

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5620

RECEIVED APPLICATION FOR TRANSFER OF WATER RIGHT RECEIVED
JUL 14 2000 PART 1 DEC 10 1999

Department of Water Resources
Name of applicant _____

Department of Water Resources
Name of applicant P4 Production, L.L.C.

Phone 208-547-4900

Post Office address P.O. Box 816, Soda Springs, Idaho 83276

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 Change source
2. Describe the reason for the proposed changes Pursuant to a lease agreement between Applicant and the Oregon Trail Golf Course of Soda Springs, Idaho.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- | 1. Right Number | Priority | Amount
(cfs/ac-ft) | Nature
of Use | Period of Use |
|-----------------|-----------|-----------------------|------------------|---------------|
| 11-00531D | 5.01.1892 | 1.00 cfs | Irrigation | 4/15 to 10/15 |
| | | | | to |
| | | | | to |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 1.00 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Bear River tributary to Great Salt Lake
4. Point(s) of Diversion:

[illegible]

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
9S	41E	10				6													6
		11						18	18	8									44

TRANSFER 5620

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Total acres 50

PART 1

6. General Information:

a. Description of diversion system Centrifugal pump and electric motor from Alexander Reservoir.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____.

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PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

** Split Right*

Water Right No. 11-00531B

STAGE: DECREED

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	3.90 CFS	707.0 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
SODA CREEK	BEAR RIVER

Priority: 05/01/1892

LOCATION OF POINT(S) OF DIVERSION:

NWNE , Sec. 36, Township 08S, Range 41E
 NESE , Sec. 36, Township 08S, Range 41E
 NESW , Sec. 6, Township 09S, Range 42E
 CARIBOU County

PLACE OF USE:

IRRIGATION

NE				NW				SW				SE				
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
09S	42E	6	:	03-37	04-32	05-30	39	39	06-25							202.0
TOTAL ACRES															202.0	

CONDITIONS/REMARKS:

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 11A.
2. This right when combined with all other rights shall provide no more than 3.5 afa per acre for irrigation of the lands above.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
6. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

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Water Right No. 11-00531B

CONDITIONS/REMARKS:

7. The total instantaneous diversion of water from all points of diversion and combined sources under Transfer No. 4887 shall not exceed 7.12 cfs, nor total combined annual volume of 707.0 af for the irrigation of a combined total of 202.0 acres.
8. That portion of the total combined diversion rate authorized under Transfer No. 4887 from combined sources in excess of 4.04 cfs is limited to use for conveyance losses in delivery of these rights.

Describe any other water rights used for the same purpose as described above:

See tr. 4887To your knowledge has any portion of this water right undergone a period of five or more consecutive years of non-use? NO If yes, describe:

Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

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10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
 No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

"D"

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 1.00 for Irrigation purposes from 4/15 to 10/15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres 50**C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)**

1. amount 1.82 cfs for Irrigation purposes from 4/15 to 10/15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

"C"

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

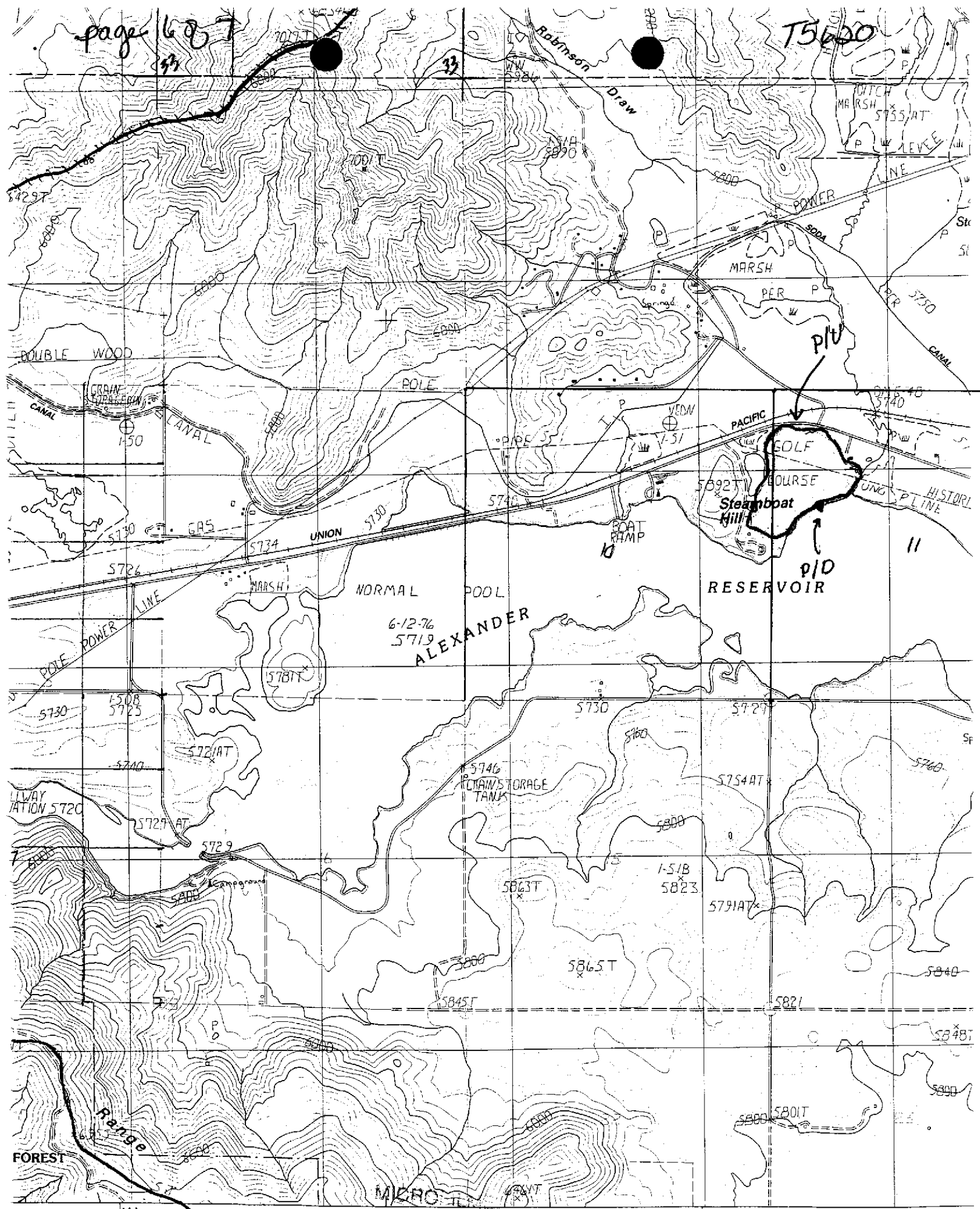
Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres

-95- 101

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T5600



SCALE 1:24 000

NOV 2 3 1988

INTERIOR—GEOLOGICAL SURVEY RESTON VIRGINIA—1982

ROAD LEGEND

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. 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 voiding its approval.

P4 PRODUCTION, L.L.C.

Randall C. Budge, authorized attorney
(Signature of Applicant)

Subscribed and sworn to before me this 9th day of December, 19 99.

Mari Rogers
(Notary Public)

My commission expires 8/26/00

FOR DEPARTMENT USE ONLY

Transfer contains 7 pages and attachments

Received by HWT Date 12-10-99 Protest filed by

Prelim. check by Fee \$100^{xx}

Receipted by HWT # EO25507 Date 12-10-99

Published in Carbon County Sun Copies of protest forwarded by

Pub. dates 1-12 & 1-19-2000 Hearing held by Date

Watermaster recommendation requested on Recommended for ☒ approval ☐ denial

 rec'd. by ROC

Copy of transfer sent to lien holder

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LEASE OF WATER RIGHTS

Lease Agreement made and entered into April 22, 1999, between P4 PRODUCTION, L.L.C., whose address is P.O. Box 816, Soda Springs, Idaho 83276 (hereinafter "Lessor") and OREGON TRAIL GOLF COURSE OF SODA SPRINGS, IDAHO, whose address is in care of Bill Harris, 279 E. 3rd N., Soda Springs, Idaho 83276 (hereinafter "Lessee"):

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor a portion of Lessor's right, title and interest in the following described water rights originally decreed in the District Court of the United States for the District of Idaho, Eastern Division, in Equity No. 201, in the case of Utah Power & Light Company, Plaintiff, vs. The Last Chance Canal Company, Limited, et al., Defendants, commonly known as the "Dietrich Decree", also identified as the following Idaho Department of Water Resource ("IDWR") Water Right Number:

Water Right No.	Priority	Quantity
11-00531B	5/01/1892	* <u>1.00 cfs/197.4 AF</u>
*(A portion of total right of 3.90 cfs/770AF)		

2. **Term.** The term of this Lease shall be for a term of five (5) years, commencing April 20, 1999 and terminating September 30, 2003. Thereafter, this Lease will be automatically renewed and extended for successive additional one-year terms, unless and until terminated by either party as hereafter provided.

Either party may terminate this Lease at any time upon not less than ninety (90) days advance written notice.

3. **Rent.** For the use of the lease property Lessee shall pay to Lessor on or before April 1 of each year rent in the amount of \$500 per cfs, a total of \$500 per year. The first year's rent shall be due upon approval of the transfer application described in paragraph 7 allowing Lessee to use the water right.

4. **Non-Use by Lessor.** Lessor covenants that all lands to which the water rights are presently appurtenant shall not be irrigated from the described water right during the term of this Lease.

5. **Use by Lessee.** During the term of this Lease and during any extension, Lessee shall place to beneficial use for irrigation purposes, between April 20th and September 30th each year, all waters approved for use under the water rights and shall comply with all applicable federal, state and local laws and all rules and regulations of any agency, including IDWR applicable to such water rights, together with all state and federal environmental and water quality laws.

6. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owners of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. **Transfer Application.** The parties acknowledge and agree that it will be necessary to make application and obtain IDWR approval to transfer the existing point of diversion and place of use of said water rights to Lessee's property; and, further, that upon termination of the Lease, it will be necessary to make application and secure IDWR approval to change the point of diversion and place of use back from Lessee's property to the original locations upon Lessor's property.

7.1 Lessee and Lessor will file and process all necessary applications with IDWR to transfer the places of use and points of diversion of the water rights on a temporary basis during the lease term.

7.2 Lessor and Lessee shall cooperate with each other in securing such transfers and processing such application(s) and shall execute any documents necessary to achieving such transfers.

7.3 Lessor shall be responsible for the costs associated with accomplishing the foregoing transfers.

7.4 This Lease is conditioned upon IDWR's approval of a transfer of the water rights from Lessor's present places of use and points of diversion to places of use and points of diversion located on lands owned or leased by Lessee. In the event the transfer to Lessee's property is not granted, this Lease may be terminated at Lessee's option.

8. **Indemnification of Lessor.** Lessee agrees to indemnify and hold harmless Lessor from any and all claims and demands, including legal attorney fees and costs, which may arise directly or indirectly as a result of this lease or the transfer or use of the water rights by Lessee pursuant to this Lease.

9. **Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect to terminate this Lease and recover any damages or pursue any other remedy available under Idaho law by reason of such breach.

10. **Option to Purchase.** Should Lessor during the term of this Lease or any renewal thereof or at any time within one (1) year from the date of termination of this Lease decide to sell the leased water rights, and should Lessor receive a bona fide offer therefor acceptable to Lessor, the, before making any such sale or any agreement to sell, Lessor shall give Lessee notice in writing by certified or registered mail of Lessor's desire to sell and the complete terms of the offer, and Lessee shall have the exclusive right, for a period of sixty (60) days from the date of delivery of such notice,

to purchase the leased water rights at the amount of the offer. If Lessee fails to exercise the option herein granted and the water rights are actually sold by Lessor, such sale shall be made subject to this Lease.

11. **Option to Renew Lease.** Should Lessor decide to re-lease the water rights at the expiration of the lease term or any extension thereof or within one (1) year from the date of termination of this lease, and should Lessor receive an offer of lease therefor acceptable to Lessor, the, before making any such lease agreement, Lessor shall give Lessee notice in writing by certified or registered mail of Lessor's desire to re-lease the water rights, and Lessee shall have the exclusive right, for a period of sixty (60) days from the date of delivery of such notice, to re-lease the water rights at the amount and under the same terms and conditions of the offer.

12. **Assignment.** This Agreement may not be assigned by either party without the express written consent of the other.

13. **Attorney Fees.** In the event of any litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

14. **Binding Effect.** This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

LESSOR:
P4 PRODUCTION, L.L.C.

By *[Signature]* WDL
Name: James J. Karaman
Title: VICE PRESIDENT
Date: 4-22-99

LESSEE:
OREGON TRAIL GOLF COURSE OF
SODA SPRINGS, IDAHO

By *[Signature]*
Name: BILLY J HARRIS
Title: President
Date: 31 March 1999

ATTEST:

LEASE OF WATER RIGHTS - 3 MICROFILM

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SODA CREEK PICTURES

1. Feeney Ditch diversion. Also known as the City's Diversion No. 1, which is the feed for the City's Canal No. 5, which feeds Number 5 Power Plant. Located on City Creek in Kackley property approximately 1/4 mile south of Hooper Springs. Diverts water from Soda Creek natural channel into the Feeney Ditch. Discharge pipe reflected is Monsanto's discharge pipe from the plant which feeds into the natural channel of Soda Creek at the same location of the Feeney Ditch/Diversion No. 1.
2. Feeney Ditch/Canal No. 5 discharge. At the point of feed/discharge into City Power Plant No. 5. Picture faces northeast. Discharge is in an easterly direction through Plant 5 back into Soda Creek natural channel.
3. Farmers Land & Irrigation diversion structure. On Soda Creek at the head of Farmers Land & Irrigation Canal. Picture taken standing on the diversion structure looking northeast. Location is directly west of county shops.
4. Farmers Land & Irrigation diversion structure and headgate at the Canal feed. Reflects two locking screw-type headgates. Taken from the west looking east. At the bottom of the picture covered in snow is the first canal cutout on the south canal bank which diverts water back into Soda Creek.
5. Farmers Land & Irrigation Company canal running west from the headgate. On the west bank approximately 300 yards west of the diversion structure is the second cutout from the south canal back into Soda Creek.
6. Farmers Land & Irrigation Company headgate and diversion structure viewed from the south. The headgate is in the background on the north side of Soda Creek. The diversion structure is a concrete wall which diverts Soda Creek into the canal. The diversion is in front or east of the tree underwater.

Tr. 5619, 5620 + 5621

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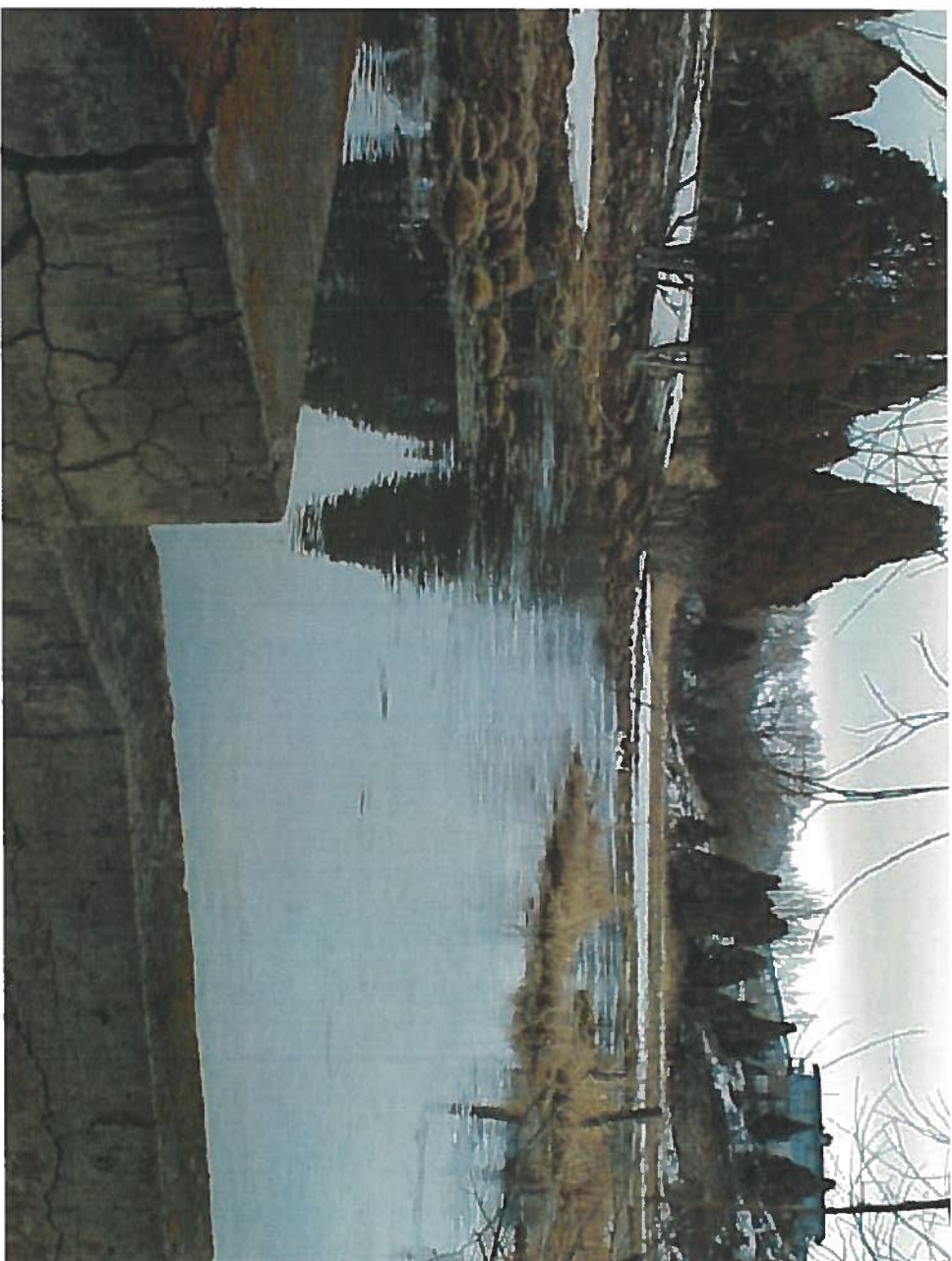
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April 11, 2000

**FARMERS LAND
& IRRIGATION
CO. DIVERSION
AND OVERFLOW
TO SODA CREEK**



**OVERFLOW TO
SODA CREEK FROM CANAL**



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April 11, 2000

**FARMERS LAND & IRRIGATION COMPANY DIVERSION
(left)**



SODA CREEK (right)

**FARMERS LAND & IRRIGATION COMPANY CANAL
Downstream of Diversion**



FILMED
APR 23 2000