

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 79083

This is to certify that: CEMMRM PARTNERS LLC
C/O DON J MCGRATH
3300 POWER ST
EMERYVILLE, CA 94608

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
37-448C	WR/DECREED	6/15/1887	1.350 cfs	N/A	N/A	60.0	LOVING CREEK

Purpose of Transfer (Changes Proposed)

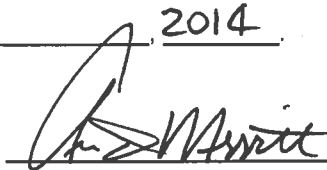
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
37-448C	NO	NO	NO	YES	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
37-448C	37-448C	1.350 cfs	N/A	N/A	60.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		1.350 cfs	N/A	N/A	60.0		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 2nd day of April, 2014.


Southern Region Manager

WATER RIGHT NO. 37-448C**As Modified by Transfer No. 79083**

In accordance with the approval of Transfer No. 79083, Water Right No. 37-448C is now described as follows:

Right Holder: CEMMRM PARTNERS LLC
C/O DON J MCGRATH
3300 POWER ST
EMERYVILLE, CA 94608

Priority Date: 6/15/1887

Source: LOVING CREEK
Source: SILVER CREEK

Tributary: SILVER CREEK
Tributary: LITTLE WOOD RIVER

BENEFICIAL USE
IRRIGATION

From 04/15 to **To** 10/31

Diversion Rate
1.350 cfs
1.350 cfs

LOCATION OF POINT(S) OF DIVERSION

LOVING CREEK NESENW Sec 24 Twp 01S Rge 19E BLAINE County
SILVER CREEK NESW Sec 20 Twp 01S Rge 20E BLAINE County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01S	20E	20		21.0			39.0												60.0

POU Total Acres: 60.0

CONDITIONS OF APPROVAL

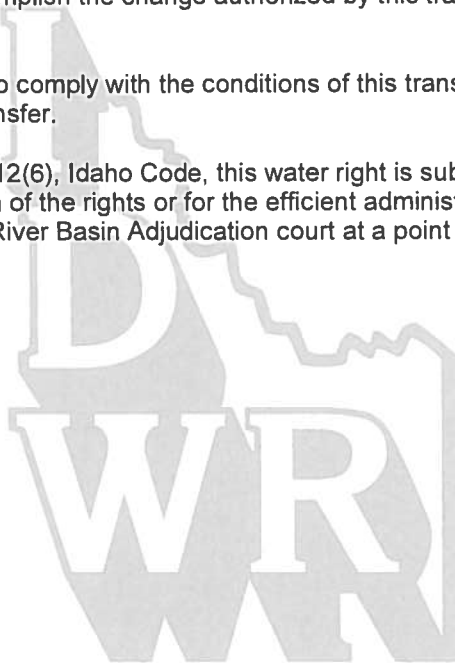
1. Rights 37-448C and 37-2739 when combined shall not exceed the irrigation of 60 acres.
2. When water is diverted under this right at the Point of Diversion, located in TWP 01S, RNG 20E, Sec. 20 NESW, the watermaster shall deliver 0.04 cfs from right 37-448C into the point of diversion, located in TWP 01S, RNG 19E, Sec. 24 NESENW, locally known as the Gillihan Ditch, to mitigate for injury to other water users which have historically relied on sharing ditch loss with the right owner. Future adjustment to the amount needed for mitigation may be made by IDWR if improved conveyance loss analysis is developed. If water use from the headgate located in TWP 01S, RNG 20E, Sec. 20 NESW is curtailed the mitigation requirement ceases.
3. 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. 37.

Transfer No. 79083

WATER RIGHT NO. 37-448C
As Modified by Transfer No. 79083

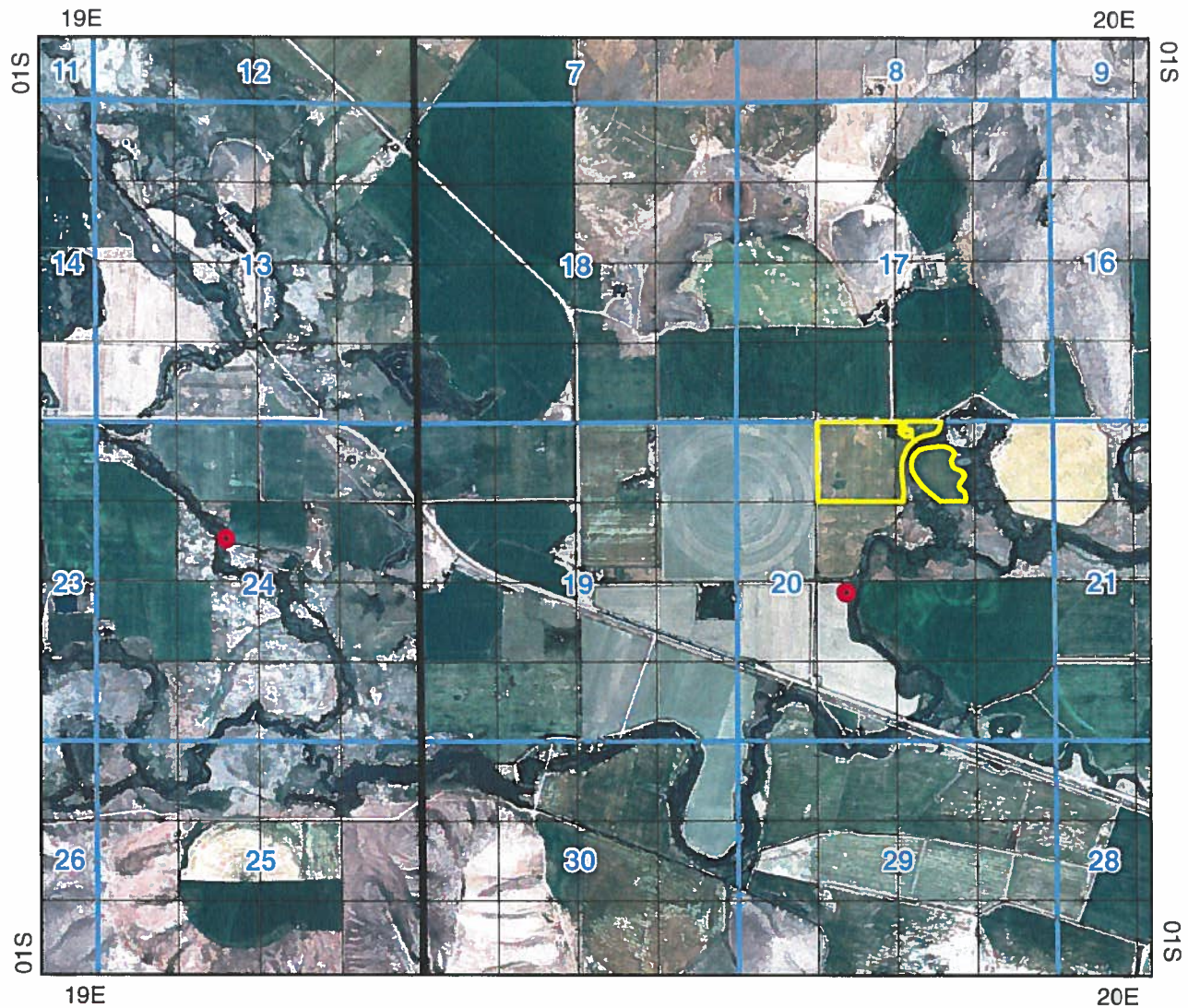
CONDITIONS OF APPROVAL

4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. This right does not grant any right-of-way or easement across the land of another.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. 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.



State of Idaho
Department of Water Resources
Attachment To Transfer No. 79083
Right: 37-448C

This map depicts the IRRIGATION place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.35 0.7 1.4 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, Idaho 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 3, 2014

CEMMRM PARTNERS LLC
C/O DON J MCGRATH
3300 POWELL ST
EMERYVILLE CA 94608

Re: Transfer No: 79083
Water Right No(s): 37-448C

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 736-3033.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Merritt". The signature is fluid and cursive, with a large initial "A" and "M".

Allen Merritt
Southern Region Manager

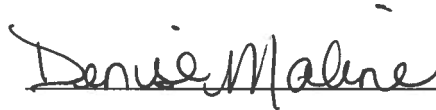
Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2014 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

**Re: Transfer No.: 79083
Water Right No(s): 37-448C**

**CEMMRM PARTNERS LLC
C/O DON J MCGRATH
3300 POWELL ST
EMERYVILLE CA 94608**

A handwritten signature in cursive script, reading "Denise Maline", is written over a horizontal line.

**Denise Maline
Administrative Assistant**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 3, 2014

KEVIN LAKEY WATERMASTER
WATER DISTRICT # 37
107 W 1ST ST
SHOSHONE, ID 83352

Re: **APPROVED Transfer No. 79083 (CEMMRM Partners LLC)**

Dear Mr. Lakey:

For your information and records, we have enclosed a copy of an APPROVED Application for Transfer within your District.

If you have any questions, please contact this office, or the applicant.

Sincerely,

A handwritten signature in cursive script that reads "Denise Maline".

Denise Maline
Administrative Assistant

Enclosure

MEMORANDUM

Date: April 1, 2014
To: Transfer 79083 File
From: Jeff Cooper
Re: Evaluation of Sufficiency of Information Submitted

Application for transfer proposes to add a point of diversion (POD) on Silver Creek for irrigation right 37-448C, which is currently authorized to divert 1.35 CFS (60 acres) from Loving Creek at the Gillihan Ditch, located approximately 1.3 mi. N & 4.0 mi. W of Picabo. The proposed Silver Creek POD will be located downstream of the Gillihan Ditch diversion, closer to the applicant's property, approximately 1.1 mi. N & 2.1 mi. W of Picabo. Applicant also proposes to leave 0.04 CFS in the Gillihan Ditch when taking water at the proposed POD to cover conveyance loss.

In order to address concerns of injury to the rights in the Gillihan Ditch, an analysis was performed to determine the ditch loss that has historically been mitigated by turning in the rights involved in this transfer. This analysis was based on the Brockway & Allen model. This model utilizes the width of the channel; a seepage rate based on the channel material; and length of channel (reach) to determine a delivery loss. Analysis was based on the highest amount delivered between 2003 & 2012. The amount determined by this analysis (0.04 CFS) will be used in a condition on the rights to leave water in the ditch when the proposed POD is being used.

Proposed changes occur within the Big and Little Wood Water District (37). I spoke with the Watermaster (Kevin Lakey) on April 1, 2014, by phone since he didn't respond to our initial request for comments. He indicated he did not have any issues with the proposed changes. We also discussed the flow of Loving Creek into Silver Creek to ascertain if there was any time of year that the flow from Loving Creek ceased flowing into Silver Creek. He indicated the flow was present year round into Silver Creek from Loving Creek.

- **Authority to File:**
Applicant (CEMMRM Partners) is currently listed as the current owner on the water rights involved in this transfer. Applicant provided a Certificate of Authority indicating that Don McGrath has authority to file the proposed changes. Application was signed by Mr. McGrath. Nick Purdy, owner of Picabo Livestock, granted permission for CEMMRM to pursue the POD on property owned by Picabo Livestock.
- **Water Right Validity:**
Rights 37-448C was partially decreed in the SRBA on April 6, 2010, therefore forfeiture is not an issue.
- **Injury to Other Water Rights:**
None anticipated.
- **Enlargement of Use:**
None anticipated. Combined conditions and limits will remain as decreed.
- **Local Public Interest:**
No negative impact anticipated.

- **Beneficial Use/Conservation of Water Resources:**
Decreed uses are recognized as a beneficial use of water.
- **Effect on Economy of the Local Area:**
None anticipated.
- **Effect of the Agricultural Base of the Local Area:**
None anticipated.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

Cooper, Jeff

From: Nick Purdy [nick@purdyent.com]
Sent: Tuesday, April 01, 2014 11:14 AM
To: Cooper, Jeff
Subject: cemmr
Attachments: Scan.pdf

Jeff

As president of Picabo Livestock Co. I am giving permission for Cemmr Partners to divert their Gillihan water right at Picabo Livestock's Point of Diversion on Picabo Livestock property at the old Martin Bridge.

The attached scan is of property we have on the Picabo desert in R20E ,SW1/4,sec 18 and NW1/4,sec19. The question is do we have a ground water right on the property depicted in the scan. There are two wells in the north end of the property.

Thanks for all your help.

Nick Purdy

AFFIDAVIT o. PUBLICATION

State of Idaho
County of Blaine

Pam Morris

, being the first duly sworn, deposes and says that she is the printer (publisher) of the Idaho Mountain Express, a newspaper published every week in Ketchum, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first

publication of said advertisement was on the 5 day of

March, 20 14, and the date of the last publication was

on the 12 day of March, 20 14

Pam Morris

Subscribed and sworn to before me this 12 day of

March, 20 14.

Connie N. Johnson
NOTARY PUBLIC

RECEIVED

MAR 17 2014

DEPT. OF WATER RESOURCES
SOUTHERN REGION

RESIDING AT HAILEY, IDAHO
MY COMMISSION EXPIRES ON 7/10/2018

IDAHO MOUNTAIN EXPRESS

P.O. Box 1013

Ketchum, Idaho 83340

COST OF PUBLICATION

Number of Picas per Line 11.5

Number of Lines in Notice 53

Number of Insertions 2

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53 Lines straight at 42.67 8.0 cents/pica

53 Subsequent lines at 7.0 7.0 cents/pica

TOTAL COST \$ 91.43

COPY OF NOTICE

Legal Notice
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

IDWR

BILL TO

NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 79083

CEMMRM PARTNERS LLC, C/O DON J MCGRATH, 3300 POWELL ST, EMERYVILLE, CA 94608; has filed Application No. 79083 for changes to the following water rights within BLAINE County(s): Right No(s). 37-448C. The purpose of the transfer is to change a portion of the above rights as follows: Application for transfer proposes to add a point of diversion (POD) on Silver Creek for irrigation right 37-448C, which is currently authorized to divert 1.35 CFS (60 acres) from Loving Creek at the Gillihan Ditch, located approximately 1.3 mi. N & 4.0 mi. W of Picabo. The proposed Silver Creek POD will be located downstream of the Gillihan Ditch diversion, closer to the applicant's property, approximately 1.1 mi. N & 2.1 mi. W of Picabo. Applicant also proposes to leave 0.04 CFS in the Gillihan Ditch when taking water at the proposed POD to cover conveyance loss.

For additional information concerning the property location, contact Southern Region office at (208) 736-3033; or to see a full description of these rights and the proposed transfers, please visit our website at www.idwr.idaho.gov and search under New Water Right Applications. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Southern Region, 650 Addison Ave W, Ste 500, Twin Falls ID 83301 together with a protest fee of \$25.00 for each application on or before March 24, 2014. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

PUBLISH:
IDAHO MOUNTAIN EXPRESS
March 5 & 12, 2014

✓ OK
DM
3-27-2014

