

RECEIVED  
JUN 08 2011  
Department of Water Resources  
Eastern Region

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for an entire water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right or to report an ownership change for a portion of a water right. See the *Application for Transfer Instructions* for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

☐ Change diversion point(s)

☒ Add diversion point(s)

☐ Ownership change

1. APPLICANT(S) City of Rexburg Phone 208-359-3020

2. MAILING ADDRESS PO Box 280 City Rexburg

State ID Zip 83440 Email \_\_\_\_\_

☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.

☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.

☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed.

☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. LIST WATER RIGHT NUMBER(S) 22-7074, 22-7175, 22-7176, 22-7617, 22-7754, 22-13790

☒ Attach a copy of the water right(s) as recorded, available at [www.idwr.idaho.gov](http://www.idwr.idaho.gov), *Water Right Transfers, Step 1*, or by contacting any Department office.

4. TOTAL AMOUNT OF WATER transferred is 21.73 cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.  
(diversion rate) (storage volume)

5. POINT OF DIVERSION – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at [www.idwr.idaho.gov](http://www.idwr.idaho.gov), *Water Right Transfers, Online Resources*.

| Twp | Rge | Sec | Govt Lot | ¼ | ¼  | ¼  | County  | Source       | Local name or tag # |
|-----|-----|-----|----------|---|----|----|---------|--------------|---------------------|
| 6N  | 39E | 35  |          |   | SE | NE | MADISON | GROUND WATER | NEW WELL #2         |
| 6N  | 40E | 17  |          |   | SW | SW | MADISON | GROUND WATER | NEW WELL #1         |
|     |     | 17  |          |   | SW | SW | MADISON | GROUND WATER | NORTH WELL          |
|     |     | 20  |          |   | SW | SW | MADISON | GROUND WATER | SMITH WELL          |
|     |     | 29  |          |   | SW | SW | MADISON | GROUND WATER | WELL 6              |
|     |     | 29  |          |   | SW | SW | MADISON | GROUND WATER | WELL 1              |
|     |     | 30  |          |   | SE | NW | MADISON | GROUND WATER | PORTER WELL         |
|     |     | 30  |          |   | NE | SE | MADISON | GROUND WATER | BYU-IDAHO WELL      |
|     |     | 31  |          |   | NE | SE | MADISON | GROUND WATER | NEW WELL #3         |
|     |     | 31  |          |   | NE | SE | MADISON | GROUND WATER | WELL 5              |

6. 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 already have measuring devices. New wells have yet to be drilled, but have been approved by IDWR already through Transfer No. 76375. Measuring devices will also be installed at time of drilling.

- b. Who owns the property at the point(s) of diversion? Applicant owns all property for wells except BYU-I Well  
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

Lease agreement (see Attachment Item #6b)

- c. 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(s), or  
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe \_\_\_\_\_

7. MAP - ☒ Attach a map of the diversion, measurement, control and distribution system. Clearly label the map with township, range, section and 1/4 1/4 of section information. The Map Tool, available at <http://maps.idwr.idaho.gov/TransferApplicationLayouts/> provides a satisfactory template for creating the required map.

8. SIGNATURE - The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Richard S Woodland RICHARD S WOODLAND 6-7-11  
Signature of applicant or authorized agent Print name and title if applicable MAYOR Date

\_\_\_\_\_  
Signature of applicant or authorized agent Print name and title if applicable Date

9. FEE - ☒ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The Fee Schedule is available at [www.idwr.idaho.gov](http://www.idwr.idaho.gov), Water Right Transfers, Step 4 and in the Application for Transfer Instructions.

FOR DEPARTMENT USE ONLY

Transfer includes \_\_\_\_\_ pages of attachments. Received by sc Date 6/8/11  
Fee paid 1050<sup>00</sup> Date 6/8/11 Received by sc Receipt # E036714  
Preliminary review completed by \_\_\_\_\_ Date \_\_\_\_\_

WATER RIGHT NO. 22-7074

**Owner Type   Name and Address**

Current Owner CITY OF REXBURG  
PO BOX 280  
REXBURG, ID 83440  
(208)359-3020

Priority Date: 06/19/1973

Basis: Decreed

Status: Active

**Source   Tributary**

GROUND WATER

**Beneficial Use   From   To   Diversion Rate   Volume**

MUNICIPAL   1/01   12/31   1.57 CFS

Total Diversion                      1.57 CFS

Location of Point(s) of Diversion:

GROUND WATER SENE   Sec. 35 Township 06N Range 39E MADISON County  
GROUND WATER SWSW Sec. 17 Township 06N Range 40E MADISON County  
GROUND WATER SWSW Sec. 17 Township 06N Range 40E MADISON County  
GROUND WATER SWSW Sec. 20 Township 06N Range 40E MADISON County  
GROUND WATER SWSW Sec. 29 Township 06N Range 40E MADISON County  
GROUND WATER SWSW Sec. 29 Township 06N Range 40E MADISON County  
GROUND WATER SENW Sec. 30 Township 06N Range 40E MADISON County  
GROUND WATER NESE   Sec. 31 Township 06N Range 40E MADISON County  
GROUND WATER NESE   Sec. 31 Township 06N Range 40E MADISON County

Place(s) of use: Large POU Info

## Conditions of Approval:

1. 124 Place of use is within the service area of the City of Rexburg municipal water supply system as provided for under Idaho Law.
2. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.  
Use of water under this right will be regulated by a watermaster with responsibility for the
3. R05 distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 100.  
Diversion of water from the point(s) of diversion authorized by approved Transfer 76375 shall not exceed the total combined maximum diversion rates as specified below: ~~ac~~ SWSW, Sec. 17, T06N, R40E, B.M.; SWSW, Sec. 17, T06N, R40E, B.M.; and SWSW, Sec. 20, T06N, R40E, B.M. limited to 4.34 cfs. ~~ac~~ SENE, Sec 35, T06N, R39E, B.M. limited to 6.68 cfs. ~~ac~~ SENE, Sec 35, T06N, R39E, B.M.; SENW, Sec 30, T06N, R40E, B.M.; SWSW Sec 29, T06N, R40E, B.M.; SWSW, Sec 29, T06N, R40E, B.M.; NESE, Sec 31, T06N, R40E, B.M.; and NESE, Sec 31, R06N, T40E, B.M. limited to 12.49 cfs.
4. Prior to diversion and use of water under Transfer approval 76375, the right holder shall install
5. 212 and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.  
Upon specific notification of the Department, the right holder shall install and maintain data
6. 213 loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.  
To the extent necessary for administration between points of diversion for ground water, and
7. 226 between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Snake River Basin Adjudication partial decree dated 1/5/2007.  
The right holder shall not provide water diverted under this right for the irrigation of land having
8. 102 appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use . This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
9. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. T07 The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.
11. 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.  
Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions
12. T19 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.

WATER RIGHT NO. 22-7175

**Owner Type   Name and Address**

Current Owner CITY OF REXBURG  
PO BOX 280  
REXBURG, ID 83440  
(208)359-3020

Priority Date: 02/04/1976

Basis: Decreed

Status: Active

**Source   Tributary**

GROUND WATER

**Beneficial Use   From   To   Diversion Rate   Volume**

MUNICIPAL   1/01   12/31   5.61 CFS

Total Diversion                      5.61 CFS

Location of Point(s) of Diversion:

GROUND WATER SENE   Sec. 35 Township 06N Range 39E MADISON County  
GROUND WATER SWSW   Sec. 17 Township 06N Range 40E MADISON County  
GROUND WATER SWSW   Sec. 17 Township 06N Range 40E MADISON County  
GROUND WATER SWSW   Sec. 20 Township 06N Range 40E MADISON County  
GROUND WATER SWSW   Sec. 29 Township 06N Range 40E MADISON County  
GROUND WATER SWSW   Sec. 29 Township 06N Range 40E MADISON County  
GROUND WATER SENW   Sec. 30 Township 06N Range 40E MADISON County  
GROUND WATER NESE   Sec. 31 Township 06N Range 40E MADISON County  
GROUND WATER NESE   Sec. 31 Township 06N Range 40E MADISON County

Place(s) of use: Large POU Info

## Conditions of Approval:

1. 124 Place of use is within the service area of the City of Rexburg municipal water supply system as provided for under Idaho Law.
2. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.  
Use of water under this right will be regulated by a watermaster with responsibility for the
3. R05 distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 100.  
Diversion of water from the point(s) of diversion authorized by approved Transfer 76375 shall not exceed the total combined maximum diversion rates as specified below:  $\frac{1}{4}$  SWSW, Sec. 17, T06N, R40E, B.M.; SWSW, Sec. 17, T06N, R40E, B.M.; and SWSW, Sec. 20, T06N, R40E, B.M. limited to 4.34 cfs.  $\frac{1}{4}$  SENE, Sec 35, T06N, R39E, B.M. limited to 6.68 cfs.  $\frac{1}{4}$  SENE, Sec 35, T06N, R39E, B.M.; SENW, Sec 30, T06N, R40E, B.M.; SWSW Sec 29, T06N, R40E, B.M.; SWSW, Sec 29, T06N, R40E, B.M.; NESE, Sec 31, T06N, R40E, B.M.; and NESE, Sec 31, R06N, T40E, B.M. limited to 12.49 cfs.
4. Prior to diversion and use of water under Transfer approval 76375, the right holder shall install
5. 212 and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.  
Upon specific notification of the Department, the right holder shall install and maintain data
6. 213 loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.  
To the extent necessary for administration between points of diversion for ground water, and
7. 226 between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Snake River Basin Adjudication partial decree dated 5/13/2009.  
The right holder shall not provide water diverted under this right for the irrigation of land having
8. 102 appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
9. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. T07 The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.
11. 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.  
Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions
12. T19 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.

WATER RIGHT NO. 22-7176

**Owner Type   Name and Address**

Current Owner CITY OF REXBURG  
 PO BOX 280  
 REXBURG, ID 83440  
 (208)359-3020

Priority Date: 02/04/1976

Basis: Decreed

Status: Active

**Source   Tributary**

GROUND WATER

**Beneficial Use From To Diversion Rate Volume**

MUNICIPAL 1/01 12/31 4.68 CFS

Total Diversion 4.68 CFS

Location of Point(s) of Diversion:

GROUND WATER SENE Sec. 35 Township 06N Range 39E MADISON County  
 GROUND WATER SWSW Sec. 17 Township 06N Range 40E MADISON County  
 GROUND WATER SWSW Sec. 17 Township 06N Range 40E MADISON County  
 GROUND WATER SWSW Sec. 20 Township 06N Range 40E MADISON County  
 GROUND WATER SWSW Sec. 29 Township 06N Range 40E MADISON County  
 GROUND WATER SWSW Sec. 29 Township 06N Range 40E MADISON County  
 GROUND WATER SENW Sec. 30 Township 06N Range 40E MADISON County  
 GROUND WATER NESE Sec. 31 Township 06N Range 40E MADISON County  
 GROUND WATER NESE Sec. 31 Township 06N Range 40E MADISON County

Place(s) of use: Large POU Info

## Conditions of Approval:

1. 124 Place of use is within the service area of the City of Rexburg municipal water supply system as provided for under Idaho Law.
2. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.  
Use of water under this right will be regulated by a watermaster with responsibility for the
3. R05 distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 100.  
Diversion of water from the point(s) of diversion authorized by approved Transfer 76375 shall not exceed the total combined maximum diversion rates as specified below:  $\frac{1}{4}$  SWSW, Sec. 17, T06N, R40E, B.M.; SWSW, Sec. 17, T06N, R40E, B.M.; and SWSW, Sec. 20, T06N, R40E, B.M. limited to 4.34 cfs.  $\frac{1}{4}$  SENE, Sec 35, T06N, R39E, B.M. limited to 6.68 cfs.  $\frac{1}{4}$  SENE, Sec 35, T06N, R39E, B.M.; SENW, Sec 30, T06N, R40E, B.M.; SWSW Sec 29, T06N, R40E, B.M.; SWSW, Sec 29, T06N, R40E, B.M.; NESE, Sec 31, T06N, R40E, B.M.; and NESE, Sec 31, R06N, T40E, B.M. limited to 12.49 cfs.
4. Prior to diversion and use of water under Transfer approval 76375, the right holder shall install
5. 212 and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.  
Upon specific notification of the Department, the right holder shall install and maintain data
6. 213 loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.  
The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface
7. 102 water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.  
To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this
8. 226 right retains its original priority for well locations authorized under this right as identified in Snake River Basin Adjudication partial decree dated 5/13/2009.
9. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. T07 The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.
11. 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.  
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
12. T19 be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

WATER RIGHT NO. 22-7617

**Owner Type   Name and Address**

Current Owner CITY OF REXBURG  
PO BOX 280  
REXBURG, ID 83440  
(208)359-3020

Priority Date: 10/31/1950

Basis: Decreed

Status: Active

**Source   Tributary**

GROUND WATER

**Beneficial Use   From   To   Diversion Rate   Volume**

MUNICIPAL   1/01   12/31   2.2 CFS

Total Diversion                      2.2 CFS

Location of Point(s) of Diversion:

GROUND WATER SENE   Sec. 35 Township 06N Range 39E MADISON County  
GROUND WATER SWSW   Sec. 17 Township 06N Range 40E MADISON County  
GROUND WATER SWSW   Sec. 17 Township 06N Range 40E MADISON County  
GROUND WATER SWSW   Sec. 20 Township 06N Range 40E MADISON County  
GROUND WATER SWSW   Sec. 29 Township 06N Range 40E MADISON County  
GROUND WATER SWSW   Sec. 29 Township 06N Range 40E MADISON County  
GROUND WATER SENW   Sec. 30 Township 06N Range 40E MADISON County  
GROUND WATER NESE   Sec. 31 Township 06N Range 40E MADISON County  
GROUND WATER NESE   Sec. 31 Township 06N Range 40E MADISON County

Place(s) of use: Large POU Info

## Conditions of Approval:

1. 124 Place of use is within the service area of the City of Rexburg municipal water supply system as provided for under Idaho Law.
2. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.  
Use of water under this right will be regulated by a watermaster with responsibility for the
3. R05 distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 100.  
Diversion of water from the point(s) of diversion authorized by approved Transfer 76375 shall not exceed the total combined maximum diversion rates as specified below: â€¢ SWSW, Sec. 17, T06N, R40E, B.M.; SWSW, Sec. 17, T06N, R40E, B.M.; and SWSW, Sec. 20, T06N, R40E, B.M. limited to 4.34 cfs. â€¢ SENE, Sec 35, T06N, R39E, B.M. limited to 6.68 cfs. â€¢ SENE, Sec 35, T06N, R39E, B.M.; SENW, Sec 30, T06N, R40E, B.M.; SWSW Sec 29, T06N, R40E, B.M.; SWSW, Sec 29, T06N, R40E, B.M.; NESE, Sec 31, T06N, R40E, B.M.; and NESE, Sec 31, R06N, T40E, B.M. limited to 12.49 cfs.
4. Prior to diversion and use of water under Transfer approval 76375, the right holder shall install
5. 212 and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.  
Upon specific notification of the Department, the right holder shall install and maintain data
6. 213 loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.  
To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this
7. 226 right retains its original priority for well locations authorized under this right as identified in Snake River Basin Adjudication partial decree dated 5/13/2009.  
The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface
8. 102 water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
9. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
10. T07 The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.
11. 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.  
Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions
12. T19 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.

77384

77384

WATER RIGHT NO. 22-7754

**Owner Type    Name and Address**

Current Owner CITY OF REXBURG  
PO BOX 280  
REXBURG, ID 83440  
(208)359-3020

Priority Date: 12/17/1992

Basis: License

Status: Active

**Source        Tributary**

GROUND WATER

**Beneficial Use From To Diversion Rate Volume**

MUNICIPAL    1/01    12/31    2.77 CFS

Total Diversion                    2.77 CFS

Location of Point(s) of Diversion:

GROUND WATER SENE    Sec. 35 Township 06N Range 39E MADISON County  
GROUND WATER SWSW    Sec. 17 Township 06N Range 40E MADISON County  
GROUND WATER SWSW    Sec. 17 Township 06N Range 40E MADISON County  
GROUND WATER SWSW    Sec. 20 Township 06N Range 40E MADISON County  
GROUND WATER SWSW    Sec. 29 Township 06N Range 40E MADISON County  
GROUND WATER SWSW    Sec. 29 Township 06N Range 40E MADISON County  
GROUND WATER SENW    Sec. 30 Township 06N Range 40E MADISON County  
GROUND WATER NESE    Sec. 31 Township 06N Range 40E MADISON County  
GROUND WATER NESE    Sec. 31 Township 06N Range 40E MADISON County

Licensed Diversion Capacity: 2.77

Place(s) of use: Large POU Info

## Conditions of Approval:

1. 124 Place of use is within the service area of the City of Rexburg municipal water supply system as provided for under Idaho Law.
2. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.  
Use of water under this right will be regulated by a watermaster with responsibility for the
3. R05 distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 100.  
Diversion of water from the point(s) of diversion authorized by approved Transfer 76375 shall not exceed the total combined maximum diversion rates as specified below:  SWSW, Sec. 17, T06N, R40E, B.M.; SWSW, Sec. 17, T06N, R40E, B.M.; and SWSW, Sec. 20, T06N, R40E, B.M. limited to 4.34 cfs.  SENE, Sec 35, T06N, R39E, B.M. limited to 6.68 cfs.  SENE, Sec 35, T06N, R39E, B.M.; SENW, Sec 30, T06N, R40E, B.M.; SWSW Sec 29, T06N, R40E, B.M.; SWSW, Sec 29, T06N, R40E, B.M.; NESE, Sec 31, T06N, R40E, B.M.; and NESE, Sec 31, R06N, T40E, B.M. limited to 12.49 cfs.
4. Prior to diversion and use of water under Transfer approval 76375, the right holder shall install
5. 212 and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.  
Upon specific notification of the Department, the right holder shall install and maintain data
6. 213 loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.  
To the extent necessary for administration between points of diversion for ground water, and
7. 226 between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Water Right License dated 3/19/1998.
8. 075 Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.  
The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface
9. 102 water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
10. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
11. T07 The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.
12. 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.

WATER RIGHT NO. 22-13790

**Owner Type   Name and Address**

Current Owner CITY OF REXBURG  
PO BOX 280  
REXBURG, ID 83440  
(208)359-3020

Priority Date: 01/25/1961

Basis: Beneficial Use

Status: Active

**Source   Tributary**

GROUND WATER

**Beneficial Use   From   To   Diversion Rate   Volume**

MUNICIPAL   01/01   12/31   4.9 CFS

Total Diversion                      4.9 CFS

Location of Point(s) of Diversion:

GROUND WATER SWSW Sec. 29 Township 06N Range 40E MADISON County

Place(s) of use: Large POU Info

Conditions of Approval:

This partial decree is subject to such general provisions necessary for the definition of the rights or

1. C18 for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. 124 Place of use is within the service area of the City of Rexburg municipal water supply system as provided for under Idaho Law.
3. Point of diversion known locally as Well #1.
4. F06 The following rights are diverted through point of diversion described above: 22-7074, 22-7175, 22-7176, 22-7617, 22-7754, and 22-13790.

AGREEMENT TO LEASE WATER RIGHT

THIS AGREEMENT is effective as of the 19<sup>th</sup> day of May, 2011, by and between **BRIGHAM YOUNG UNIVERSITY-IDAHO**, of 525 S. Center Street, Rexburg, Idaho 83460, hereinafter called "BYUI," and **CITY OF REXBURG**, of 35 N. 1<sup>st</sup> E., Rexburg, ID 83440, hereinafter referred to as "CITY."

WITNESSETH:

1. Water Right To Be Leased. For and in consideration of One Hundred Dollars (\$100.00) per year, and other good and valuable consideration, BYUI does hereby lease to the CITY, and the CITY does hereby assume the lease from BYUI, that certain ground water right partially decreed by the Snake River Basin Adjudication Court as water right number 22-4130, and more fully described as follows:

Ground water for irrigation in the amount of 2.66 CFS from 4/01 to 10/31 with an annual volume limitation of 466 AF. The present authorized point of diversion is located in the NENESE of Section 30, Twp. 6N, Rge. 40 E.B.M. and the present authorized place of use is for 133 acres located in Sections 30 and 31 (T6N, R40E). (hereinafter "Right")

Together with a right to make an application for a long-term lease with the Idaho Water Resource Board's "Water Bank" for use of the Right for municipal purposes (including irrigation) within the city limits of Rexburg, Idaho, including the lands to which the water right presently are appurtenant. The above lease and use of the Right are hereinafter referred to as Lease Agreement.

2. Term of Lease Agreement. This Lease Agreement is for a term of five years beginning immediately upon execution hereof and continuing until December 31, 2015, at which time, the

Lease Agreement shall automatically terminate unless the parties mutually agree to an extension.

3. Water Board Rental/Lease Fees, Water Lines, Equipment and Maintenance Costs,

Supply of BYUI Irrigation Needs. It is understood and agreed that the CITY shall pay all costs associated with the intended Lease Agreement, Water Board rental/lease fees of the RIGHT for its intended uses set forth herein, including all legal and hydrological fees associated with the application for lease as may be required. CITY shall also pay all costs for installation and maintenance of water lines and equipment associated with the use of the Right.

BYUI agrees to allow the pumping facilities to remain connected to the BYUI power supply systems. Furthermore, the CITY agrees to meter the power usage and reimburse BYUI at the rate BYUI pays for power on a monthly basis.

Finally, the CITY shall insure that all necessary irrigation needs required by BYUI shall be made available to BYUI by the CITY.

4. Representations of BYUI. BYUI holds the Right without any encumbrance and has full legal authority to lease/rent the Right to CITY. BYUI knows of no facts which would lead to a claim by any third party or the Idaho Department of Water Resources to challenge the partial decree granted by the Snake River Basin Adjudication court to the Right. BYUI shall sign all necessary documentation in order to lease the Right to the CITY. BYUI acknowledges that should this Lease Agreement be terminated for any reason and BYUI is re-assigned the Right, then the CITY may NOT be obligated to provide water necessary for the irrigation of BYUI's lands as originally decreed in the Right.

5. Representations of CITY. CITY shall apply the water under the Right to the beneficial

use of irrigation (or municipal use if authorized) such that the full water right shall be beneficially applied in the required amounts and to the required number of acres in order to insure that the Right is not in jeopardy of forfeiture. CITY shall not encumber the Right in any manner which would impact BYUI's right of re-assignment. Furthermore, CITY shall do nothing which shall jeopardize the viability or active status of the Right. CITY shall follow all laws in obtaining a legal right to lease the Right to CITY.

Any application for lease or rental of the Right made by the City from the Water Board Rental Bank shall be subject to the following terms and restrictions:

A. The elements of the Right may only be temporarily modified as allowed by the Water Board Rental Rules.

B. CITY shall cause that BYUI be notified in writing as to any plans for the use of the Right, including the construction of any conveyance system and installation of any irrigation equipment.

C. CITY shall execute all documents necessary to accomplish the re-assignment of the Right from the CITY back to BYUI at the end of termination of this lease in a manner which will allow BYUI to, at a minimum, independently use the Right to irrigate lands owned by BYUI in the original number of acres granted in the partial decree of the Right.

6. CITY's Right to the Use of the Well and BYUI's Right of Examination. It is understood and agreed that the CITY intends to connect its present city ground water municipal system to the existing well located on BYUI's lands. For the term of this Lease Agreement, the CITY shall be granted an easement and limited Right for the use of the well and the necessary lands surrounding the well, including ingress and egress for installation and maintenance, to

install the necessary pumps, panels, pipes, valves, electrical connections and shed to house said equipment (hereinafter collectively referred to as "Equipment"). Any modifications to the Equipment must be approved by BYUI, which approval must not be unreasonably withheld. The use of the well and Equipment shall also include the right of the CITY to pump from the well any other water rights owned or leased by the CITY for any municipal purpose providing such use is authorized by Idaho Department of Water Resources as an additional point of diversion for such other water rights.

BYUI or its agents shall be permitted to enter its licensed property upon 1 day written or oral notice for the purpose of examining the use of the water works under the Right to insure proper beneficial use has or is occurring.

7. Non Assignment of Right. CITY shall not assign nor encumber this Lease Agreement nor the Right nor any portion of it nor any right or privilege connected with it without first obtaining the written consent of BYUI. CITY may not sublease or sub-license the Right or any part thereof without first obtaining the written approval of BYUI. An unauthorized assignment or encumbrance, sublease or use shall be void and shall terminate this Lease Agreement immediately at the option of BYUI. The interest of the CITY in this Lease Agreement is not assignable by operation of law without written consent of BYUI.

8. Taxes and Assessments. CITY shall pay all taxes and assessments, ordinary and extraordinary, general or specific, taxed or assessed against the Right and Equipment during the term of this Lease Agreement.

9. Default by the Parties. In the event of material default or breach of the terms and conditions of this Lease Agreement by the CITY, possession under the Right, at the option of

BYUI, shall terminate upon providing the CITY thirty (30) days written notice and opportunity to cure the default. In that event, BYUI shall have the right to re-claim and re-assign the Right and accept the surrender of the Right from the CITY. BYUI shall then have the right to terminate the Lease Agreement of the Right through the Water Board Rental Pool and proceed to re-assign the Right back to itself before the Idaho Department of Water Resources or any other state or local agency necessary to accomplish said task.

In the event of a material default or breach of the terms and conditions of this Lease Agreement by either party, the non-defaulting party shall be entitled to pursue any and all legal and equitable remedies available to it upon providing the defaulting party with thirty (30) days written notice and opportunity to cure the default.

10. Notices. Notices and demands by either BYUI or CITY shall be given by certified mail with prepaid postage addressed to BYUI or CITY at their respective addresses described above, subject to the right of either BYUI or CITY to designate by notice in writing a new address to which notice or demands must be sent.

11. Quiet Enjoyment. Subject to the terms of this Lease Agreement, and provided CITY is not in breach of this Lease Agreement, BYUI warrants CITY shall have quiet and peaceable possession of the Right during the term of this Lease Agreement or any extension of the term without any disturbance from BYUI or from any person claiming rights through BYUI.

12. Indemnification. BYUI and CITY agree to indemnify and save the other harmless against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims, and demands of every kind or nature, including reasonable attorneys' fees, by or on behalf of any person, party or governmental authority whatsoever arising out of any failure

by CITY or BYUI to perform any of the terms of this Lease Agreement or any accident, injury or damage which shall happen in or about the Right and lands associated with the well from which the Right is pumped, arising out of the respective negligence of BYUI or CITY.

13. Rules of Construction.

- a. Time is of the essence of this Lease Agreement.
- b. This Lease Agreement shall be governed, construed and enforced in accordance with the laws of the State of Idaho and the rules of the Idaho Water Board and the Idaho Department of Water Resources.
- c. In construing this Lease Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.
- d. If either party commences an action against the other party arising out of or in connection with this Lease Agreement, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys fees and costs of suit.
- e. This Lease Agreement contains the entire agreement between the parties and any executory agreement later made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the party against whom enforcement of the change, modification or discharge is sought.

- f. The covenants and conditions of this Lease Agreement apply to and bind the legal representatives, successors, and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement.

BYUI:



By: Charles N. Andersen, University  
Resources Vice President

CITY:

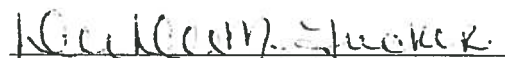
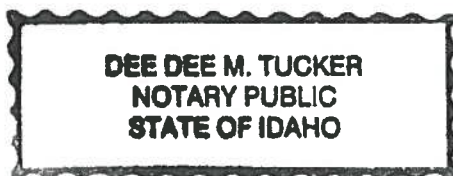


By: Richard Woodland, Mayor

**Acknowledgment**

STATE OF IDAHO    )  
                                  ss.  
County of Madison.    )

On this 11<sup>th</sup> day of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **Charles N. Andersen**, known to me to be the University Resources Vice President, of **Brigham Young University-Idaho**, that he executed the foregoing instrument, and acknowledged to me that he executed the same.



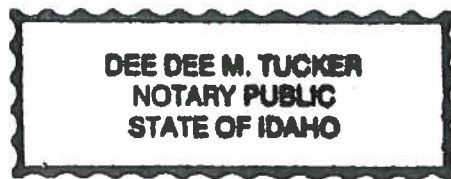
Notary Public for Idaho

Residing at: Madison

My Commission expires: 05/02/17

STATE OF IDAHO    )  
                                  ss.  
County of Madison    )

On this 19<sup>th</sup> of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard Woodland, known to me to be the Mayor, of The City of Rexburg, an Idaho Municipal Corporation, that executed the above Subordination Agreement, and acknowledged to me that The City of Rexburg, an Idaho Municipal Corporation, executed the same.



Dee Dee M. Tucker  
Notary Public for Idaho  
Residing at: Madison  
My Commission expires: 05/02/17

# Attachment Item #7

City of Rexburg

