

Jordan, Blake

From: Cefalo, James
Sent: Friday, March 21, 2014 2:32 PM
To: mcc@givenspursley.com; jasoncivil@alumni.nd.edu
Cc: Jordan, Blake; delkohtzidwc@mindspring.com
Subject: Response to additional information about water rights 35-2348 and 35-7929

Mike and Jason,

Thank you for providing additional data about the beneficial use occurring under water rights 35-2348 and 35-7929. We have reviewed the data and have determined that the transfer can move forward to advertising. The decision to process the transfer, however, does not mean that we adopt all of the assertions set forth in your March 14th letter.

For example, we don't agree with the assessment of the value of FSA reports. Although FSA reports may be useful in determining the extent of cultivated land, they are not always a good indicator of the irrigation taking place on the land. As we speak to farmers and FSA employees, they confirm that the reports are primarily based on information provided by the farmer. FSA employees do not conduct regular field inspections to verify irrigation. FSA reports represent one piece of the larger puzzle, but they, by themselves, are not determinative of the question of beneficial use.

Second, we don't agree with the dismissal of Water Management Information System (WMIS) records. You state that WMIS records are of limited value because of the annual variance in PCC values. WMIS is a very important tool that helps watermasters and the department regulate and track water use. We have been very successful using WMIS records (in combination with aerial photos) to identify unauthorized irrigation occurring in the ESPA. Unlike FSA reports, WMIS records are based on actual on-site field inspections. According to records for WMIS #500280, in 1998, 2003, 2006, 2009, and 2012 the hydrographers found only one pivot and three wheel lines in operation during the flow measurements. WMIS records can often confirm use or non-use as indicated in aerial photos.

The 190 acres in question do not appear to have been irrigated for some time. It seems likely that Farms LLC filed Transfer 77894 in 2012 because the existing diversion system was not sufficient to irrigate all of the acres described under the water right. An additional well was needed for Farms LLC to irrigate the SE portion of the property.

Blake and I still feel that the available evidence strongly suggests that the 190 acres in question have not been irrigated since the partial decree was issued in 2002. However, we also recognize that fairness requires the department to accept Transfer Approval 77984 as a final administrative action of the department. It appears that the forfeiture review conducted by IDWR staff for Transfer 77984 was not rigorous enough. We will try to be more diligent about identifying potentially forfeited acres in the future.

Let this email confirm that we will move forward processing Idaho Water Company's Application for Transfer. It will be prepared for advertising in the next two weeks. Please feel free to contact Blake or I if you have any other concerns.

James Cefalo
Water Resources Program Manager
IDWR Eastern Region
(208) 525-7161

Jordan, Blake

From: Jason Helms [jasoncivil@alumni.nd.edu]
Sent: Tuesday, March 18, 2014 11:25 AM
To: Jordan, Blake
Subject: Idaho Water Co. 4-Transfers 35-2348, 35-7929 corrections
Attachments: TRANSFER1-Ammon_corrected-pages.pdf; TRANSFER2-Chubbuck_corrected-pages.pdf; TRANSFER3-CLF_corrected-pages.pdf; TRANSFER4-Blackfoot_corrected_pages.pdf

Hi Blake,

Please find attached the corrected application pages which should address the concerns identified in your letter of 2/24/2014. I have changed the nature of use to Municipal for the three municipalities and corrected the clerical error which mis-located most of the Chubbuck wells and mis-located the proposed 1.8 acre dry-up in the SWSE rather than the SESE. I highlighted all changes in yellow. If you can check the box on the original signature page showing the intent to change in nature of use for the three municipal transfers that would be perfect.

I understand that Michael Creamer has addressed the issue related to the partial forfeiture in a letter to James Cefalo.

Let me know if you would like a hard copy sent over or if you need anything else.

Thanks,

Jason C. Helms, P.E.
JCH Engineering & Consulting, PLLC
(208) 308-2109

MAR 17 2014

Department of Water Resources
Eastern Region

LAW OFFICES
601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Michael C. Creamer
Direct Dial: (208) 388-1247
Email: mcc@givenspursley.com

Gary G. Allen
Peter G. Barton
Christopher J. Beeson
Clint R. Bolinder
Erik J. Bolinder
Preston N. Carter
Jeremy C. Chou
William C. Cole
Michael C. Creamer
Amber N. Dina
Elizabeth M. Donick
Thomas E. Dvorak
Jeffrey C. Fereday
Martin C. Hendrickson
Don E. Knickrehm

Neal A. Koskella
Debora K. Kristensen
Michael P. Lawrence
Franklin G. Lee
David R. Lombardi
Kimberly D. Maloney
Emily L. McClure
Kenneth R. McClure
Kelly Greene McConnell
Alex P. McLaughlin
Melodie A. McQuade*
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery

Deborah E. Nelson
W. Hugh O'Riordan, LL.M.
Angela M. Reed
Matt G. Smith
P. Mark Thompson
Jeffrey A. Warr
Robert B. White

*Licensed in Virginia

Retired:
Kenneth L. Pursley
James A. McClure (1924-2011)
Raymond D. Givens (1917-2008)

March 14, 2014

James Cefalo
Eastern Region Manager
Idaho Department of Water Resources
900 North Skyline
Idaho Falls ID 83402-3653

Re: Information Supporting Non-forfeiture of Portions of Water Right Nos. 35-2348
and 35-7929

Dear James:

This information is being submitted in response to a February 24, 2014 letter from Blake Jordan to Idaho Water Company ("IWC") concerning its applications to transfer portions of water right Nos. 35-2348 and 35-7929 to County Line Farms, City of Ammon, City of Chubbuck and City of Blackfoot. Among other things, Blake's letter indicated that based on his review of landsat imagery for the years 2004 through 2010, 190 acres of irrigation under these water rights "probably have been lost to forfeiture." Based on the facts summarized below, IWC disagrees with Blake's conclusion of probable forfeiture of these rights. IWC will be addressing other issues identified in Blake's letter and will respond to him, as requested.

The IWC transfer applications, as submitted to IDWR, were based on information then available to IWC concerning historical beneficial use of water on the 190 acres affected by the transfer applications and on Jason Helms' understanding of the FSA reports for the Farms, LLC property at that time. Subsequently, IWC has obtained additional information, including additional aerial imagery, FSA farm reports for the years 2007-2011, documents from IDWR files concerning a 2012 transfer application affecting the water rights and WMIS records concerning measured and/or calculated power and water use for the Farms, LLC lands. Jason Helms also has had further conversations with the Bingham County FSA concerning interpretation of their reports. Taken together, this additional information documents that there has been no continuous five-year period of non-use of water on the 190 acres. In particular, IWC believes that a 2012 transfer approval confirming the elements of the water rights resolves the issue of forfeiture in and of itself. Other information discussed below reinforces that conclusion.

1. Prior Transfer 77894

In 2012, Farms, LLC filed a transfer application seeking to add a point of diversion for water rights 35-2348 and 35-7929. As part of the review of that application required by Idaho Code 42-222, IDWR reviewed the historical use of the water rights to verify that they had not been forfeited due to non-use. This review is required in every transfer. Idaho Code 42-222; *Jenkins v. IDWR*, 103 Idaho 384, 387, 647 P.2d 1256, 1259 (1982) (Director of Department of Water Resources has jurisdiction to determine question of abandonment and forfeiture in water rights transfer proceeding and such is required as preliminary step to performance of his statutory duty in determining whether proposed transfer would injure other water rights); *In the Matter of Application for Transfer No. 78878 in the Name of BLF Land LLC, Preliminary Order Denying Transfer* (January 6, 2014).

A June 19, 2012 Department Memorandum to the transfer file states that “[t]his right was involved in the SRBA and was partially decreed on 1/31/2002. Aerial photography from 2006, 2009 and 2011 were referenced to determine if there was forfeiture. Forfeiture does not appear to be an issue. . . Review of the application finds there is no clear inconsistency with the criteria set forth in Section 42-222 Idaho Code preventing processing of this application.”

This determination is binding on the Department as to the validity of the water rights as of 2012. The July 6, 2012 final order describing the water right elements as of that date preclude the Department from revisiting and reaching a different conclusion now (i.e., “going behind the final order” and finding probable forfeiture based on review of landsat imagery spanning the same period reviewed in Transfer No. 77894). The 2012 final order is *res judicata* on the issue of forfeiture as of that date, particularly where, in reliance on that final order, Farms, LLC has continued to make investments in the property and entered into a contract with IWC to sell a portion of the water rights. See *Sagewillow v. IDWR*, 138 Idaho 831, 844, 70 P.3d 669, 682 (2003) ((by negative implication¹) holding that where the issue of forfeiture or abandonment is actually raised as an issue in a proceeding to transfer the point of diversion or place of use of a water right, the final order of the transfer proceeding is *res judicata* on the issue of whether the water right at issue had been forfeited or abandoned).

The relevant time period for considering whether there have been five or more consecutive years of unexcused non-use of the water rights would begin in 2013. The IWC transfer applications have stated that the subject lands were irrigated in 2013.

¹ In *Sagewillow*, the appellant argued that a previous final order involving a transfer of the same water rights was binding on the Department as to the issue of forfeiture which arose in a subsequent transfer but which did not arise and was not considered by the Department in the prior transfer. The Court held that the prior transfer order was not *res judicata* in the subsequent transfer on the issue of forfeiture specifically because the Department did not consider forfeiture in the prior transfer. Here, the Department specifically *did* consider forfeiture in the prior transfer, and under the holding in *Sagewillow*, the issue is *res judicata* as to that issue at least up through 2012.

2. FSA Farm Reports

The Bingham County FSA has provided all farm cropping reports it currently maintains for the Farms, LLC property, which are enclosed and include the years 2007 through 2011. Also enclosed is an aerial photo showing the FSA designated fields for purposes of its farm programs reporting. The Farms, LLC property is designated as farm 5034, tract 525 and has been divided into fields 1-8. Fields 3, 5, 7 and 8 are affected by the IWC transfer applications.

The Report of Acreage for Program Years 2007 and 2008 show 49.2 acres of field 3 as irrigated ("Ir") and planted to wheat and 170.1 acres of fields 5, 7 and 8 as non-irrigated ("Ni"). The Report of Acreage for Program Year 2009 shows 49.2 acres of field 3 as irrigated ("Ir") and planted to wheat and 170.1 in fields 5, 7 and 8 as irrigated ("Ir") but fallow or unharvested.² For Program Year 2010, 49.2 acres of field 3 are indicated as irrigated ("Ir") and planted to alfalfa (planted in 2009), and 170.1 in fields 5, 7 and 8 as irrigated ("Ir") but fallow or unharvested. The FSA Report of Commodities Farm and Tract Detail Listing for Program Year 2011, shows 49.2 acres of field 3 in alfalfa, 21.7 acres of field 7A in wheat (planted in May 2011), and 88.3 acres of field 8 planted in wheat (planted in May 2011).

3. WIMS Records

The WIMS records database includes information concerning well/irrigation system inspections including KW usage, GPM and PSI produced and estimated annual volumes diverted based on the power-consumption coefficient for the well. The WMIS site has "PCC Conditions" reports for the years 1998, 2003, 2006 2009 and 2012, a "Data Summary" report for the years 1998 through 2012, and a Crop Data Report showing crops, and acres for the years 2006, 2009 and 2012.

Of these, the PCC reports appear to be of limited, if any, value in determining total water pumped or acres irrigated for a given year, due to the significant season-to-season variability in the PCC values, which may be understandable given the significant variability in the irrigation system setup and pressures recorded for the years when site visits were made (i.e., from 34 psi in 2012 to 100 psi in 1998). As such, IWC does not believe this data is useful or pertinent to a determination of whether the water rights have been forfeited, where forfeiture is required to be established by clear and convincing evidence. The Crop Data Report does indicate, however, that all 313 acres authorized under water right Nos. 35-2348 and 35-7929 were irrigated in 2006.

4. Aerial Imagery

Jason Helms has obtained aerial or satellite imagery for the Farms, LLC property for the years 2003 through 2011. Copies are enclosed. Although interpretation of this imagery is necessarily somewhat subjective, a cursory or untrained review of them supports the conclusion

² Since filing the IWC applications, Jason Helms has inquired of FSA regarding the irrigation practice codes on the FSA reports and has been told that "Ir" or "I" indicates irrigated and "Ni" or "N1" indicates non-irrigated. This designation is entered by the producer or the FSA technician based on the irrigation practice for that year.

James Cefalo
March 14, 2014
Page 4

that the subject fields could have been irrigated in 2005, 2006, 2009 and 2011. That conclusion would not be inconsistent with the IDWR June 19, 2012 Memorandum in the record for Transfer 77894 or with the FSA and WIMS records.

Idaho law requires that forfeiture of a water right be established by clear and convincing evidence, not that clear and convincing evidence of use must be presented to avoid forfeiture. Here, there is more than sufficient evidence to indicate that there has not been any continuous five-year period in which the subject water rights were not used since the partial decrees were issued. For this reason the Department should move forward with processing the IWC applications as soon as the other issues indentified by Blake Jordan in his letter are addressed, which will be the case shortly.

Sincerely,



Michael C. Creamer

MCC/rgm
2029575_1 / 6131-79

Enclosures

cc: Del Kohtz
Cole Hall
Jason Helms

MEMORANDUM

Date: June 19, 2012
To: Transfer 77894
From: dkidman
Re: Transfer Analysis

The applicant proposes to add a new POD to water rights 35-2348 and 35-7929. The new POD will be interconnected with the existing POD. By adding the new well, this will make it more feasible to irrigate the SW of T02S R32E Sec 14.

Authority to File:

The applicant is the owner of water rights 35-2348 and 35-7929 on IDWR data base.

Water Right Validity:

This right was involved in the SRBA and was partially decreed on 1/31/2002. Aerial photography from 2006, 2009 and 2011 were referenced to determine if there was forfeiture. Forfeiture does not appear to be an issue.

Injury to Other Water Rights:

This right falls within the ESPA boundary. The proposed POD and existing POD are located within adjacent cells (Row 71, Column 124 and Row 70, Column 124, respectively). According to the Transfer Memo 24, if the PODs are located within adjacent cells, it is not necessary to run the ESPA Model. This proposed transfer lies within Water District 120 and the watermaster does not oppose this transfer.

Enlargement of Use:

No enlargement was found since the transfer deals only with the addition of a POD. No other element of the water right has been requested to change.

Local Public Interest:

No issue identified.

Beneficial Use/Conservation of Water Resources:

No issue identified.

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.

The application has been advertised in the Morning News and no protests were filed.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 77894

This is to certify that: FARMS LLC
C/O BRAD HALL
2840 SUNNYBROOK LN
IDAHO FALLS ID 83404
(208)524-2532

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 Change

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
35-7929	WR/Decreed	12/03/1980	2.66 cfs	N/A	133.0	313.0	GROUND WATER
35-2348	WR/Decreed	08/18/1953	4.08 cfs	N/A	204.0	313.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

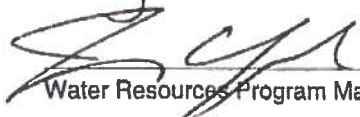
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
35-7929	NO	NO	NO	YES	NO	NO
35-2348	NO	NO	NO	YES	NO	NO

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>
35-7929	35-7929	2.66 cfs	532 af	133.0	313.0		N/A	N/A	N/A	N/A
35-2348	35-2348	4.08 cfs	816 af	204.0	313.0		N/A	N/A	N/A	N/A
COMBINED TOTALS		4.08 cfs	1252 af	313.0	313.0		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 6th day of July, 20 12


Water Resources Program Manager

SUPPORT DATA
IN FILE # 35-2348

WATER RIGHT NO. 35-2348
As Modified by Transfer No. 77894

In accordance with the approval of Transfer No. 77894, Water Right No. 35-2348 is now described as follows.

Right Holder: FARMS LLC
 C/O BRAD HALL
 2840 SUNNYBROOK LN
 IDAHO FALLS ID 83404

Priority Date: August 18, 1953

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 10/31	4.08 CFS	816.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SESW	Sec. 14 Twp 02S	Rge 32E	BINGHAM County
GROUND WATER	NENENE	Sec. 15 Twp 02S	Rge 32E	BINGHAM County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02S	32E	14							5.0	4.0	35.0	34.0	25.0	33.0					136.0
02S	32E	15	32.0	5.0	21.0	40.0									38.0	29.0		7.0	172.0
02S	32E	23					3.0	2.0											5.0

Total Acres: 313

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of 204 acres within the authorized place of use in a single irrigation season.
2. Rights 35-2348 and 35-7929 when combined shall not exceed a total diversion rate of 4.08 cfs, a total annual maximum diversion volume of 1252 af at the field headgate, and the irrigation of 313 acres.
3. Rights 35-2348 and 35-7929 are diverted through points of diversion described above.
4. 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.
5. Prior to the diversion and use of water under Transfer approval 77894, 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.

WATER RIGHT NO. 35-2348
As Modified by Transfer No. 77894

CONDITIONS OF APPROVAL

6. 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.
7. 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.
8. Diversion of water from the additional well authorized under Transfer 77894 located in SESW, Sec. 14, T02S, R32E shall not exceed a maximum diversion rate of 2.5 cfs.
9. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
12. 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.

This water right 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.

Dated this 6th day of July, 2012



Water Resources Program Manager

WATER RIGHT NO. 35-7929
As Modified by Transfer No. 77894

In accordance with the approval of Transfer No. 77894, Water Right No. 35-7929 is now described as follows.

Right Holder: FARMS LLC
C/O BRAD HALL
2840 SUNNYBROOK LN
IDAHO FALLS ID 83404

Priority Date: December 03, 1980

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01 to 11/01	2.66 CFS	532.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SESW	Sec. 14 Twp 02S	Rge 32E	BINGHAM County
GROUND WATER	NENENE	Sec. 15 Twp 02S	Rge 32E	BINGHAM County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02S 32E 14							5.0	4.0	35.0	34.0	25.0	33.0					136.0
02S 32E 15	32.0	5.0	21.0	40.0									38.0	29.0		7.0	172.0
02S 32E 23					3.0	2.0											5.0

Total Acres: 313

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of 133 acres within the authorized place of use in a single irrigation season.
2. Rights 35-2348 and 35-7929 when combined shall not exceed a total diversion rate of 4.08 cfs, a total annual maximum diversion volume of 1252 af at the field headgate, and the irrigation of 313 acres.
3. Rights 35-2348 and 35-7929 are diverted through points of diversions described above.
4. 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.
5. Prior to the diversion and use of water under Transfer approval 77894, 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.

WATER RIGHT NO. 35-7929
As Modified by Transfer No. 77894

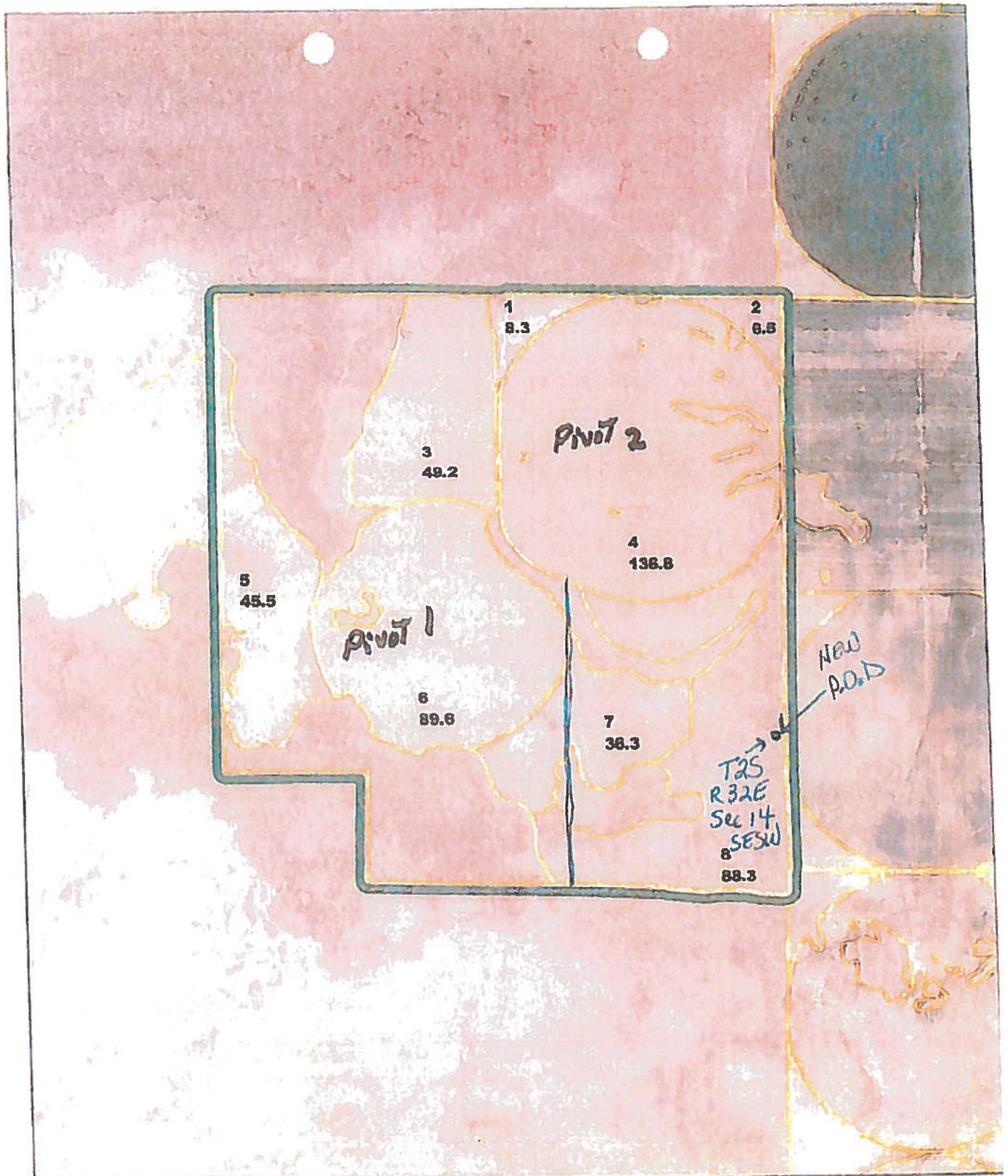
CONDITIONS OF APPROVAL

6. 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.
7. 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.
8. Diversion of water from the additional well authorized under Transfer 77894 located in SESW, Sec. 14, T02S, R32E shall not exceed a maximum diversion rate of 2.5 cfs.
9. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
12. 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.

This water right 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.

Dated this 6th day of July, 20 12


Water Resources Program Manager



Farm 5034
Tract 525
113

Adamson Farm
West Desert

77894

0.1 0 0.1 0.2 0.3 0.4 Miles



Map Printed: Aug 13, 2004

BINGHAM, IDAHO

Form Approved - OMB No. 0560-0004

FSA-578 (Producer Print)

REPORT OF ACREAGE

PROGRAM YEAR 2007

DATE: 07-30-2012

Farm Number	Tract Number	CLU/Field	Ir Pr	Ver/ C/C	Int Use	C/C Stat	Rpt Quantity	Determined Quantity	Crop Lnd	Planting Date	Prod Share	Prod Name	RMA Odt	Unt
		Cropland:		607.4		Farmland:		640.0						
5034	525	1	N1	FALOW		I A	8.30		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		2	N1	FALOW		I A	6.50		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		7	N1	FALOW		I A	36.30		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		8	N1	FALOW		I A	88.30		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		5	N1	FALOW		I A	45.50		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		3	Ir	WHEAT HRW	Grain	I A	49.20		Y	09-28-2006	.4000	SUNNY HARKER	.6000	ERIC M HARKER
		4	Ir	WHEAT HWS	Grain	I A	136.80		Y	04-28-2007	.4000	SUNNY HARKER	.6000	ERIC M HARKER
	526	6	Ir	WHEAT HWS	Grain	I A	89.60		Y	04-28-2007	.4000	SUNNY HARKER	.6000	ERIC M HARKER
		1	Ir	WHEAT HWS	Grain	I A	75.50		Y	04-15-2007	.4000	SUNNY HARKER	.6000	ERIC M HARKER
		4	Ir	WHEAT HWS	Grain	I A	93.20		Y	04-15-2007	.4000	SUNNY HARKER	.6000	ERIC M HARKER
		6	Ir	WHEAT HWS	Grain	I A	83.30		Y	04-15-2007	.4000	SUNNY HARKER	.6000	ERIC M HARKER
		2	N1	FALOW		I A	3.20		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		3	N1	FALOW		I A	5.40		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		5	N1	FALOW		I A	7.70		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		7	N1	FALOW		I A	3.20		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
527	1	1	N1	FALOW		I A	5.10		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		2	N1	FALOW		I A	4.10		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		3	N1	FALOW		I A	5.90		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		5	N1	FALOW		I A	4.70		Y		.4000	SUNNY HARKER	.6000	ERIC M HARKER
		4	Ir	WHEAT HWS	Grain	I A	134.60		Y	04-25-2007	.4000	SUNNY HARKER	.6000	ERIC M HARKER

Photo Number/Legal Descriptions: 525

FSA-578 (Producer Print)

REPORT OF ACREAGE

Form Approved - OMB No. 0560-0004

PROGRAM YEAR 2008

DATE: 07-30-2012

Farm Number	Tract Number	CLU/Field	Ir Pr	C/C	Var/Type	Int Use	C/C Stat	Rpt Reported Quantity	Determined Quantity	Crp Lnd	Planting Date	Prod Share	Prod Name	RMA Opt
Unt														
		Cropland:		607.4		Farmland:		640.0						
5034	525	1	N1	FALLOW			I A	8.30		Y		.4000	SUNNY HARKER	
		2	N1	FALLOW			I A	6.50		Y		.6000	ERIC M HARKER	
		5	N1	FALLOW			I A	45.50		Y		.4000	SUNNY HARKER	
		7	N1	FALLOW			I A	36.30		Y		.6000	ERIC M HARKER	
		8	N1	FALLOW			I A	88.30		Y		.4000	SUNNY HARKER	
		4	Ir	WHEAT HRW Grain			I A	136.80		Y	09-10-2007	.6000	ERIC M HARKER	
		3	Ir	WHEAT HRW Grain			I A	49.20		Y	09-10-2007	.4000	SUNNY HARKER	
		6	Ir	WHEAT HRW Grain			I A	89.60		Y	09-10-2007	.6000	ERIC M HARKER	
	526	1	Ir	WHEAT SWW Grain			I A	75.50		Y	09-16-2007	.4000	SUNNY HARKER	
		4	Ir	WHEAT SWW Grain			I A	93.20		Y	09-16-2007	.6000	ERIC M HARKER	
		6	Ir	WHEAT SWW Grain			I A	83.30		Y	09-16-2007	.4000	SUNNY HARKER	
		2	N1	FALLOW			I A	3.20		Y		.6000	ERIC M HARKER	
		3	N1	FALLOW			I A	5.40		Y		.4000	SUNNY HARKER	
		5	N1	FALLOW			I A	7.70		Y		.6000	ERIC M HARKER	
		7	N1	FALLOW			I A	3.20		Y		.4000	SUNNY HARKER	
	527	1	N1	FALLOW			I A	5.10		Y		.6000	ERIC M HARKER	
		2	N1	FALLOW			I A	4.10		Y		.4000	SUNNY HARKER	
		3	N1	FALLOW			I A	5.90		Y		.6000	ERIC M HARKER	
		5	N1	FALLOW			I A	4.70		Y		.4000	SUNNY HARKER	
		4	Ir	WHEAT HRW Grain			I A	134.60		Y	09-10-2007	.6000	ERIC M HARKER	

Photo Number/Legal Descriptions: 825

FSA-578 (Producer Print)

REPORT OF ACREAGE

Form Approved - OMB No. 0560-0004

PROGRAM YEAR 2009

DATE: 07-30-2012

Farm Number	Tract Number	CLU/Field	Ir Pr	C/C	Var/Type	Int Use	C/C Stat	Rpt Unt	Reported Quantity	Determined Quantity	Crop Lnd	Planting Date	Prod Share	Prod Name	RMA Opt	Unt
		Cropland:		607.4	Farmland:		640.0									
5034	825	1	Ir	FALOW			I A	8.30			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		2	Ir	FALOW			I A	6.50			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		5	Ir	FALOW			I A	45.50			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		7	Ir	FALOW			I A	36.30			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		8	Ir	FALOW			I A	88.30			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		3	Ir	WHEAT SWW Grain		IF	A	49.20			Y	09-16-2008	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		4	Ir	WHEAT SWW Grain		IF	A	136.80			Y	09-16-2008	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		6	Ir	WHEAT SWW Grain		IF	A	89.60			Y	09-16-2008	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		3	Ir	WHEAT HWS Grain		R	A	49.20			Y	05-08-2009	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		4	Ir	WHEAT HWS Grain		R	A	136.80			Y	05-08-2009	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
526		6	Ir	WHEAT HWS Grain		R	A	89.60			Y	05-08-2009	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		3	Ir	FALOW			I A	6.40			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		5	Ir	FALOW			I A	7.70			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		7	Ir	FALOW			I A	3.20			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		2	Ir	FALOW			I A	3.20			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		1	Ir	ALFAL	Forage		I A	75.80			Y	09-07-2008	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		4	Ir	ALFAL	Forage		I A	93.20			Y	09-07-2008	.4000	SUNNY HARKER		
527													.6000	ERIC M HARKER		
		6	Ir	ALFAL	Forage		I A	83.30			Y	09-07-2008	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		4	Ir	ALFAL	Forage		I A	134.60			Y	09-07-2008	.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		
		1	Ir	FALOW			I A	5.10			Y		.4000	SUNNY HARKER		
													.6000	ERIC M HARKER		

FSA-578 (Producer Print)

REPORT OF ACREAGE

Form Approved - OMB No. 0560-0004

PROGRAM YEAR 2010

DATE: 07-30-2012

Farm Number	Tract Number	CLU/Field	Ir Pr	C/C	Var/Type	Int Use	C/C Stat	Rpt Unit	Reported Quantity	Determined Quantity	Crp Lnd	Planting Date	Prod Share	Prod Name	RMA Opt
4526	25901	1	Ir	ALFAL		Forage	I	A	155.00		Y	09-15-2005	.4000	SUNNY HARKER	Opt
		2	Ir	FALOW			I	A	5.30		Y		.6000	ERIC M HARKER	Unt
		3	Ir	FALOW			I	A	5.00		Y		.4000	SUNNY HARKER	
		4	Ir	FALOW			I	A	6.60		Y		.6000	ERIC M HARKER	
		5	Ir	ALFAL		Forage	I	A	131.50		Y	09-15-2005	.4000	SUNNY HARKER	
		6	Ir	FALOW			I	A	5.60		Y		.6000	ERIC M HARKER	

Photo Number/Legal Descriptions: 572 13-2-32 (NEW) J13
 25901 11-14-23-2-32 (NEW) J13

Cropland: 607.4 Farmland: 640.0

5034	525	1	Ir	FALOW			I	A	8.30		Y		.4000	SUNNY HARKER	
		2	Ir	FALOW			I	A	6.50		Y		.6000	ERIC M HARKER	
		5	Ir	FALOW			I	A	45.50		Y		.4000	SUNNY HARKER	
		7	Ir	FALOW			I	A	36.30		Y		.6000	ERIC M HARKER	
		8	Ir	FALOW			I	A	88.30		Y		.4000	SUNNY HARKER	
		3	Ir	ALFAL		Forage	I	A	49.20		Y	09-07-2009	.6000	ERIC M HARKER	
		4	Ir	ALFAL		Forage	I	A	136.80		Y	09-07-2009	.4000	SUNNY HARKER	
		6	Ir	ALFAL		Forage	I	A	89.60		Y	09-07-2009	.6000	ERIC M HARKER	
	527	1	Ir	FALOW			I	A	5.10		Y		.4000	SUNNY HARKER	
		2	Ir	FALOW			I	A	4.10		Y		.6000	ERIC M HARKER	
		3	Ir	FALOW			I	A	5.90		Y		.4000	SUNNY HARKER	
		4	Ir	ALFAL		Forage	I	A	134.60		Y	09-07-2008	.6000	ERIC M HARKER	
		6	Ir	FALOW			I	A	4.70		Y		.4000	SUNNY HARKER	

Photo Number/Legal Descriptions: 525 14-15-22-23-2-32

Bingham, Idaho

FSA - 578 (Producer Print)

Producer Name and Address

ERIC M HARKER

2071 AUTUMN LN

IDAH0 FALLS, ID 83404-8287

Form Approved - OMB No. 0560-0004

PROGRAM YEAR: 2011

DATE: 07/30/2012

PAGE: 2

REPORT OF COMMODITIES FARM AND TRACT DETAIL LISTING

Farm Number	Tract Number	CUU/Field	Irrigation Practice	Crop/Commodity	Var/Type	Int Use	Rep'd Quantity	Determined Quantity	Crop Land	Planting Date	Planting Period	End Date	Producer Name	Share	RMA Unit	NAP Unit
		6	N	FALLOW					Yes				ERIC M HARKER	60.00		625

Photo Number/Legal Description: 13-2-32

Cropland: 298.40

Farmland: 320.00

4528	25801	1	I	WHEAT	HRS	GR		155.00	Yes	4/12/11			SUNNY HARKER	40.00		625
		2	N	FALLOW				5.30	Yes				ERIC M HARKER	60.00		625
		3	I	WHEAT	HRS	GR		5.00	Yes	4/12/11			SUNNY HARKER	40.00		625
		4	I	WHEAT	HRS	GR		6.80	Yes	4/12/11			ERIC M HARKER	60.00		625
		5	I	WHEAT	HRS	GR		131.50	Yes	4/12/11			ERIC M HARKER	60.00		625
		6	I	WHEAT	HRS	GR		5.80	Yes	4/12/11			ERIC M HARKER	60.00		625

Photo Number/Legal Description: 11-14-23-2-32

Cropland: 309.00

Farmland: 320.00

Crop/Commodity	Var/Type	Int Use	Irrigation Practice	Crop/Commodity	Var/Type	Int Use	Rep'd Quantity	Determined Quantity	Prevented Reported Quantity	Prevented Determined Quantity	Reported Quantity	Planting Date	Planting Period	End Date	Producer Name	Share	RMA Unit	NAP Unit
ALFAL			I	FG			13.50								SUNNY HARKER	40.00		625
FALLOW			N				11.20								ERIC M HARKER	60.00		625
WHEAT			I	GR			582.70								SUNNY HARKER	40.00		625
			I	FG				49.20	Yes	9/7/09				2012	ERIC M HARKER	60.00		625
			I	FG				138.80	Yes	9/7/09				2012	ERIC M HARKER	60.00		625
			I	FG				45.50	Yes						SUNNY HARKER	40.00		625
			I	FG				89.60	Yes	9/7/09					ERIC M HARKER	60.00		625
			I	WHEAT	HRS	GR		21.70	Yes	5/17/11					SUNNY HARKER	40.00		625
			I	FALLOW				14.60	Yes						ERIC M HARKER	60.00		625
			I	WHEAT	HRS	GR		88.30	Yes	5/17/11					ERIC M HARKER	40.00		625

**Quick Search:**[For assistance, email](#)[WMS Info](#)

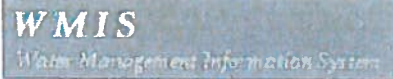
Search Method: **Legal Description**
 Legal Description: **02S 32E 15 NE NE NE**

Search*You are logged in as Guest*
[Point Of Diversion](#) [PCC](#) [Flow Meter](#) [Time Clock](#) [Alternate](#) [Contacts](#) [Data Summary](#) [Other](#) [Logout](#)
Point Of Diversion*You are viewing 500280; A0007233*

WMIS Number 500280 **Network Well** No
Reporting District Bingham GWD **Access Power** No
Measurement Option PCC (2) **Water District** 120
Metal Tag Number A0007233 **Tag Location** 15NE
Followup Date 07/05/2015 **Comments**
Diversion Name 02S 32E 15 01

[Search Water Rights](#)
[Contacts](#) [PLSS](#) [Spatial Data](#) [Water Source](#) [Water Rights](#)

Water Right Number	Owner Type	Owner Name	Address	Phone	City/State/Zip	Email
35-2348	Current Owner	FARMS LLC	C/O BRAD HALL 2840 SUNNYBROOK LN	(208) 524-2532	IDAHO FALLS, ID 83404	
35-7929	Current Owner	FARMS LLC	C/O BRAD HALL 2840 SUNNYBROOK LN	(208) 524-2532	IDAHO FALLS, ID 83404	

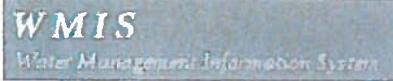
**Quick Search:**

Search Method: **Legal Description**
Legal Description **02S 32E 15 NE NE NE**

[For assistance, email WMIS info](#)*You are logged in as Guest*[Point Of Diversion](#) [PCC](#) [Flow Meter](#) [Time Clock](#) [Alternate](#) [Contacts](#) [Data Summary](#) [Other](#) [Logout](#)**Crop Data***You are viewing S00280; A0007233*

Report Year	Crop*	Acres
2012	ALFALFA / HAY	120
2009	ALFALFA / HAY	190
2006	WINTER WHEAT/WINTER GRAIN	313

Report Year	Total Acres
2006	313
2009	190
2012	120
Average Annual Acres: 207	

**Quick Search:**

Search Method: **Legal Description**
Legal Description **02S 32E 16 NE NE NE**

[For assistance, email WMIS Info](#)*You are logged in as Guest*

[Point Of Diversion](#) [PCC](#) [Flow Meter](#) [Time Clock](#) [Alternate](#) [Contacts](#) [Data Summary](#) [Other](#) [Logout](#)

Data Summary*You are viewing 500280; A0007233*

Report Year	Alternate	FM	PCC	Time Clock
2013				
2012			394.16	
2011			366.00	
2010			378.00	
2009			279.00	
2008			342.30	
2007			276.32	
2006			209.55	
2005			358.65	
2004			437.90	
2003			543.20	
2002			310.40	
2001			399.70	
2000			383.40	
1999			209.70	
1998			169.20	



Quick Search:

[For assistance, email WMIS](#)
[Info](#)

Search Method: **Legal Description**
 Legal Description: **02S 32E 15 NE NE NE**

You are logged in as Guest

[Point Of Diversion](#) [PCC](#) [Flow Meter](#) [Time Clock](#) [Alternate](#) [Contacts](#) [Data Summary](#) [Other](#) [Logout](#)

PCC Conditions

Data that are protected from disclosure are not shown - Contact IDWR for more information

Year: 2012		Date: 7/5/2012 12:00:00 AM		Total PCC:	Total Percentage:
#	1	Condition Date:	07/05/2012	ConditionPCC:	Percentage:
KW:	119.70	Boost On:	No		
GPM:	1093.0	Description:	1- 7 tower pivot with end guns on and 3 wheel lines.		
PSI:	60				
Meter:					
Utility:		Serial Number:			
Main HP:	150.00	Boost HP:	0.00		
Pole Number:		Multiplier:			
Manufacturer:		Disk Constant:			
Year: 2009		Date: 7/29/2009 12:00:00 AM		Total PCC:	Total Percentage:
#	1	Condition Date:	07/29/2009	ConditionPCC:	Percentage:
KW:	120.00	Boost On:	No		
GPM:	1071.2	Description:	1 7 tower pivot with end guns off and 3 wheel lines.		
PSI:	40				
Meter:					
Utility:		Serial Number:			
Main HP:	150.00	Boost HP:	0.00		
Pole Number:		Multiplier:			
Manufacturer:		Disk Constant:			
Year: 2006		Date: 6/7/2006 12:00:00 AM		Total PCC:	Total Percentage:
#	5200	Condition Date:	06/07/2006	ConditionPCC:	Percentage:
KW:	115.71	Boost On:	No		
GPM:	1126.7	Description:			
PSI:	34				
Meter:					
Utility:		Serial Number:			
Main HP:	150	Boost HP:			
Pole Number:		Multiplier:			
Manufacturer:		Disk Constant:			

Year: 2003		Date: 8/15/2003 12:00:00 AM		Total PCC:		Total Percentage:	
#	9652	Condition Date:	08/15/2003	ConditionPCC:		Percentage:	
KW:	116.29	Boost On:	No				
GPM:	1259.0	Description:	hay, 1 1/4 mi. pivot, end gun on, 3 1/4 mi. wheel lines, booster off, owner's pressure gauge				
PSI:	56						
Meter:							
Utility:		Serial Number:					
Main HP:		0	Boost HP:				
Pole Number:			Multiplier:				
Manufacturer:			Disk Constant:				
Year: 1998							
Date: 7/8/1998 12:00:00 AM		Total PCC:		Total Percentage:			
#	16989	Condition Date:	07/08/1998	ConditionPCC:		Percentage:	
KW:	169.20	Boost On:	No				
GPM:	1257.0	Description:	1-1/4 mi pivot + 3-1/4 mi w/lines				
PSI:	100						
Meter:							
Utility:		Serial Number:					
Main HP:		150	Boost HP:				
Pole Number:			Multiplier:				
Manufacturer:			Disk Constant:				

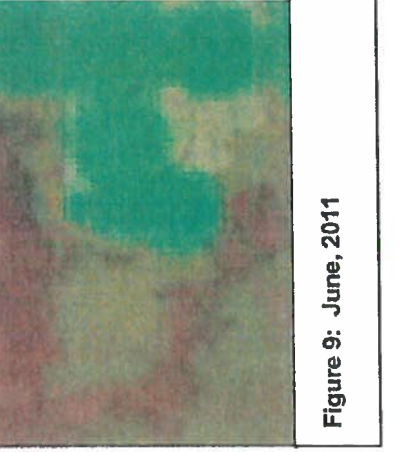
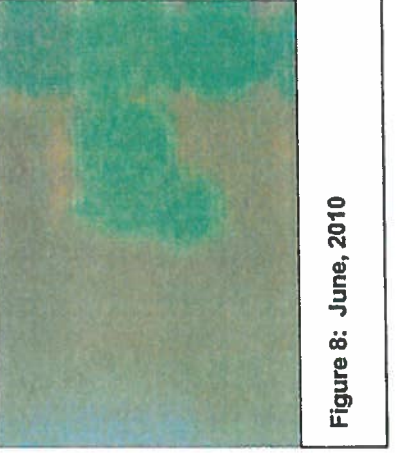
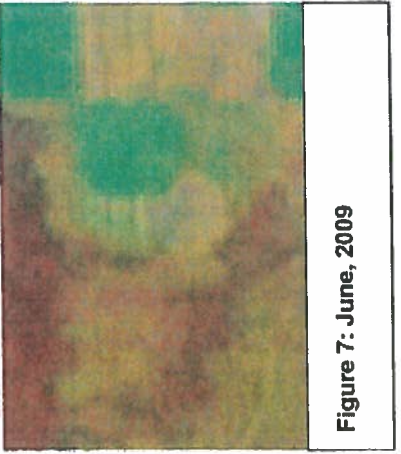
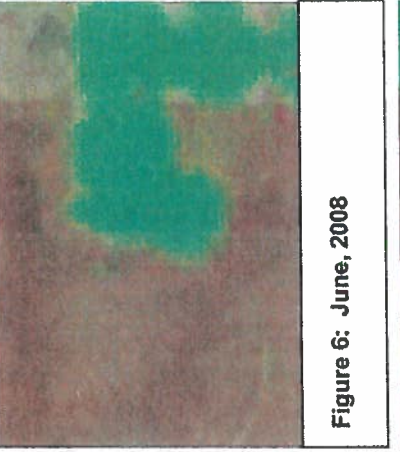
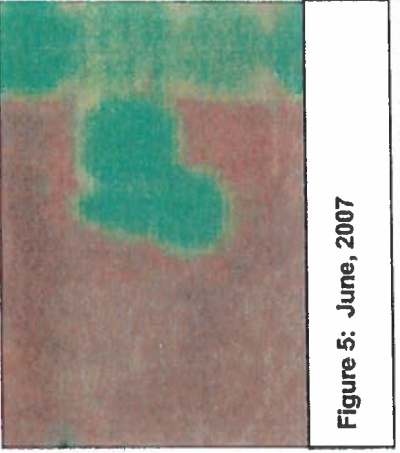
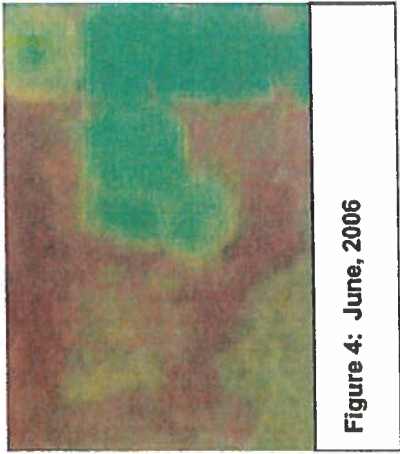
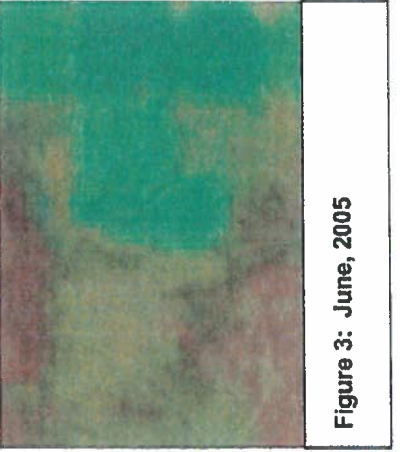
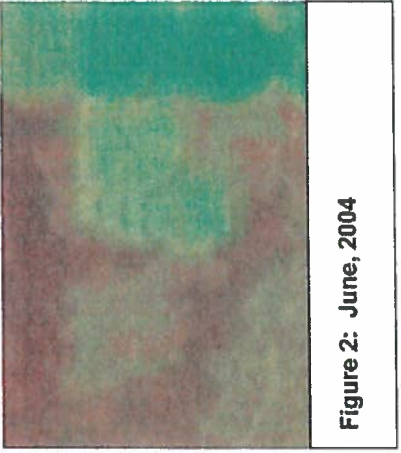
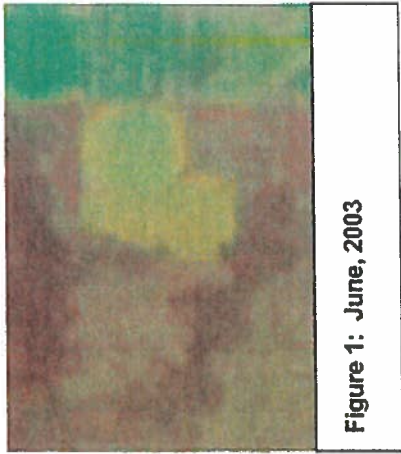




Figure 10: NAIP, 2006

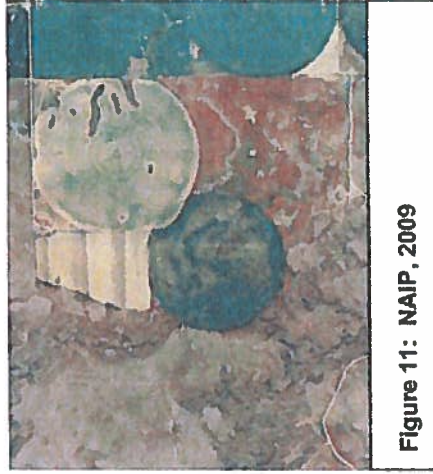


Figure 11: NAIP, 2009



Figure 12: NAIP, 2011



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 North Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

2/24/2014

Idaho Water Company, LLC
1135 Valley Rd S.
Eden, ID 83325

Re: Applications for Transfer

Dear Applicant,

The Department of Water Resources has reviewed your recently-filed transfer applications. We have discovered some items that need your attention before we begin processing the applications:

City of Ammon

This transfer seeks to provide water for the City of Ammon for irrigation purposes (16 acres) within the City's service boundary. When the department processes applications for transfer that propose to move an irrigation water right into a city or municipal service boundary for irrigation purposes we require the applicant to change the nature of use from irrigation to municipal. Changing the nature of use to municipal will allow the water user the flexibility to use the water right for irrigation purposes anywhere within their service boundary. If you choose not to change the nature of use then a land list along with a map must be provided that describes where the 16.0 acres of irrigation will occur.

The portion of the water right(s) to be changed as described under Part 2B of the application is in error. According to department records the place of use for water rights 35-2348 and 35-7929 does not authorize irrigation in the SWSE of 02S, 32E, Section 15. According to your map the 1.8 acres proposed to be changed is located in the SESE of 02S, 32E, Section 15.

City of Chubbuck

This transfer seeks to provide water for the City of Chubbuck for irrigation purposes (71.5 acres) within the City's service boundary. When the department processes applications for transfer that propose to move an irrigation water right into a city or municipal service boundary for irrigation purposes we require the applicant to change the nature of use from irrigation to municipal. Changing the nature of use to municipal will allow the water user the flexibility to use the water right for irrigation purposes anywhere within their service boundary. If you choose not to change the nature of use then a land list along with a map must be provided that describes where the 71.5 acres of irrigation will occur.

The portion of the water right(s) to be changed as described under Part 2B of the application is in error. According to department records the place of use for water rights 35-2348 and 35-7929 does not authorize irrigation in the SWSE of 02S, 32E, Section 15. According to your map the 1.8 acres proposed to be changed is located in the SESE of 02S, 32E, Section 15.

The proposed points of diversion as described under Part 1B (3) are in error. According to department records, only one of the five points of diversion under the City of Chubbuck's water rights is located in Township 05S. The other four points of diversion are all in Township 06S.

Page one of the purchase and sale agreement is missing. The proposed volume and acres in the purchase and sale agreement are less than the proposed volume and acres proposed to be changed under the transfer application.

County Line Farms

The portion of the water right(s) to be changed as described under Part 2B of the application is in error. According to department records the place of use for water rights 35-2348 and 35-7929 does not authorize irrigation in the SWSE of 02S, 32E, Section 15. According to your map the 1.8 acres proposed to be changed is located in the SESE of 02S, 32E, Section 15.

City of Blackfoot

This transfer seeks to provide water for the City of Blackfoot for irrigation purposes (25.0 acres) within the City's service boundary. When the department processes applications for transfer that propose to move an irrigation water right into a city or municipal service boundary for irrigation purposes we require the applicant to change the nature of use from irrigation to municipal. Changing the nature of use to municipal will allow the water user the flexibility to use the water right for irrigation purposes anywhere within their service boundary. If you choose not to change the nature of use then a land list along with a map must be provided that describes where the 25.0 acres of irrigation will occur.

The portion of the water right(s) to be changed as described under Part 2B of the application is in error. According to department records the place of use for water rights 35-2348 and 35-7929 does not authorize irrigation in the SWSE of 02S, 32E, Section 15. According to your map the 1.8 acres proposed to be changed is located in the SESE of 02S, 32E, Section 15.

The place of use description was not filled out under Part 1B (4). Please provide a description for the proposed place of use.

ESPA Analysis

After a cursory review of your ESPA analysis it appears to satisfy department standards. However, due to the complexity of offsetting transfers the department will conduct a more in-depth review at some point in the future.

Idaho Code 42-222 lists the fundamental requirements for a water right transfer. It also sets out criteria for approving a water right transfer. Idaho Code 42-222(2) states: "All rights to the use of water

acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which was appropriated..." As part of the departments transfer review process we are required to determine whether a water right has undergone a period of five or more consecutive years of non-use based on evidence provided with the transfer application, available water delivery records and/or available aerial photography. In Part 5C of the applications you state that approximately 60 acres were not irrigated from 2007-2011. According to 2004 through 2010 aerial photography and land-sat imagery all of the 190.0 acres proposed to be changed through these transfers have likely undergone a period of five or more consecutive years of non-use. Based on your response to question 5C and based on aerial photography and land-sat imagery from 2004 through 2010, 190.0 acres under water rights 35-2348 and 35-7929 have probably been lost to forfeiture.

The Idaho Supreme Court recognizes the common law doctrine of resumption of use as a valid defense to forfeiture. *Sagewillow, inc. v. IDWR*, 138 Idaho 831 (2003). The resumption of use doctrine indicates that although a water right has not been used for a period of more than five years, forfeiture of the water right may be avoided if use under the water right is resumed prior to a claim of right by a third party. Based on a Preliminary Order recently issued by the department, it is unlikely that resumption of use qualifies as a defense to forfeiture for the 190.0 acres under water rights 35-2348 and 35-7929. I have attached the Preliminary Order Denying Transfer 78878 for your reference.

If you would like the department to continue processing these applications please make the necessary changes described above and return them to me. If we do not receive the necessary changes within 30 days then we will return your applications and refund your money.

If you have any questions, feel free to call me at (208) 525-7161.

Thanks,

Blake Jordan
Sr. Water Resource Agent
IDWR

CC: Jason Helms
Farms LLC

Encl: Preliminary Order

January 29, 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

RECEIVED

JAN 29 2014

Department of Water Resources
Eastern Region

**Re: (4) Idaho Water Company Applications for Transfer 35-2348, 35-7929
Combined for ESPA Mitigation Purposes**

Dear Reviewing Agent:

Please find attached four applications for water right transfer prepared on behalf of Idaho Water Company. The transfers seek to change the place of use for fractions of existing water rights 35-2348 and 35-7929. The land associated with these water rights was fully irrigated in 2013 so forfeiture should not be an issue.

I have attached a contract between the existing water right owner (Brad Hall of Farms, LLC) and Idaho Water Company showing that Idaho Water Company has the authority to make the changes to the original water rights and the contract indicates 190 acres are to be transferred from the property and all remaining water rights stay in the name of Farms, LLC.

The transfers should be processed in the name of Idaho Water Company, LLC. Ownership change applications will be filed following final approval. Attached to each transfer are contracts authorizing Idaho Water Company to transfer the water rights to the City of Ammon, City of Chubbuck, County Line Farms and the City of Blackfoot.

The combination of these transfers maintains ESPA reach impacts within 5% of historical projections through mutually off-setting impacts. A combined ESPA transfer spreadsheet analysis is attached showing modeled Snake River reach impacts meet approvable limits when compared with the continuing use of the water rights at their existing point of diversion. When viewed in combination no permanent ESPA mitigation appears to be required and the transfers should be approvable. Transient changes are mitigated through reduced diversions authorized for the City of Ammon portion (limited to 48 acre-ft in 2014 & 2015) and the City of Blackfoot portion (limited to 88 acre-ft in 2014). The transfers have been modeled to allow approval as early as the spring trimester of 2014.

If you have any questions regarding any of the transfers, or need any additional information to assist in processing please don't hesitate to contact me. If it becomes necessary to return the transfers please

return all original documents to me.

Thanks,



Jason C. Helms, P.E.

Attachments: ESPA Impact Analysis Report w/ Appendices
Option Agreement for Purchase & Sale (Farms, LLC - Idaho Water Co.)

Application for Water Right Transfer #1: 0.21 cfs (City of Ammon Ck# 36064 \$500)
Agreement for Purchase & Sale (Idaho Water Co. - City of Ammon)

Application for Water Right Transfer #2: 0.93 cfs (City of Chubbuck Ck# 19688 \$500)
Agreement (Idaho Water Co. - City of Chubbuck)

Application for Water Right Transfer #3: 1.01 cfs (Idaho Water Co. Ck# 1004 \$580)
Special Agreement Allowing Transfer (County Line Farms - Idaho Water Co.)

Application for Water Right Transfer #4: 0.33 cfs (Idaho Water Co. Ck# 1002 \$500)
Letter of Consent Allowing Transfer (City of Blackfoot - Idaho Water Co.)

cc: Del Kohtz (Idaho Water Co.)