 0.5 1 Miles

2013 NAIP Aerial Photo

⊕ City of Ammon Calculated Centroid of Diversions

● City of Ammon Authorized Wells

□ ESPA Ground Water Model Grid

□ Sections

□ Township & Range

□ Primary Roads



Attachment #7a

79 468

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT (this "Agreement") is made and entered into this 11 day of June, 2014 (the "Effective Date"), by and between Idaho Water Company LLC, an Idaho limited liability company, whose address is 1135 Valley Road South, Eden, Idaho 83325 (hereinafter "Seller"), and the City of Ammon, an Idaho municipal corporation, whose address is 2135 South Ammon Road, Ammon, Idaho 83406 (hereinafter "Buyer"). Del Kohtz is a principal of Seller and hereby discloses that he is a licensed real estate agent acting herein as principal for his own account and not representing or acting as an agent for Buyer. Buyer and Seller are individually a "Party" and together the "Parties".

RECITALS:

A. Buyer is a municipal corporation of the State of Idaho which owns a municipal water delivery system, as well as a number of associated water rights.

B. Seller currently is the owner of Water Right No. 25-14381 (the "Water Right"), which is a water right whose parent water right was decreed on June 7, 2002 in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of the State of Idaho. The Water Right is more fully described in the report obtained from the Idaho Department of Water Resources ("Department" or "IDWR") attached hereto as Exhibit 1.

C. Seller desires to sell and Buyer desires to buy the entirety of the Water Right.

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENTS:

1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, the Water Right, which has the following described elements:

WATER RIGHT NO. ~~35-2348~~ 25-14381

<u>Diversion Rate:</u>	19 cfs
<u>Diversion Volume:</u>	51.2 acre-feet per year
<u>Irrigated Acres:</u>	12.8 acres

2. Property Retained. Seller reserves and retains unto Seller all portions of any other water rights that may be appurtenant to the authorized place of use for the Water Right other than the Water Right. No land, easements, or other property interests, other than the Water Right is included in this Agreement.

3. Purchase Price and Potential Downward Adjustment.

(a) Purchase Price. The purchase price for the Water Right is [] Dollars [] (the "Purchase Price"), which is based on the following unit values per acre foot of authorized annual volume of water to be conveyed to Buyer:

Water Right No.	Price per acre-foot	Acre-feet purchased	Total Price
25-14381	[]	51.2	[]
	TOTALS	51.2	[]

The Purchase Price, less the Earnest Money to be delivered to Seller as described in Paragraph 4 below, shall be payable to Seller at closing.

(b) Adjustment to Purchase Price and Total Amount of Water Right to be Purchased Due to Transfer Conditions. Seller and Buyer acknowledge that the Purchase Price is based upon the unit values (set forth in paragraph 3(a)) per acre-foot of water authorized by the Transfer (described in paragraph 6 below) to be available for Buyer's intended use. If due to acknowledged uncertainties in the final ESPA model configurations or otherwise, the Department approves the Transfer (as described in paragraph 6 below) but with conditions limiting the total annual diversion volume for irrigation to less than proposed in the Transfer, and provided Buyer has waived the condition precedent described in paragraph 7 below, and elected to close on the purchase of the lesser quantity of the Water Right approved under the Transfer, then the Parties agree that the Purchase Price will be adjusted downward based on the reduced annual diversion volume (in units of acre-feet) that has been approved by the Transfer to Buyer's use for irrigation multiplied by the price per acre-foot unit value.

4. Earnest Money Deposit. Contemporaneously with the execution of this Agreement, Buyer shall deliver to Seller earnest money in the amount of 20% of the Purchase Price, which is [] Dollars ([]) (the "Earnest Money"). The Earnest Money shall be applied towards the Purchase Price at closing, or otherwise disposed of as provided herein.

5. Closing.

(a) Closing Date. Closing on the Water Right shall occur within thirty (30) days of the date of a final order of the Department approving the Application for Transfer to be filed by Buyer (pursuant to paragraph 6 herein), and after the contingencies described in paragraph 7 are met. The closing shall occur at the offices of the City of Ammon.

(b) Documents to be Delivered at Closing. At closing, Buyer and Seller shall execute (with acknowledgements, as needed) and/or deliver all instruments, documents and the balance of the Purchase Price necessary to complete the purchase and sale in accordance with this Agreement. The documents Seller shall deliver to Buyer at closing include: (i) a Special Warranty Deed (the "Deed") substantially in the form attached to this Agreement as Exhibit 2; and (ii) any lien release or other documents reasonably requested to confirm the conveyance of the Water Right free and clear of encumbrances.

(c) Payment of Balance of Purchase Price. The Buyer shall deliver the balance of the Purchase Price to Seller at closing. The transaction shall be deemed closed once the Parties have exchanged and mutually delivered all instruments, documents and monies necessary to complete the purchase and sale of the Water Right in accordance with this Agreement.

(d) Fees and Costs of Closing. The cost of recording the Deed shall be paid by Buyer. All other expenses not specifically referenced in this Agreement but related to the Transfer and incurred by Seller or Buyer with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.

6. Use of Water Right.

(a) Transfer Application to the Department. It is understood and agreed that within thirty (30) days after execution of this Agreement, Seller, on behalf of Buyer, shall file an application for transfer of a water right under Idaho law ("Application for Transfer" or "Transfer") of the Water Right with the Department. Seller and Buyer agree to cooperate in obtaining Department approval of the Transfer. The Application for Transfer of the Water Right shall identify all of Buyer's authorized points of diversion in its municipal system as authorized points of diversion for the Water Right, as well as the Buyer's municipal boundary as the authorized place of use of the Water Right.

(b) Transfer Costs. Seller shall be responsible for the costs to prepare the Transfer, including all consultant fees for preparation of the Transfer application and calculation of mitigation, and Buyer shall be responsible for the costs of filing and prosecuting and defending the Transfer application, including all attorney fees, in the event the Transfer is protested and the subsequent administrative process associated with such protest(s) begins. Buyer and Seller shall use best efforts to obtain timely Transfer approval. Buyer authorizes Seller to make needed changes to the Transfer to facilitate the process of transferring the water, provided such changes made will not materially change the amount of money Buyer has to pay, or the amount of water Buyer receives, provided that Seller provides notice to the Buyer of such changes.

(c) Seller's right to any transfer or mitigation credits. If the Transfer results in any river flow or mitigation credits recognized by the Department in any reach of the Snake River or any portion of the Eastern Snake Plain Aquifer, all such credits shall be retained by Seller.

7. Contingencies and Conditions Precedent.

(a) Satisfactory Transfer Approval Contingency. The Parties expressly acknowledge and agree that performance under this Agreement is fully contingent upon the approval of the Application for Transfer by the Department in a manner reasonably satisfactory to the Buyer, unless such contingency is waived by the Buyer. If this Agreement does not close because the Department does not approve the Application for Transfer in a manner reasonably satisfactory to Buyer, then [redacted] of the Earnest Money shall be retained by Seller and the remaining Earnest Money—[redacted]—shall promptly be returned by Seller to Buyer. If the Application for Transfer is approved by the Department in a manner reasonably satisfactory to Buyer and Buyer fails to close hereunder (through no fault of Seller), Seller shall be entitled to retain one-half (1/2) the Earnest Money deposit and shall promptly return the remaining one-half (1/2) to Buyer. In either such instance, Buyer shall be required to undertake, at Buyer's expense, actions that may be necessary with the Department to ensure that the Water Right are in the same condition on the Department's records as they were prior to the execution of this Agreement. Upon such disposition of the Earnest Money and completion of such action to be taken by Buyer, the Parties shall be relieved of further obligation hereunder.

8. Default. In addition to either Party's failure to perform any material term or condition of this Agreement or a Party's breach of any of such Party's representations or warranties (in which event the non-defaulting party may pursue any available remedy, including equitable relief), Buyer shall be deemed in default hereof if Buyer files a petition in bankruptcy or is adjudicated bankrupt or insolvent, Buyer makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization, in which case, in addition to any other remedies or rights Seller might have, Seller shall have the power and authority to notify the Department that the Application for Transfer has been withdrawn.

9. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the effective date of this Agreement and again as of the closing as follows:

(a) Authority. Seller has the full legal right, power and authority to enter into and perform this Agreement, and will obtain good marketable title to the Water Right in fee simple, and Seller (at its expense) shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Water Right on or before closing.

(b) Conveyance. Provided that the contingencies in Paragraph 7 are satisfied, Seller shall then convey the Water Right free and clear of all liens, encumbrances and restrictions, except such restrictions on the use of water as may appear on the water right records contained in Exhibit 1 and in the Transfer approved by the Department.

Seller

Del Kohtz
Idaho Water Company LLC
1135 Valley Road S
Eden, ID 83325
(208) 825-5617

Buyer

City of Ammon City
2135 South Ammon Road
Ammon, Idaho 83406
(208) 612-4000

Seller's Representative

Michael C. Creamer
Givens Pursley, LLP
601 W. Bannock Street
Boise, ID 83702
(208) 388-1200

Buyer's Representative

Scott R. Hall
Nelson Hall Parry Tucker, P.A.
490 Memorial Drive
Idaho Falls, ID 83402
(208) 522-3001

(c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Water Right. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.

(d) Broker. It is understood and agreed by and between the Parties that the transaction herein contemplated does not involve a broker for either Seller or Buyer. To the extent any broker commissions are owed as a result of this transaction by Buyer, Buyer agrees to be solely liable therefore, and Buyer agrees to indemnify Seller from any such commissions. To the extent any broker commissions are owed as a result of this transaction by Seller, Seller agrees to be solely liable therefore, and Seller agrees to indemnify Buyer from any such commissions.

(e) Own Account. Seller discloses and Buyer acknowledges that Delbert G. Kohtz, Seller's managing member, is a licensed real estate agent acting herein as Seller's principal for his own account and is not representing or acting as an agent for Buyer.

(f) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.

(g) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.

(h) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.

(i) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

(j) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

(k) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.

(l) Essence of Time. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SELLER"

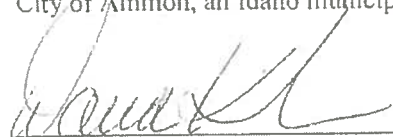
IDAHO WATER COMPANY, LLC

By: 

Del Kohrtz, Managing Member

"BUYER"

City of Ammon, an Idaho municipal corporation


By: Dana Kirkham, Council President
City Council, City of Ammon

ATTEST


Ron Folsom
City Clerk, City of Ammon

RECEIVED

JUN 19 2014

Department of Water Resources
Eastern Region

June 19, 2014

JCH Engineering & Consulting, PLLC

6755 N. Albert Lane
Idaho Falls, ID 83401
(208) 308-2109
jasoncivil@alumni.nd.edu

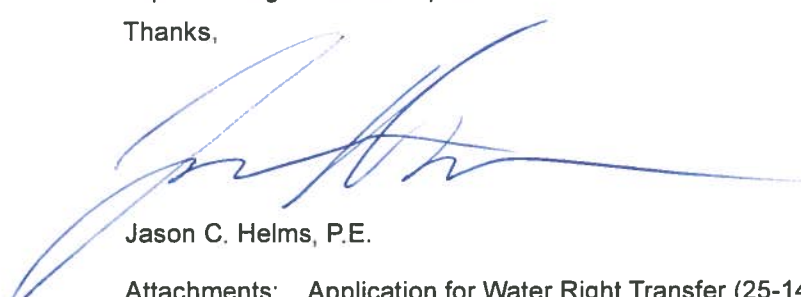
Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Application for Transfer 25-14381

Dear Reviewing Agent:

Please find attached an application for water right transfer proposing to move the entirety of water right 25-14381 to the City of Ammon for municipal irrigation purposes. If you should need anything to assist in processing the transfer please let me know.

Thanks,



Jason C. Helms, P.E.

Attachments: Application for Water Right Transfer (25-14381 to City of Ammon)
Processing Fee: Idaho Water Company Check #1006 in the amount of \$200

cc: Del Kohtz (Idaho Water Co.)
Robert L. Harris (Atty. for City of Ammon)

79 46 8