

RECEIVED

OCT 02 2024

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

DEPT. OF WATER RESOURCES

EASTERN REGION

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at idwr.idaho.gov.

Name of Applicant(s) Teton Flats, LLC.Check whether each item below is *attached (Yes)* or *not applicable (N/A)* for the proposed transfer.Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☒ ☐ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).**
** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☒ ☐ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at <https://idwr.idaho.gov/water-rights/transfers/resources/>.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☒ ☐ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see fee schedule.
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. (Attachment WSB)
- ☒ ☐ #10 Other. Please describe: Authorization to use City of Driggs municipal system to deliver water right

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Teton Flats, LLC. Phone 208-223-2872
Mailing address 155 W. 2nd S, Rexburg, ID 83440 Email kwebb@hemmingcorp.com

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☒ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☒ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Rocky Mountain Environmental Associates, Inc. Phone 208.524.2353 ext 104
Mailing address 482 Constitution Way Ste 303, Idaho Falls, ID 83402 Email kristin.rmea@gmail.com

- ☐ Send all correspondence for this application to the representative and not to the applicant.
OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). 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 rejection of the application or cancellation of an approval.


Signature of Applicant or Authorized Representative

Kurt Webb, Managing Member
Print Name and Title if applicable

9-27-24
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
☒ Change nature of use
 ☒ Add diversion point(s)
☒ Change period of use
 ☒ Change place of use
☐ Other _____
- Is this a transfer for changes pursuant to Idaho Code § 42-221.O.8?
If yes, ☐ attach an explanation and any supporting documentation labeled as **Part1A.2**.
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part1A.3**.
Applicant proposes to convert the described portion of water right 22-7681 for municipal purposes to be delivered through the City of Driggs's municipal system to a new development project. Quantities to be transferred meet the City's water requirements for municipal water for the additional connections. Only the consumptive portion of the water right is proposed to be transferred.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

I.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
☐ All or ☒ Part	22-7681	0.11 cfs	Municipal	1/1 to 12/31	Ground water
☐		23.9 afa		to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	

Total authorized under rights 0.11 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.11 cubic feet per second and/or _____ acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #

See supplemental list attached.

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Municipal Service Area of the City of Driggs

Total Acres (for irrigation use)

Ident. No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. 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:
The City has 7 active municipal wells that connect to a series of mainlines for delivery.
Each of the City's wells have existing measuring devices and lockable controlling works.
- b. Who owns the property at the point(s) of diversion? City of Driggs owns many of the POD locations.
 If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
Several of the wells are owned by associated entities and used by agreement with the city. These are existing diversions for the City and have already been authorized for use.
- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
 If yes, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: _____

 It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.
- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?
 If yes, ☐ complete Attachment WSB.
- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:
The land now irrigated, or authorized to be irrigated will be dried up and will no longer receive irrigation water from this water right.
- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:
Proposed POU/POD: City of Driggs municipal water rights share the same delivery system.
Existing POU/POD: no other water rights.
- g. 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, or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?
 If yes, describe:

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT REPORT

7/8/2024

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 22-7681

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LEXIE G HILL
Current Owner	THOMAS E HILL 1540 S 6000 W DRIGGS, ID 83422-4839 2083907170

Priority Date: 08/30/1990

Basis: License

Status: Active

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

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/15	10/31	1.12 CFS	308 AFA
Total Diversion			1.12 CFS	308 AFA

Location of Point(s) of Diversion:

GROUND WATER|NESWSW|Sec. 17|Township 04N|Range 45E|TETON County

Licensed Diversion Capacity: 2.22

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
04N	45E	17		SWSW	29		SESW	6						
		19		NENE	39									
		20		NENW	7		NWNW	7						

Total Acres: 88

Conditions of Approval:

1. 050 Diversion and use of water under this right is subject to rules that may subsequently be promulgated for existing rights used for supplemental purposes.
2. 048 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. 049 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.
4. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

Dates:

Licensed Date: 10/19/2000

Decreed Date:

Permit Proof Due Date: 2/1/1999

Permit Proof Made Date: 2/4/1999

Permit Approved Date: 1/25/1991

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 08/27/1990

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: EXC

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- If any part of the irrigation water right is leased to the Water Supply Bank, you must also specify the location and number of acres that will remain idled for the duration of the lease contract at the new, proposed place of use.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

89379

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT (this "Agreement") is made and entered to be effective as of the 21 day of June, 2024 (the "Effective Date"), by and between the following entities:

1. **Rocky Mountain Water Exchange, LLC**, an Idaho limited liability company, whose address is 482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402 (hereinafter "Seller"); and
2. Acting on behalf of Seller, **Keller Williams Realty East Idaho**, an Idaho limited liability limited partnership whose address is 3525 Merlin Dr., Idaho Falls, Idaho 83404, with **D'Wayne Coburn** as Broker and **Reed D. Nord** acting as Agent for the Broker (hereinafter "Broker").
3. **Teton Flats, LLC**, an Idaho limited liability company, whose address is 155 W 2nd S, Rexburg, Idaho 83440 (hereinafter "Buyer");

Buyer, Seller, and Broker are individually a "Party" and together the "Parties".

RECITALS:

- A. Seller currently has the legal right and option to sell Water Right No. 22-7681 (the "Water Right"), which was licensed on October 19, 2000 for irrigation purposes with a priority date of August 30, 1990. The current description of the Water Right is more fully set forth in the report obtained from the Idaho Department of Water Resources ("IDWR" or the "Department") attached hereto as **Exhibit 1**.
- B. Seller desires to sell, and Buyer desires to buy 9.0 acres of the Water Right. Buyer has agreed to purchase 9.0 acres of the Water Right from Seller as set forth in the terms and provisions of this Agreement.

AGREEMENT:

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, the following-described portion of the Water Right:

Purpose:	Irrigation
Priority:	<u>August 30, 1990</u>
Quantity (Diversion Rate):	<u>0.11</u> cfs of the total authorized <u>1.12</u> cfs
Quantity (Volume):	31.5 acre-feet per annum

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: [Initials] DATE: 6/21/24 PAGE 1 OF 14

Place of Use (Acreage): 9.0 acres of the 88 authorized acres identified on **Exhibit 2**.

The above-described portion of the Water Right is referred to hereafter as the "Purchased Water Right."

2. Property Retained. Other than the Purchased Water Right, Seller reserves and retains unto Seller any other water rights that may be appurtenant to the authorized place of use for the Water Right. No land, easements, or other property interests, other than the Purchased Water Right, are included in this Agreement.
3. Purchase Price. The purchase price for the Purchased Water Right is [REDACTED] the "Purchase Price") plus the Buyer's Premium of [REDACTED] as described in Paragraph 12(a).
4. Earnest Money Deposit. Contemporaneous with the execution of this Agreement, Buyer shall deliver to *Holden, Kidwell, Hahn, and Crapo, P.L.L.C.* earnest money in the amount of [REDACTED] (the "Earnest Money"). Checks can be made out to "HKHC Trust Account" or information can be provided for a wire transfer. The Earnest Money shall be applied towards the Purchase Price at closing, or otherwise disposed of as provided herein.
5. Transfer Application. Within 30 days after both Parties sign this Agreement, Buyer will file with IDWR an *Application for Transfer of Water Right* (the "Transfer") to amend and move the Purchased Water Right to Buyer's desired location(s) at the buyers designated place of use. The Parties will cooperate in obtaining IDWR approval of the Transfer and will provide and execute any necessary documents requested by IDWR. Buyer will be responsible for the costs to file the Transfer, including all attorney fees, consultant fees, and filing fees associated with preparation of the Transfer. In the event this Agreement is terminated pursuant to paragraph 6 of this Agreement, Buyer shall at its sole expense take such action as may be required to void or reverse the Transfer in order to return the Purchased Water Right to the condition it existed on the Effective Date, upon completion of which the Earnest Money will be returned by Buyer within 14 days of such completion.
6. Transfer Contingencies.
 - (a) [IF APPLICABLE] Unstacking of Water Rights. While the elements of the Water Right and an associated water right, Water Right No. _____, are sufficiently described to allow IDWR to "unstack" these water rights, this Agreement shall be null and void and of no further effect if IDWR does not unstack the Purchased Water Right from Water Right No. _____.
 - (b) [IF APPLICABLE] Lien Release. If, after exercising commercially reasonable efforts, Seller is unable to obtain a lien release on the Water Right, this Agreement shall be null and void and of no further effect, and Buyer shall return the Earnest Money to Buyer.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: [Signature] DATE: 10/21/24 PAGE 2 OF 14

- (c) No Protests. If no protests or other objections to the Transfer are filed with IDWR, but the Transfer is (i) denied, (ii) approved by IDWR for less than 9.0 acres worth of water right or (iii) approved by IDWR with conditions that materially devalue the Purchased Water Right for Buyer's intended use thereof; then Buyer may terminate this Agreement within 14 days after the date of the IDWR approval notice by providing written notice of termination to Seller. Within 14 days of receipt of the notice of termination, Seller shall refund the Earnest Money to Buyer. If Buyer does not terminate this Agreement as provided herein, the Parties shall proceed to Closing as set forth in paragraph 7.
- (d) Protest Filed. If a protest or other objection to the Transfer is filed with IDWR, then Buyer may terminate this Agreement within 180 days after the protest is filed with IDWR. If Buyer does elect to terminate this Agreement, Seller shall refund the Earnest Money to Buyer within 14 days of receipt of the notice of termination.
- (e) Option Agreement. If Seller is unable to obtain title to the Water Right through the exercise of Seller's option to purchase the Water Right because of a breach by the other party to the Option Agreement, Seller may elect to terminate this Agreement within 180 days of the breach. In such event, Closing on this Agreement shall be stayed for said 180 days pending resolution of the dispute over the Option Agreement or termination by Seller.

7. Closing.

- (a) Closing Date. If (1) the Water Right is unstacked as provided in paragraph 6(a); and (2) no protest to the Transfer is filed with IDWR; or (3) IDWR issues a transfer approval acceptable to Buyer without the conditions of paragraph 6(c) present, then Closing on the Purchased Water Right shall occur within 30 days after the date all the above items are satisfied. If a protest or other objection to the Transfer is filed with IDWR, or there is a dispute over the Option Agreement, and Buyer does not elect to terminate the Agreement as set forth in paragraph 6(d) of this Agreement, the Closing shall occur within 14 days after the 180-day termination period expires. Notwithstanding the above, the Parties may mutually agree to another date for the Closing.
- (b) Closing Location. The Closing shall occur at the offices of Holden, Kidwell, Hahn, and Crapo, P.L.L.C., 1000 Riverwalk Drive, Suite 200, Idaho Falls, ID 83405, or at another location mutually agreed by the Parties.
- (c) Documents to be delivered at Closing.
 - (1) At Closing, Buyer shall deliver the Purchase Price plus Buyer's Premium less the Earnest Money [REDACTED]
 - (2) At Closing, Seller shall deliver to Buyer the Special Warranty Deed (the "Deed") substantially in the form attached to this Agreement as Exhibit 3 for the Purchased Water Right, and any

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: [Signature] [Signature] DATE: 6/21/24 PAGE 3 OF 14

lien release or other documents reasonably requested to confirm the conveyance of the Purchased Water Right free and clear of encumbrances.

- (d) Fees and Costs of Closing. The fees and costs of processing the closing including recording the deed after closing and preparation and fee for Change of Ownership application shall be paid by Buyer. All other expenses not specifically referenced in this Agreement but related to the Transfer and incurred by Seller or Buyer with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.
8. Default. In addition to either Party's failure to perform any material term or condition of this Agreement or a Party's breach of any of such Party's representations or warranties (in which event the non-defaulting party may pursue any available remedy, including equitable relief), Buyer shall be deemed in default hereof if Buyer files a petition in bankruptcy or is adjudicated bankrupt or insolvent, Buyer makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization, in which case, in addition to any other remedies or rights Seller might have, Seller shall have the power and authority to notify the Department that the Application for Transfer has been withdrawn.
9. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the Effective Date and again as of the Closing as follows:
- (a) Authority. Seller has the full legal right, power and authority to enter into and perform this Agreement, and will obtain good marketable title to the Purchased Water Right in fee simple, and Seller (at its expense) shall remove, or shall exercise commercially reasonable efforts to cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased Water Right on or before Closing. If, after exercising commercially reasonable efforts, the liens, claims, or encumbrances are not removed by Closing, Seller may terminate this Agreement.
- (b) Conveyance. Seller shall then convey the Purchased Water Right free and clear of all liens, encumbrances and restrictions, except such restrictions on the use of water as may appear on the Water Right Report contained at **Exhibit 1**.
- (c) Appurtenance. The Purchased Water Right is appurtenant to and has been beneficially used as the water source to irrigate its place of use and/or been properly preserved for future use consistent with Idaho law.
- (d) Not Forfeited. No portion of the Purchased Water Right has been forfeited or abandoned in whole or in part.
- (e) No Representation or Warranty Concerning Suitability for Buyer's Intended Use. Seller has not made, and hereby makes, no representation or warranty to Buyer except as expressly contained in this Agreement.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: LPK KW DATE: 6/21/24 PAGE 4 OF 14

10. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and again as of the Closing for the Purchased Water Right, as follows:
- (a) Authority. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder.
 - (b) Buyer's Due Diligence. Buyer and Buyer's consultants and counsel have had a full opportunity to review all documents, records and other information made available to Buyer by Seller and/or otherwise reasonably available to Buyer through public or other sources, related to the nature and extent of the Purchased Water Right, the laws and rules affecting their transfer and use by Buyer, and the suitability or fitness of the Purchased Water Right for Buyer's intended purposes.
11. Warranties to Survive Closing. All representations and warranties made by the Parties herein are also covenants, and each Party shall take all such actions as may be required to satisfy said covenants and to cause the representations and warranties to be true on and as of the Closing. The Parties' respective obligations to close and consummate the transaction contemplated herein are contingent upon the representations, warranties and covenants contained in this Agreement being true, valid and satisfied on and as of the Closing. All such representations and warranties shall survive the Closing.
12. Broker.
- (a) The Broker represents Buyer under this Agreement and Buyer shall pay a Buyer's Premium of [REDACTED] of the sale price or [REDACTED] at closing.
 - (b) Consent To Limited Dual Representation And Assigned Agency. The undersigned Buyer has received, read and understand the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned Buyer understands that the brokerage involved in this transaction may be providing agency representation to both the Buyer and the Seller. The undersigned Buyer understands that, as an agent for both Buyer/client and Seller/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms, or factors motivating the Buyer/client to buy or the Seller/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations, and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by § 54-2085, Idaho Code. The undersigned Buyer understands that a limited dual agent does not have a duty of undivided loyalty to either client. The undersigned Buyer further acknowledges that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in § 54-2087, Idaho Code. In an

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: [Signature] [Signature] DATE: 6/21/24 PAGE 5 OF 14

assigned agency situation, the designated Broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

- (c) Buyer Notification and Consent to Release from Conflicting Agency Duties. Buyer acknowledges that Broker as named above has disclosed the fact that at times Broker acts as agent(s) for other buyers and for sellers in the sale of the property. Buyer has been advised and understands that it may create a conflict of interest for Broker to introduce Buyer to a Seller client's property because Broker could not satisfy all of its client duties to both Buyer client and Seller client in connection with such a showing or any transaction which resulted. **Based on the understandings acknowledged, Buyer makes the following election.** (Make one election only.)

_____/_____
Initials

Limited Dual Agency and / or
Assigned Agency

Buyer DOES want to be introduced to Seller client's property and hereby agrees to relieve Broker of conflicting agency duties, including the duty to disclose confidential information known to the Broker at the time and the duty of loyalty to either party. Relieved of all conflicting agency duties, Broker will act in an unbiased manner to assist the Buyer and Seller in the introduction of Buyer to such Seller client's property and in the preparation of any contract of sale which may result. Buyer authorizes Broker to act in a limited dual agency capacity. Further, Buyer agrees that Broker may offer, but is not obligated to offer, assigned agency representation, and if offered by the Broker, Buyer authorizes Broker to act in such capacity.

OR

_____/_____
Initials

Single Agency

Buyer DOES NOT want to be introduced to Seller client's property and hereby releases Broker from any responsibility or duty under the agency agreement. Broker shall be under no obligation or duty to introduce the Buyer to any Seller client's property.

13. Miscellaneous.

- (a) Attorneys' Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages because of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: _____ DATE: 6/21/24 PAGE 6 OF 14

- (b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

<u>Seller</u>	<u>Buyer</u>
Rocky Mountain Water Exchange, LLC	Teton Flats, LLC
482 Constitution Way Suite 303	Attn: Kurt Webb
Idaho Falls, ID 83402	155 W 2 nd S
Email: rog.rmea@gmail.com	Rexburg, ID 83440
	Email: kwebb@hemmingcorp.com
<u>Seller's Representative</u>	<u>Buyer's Representative</u>
Reed Nord	None
3525 Merlin Dr.	
Idaho Falls, ID 83404	
Email: rgnord@ida.net	

- (c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Purchased Water Right. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.
- (d) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.
- (e) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.
- (f) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

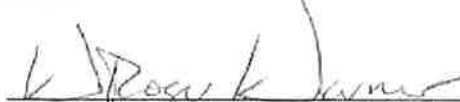
BUYER AND SELLER'S INITIALS: KWK PN DATE: 6/21/24 PAGE 7 OF 14

- (g) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.
- (h) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- (i) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.
- (j) Essence of Time. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SELLER"

**ROCKY MOUNTAIN WATER EXCHANGE,
LLC**



By: W. Roger Warner

Its: *Partner Manager*

"BROKER"

KELLER WILLIAMS EAST IDAHO



D'Wayne Coburn

By: Reed D. Nord, Agent for Broker

"BUYER"

TETON FLATS LLC



By: Kurt Webb

Its: Managing Member

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: *LSRB* *KWB* DATE: *6/21/24* PAGE 8 OF 14

Exhibit 1

The "Water Right"

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT REPORT

6/5/2024

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 22-7681

Owner Type	Name and Address
Current Owner	LEXIE G HILL
Current Owner	THOMAS E HILL 1540 S 6000 W DRIGGS, ID 83422-4839 2083907170

Priority Date: 08/30/1990

Basis: License

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	4/15	10/31	1.12 CFS	308 AFA
Total Diversion			1.12 CFS	308 AFA

Location of Point(s) of Diversion:

GROUND WATER | NESWSW | Sec. 17 | Township 04N | Range 45E | TETON County

Licensed Diversion Capacity: 2.22

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	45E	17		SWSW 29			SESW 6							
		19		NENE 39										
		20		NENW 7			NWNW 7							

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: LEXIE G HILL DATE: 6/21/24 PAGE 9 OF 14

Total Acres: 88

Conditions of Approval:

1. 050 Diversion and use of water under this right is subject to rules that may subsequently be promulgated for existing rights used for supplemental purposes.
2. 049 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.
3. 048 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.
4. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

Dates:

Licensed Date: 10/19/2000

Decreed Date:

Permit Proof Due Date: 2/1/1999

Permit Proof Made Date: 2/4/1999

Permit Approved Date: 1/25/1991

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 08/27/1990

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: EXC

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

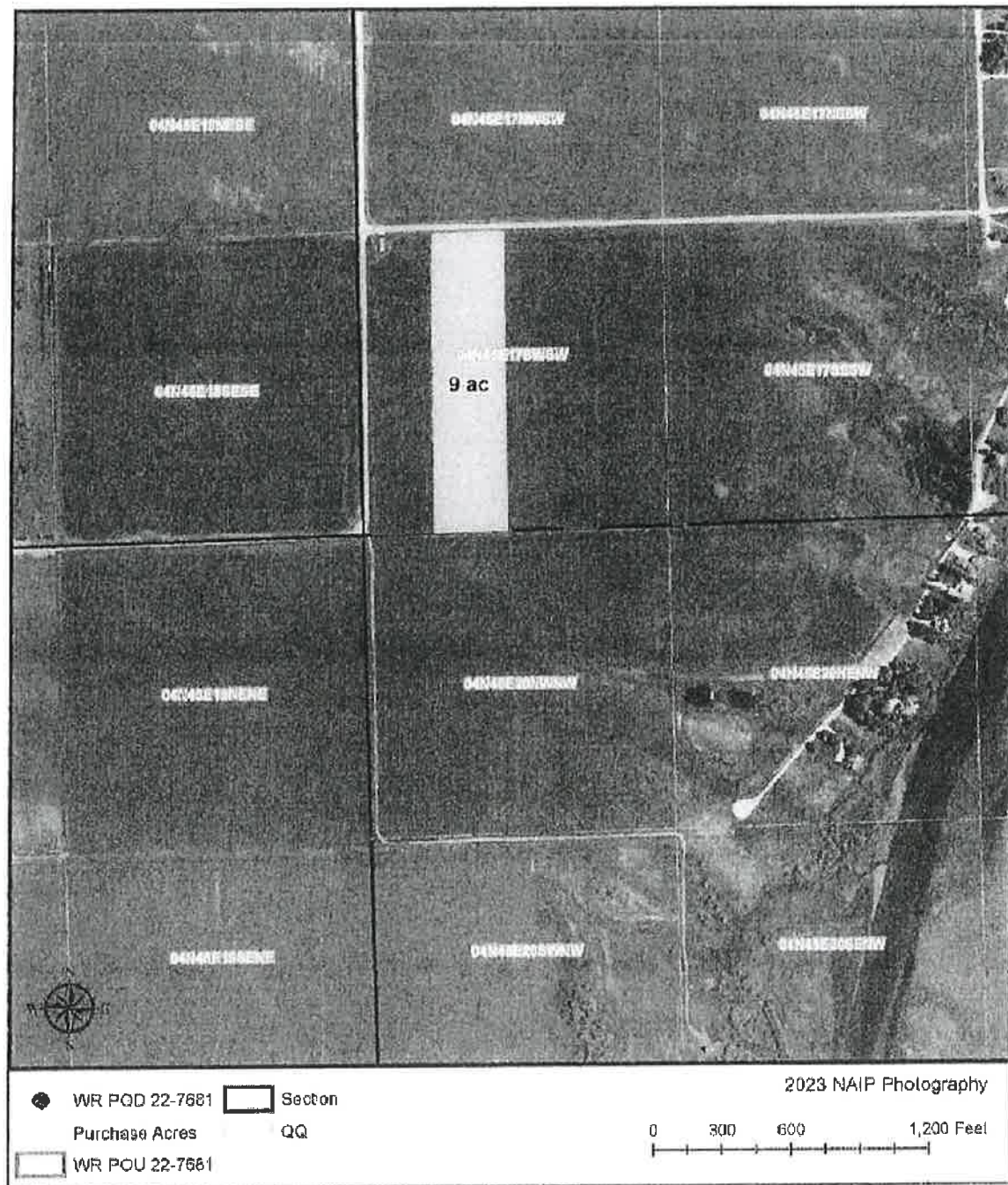
AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: LRL / JAW DATE: 6/24/24 PAGE 10 OF 14

89379

Exhibit 2

Map of 10 Acres—the “Purchased Water Right”



AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: LSH / KSH DATE: 6/24/24 PAGE 11 OF 14

**Exhibit 3
Form of the Deed**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Kristin Moore
Rocky Mountain Environmental Associates, Inc.
482 Constitution Way, Suite 303
Idaho Falls, ID 83402

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHTS

THOMAS E. HILL and LEXIE G. HILL, husband and wife, whose address is 1540 S 6000 W, Driggs, ID 83422 (hereinafter "Grantor") does hereby grant, bargain, sell, assign, and convey unto **TETON FLATS, LLC**, an Idaho limited liability company, whose address is 155 W 2nd S, Rexburg, Idaho 83440 (hereinafter "Grantee") and to Grantee's heirs and assigns forever, all of Grantor's right, title, and interest in water right described on Exhibit A attached hereto (hereinafter the "Water Right").

Grantor hereby covenants and warrants to Grantee as follows:

- (A) Grantor is the owner of the Water Right;
- (B) Grantor has not conveyed any of the Water Right to anyone other than Grantee;
- (C) The Water Right is free from all liens, claims, or encumbrances; and
- (D) Grantor has the authority to convey the Water Right to Grantee.

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

IN WITNESS WHEREOF, the undersigned authorized officer of Grantor, acting on behalf of Grantor, has caused his name to be hereunto subscribed.

DATED this _____ day of _____, 2024.

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: LBK / JMO DATE: 6/21/24 PAGE 12 OF 14

89379

"GRANTOR"

Thomas E. Hill

Lexie G. Hill

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2024, by _____.

Notary Public for Idaho
My Commission Expires: _____

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2024, by _____.

Notary Public for Idaho
My Commission Expires: _____

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: LEH KEH DATE: 6/21/24 PAGE 13 OF 14

EXHIBIT A
WATER RIGHT DESCRIPTION
(TO BE COMPLETED AFTER APPROVED TRANSFER)

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

BUYER AND SELLER'S INITIALS: APK V Ford DATE: 6/21/24 PAGE 14 OF 14

89379

November 27, 2023

To: Idaho Department of Water Resources
From: Thomas E. Hill and Lexie G. Hill
Subject: Applications for Water Right #22-7681

Thomas E. Hill and Lexie G. Hill ("Hills") are the owner of Water Right No(s). 22-7681 The Hills and Rocky Mountain Water Exchange, LLC ("RMWE") have entered into an agreement wherein RMWE is authorized to contract with third parties to sell the above-described water right(s), or portions thereof, and file transfer applications associated with said water right(s) through December 31, 2024.

The Hills hereby consent to any transfer or transfers filed by RMWE for the above-described water right(s), with the intent that this single consent may be submitted as proof of authorization for any transfer(s) of the above-described water right(s). This consent shall be valid and may be submitted for any transfer of the above-described water right(s) up until December 31, 2024.

The parties acknowledge and understand that for each transfer that is approved, the above-described water right(s) will be amended, with the understanding that title to the water right(s) can only be transferred upon execution and recording of a deed for the water right(s).

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct. Idaho Code § 9-1406; Idaho Rule of Civil Procedure 2.7.



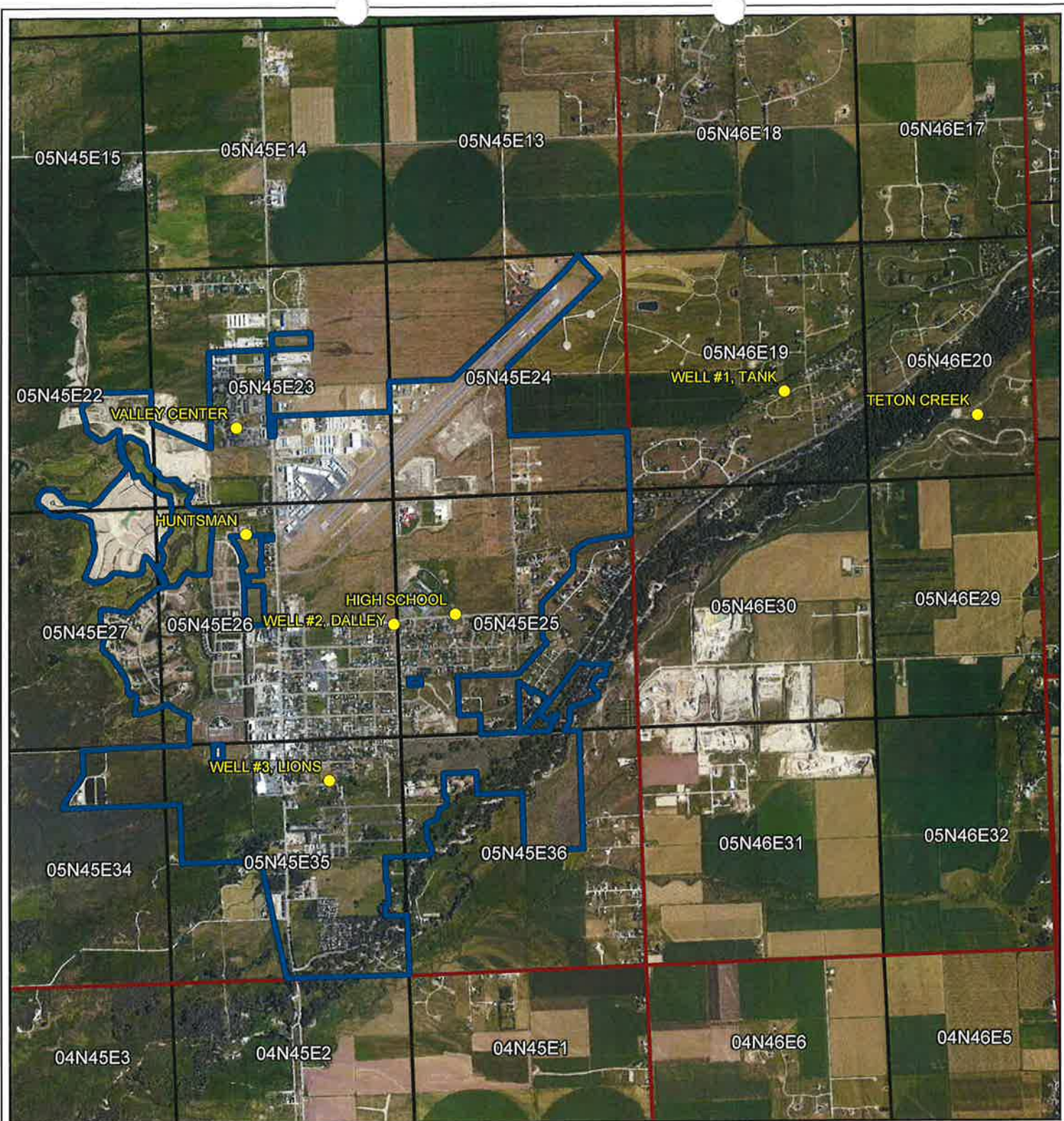
Printed Name: Thomas E. Hill

Date: 11-27-23



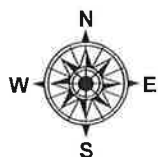
Printed Name: Lexie G. Hill

Date: 11-27-23



Legend

- Driggs Municipal Wells
- Driggs Municipal Boundary
- Twp & Rng
- Section



Attachment #7a. Proposed Location

Teton Flats, LLC

RMEA # 24-0080

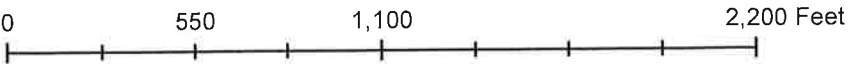
by: KM

Date: 7/17/2024



Rocky Mountain
ENVIRONMENTAL
ASSOCIATES, INC.

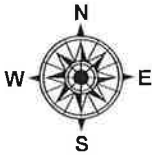
89379



2023 NAIP

Legend

- POD 22-7681
- Purchase Acres
- POU 22-7681
- Twp & Rng
- Section
- QQ



Attachment #7b. Existing Location

Teton Flats, LLC

RMEA # 24-0080
by: KM
Date: 7/17/2024



Conversion of Nature of Use

Teton Flats LLC – Application for Transfer 22-7681

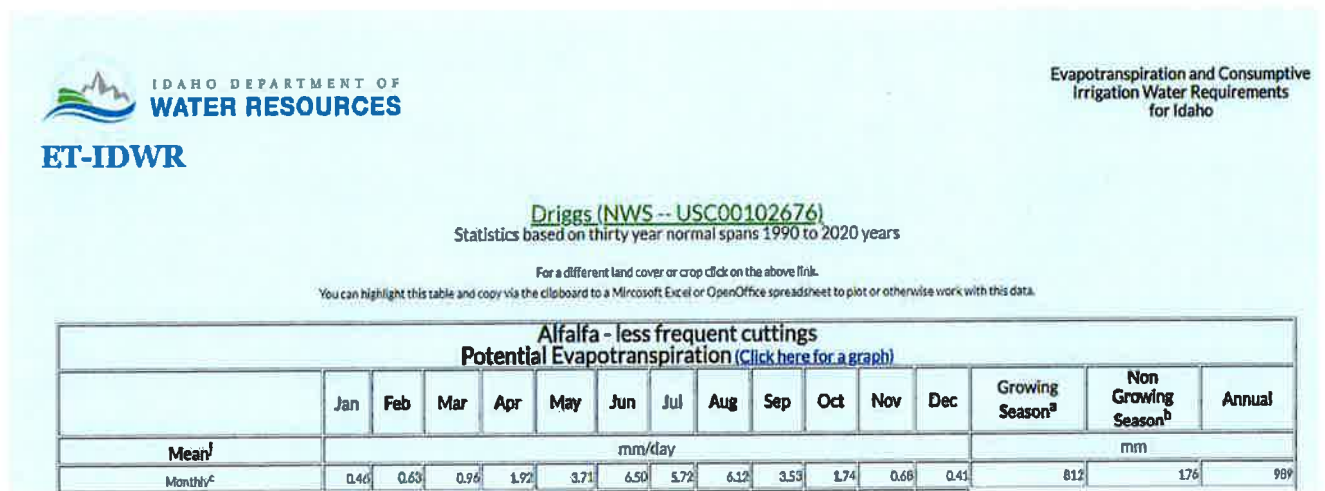
Applicant proposes to convert 9 acres of an Irrigation right to Municipal use. Historical crop rotation on the acres proposed to be transferred is alfalfa-less frequent cuttings.

According to ET-IDWR¹, and using the Driggs (NWS-USC00102676) station for Alfalfa – less frequent cuttings, the historical precipitation deficit is 812 mm/year, or 2.66 ft/year.

$$2.66 \text{ ft/yr} \times 9 \text{ acres} = 23.9 \text{ afa}$$

It is proposed that the resulting converted municipal water right reflect the historical consumptive use volume of 23.9 afa.

Figure 1. Excerpts of ET-IDWR



¹ <https://et-idwr.idaho.gov/>



CITY OF DRIGGS OFFICE OF THE MAYOR

Rocky Mountain Environmental Associates, Inc.
c/s Kristin Moore
482 Constitution Way, Ste 303
Idaho Falls, ID 83402
Sent via email to kristin.rmea@gmail.com

Re: Water rights transfer

Ms. Moore,

The City of Driggs authorizes the transfer of water right 22-7681 into the City municipal system in the amount of 0.11 cfs. This transfer is in conformance with the Development Agreement between the City of Driggs and Teton Flats, LLC and satisfies the requirement for the developer to offset water demand for Phases I and II.

Please contact my office if you have any questions.

Thank you,

August Christensen
Mayor, City of Driggs

Attest, City Clerk



208-354-2362
M-TH 8:30am - 5pm
F 8:30am - 1pm



mayor@driggsidaho.org
DRIGGSIDAHO.ORG



60 South Main Street
PO Box 48
Driggs, ID 83422



IDAHO DEPARTMENT OF
WATER RESOURCES

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

Phone: 208-525-7161 • Fax: 208-525-7177 • Email: easterninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

October 16, 2024

TETON FLATS LLC
155 W 2ND S
REXBURG, ID 83440

RE: Transfer No. 89379
Water Right No(s). 22-14619

Dear Applicant:

The Department of Water Resources has received your water right transfer application. Please refer to the transfer number referenced above in all future correspondence regarding this transfer.

A legal notice of the application has been prepared and is scheduled for publication in the TETON VALLEY NEWS on 10/23/2024 and 10/30/2024. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the approval document.

Please contact this office if you have any questions regarding the application.

Sincerely,

Christina Henman
Administrative Assistant

CC:
ROCKY MOUNTAIN ENVIRONMENTAL ASSOC INC
482 CONSTITUTION WAY STE 303
IDAHO FALLS, ID 83402-3552

Henman, Christina

From: Henman, Christina
Sent: Wednesday, October 16, 2024 12:31 PM
To: legalnotices@postregister.com
Subject: Legal Notice for Teton Valley News
Attachments: 89378, 89379 Teton Valley News.docx

LEGAL NOTICE DEPARTMENT
TETON VALLEY NEWS
80 E LITTLE AVE
DRIGGS, ID 83422

RE: Transfer No. 89378, 89379
Water Right No(s). 22-14618, 22-14619

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 11/12/2024. Your cooperation is appreciated.

Thank You,



Christina Henman
Administrative Assistant
IDWR, Eastern Region
900 N Skyline Ste. A
Idaho Falls, ID 83402
Phone: (208) 525-7161

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

TRANSFER NO. 89378

TANKGOCKEY IDRE LLC, PO BOX 1768, WILSON, WY 83014 has filed Application No. 89378 for changes to the following water rights within TETON County(s): Right No(s). 22-14618; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows: change place of use. Proposed place of use is in NENW Sec 20 T04N R45E for 4.2 acres. Right 22-14618 is a proposed split of 0.05 cfs from ground water right 22-7681.

TRANSFER NO. 89379

TETON FLATS LLC, 155 W 2ND S, REXBURG, ID 83440 has filed Application No. 89379 for changes to the following water rights within TETON County(s): Right No(s). 22-14619; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows: change nature of use, place of use, period of use and point of diversion, and add points of diversion. Proposed use is Municipal within the service area of the City of Driggs from 1/1 to 12/31. Proposed points of diversion are in NESW Sec 23, SWNW Sec 25, NENW and NESE Sec 26, and NWN Sec 35, T05N R45E; and NWSE Sec 19 and NESW Sec 20, T05N R46E for 0.11 cfs from Ground Water. Right 22-14619 is a proposed split from right 22-7681.

For additional information concerning the property location, contact Eastern Region office at (208)525-7161. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Eastern Region, 900 N SKYLINE DR STE A, IDAHO FALLS ID 83402-1718 together with a protest fee of \$25.00 for each application on or before 11/12/2024. The protestant must also send a copy of the protest to the applicant.

MATHEW WEAVER, Director

Published on 10/23/2024 and 10/30/2024