

Form 1-222
12-92STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

1. Name of Applicant W. Michael Baker Phone (208) 720-6751Mailing Address 521 North 200 West, Teton, ID 83452c/o Keith C. Wilson Rocky Mountain Environmental Associates, Inc.482 Constitution, Ste 303(208) 524-2353Idaho Falls, ID 83402Fax 208) 524-1795

A. PURPOSE OF TRANSFER

1. ☒ Change Point of Diversion ☐ Add diversion point(s) ☒ Change Place of use☐ Change Nature of Use ☐ Change Period of Use ☐ Other _____2. Describe the reason for the proposed changes: Move portion of 22-13584 purchased to applicant's land.

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

1. Right Number Priority Amount Nature of Use Period of Use

22-13584(Part)	01/08/1991	0.02 cfs	Irrigation	04/15 to 10/15
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2. Total amount of water being transferred 0.02 cubic feet per second and/or _____ acre-feet per annum.3. Source of water Ground water tributary to _____

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local Name for Diversion
		SE	SE	33	6N	45E	TETON	

5. 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	
06N	45E	33																1.0	1.0

Total Acres 1.0

RECEIVED

NOV 26 2007

Department of Water Resources
Eastern Region

74353

PART 1

8. General Information:

- a. Description of diversion system: Well pump mainline to laterals with sprinklers.
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? ☐ Yes ☒ 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:
Original place of use will not be irrigated.
- d. Remarks: The original right 22-13584 has been split with BC Properties owning 0.71 cfs for 37.5 acres out of the original 0.88 cfs/46.2 ac. The remaining 0.17 cfs/8.7 ac. goes to other individuals not party to that portion owned by BC Properties. These splits have not been recorded with IDWR. The attached Split History details ownership split by contracts and deeds for the portion of 22-13584 owned by BC Properties. The applicants have a water rights purchase agreement with BC Properties for a portion of 22-13584 in the amount of 0.02 cfs and 1.0 ac. The place of use is also known as Lot 1, D Diamond Ranch. Michael Baker has already proven ownership of this ground when changing ownership of right 22-10010. Deeds can be found in the file of that water right.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Right No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 20__

for the Director



APPLICATION FOR TRANSFER OF WATER RIGHT**PART 2**

WATER RIGHT NO. 22-13584

<u>Owner Type</u>	<u>Name and Address</u>	
Current Owner	JARED E &/or LINDA S NUSBAUM	ARVADA, CO 80004
	9051 WEST 65TH AVE	(303)431-8409

Priority Date: 01/08/1991 Basis: License Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

Beneficial Use From To Diversion Rate Volume

IRRIGATION 04/15 10/15 0.88 CFS

Total Diversion 0.88 CFS

Location of Point(s) of Diversion:

GROUND WATER SWNE Sec. 05 Township 05N Range 45E TETON County

Licensed Diversion Capacity: 2.74

Place of Use Legal Description: IRRIGATION TETON County

Township Range Section Lot Tract Acres Lot Tract Acres Lot Tract Acres Lot Tract Acres

05N	45E	5	SWNE 8.7
			NESW 37.5

Total Acres: 46.2

Conditions of Approval:

- The right holder shall use the full allotment of appurtenant surface water rights, to the extent they are available, in conjunction with groundwater diverted pursuant to this right. This right to divert groundwater shall not be used if the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use without the approval of the Department. This right when combined with all other rights shall provide no more than .02 cfs per acre nor exceed a combined annual diversion volume of 161.7 af for the lands above.
1. The Director retains jurisdiction of the right to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
 2. 049 The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
 3. 048

Licensed Date: 06/30/1995



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**22-13584 (Part)****See attached split diagram***(if the entire right is to be changed by the applicant, omit part B and C.)*

1. Amount 0.02 cfs for Irrigation purposed from 4/15 to 10/15

2. Points of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local Name for Diversion
		SW	NE	5	5N	45E	TETON	

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
			1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	
5N	45E	5									1.0								1.0

Total Acres 1.0**C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT** *(omit if there is no change)* **22-13584 (Part)******See attached split diagram**

1. Amount 0.61 cfs for Irrigation purposed from 4/15 to 10/15

Amount _____ cfs for _____ purposed from _____ to _____

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local Name for Diversion
		SW	NE	5	5N	45E	TETON	

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
			1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	1/4	
5N	45E	5									32.7								32.7

Total Acres 32.7**

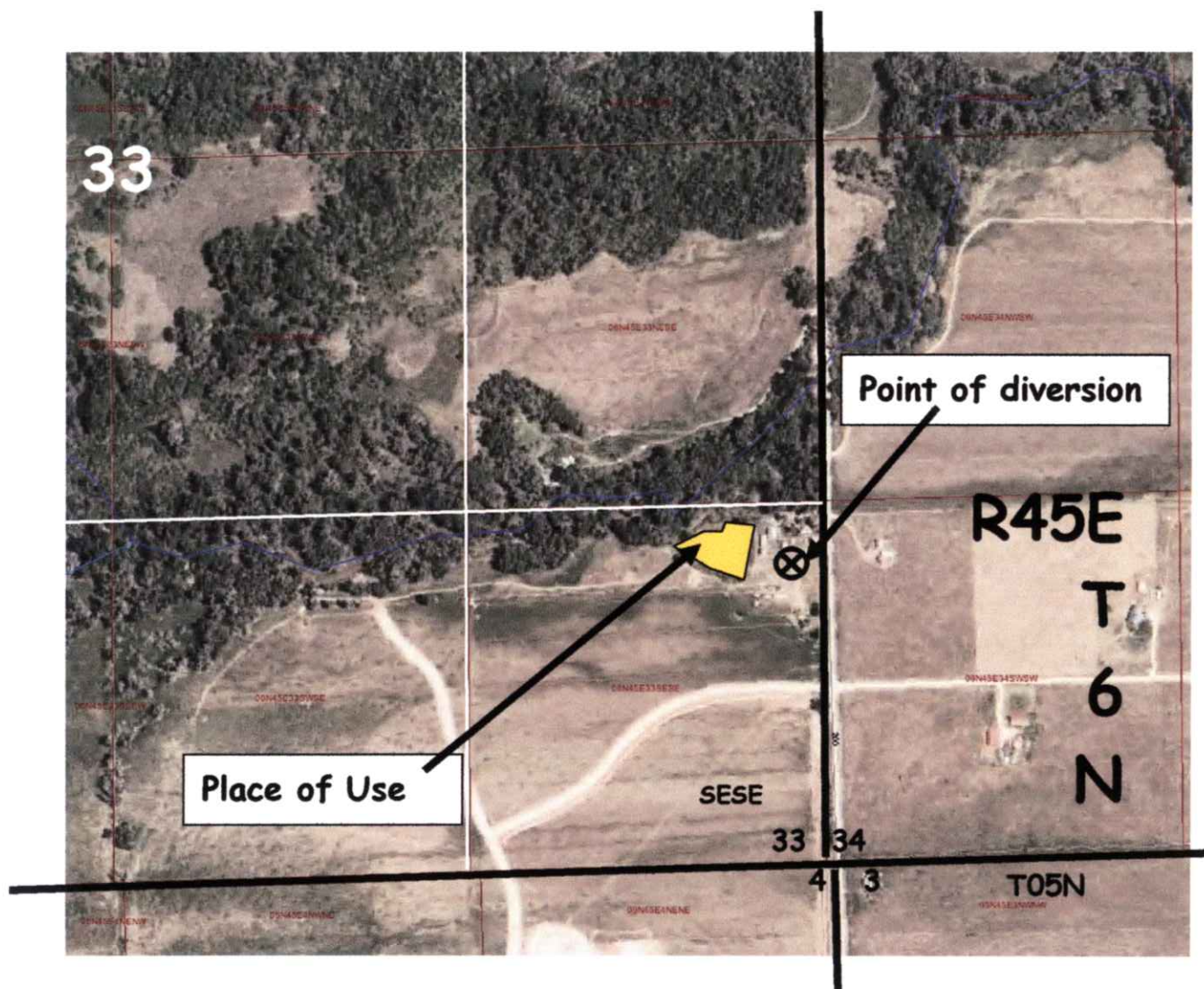
** There are or will be additional transfers pending on this right, remaining portions may vary depending on transfer approvals. See attached Split History diagram. Updates may be obtained from Rocky Mountain Environmental Associates.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



No. 0935 P. 7
Nov. 12. 2007 2:30PM Rocky Mountain Environmental

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Transfer No. 74353

PART 3

B. CHANGES IN NATURE OF USE **N/A**

1. New Nature of Use Amount (cfs/af-ac) Hours/days/year Period of use
_____ cfs _____ to _____
_____ cfs _____ 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 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.

W. Michael Baker

(Signature of Applicant)

(Office or Position of Authority)

W MICHAEL BAKER

(Printed Name)

Subscribed and sworn to before me this 14 day of Nov., 2007



Dawn Trent

Notary Public

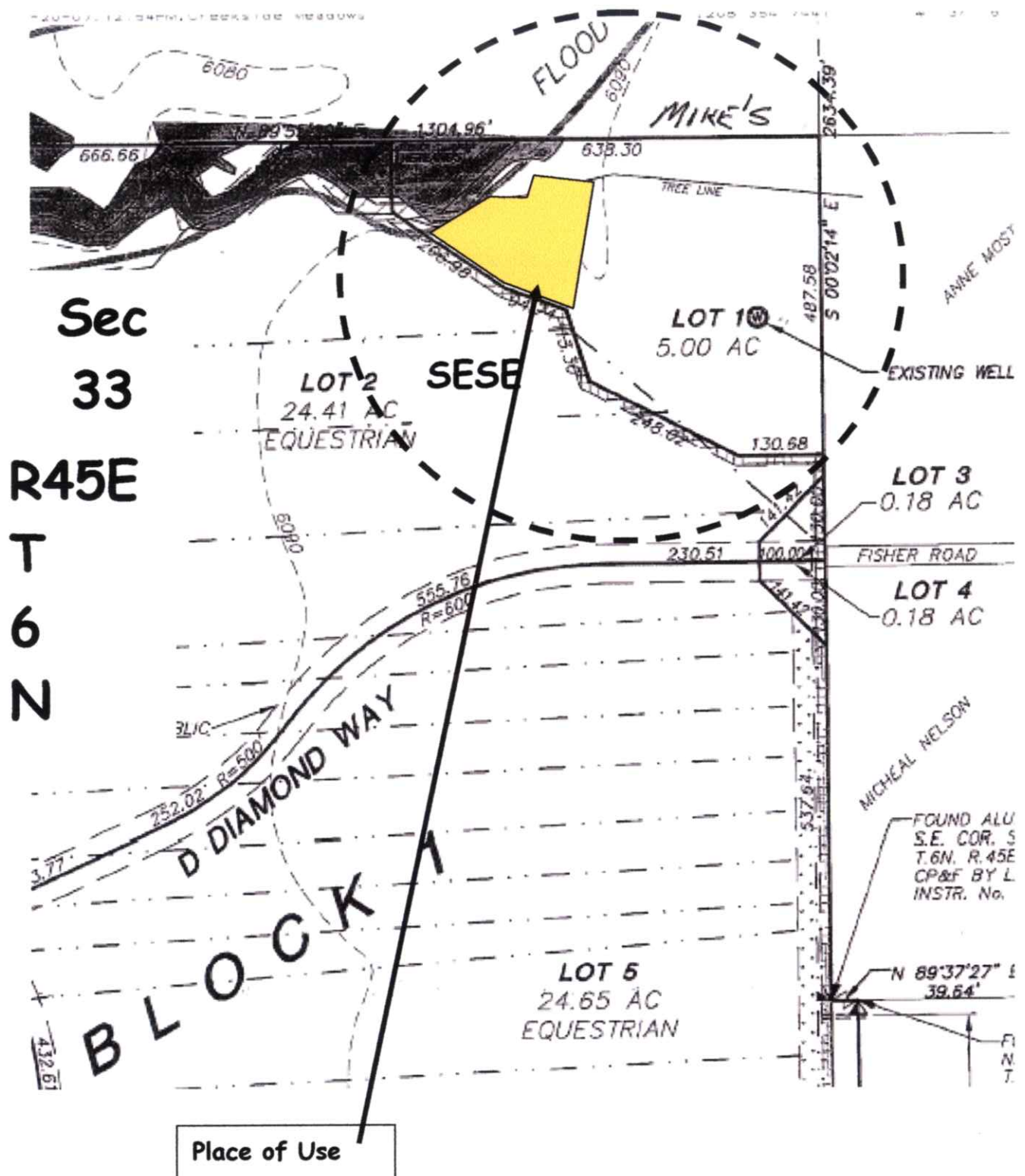
My Commission expires: 5-31-2011

FOR DEPARTMENT USE ONLY

Transfer contains 4 pages and 15 attachments
Received by _____ Date _____ Protest filed by _____
Prelim check by _____ Fee 100
Received by JJ Date 11/21/07 EO 33593
Published in Peton Valley News Copies of protest forwarded by _____
Pub. Dates _____ Hearing held by _____ Date _____
Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial
_____ rec'd _____ By _____
Copy of transfer sent to lien holder _____



74353



**Sec
33**

R45E

**T
6
N**

Flood Zone Boundary

NESE

**Approximate location of
Place of Use**

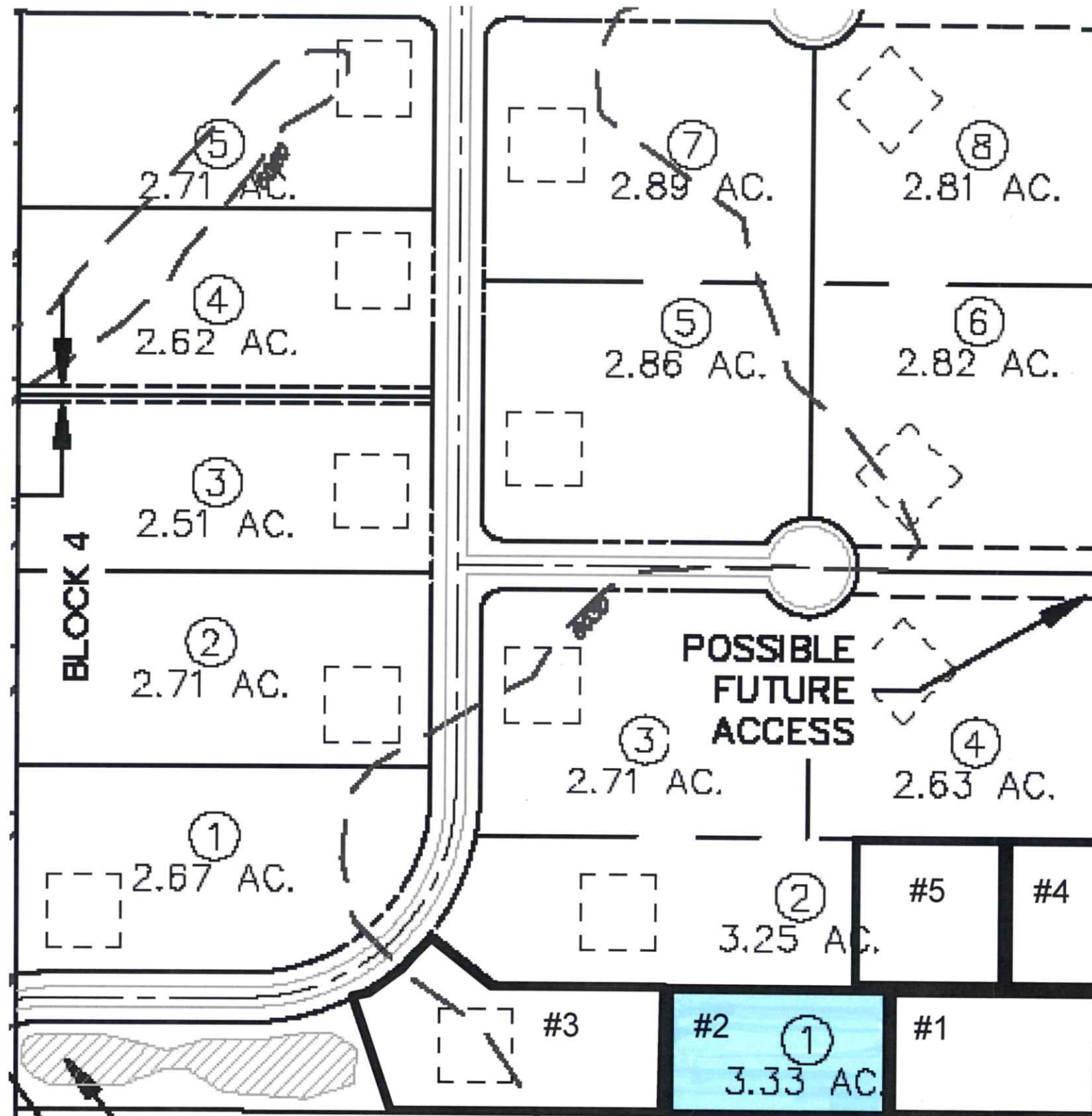
**1
5.00 AC**

SESE

**Approximate location of
Point of Diversion**

Map Indicating Lands to be dried up upon approval of Transfer

BC Properties LLC
T5N, R45E, Sec 5, NESW

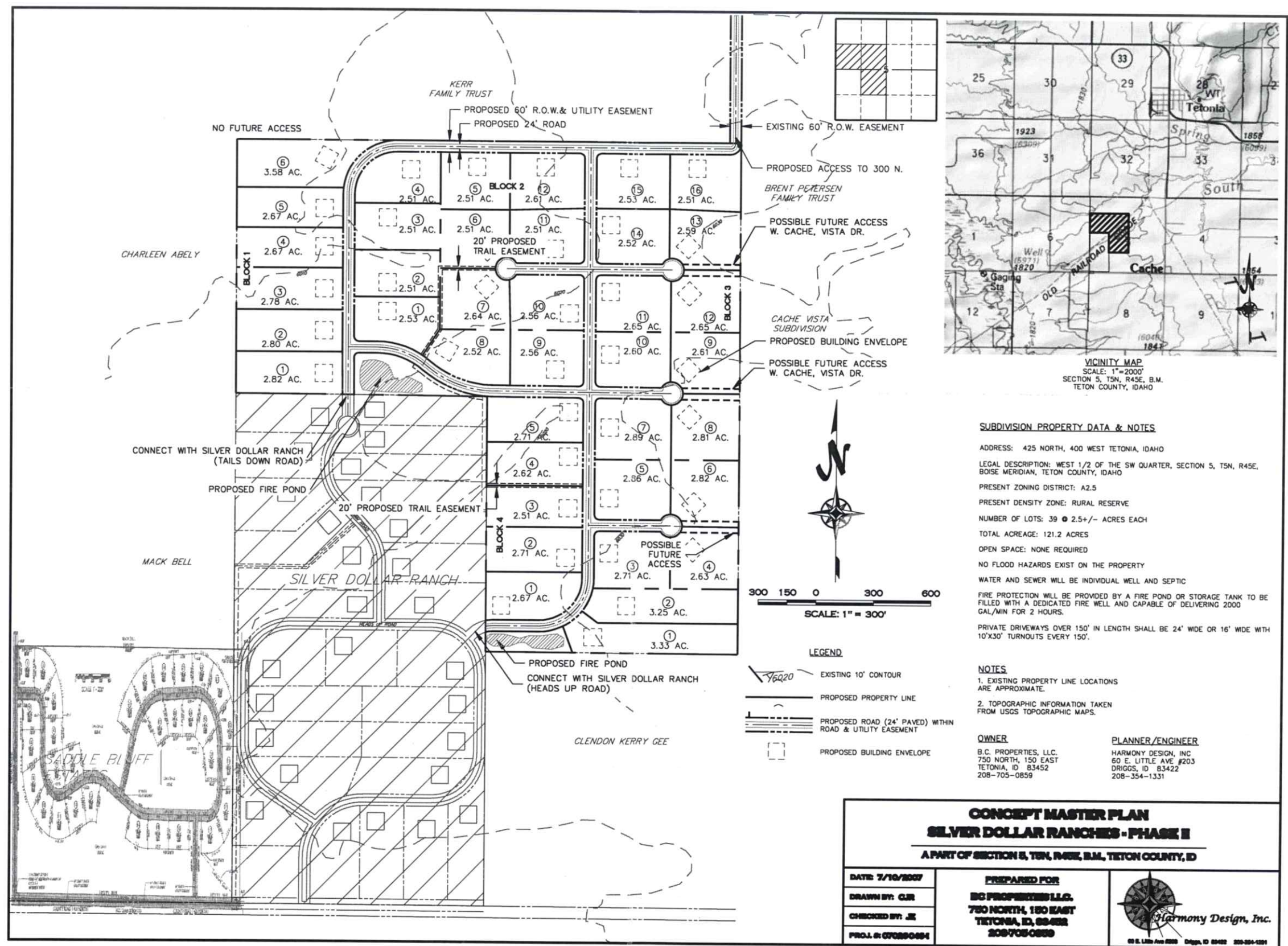


Buyers of the Water Rights from the Indicated Lands

- #1 – 1.0 ac – Surprise Valley Holdings LLC
- #2 – 1.0 ac – W. Michael Baker
- #3 – 1.3 ac – BC Properties LLC for Leigh Creek LLC
- #4 – 0.5 ac – Eureka Feeling, Inc
- #5 – 1.0 ac – Ludwig M. Long

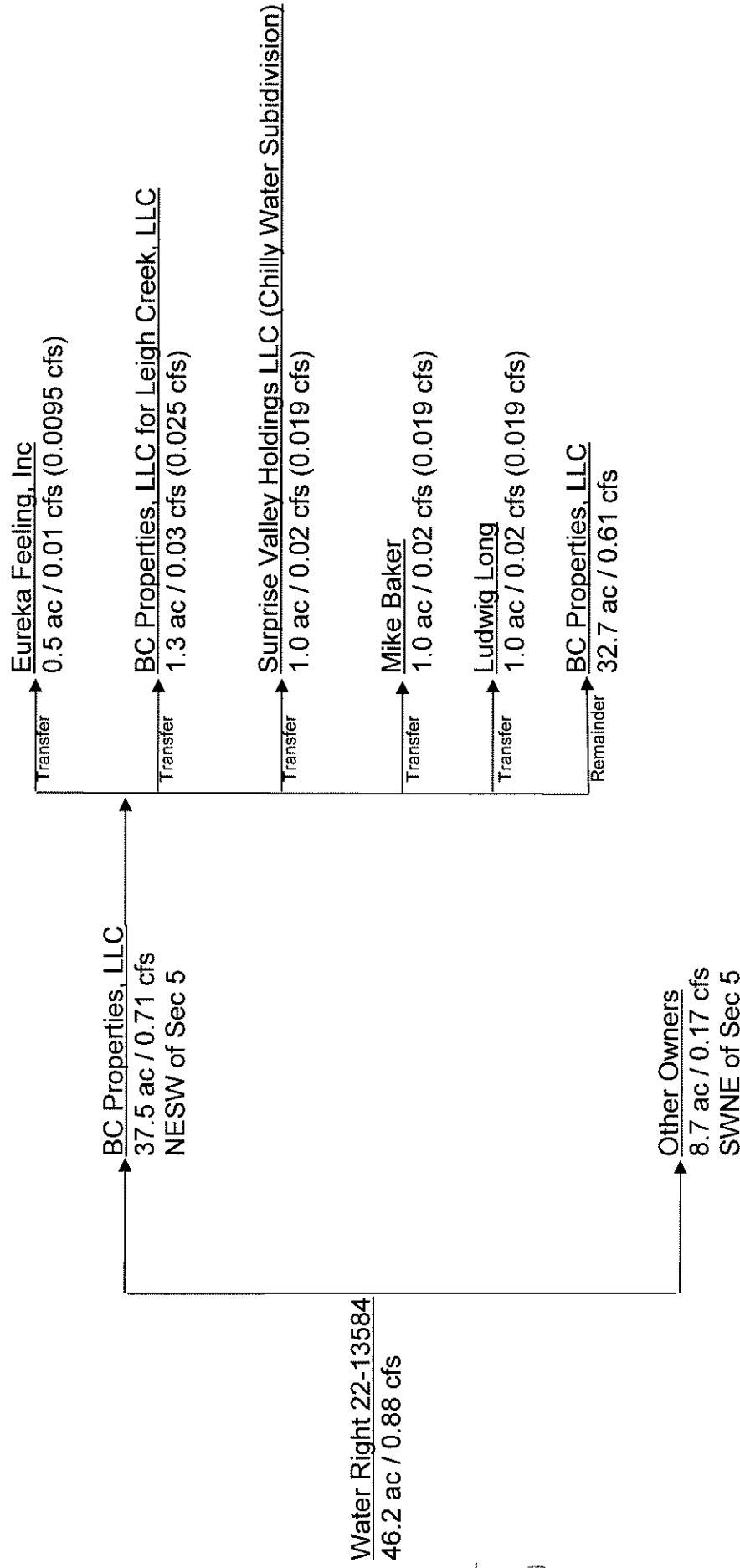
300 150 0
Scale

See attached Concept Master Plan for entire map.



Split History

Pending Transfers of Water Right 22-13584



Flow rates had been rounded to two decimal places as per Idaho Department of Water Resources.

**WATER RIGHTS PURCHASE
AND SALE AGREEMENT**

THIS AGREEMENT is made and entered into this 19th day of October, 2007, (the "Effective Date") by and between BC Properties, LLC, an Idaho Limited Liability Company, of P.O. Box 28, Driggs, Id 83422, hereafter "SELLER", and W. Michael Baker of 521 North 200 West, Teton, ID 83452, hereafter "BUYER";

WITNESSETH:

That for and in consideration of the mutual covenants and agreements set forth below, the parties hereto agree as follows:

1. **Water Right Purchase.** SELLER hereby sells to BUYER, and BUYER hereby purchases from SELLER, the following described water right or water right portion for the consideration and subject to the terms and conditions contained herein:

A portion of Idaho Department of Water Resources (IDWR)
Water Right License No. 22-13584.

Source:	Ground water
Purpose:	Irrigation
Priority:	January 8, 1991
Quantity (Diversion Rate):	0.02 cfs (Total of the right is 0.88 cfs for 161.7 af for the irrigation of 46.2 acres)
Quantity (Volume):	3.5 af
Place of Use (Acreage):	1.0 acres.

The above portion of Water Right No. 22-13584 is hereinafter referred to as the "Water Right." The Water Right shall be conveyed from SELLER to BUYER by Special Warranty Deed, in the form set forth in Exhibit "A" attached hereto. Said Special Warranty Deed will be executed and recorded by SELLER as grantor to BUYER as grantee, and delivered to grantee upon closing.

2. **Purchase Price.** The purchase price for the Water Right is Seven Thousand Five Hundred Dollars (\$7,500) for 1.0 acre, lawful money of the United States, to be paid by BUYER to SELLER, receipt whereof is hereby acknowledged by SELLER

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3. **Application for Transfer.** It is understood and agreed that BUYER will initiate the appropriate transfer proceeding under *Idaho Code* §§ 42-108 and 42-222, by filing an application with IDWR in the form attached hereto as Exhibit "C" to change the point of diversion, place of use and nature of use of the Water Right as provided in said application. The filing fees and all costs and expenses of such proceedings shall be borne by BUYER. The parties agree to cooperate in the prosecution of said transfer proceeding to the end that it might be approved by the Idaho Department of Water Resources with as much dispatch as possible.
4. **Closing.** The BUYERS shall be given possession and use of the water right and the water appurtenant thereto, upon closing.
5. **Processing of Application for Transfer.** In the event the transfer is not approved by the Idaho Department of Water Resources, or not approved in a manner satisfactory to BUYER, BUYER shall have the right to have said application withdrawn. In the event BUYER withdraws said application, SELLER agrees to refund any portion of the purchase price paid by BUYER prior to the date of such withdrawal, to BUYER, without interest, within thirty (30) days of the filing of the Notice of Withdrawal.
6. **Signature Deadline.** SELLER hereby agrees to sign this Agreement within ten (10) business days after BUYER signs this Agreement. If SELLER does not sign the Agreement within the specified time period, BUYER may terminate this Agreement by providing written notice to SELLER within twenty (20) business days after BUYER signs this Agreement.
7. **Seller's Representations and Warranties.** SELLER represents and warrants to BUYER that:
 - 7.1 **Authority.** SELLER is a validly existing Idaho Limited Liability Company and has full power and authority to enter into this Agreement and complete the Transaction.

7.2 **Binding Agreement.** Upon SELLER's execution of this Agreement, this Agreement will be binding and enforceable against SELLER in accordance with its terms.

7.3 **Title.** SELLER has fee title to the Water Right. SELLER believes in good faith that there are no unrecorded agreements, leases, liens or encumbrances which may affect title to the Water Right.

7.4 **Other Agreements.** SELLER shall not, prior to any termination of this Agreement, enter into or execute any easement, encumbrance, lease, or other agreement, with respect to the Water Right. SELLER shall not solicit any other offers for the portion of the Water Right in which BUYER and SELLER are under contract to purchase.

7.5 **No Litigation or Condemnation.** There are no suits, claims, proceedings or investigations pending or threatened with respect to the Water Right or which will adversely affect SELLER's ability to meet its obligations with respect to this Agreement. SELLER has no knowledge of or reason to suspect any proposed public improvements that could result in any condemnation or taking of all or a portion of the Water Right.

7.6 **Snake River Basin Adjudication.** SELLER has researched and reviewed the Water Right and warrants that claims for the Water Right have been filed in the Snake River Basin Adjudication (the "SRBA").

8. **BUYER's Representations and Warranties.** BUYER represents and warrants to SELLER that:

8.1 **Authority.** BUYER is a validly existing Idaho Limited Liability Company and has full power and authority to enter into this Agreement and complete the Transaction.

8.2 **Binding Agreement.** Upon BUYER's execution of this Agreement, this Agreement

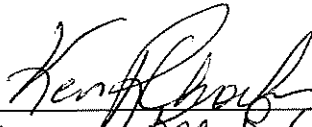
will be binding and enforceable against BUYER in accordance with its terms, and upon BUYER's execution of the additional documents contemplated by this Agreement, they will be binding and enforceable against BUYER in accordance with their terms.

9. **Attorney's Fees.** Should either party default in the performance of any of the covenants or agreements contained herein, such defaulting party shall pay to the other party all costs and expenses, including, but not limited to, a reasonable attorney fee, including such fees on appeal, which the offended party may incur in enforcing this agreement or in pursuing any remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.
10. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument. This Agreement may be signed and delivered by facsimile (fax or email) which shall be effective as an original.
11. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the parties to this Agreement and their respective successors and assigns.
12. **Reliance Upon Statements/Integration and Merger.** This Agreement sets forth the entire understanding of the parties with respect to the matters set forth in this Agreement as of the date both Buyer and Seller sign the Agreement; it supersedes all prior oral or written agreements of the parties as to the matters set forth in this Agreement; and it cannot be altered or amended except by an instrument in writing, signed by Buyer and Seller.
13. **Severability.** If any provision of this Agreement or any portion of any provision of this Agreement is determined to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability may not alter the remaining portion of such provision, or any other provision of this Agreement, as each provision of this Agreement is deemed severable from all other provisions of this Agreement.

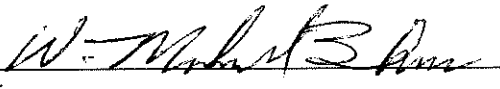
14. **Governing Law.** This Agreement is governed by, and construed and enforced in accordance with, the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

BC PROPERTIES, LLC


By: Ben R. Chamber
Its: Member

W. MICHAEL BAKER


By: _____
Its: _____

C:\Roger 2007\Mike Baker\Mike Baker Water Right Sales Agreement3.wpd:cdv

Termination Date: November 1, 2007.

If BUYER does not accept this contract of sale on or before the Termination Date above, this contract is voidable by the SELLER.

Exhibit A Form of Deed

When Recorded Return To:

xxx

SPECIAL WARRANTY DEED FOR WATER RIGHT

[Name of Seller], an [type of company] registered to do business in [state] as [name], whose address is [address] ("Grantor"), does hereby grant, bargain, sell, assign, and convey unto [Name of Seller], an [type of company] registered to do business in [state] as [name], whose address is [address] ("Grantee"), and to Grantee's heirs, successors, and assigns forever, all of Grantor's right, title, and interest in the Water Right described in Exhibits [xxx] hereto (collectively the "Water Right").

Grantor assigns to Seller any other interest it may have in the Water Right including any claim, permit, license, or shares of stock evidencing, claiming, or representing such Water Right.

To the extent the Water Right, or any of them, are represented by a permit or other property not conveyable by deed, this deed shall be deemed and shall operate as a bill of sale therefore.

Grantor retains no residual or reversionary interest in any of the Water Right.

Grantor hereby covenants and warrants to Grantee as follows:

- (A) that Grantor is the owner in fee simple of the Water Right;
- (B) that Grantor has not conveyed any of the Water Right to anyone other than Grantee;
- (C) that each of the Water Right is free from all liens, claims, or encumbrances;
- (D) that Grantor has the authority to convey the Water Right to Grantee;
- (E) the Grantor has disclosed to Grantee in good faith all relevant information known to Grantor bearing on the validity and extent of the Water Right.

Grantor makes no other covenants or warranties as to the Water Right.

[end of text; signature page to follow]

IN WITNESS WHEREOF, the undersigned authorized officers of Grantor, acting on behalf of Grantor, have caused their names to be hereunto subscribed on the date shown by each name.

Grantor:

[NAME OF SELLER]

Dated:

11/7/07

By:

Kenny Dech - Member
Name
Title BC Properties Ltd

Exhibits:

Exhibit 1 to Water Right Deed:
thereof)

Description of Water Right No. [number] (or portion

Exhibit 2 to Water Right Deed:
thereof)

Description of Water Right No. [number] (or portion

[Etc.]

[Add appropriate notary forms]

Exhibit B