

DEC 21 2023

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 88699Department of Water Resources **MINIMUM REQUIREMENTS CHECKLIST**
Eastern Region TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

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) Farmland Reserve, Inc.

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 I.
- ☒ * 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: Petition for Approval of Substitute Mitigation Plan

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

DEC 21 2023

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1**

Department of Water Resources
Eastern Region

Name of Applicant(s) Farmland Reserve, Inc. Phone 208-844-6749
Mailing address 179 S. Main St. Ste. 1000 Email jcobell@cffarms.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 Robert L. Harris Phone 208-523-0620
Mailing address HKHC, PO Box 50130, Idaho Falls, Idaho 83402 Email rharris@holdenlegal.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.

Robert L. Harris Robert L. Harris, Attorney Dec. 21, 2023
Signature of Applicant or Authorized Representative Print Name and Title if applicable Date

Signature of Applicant or Authorized Representative Print Name and Title if applicable Date

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 Amend mitigation conditions in water rights.

2. 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 **Part 1A.2**.

3. 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 **Part 1A.3**.

The applicant proposes to amend the mitigation conditions of the water rights listed herein. For background to the mitigation conditions and the proposed substitute mitigation plan, see attached Petition for Approval of Substitute Mitigation Plan.

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.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All ☒ or Part ☐	35-14240	2.44/488	Irrigation	04/01 to 10/31	Groundwater
☒ ☐	35-14655	0.15/63.7	Irrigation	04/01 to 10/31	Groundwater
☒ ☐	35-14241	5.9/1476.4	Irrigation	04/01 to 10/31	Groundwater
☒ ☐	35-14242	2.39/478	Irrigation	04/01 to 10/31	Groundwater
☒ ☐	35-14243	7.00/2636	Irrigation	04/01 to 10/31	Groundwater
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 18.76 cfs and/or 5102.1 acre-feet.

2. Total amount of water proposed to be transferred or changed 18.76 cubic feet per second and/or 5102.1 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 #

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	
Total Acres (for irrigation use)																			

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:

Well and pumps into mainlines for distribution to center pivots and handlines.

- b. Who owns the property at the point(s) of diversion? Applicant.

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- 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:

No changes.

- 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:

None.

- 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:

Attachment No. 2a Water Right Ownership Documentation

Close

Water Right Report : 35-14240(License/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Current Owner	FARMLAND RESERVE INC	79 S MAIN ST STE 1000	SALT LAKE CTY	UT	84111-1945
Previous Owner	LANCE AND/OR LISA FUNK PARTNERSHIP	PO BOX 310	AMERICAN FLS	ID	83211-0310

Water Right Status

Priority Date : 2/8/2012

Basis : License

Status : Active

Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
GROUND WATER			

Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
GROUND WATER	07S	28E	1	0	SW	SW	SE	POWER	

Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	2.44 CFS	488.00 AFA
TOTAL			2.44 CFS	488.00 CFS

Places of Use

Printable View

Paginated View

Place of Use Legal Description : IRRIGATION (POWER county)

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
07S	28E	12			NE	NE	30
07S	28E	12			NW	NE	30
07S	28E	12			SW	NE	30
07S	28E	12			SE	NE	30

Irrigation Totals

Total Acres Acre Limit

122.00

Conditions

Code Conditions

X35 Rights 35-7973 and 35-14240 when combined shall not exceed a total diversion rate of 4.81 cfs.

X35 Rights 35-7973, 35-14240, and 35-14654 when combined shall not exceed a total diversion rate of 5.39 cfs.

- R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
- 01J Prior to diversion of water under this right, the right holder shall install and maintain a flow meter measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
- R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
- 933 This right is for the use of trust water, and it is subject to review 5 years after the date of permit approval to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
- 935 Administration of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required because use of water pursuant to this right is either non-consumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right.
- 170 To mitigate for the depletion of water resulting from the use of water under water rights 35-14240, 35-14241, 35-14242, 35-14243, and 35-14655 and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official records for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or a portion thereof, are being dedicated to mitigation purposes. Use Changed Mitigation Mitigation Mitigation Right No. to Mitigation Rate (cfs) Volume (AF) Acres 29-2284 (previously 35-14014) Industrial 4.44 3215.5 N/A 29-2301 (previously 35-14015) Industrial 3.95 2858.3 N/A Combined Limit: 6073.8 If the specified mitigation rights, or portion thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or a termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.
- In the event the right holder does not maintain the right to use water rights 29-2284 and 29-2301 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right.
- By December 1st of each year, the right holder shall provide a written report to the Department describing the number and location of acres irrigated that year, the volume of water diverted under this right, the source of mitigation for the next irrigation season, and the number and location of acres proposed to be irrigated in the following year.
- As resources allow, the Department will conduct at least one in-person field examination of the authorized place of use of this right each year to verify the required mitigation and authorized irrigation under this right prior to June 15th of each year. It shall be the responsibility of the right holder to follow up with the Department by June 15th of each year to determine if the field examination was performed. If the Department is unable to conduct the field examination for any reason, the right holder or its consultant shall perform the field examination and report findings from the field examination to the Department and the protestants to this right by July 15th of each year.
- 020 The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein.
- 140 Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.

Dates

Licensed Date : 8/16/2019
 Decreed Date :
 Permit Proof Due Date : 4/1/2017
 Permit Proof Made Date : 2/9/2017
 Permit Approved Date : 3/3/2015
 Permit Moratorium Expiration Date :
 Enlargement Use Priority Date :
 Enlargement Statute Priority Date :
 Application Received Date : 2/8/2012

Other Information

State or Federal :
 Water District Number : 120
 Generic Max Rate Per Acre : 0.02
 Generic Max Volume Per Acre : 4
 Civil Case Number :
 Decree Plaintiff :
 Decree Defendant :
 Swan Falls Trust or Nontrust : T
 Swan Falls Dismissed :

Protest Deadline Date: 4/1/2012

DLE Act Number :
Cary Act Number :
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

8/31/2023

Water Right Report : 35-14655(License/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Current Owner	FARMLAND RESERVE INC	79 S MAIN ST STE 1000	SALT LAKE CTY	UT	84111-1945
Previous Owner	LANCE AND/OR LISA FUNK PARTNERSHIP	PO BOX 310	AMERICAN FLS	ID	83211-0310
Security Interest	RABO AGRIFINANCE LLC	14767 NORTH OUTER 40 RD STE 400	CHESTERFIELD	MO	63017-2003

Water Right Status

Priority Date : 2/8/2012
 Basis : License
 Status : Active

Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
GROUND WATER			

Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
GROUND WATER	07S	29E	6	0		SW	SE	POWER	
GROUND WATER	07S	29E	7	0		NW	NE	POWER	

Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	0.15 CFS	63.70 AFA
TOTAL			0.15 CFS	63.70 CFS

Places of Use

[Printable View](#)
[Regent View](#)

Place of Use Legal Description : IRRIGATION (POWER county)

Show 10 ▼ entries

Search:

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
07S	29E	6			NE	NE	22
07S	29E	6			NW	NE	20
07S	29E	6			SW	NE	32
07S	29E	6			SE	NE	33
07S	29E	6			NE	NW	26
07S	29E	6			NW	NW	16
07S	29E	6			SW	NW	25
07S	29E	6			SE	NW	37
07S	29E	6			NE	SW	32
07S	29E	6			NW	SW	20

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Irrigation Totals

Total Acres	Acre Limit
415.80	46.70

Conditions

Code Conditions

- X35 Rights 35-14241 and 35-14655 when combined shall not exceed the irrigation of 415.8 acres.
- X35 Rights 35-7914, 35-14241, 35-14655 and 35-14845 when combined shall not exceed a total diversion rate of 7.77 cfs.
- R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
- R02 A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
- 214 Prior to the diversion and use of water under Transfer approval 88535, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
- 213 Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
- 170 To mitigate for the depletion of water resulting from the use of water under water rights 35-14240, 35-14241, 35-14242, 35-14243, and 35-14655 and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official records for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or a portion thereof, are being dedicated to mitigation purposes. Use Changed Mitigation Mitigation Mitigation Right No. to Mitigation Rate (cfs) Volume (AF) Acres 29-2284 (previously 35-14014) Industrial 4.44 3215.5 N/A 29-2301 (previously 35-14015) Industrial 3.95 2858.3 N/A Combined Limit: 6073.8 If the specified mitigation rights, or portion thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or a termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.
- By December 1st of each year, the right holder shall provide a written report to the Department describing the number and location of acres irrigated that year, the volume of water diverted under this right, the source of mitigation for the next irrigation season, and the number and location of acres proposed to be irrigated in the following year.
- As resources allow, the Department will conduct at least one in-person field examination of the authorized place of use of this right each year to verify the required mitigation and authorized irrigation under this right prior to June 15th of each year. It shall be the responsibility of the right holder to follow up with the Department by June 15th of each year to determine if the field examination was performed. If the Department is unable to conduct the field examination for any reason, the right holder or its consultant shall perform the field examination and report findings from the field examination to the Department and the protestants to this right by July 15th of each year.
- R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
- 020 The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein.
- 933 This right is for the use of trust water, and it is subject to review 5 years after the date of permit approval to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
- 935 Administration of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required because use of water pursuant to this right is either non-consumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right.
- In the event the right holder does not maintain the right to use water rights 29-2284 and 29-2301 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right.
- 140 Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.
- T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
- 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.

Dates

Licensed Date : 8/16/2019

Decreed Date :

Permit Proof Due Date :

Permit Proof Made Date :

Permit Approved Date :

Permit Moratorium Expiration Date :

Enlargement Use Priority Date :

Enlargement Statute Priority Date :

Application Received Date:

Protest Deadline Date:

Other Information

State or Federal :

Water District Number : 120

Generic Max Rate Per Acre : 0.02

Generic Max Volume Per Acre : 4

Civil Case Number :

Decree Plaintiff :

Decree Defendant :

Swan Falls Trust or Nontrust : T

Swan Falls Dismissed :

DUE Act Number :

Close

Water Right Report : 35-14241(License/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Current Owner	FARMLAND RESERVE INC	79 S MAIN ST STE 1000	SALT LAKE CTY	UT	84111-1945
Previous Owner	LANCE AND/OR LISA FUNK PARTNERSHIP	PO BOX 310	AMERICAN FLS	ID	83211-0310
Representative	BROCKWAY ENGINEERING PLLC	C/O GREG SULLIVAN 2016 WASHINGTON ST N STE 4	TWIN FALLS	ID	83301-3082

Water Right Status

Priority Date : 2/8/2012

Basis : License

Status : Active

Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
GROUND WATER			

Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
GROUND WATER	07S	29E	7	0	NW	NW	NE	POWER	

Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	5.90 CFS	1476.40 AFA
TOTAL			5.90 CFS	1476.40 CFS

Places of Use

Printable view

Paginated view

Place of Use Legal Description : IRRIGATION (POWER county)

Show 10 entries

Search:

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
07S	29E	6			NE	NE	22
07S	29E	6			NW	NE	20
07S	29E	6			SW	NE	32
07S	29E	6			SE	NE	33
07S	29E	6			NE	NW	26
07S	29E	6			NW	NW	16
07S	29E	6			SW	NW	25
07S	29E	6			SE	NW	37
07S	29E	6			NE	SW	32

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
07S	29E	6			NW	SW	20

Showing 1 to 10 of 16 entries

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Next

Irrigation Totals

Total Acres Acre Limit

415.80 369.10

Conditions**Code Conditions**

- X35 Rights 35-14241 and 35-14655 when combined shall not exceed the irrigation of 415.8 acres.
- X35 Rights 35-7914 and 35-14241 when combined shall not exceed a total diversion rate of 6.46 cfs.
- X35 Rights 35-7914, 35-14241, and 35-14655 when combined shall not exceed a total diversion rate of 6.61 cfs.
- R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
- R02 A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
- 214 Prior to the diversion and use of water under Transfer approval 83782, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
- 213 Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
- 170 To mitigate for the depletion of water resulting from the use of water under water rights 35-14240, 35-14241, 35-14242, 35-14243, and 35-14655 and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official records for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or a portion thereof, are being dedicated to mitigation purposes. Use Changed Mitigation Mitigation Mitigation Right No. to Mitigation Rate (cfs) Volume (AF) Acres 29-2284 (previously 35-14014) Industrial 4.44 3215.5 N/A 29-2301 (previously 35-14015) Industrial 3.95 2858.3 N/A Combined Limit: 6073.8 If the specified mitigation rights, or portion thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or a termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.
- By December 1st of each year, the right holder shall provide a written report to the Department describing the number and location of acres irrigated that year, the volume of water diverted under this right, the source of mitigation for the next irrigation season, and the number and location of acres proposed to be irrigated in the following year.
- As resources allow, the Department will conduct at least one in-person field examination of the authorized place of use of this right each year to verify the required mitigation and authorized irrigation under this right prior to June 15th of each year. It shall be the responsibility of the right holder to follow up with the Department by June 15th of each year to determine if the field examination was performed. If the Department is unable to conduct the field examination for any reason, the right holder or its consultant shall perform the field examination and report findings from the field examination to the Department and the protestants to this right by July 15th of each year.
- R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
- 020 The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein.
- 933 This right is for the use of trust water, and it is subject to review 5 years after the date of permit approval to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.

935 Administration of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required because use of water pursuant to this right is either non-consumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right.

In the event the right holder does not maintain the right to use water rights 29-2284 and 29-2301 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right.

140 Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.

T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

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.

Dates

Licensed Date : 8/16/2019
 Decreed Date :
 Permit Proof Due Date : 4/1/2017
 Permit Proof Made Date : 2/9/2017
 Permit Approved Date : 3/3/2015
 Permit Moratorium Expiration Date :
 Enlargement Use Priority Date :
 Enlargement Statute Priority Date :
 Application Received Date: 2/8/2012
 Protest Deadline Date: 4/23/2012

Other Information

State or Federal :
 Water District Number : 120
 Generic Max Rate Per Acre : 0.02
 Generic Max Volume Per Acre : 4
 Civil Case Number :
 Decree Plaintiff :
 Decree Defendant :
 Swan Falls Trust or Nontrust : T
 Swan Falls Dismissed :
 DLE Act Number :
 Cary Act Number :
 Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

8/31/2023

Close

Water Right Report : 35-14242(License/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Current Owner	FARMLAND RESERVE INC	79 S MAIN ST STE 1000	SALT LAKE CTY	UT	84111-1945
Previous Owner	LANCE AND/OR LISA FUNK PARTNERSHIP	PO BOX 310	AMERICAN FLS	ID	83211-0310
Representative	BROCKWAY ENGINEERING PLLC	C/O GREG SULLIVAN 2016 WASHINGTON ST N STE 4	TWIN FALLS	ID	83301-3082

Water Right Status

Priority Date : 2/8/2012
 Basis : License
 Status : Active

Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
GROUND WATER			

Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
GROUND WATER	07S	29E	8	0	SW	NE	SW	POWER	

Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	2.39 CFS	478.00 AFA
TOTAL			2.39 CFS	478.00 CFS

Places of Use

[Printable View](#)
[Pages View](#)

Place of Use Legal Description : IRRIGATION (POWER county)

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
07S	29E	7			NE	SE	30
07S	29E	7			NW	SE	31
07S	29E	7			SW	SE	29
07S	29E	7			SE	SE	29

Irrigation Totals

Total Acres Acre Limit
 119.50

Conditions

Code Conditions

X35 Rights 35-7686B and 35-14242 when combined shall not exceed a total diversion rate of 4.65 cfs.

- R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
- 01J Prior to diversion of water under this right, the right holder shall install and maintain a flow meter measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
- R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
- 933 This right is for the use of trust water, and it is subject to review 5 years after the date of permit approval to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
- 935 Administration of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required because use of water pursuant to this right is either non-consumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right.
- 170 To mitigate for the depletion of water resulting from the use of water under water rights 35-14240, 35-14241, 35-14242 and 35-14243 and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official records for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or a portion thereof, are being dedicated to mitigation purposes. Use Changed Mitigation Mitigation Mitigation Right No. to Mitigation Rate (cfs) Volume (AF) Acres 29-2284 (previously 35-14014) Industrial 4.44 3215.5 N/A 29-2301 (previously 35-14015) Industrial 3.95 2858.3 N/A Combined Limit: 6073.8 If the specified mitigation rights, or portion thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or a termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.
- In the event the right holder does not maintain the right to use water rights 29-2284 and 29-2301 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right.
- By December 1st of each year, the right holder shall provide a written report to the Department describing the number and location of acres irrigated that year, the volume of water diverted under this right, the source of mitigation for the next irrigation season, and the number and location of acres proposed to be irrigated in the following year.
- As resources allow, the Department will conduct at least one in-person field examination of the authorized place of use of this right each year to verify the required mitigation and authorized irrigation under this right prior to June 15th of each year. It shall be the responsibility of the right holder to follow up with the Department by June 15th of each year to determine if the field examination was performed. If the Department is unable to conduct the field examination for any reason, the right holder or its consultant shall perform the field examination and report findings from the field examination to the Department and the protestants to this right by July 15th of each year.
- 020 The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein.
- 140 Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.

Water Supply Bank

Lease Type: Contract

Lease ID: 1724

Lease Status: Active

Lease Start Date: 1/1/2023

Lease End Date: 12/31/2023

Beneficial Use Div Rate Leased Div Volume Leased Acre Limit Leased Total Acres Leased

Irrigation	1.48	296.00	74.00	74.00
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Dates

Licensed Date : 8/16/2019
Decreed Date :
Permit Proof Due Date : 4/1/2017
Permit Proof Made Date : 2/9/2017
Permit Approved Date : 3/3/2015
Permit Moratorium Expiration Date :
Enlargement Use Priority Date :
Enlargement Statute Priority Date :
Application Received Date: 2/8/2012
Protest Deadline Date: 4/23/2012

Other Information

State or Federal :
Water District Number : 120
Generic Max Rate Per Acre : 0.02
Generic Max Volume Per Acre : 4
Civil Case Number :
Decree Plaintiff :
Decree Defendant :
Swan Falls Trust or Nontrust : T
Swan Falls Dismissed :
DLE Act Number :
Cary Act Number :
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

8/31/2023

Close

Water Right Report : 35-14243(License/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Current Owner	FARMLAND RESERVE INC	79 S MAIN ST STE 1000	SALT LAKE CTY	UT	84111-1945
Previous Owner	LANCE AND/OR LISA FUNK PARTNERSHIP	PO BOX 310	AMERICAN FLS	ID	83211-0310
Representative	BROCKWAY ENGINEERING PLLC	C/O GREG SULLIVAN 2016 WASHINGTON ST N STE 4	TWIN FALLS	ID	83301-3082

Water Right Status

Priority Date : 2/8/2012

Basis : License

Status : Active

Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
GROUND WATER			

Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
GROUND WATER	07S	29E	5	2	NE	NW	NE	POWER	

Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	7.88 CFS	2636.00 AFA
TOTAL			7.88 CFS	2636.00 CFS

Places of Use

Printable View

Pages View

Place of Use Legal Description : IRRIGATION (POWER county)

Show 10 entries

Search:

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
06S	29E	32			NE	SW	40
06S	29E	32			SW	SW	38
06S	29E	32			SE	SW	38
06S	29E	32			NE	SE	40
06S	29E	32			NW	SE	40
06S	29E	32			SW	SE	38
06S	29E	32			SE	SE	38
07S	29E	4	3		NE	NW	33
07S	29E	4	4		NW	NW	28

Township	Range	Section	Lot	QQQ	QU	Q	Acres
07S	29E	4			SW	NW	40

Showing 1 to 10 of 19 entries

Previous

1

2 Next

Irrigation Totals

Total Acres Acre Limit

659.00

Conditions**Code Conditions**

- R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
- 01J Prior to diversion of water under this right, the right holder shall install and maintain a flow meter measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
- R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
- 933 This right is for the use of trust water, and it is subject to review 5 years after the date of permit approval to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
- 935 Administration of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required because use of water pursuant to this right is either non-consumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right.
- 170 To mitigate for the depletion of water resulting from the use of water under water rights 35-14240, 35-14241, 35-14242 and 35-14243 and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official records for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or a portion thereof, are being dedicated to mitigation purposes. Use Changed Mitigation Mitigation Right No. to Mitigation Rate (cfs) Volume (AF) Acres 29-2284 (previously 35-14014) Industrial 4.44 3215.5 N/A 29-2301 (previously 35-14015) Industrial 3.95 2858.3 N/A Combined Limit: 6073.8 If the specified mitigation rights, or portion thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or a termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.
- In the event the right holder does not maintain the right to use water rights 29-2284 and 29-2301 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right.
- By December 1st of each year, the right holder shall provide a written report to the Department describing the number and location of acres irrigated that year, the volume of water diverted under this right, the source of mitigation for the next irrigation season, and the number and location of acres proposed to be irrigated in the following year.
- As resources allow, the Department will conduct at least one in-person field examination of the authorized place of use of this right each year to verify the required mitigation and authorized irrigation under this right prior to June 15th of each year. It shall be the responsibility of the right holder to follow up with the Department by June 15th of each year to determine if the field examination was performed. If the Department is unable to conduct the field examination for any reason, the right holder or its consultant shall perform the field examination and report findings from the field examination to the Department and the protestants to this right by July 15th of each year.
- 020 The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein.
- 140 Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.

Dates

Licensed Date : 8/16/2019
Decreed Date :
Permit Proof Due Date : 4/1/2017
Permit Proof Made Date : 2/9/2017
Permit Approved Date : 3/3/2015
Permit Moratorium Expiration Date :
Enlargement Use Priority Date :
Enlargement Statute Priority Date :
Application Received Date: 2/8/2012
Protest Deadline Date: 4/23/2012

Other Information

State or Federal :
Water District Number : 120
Generic Max Rate Per Acre : 0.02
Generic Max Volume Per Acre : 4
Civil Case Number :
Decree Plaintiff :
Decree Defendant :
Swan Falls Trust or Nontrust : T
Swan Falls Dismissed :
DLE Act Number :
Cary Act Number :
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

8/31/2023

Attachment No. 4

Power of Attorney

[Search again](#)

Results (as of 12/20/23)

Robert Lynn Harris

Status

Active

Admittance Date

09/30/2004

Firm

Holden, Kidwell, Hahn & Crapo, PLLC

Mailing Address

PO Box 50130

Idaho Falls, ID 83405

Phone

(208) 523-0620

Phone Ext**Fax**

(208) 523-9518

Bar Email Address

rharris@holdenlegal.com

Website Address

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Court eService Email

efiling@holdenlegal.com

Need a correction?

Is something not correct? Please use the Address Change Form

The information above is based on the Idaho State Bar records as of the date listed above. To send us an update on your own listing, please use the online Address Change Form or send an email to the Licensing Department. Please notify the Licensing Department if you find that another attorney's information is incorrect. Questions on attorney status and good standing should also be directed to the Licensing Department at (208) 334-4500.

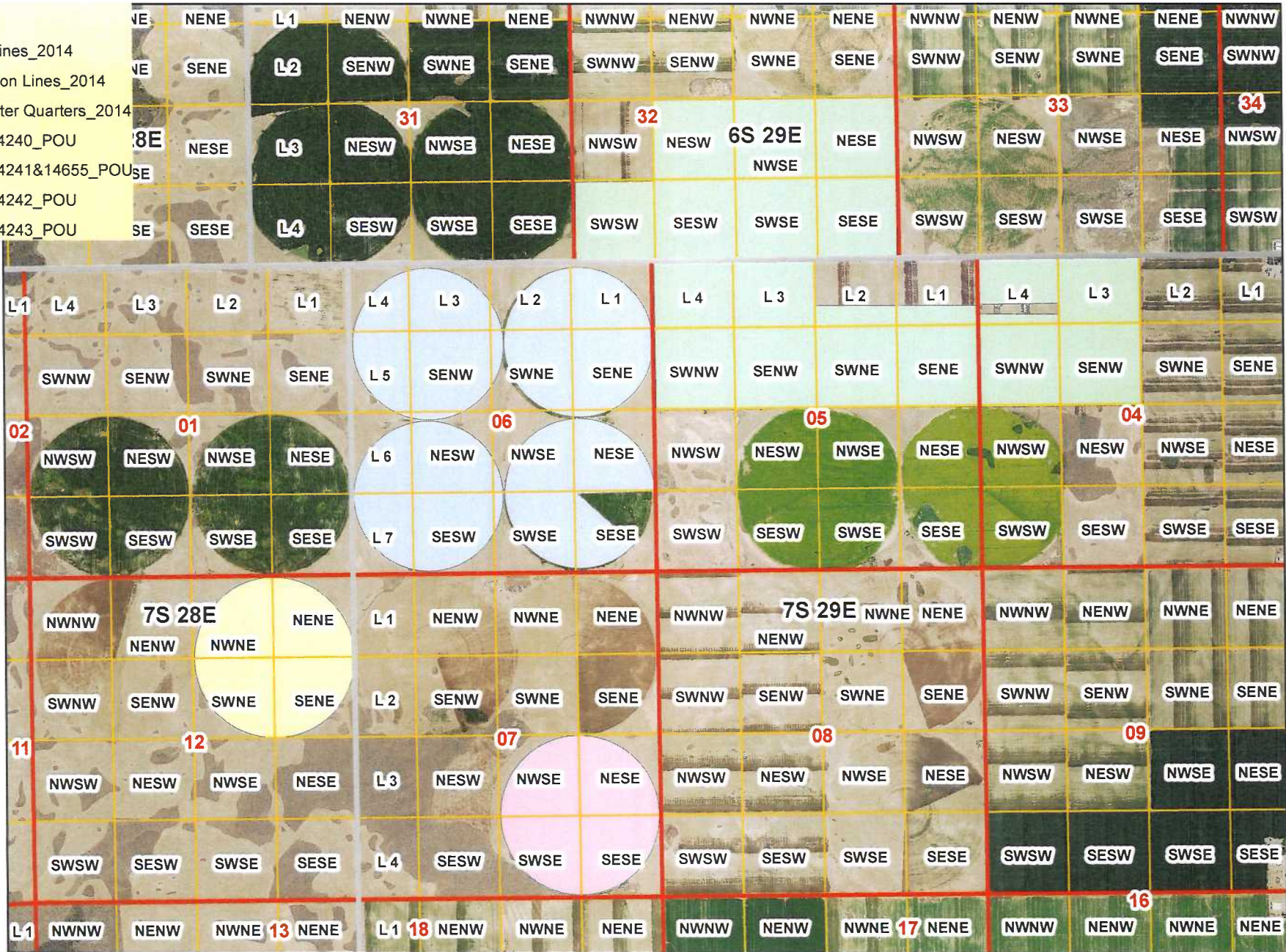
Attachment No. 7a
Map

FARMLAND RESERVE, INC.



Legend

- TR Lines_2014
- Section Lines_2014
- Quarter Quarters_2014
- 35-14240_POU
- 35-14241&14655_POU
- 35-14242_POU
- 35-14243_POU



66688

Attachment No. 10

Other

Robert L. Harris (ISB # 7018)
rharris@holdenlegal.com
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
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P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF SUBSTITUTE
MITIGATION PLAN FOR WATER RIGHT
NOS. 35-14240, 35-14655, 35-14241, 35-
14242, and 35-14243 IN THE NAME OF
FARMLAND RESERVE, INC.

**PETITION FOR APPROVAL OF
SUBSTITUTE
MITIGATION PLAN**

Farmland Reserve, Inc. ("FRI"), by and through its counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby submits this *Petition for Approval of Substitute Mitigation Plan* for Water Right Nos. 35-14240, 35-14655, 35-14241, 35-14242, and 35-14243 (the "FRI Rights") pursuant the conditions contained in the FRI Rights and the Rules of Procedure of the Idaho Department of Water Resources and the Water Resource Board (found at IDAPA 37.01.01), specifically IDAPA 37.01.01.002, 152, and 210.

BACKGROUND

1. Lance and/or Lisa Funk (collectively "Funk") filed applications for water right permits for Water Right Nos. 35-14240, 35-14241, 35-14242, 35-14243, and 35-14243 on February 8, 2012 (amended on March 14, 2012) (hereinafter, the "Applications"). In the aggregate, the Applications sought new water rights for the irrigation of up to 1,879.3 acres.

2. As mitigation for the depletive effects of the new diversions of water sought under the Applications, Funk proposed to use Water Right Nos. 35-14014 and 35-14015 owned at the time by Magnida Nitrogen Idaho, LLC d/b/a/ "Magnida", except for eighty (80) acre-feet of these rights retained by Magnida for site testing and other miscellaneous uses.
3. The Applications were protested by (1) the Surface Water Coalition¹ (the "Coalition"); (2) Idaho Power Company ("IPC"); and (3) Idaho Ground Water Appropriators, Inc. ("IGWA"). The Coalition, IPC, and IGWA are referred to herein collectively as the "Protestants." Funk and the Protestants are referred to herein as the "Parties".
4. The protests resulted in an administrative contested case before the Idaho Department of Water Resources ("IDWR" or "Department").
5. The Parties executed and filed separate, but consistent, stipulations to withdraw protests in order to resolve the contested case.
6. As part of those stipulations, Funk agreed to withdraw the application for permit for 35-14244, which sought the right to develop the irrigation of 563 acres. However, as part of the stipulations, the mitigation amount for the remaining Applications remained the same as proposed to mitigate for all the Applications. The specific provision in the stipulations is set forth here:

Withdrawal of Application for Permit No. 35-14244: Funk hereby withdraws Application for Permit No. 35-14244. Except for eighty (80) acre-feet retained by Magnida for site testing and other miscellaneous uses (as set forth in Funk's agreement with Magnida), Funk shall use the entire remaining portion of the Water Rights to mitigate for impacts of diversions under the remaining applications (i.e. 35-14240, 35-14241, 35-14242 and 35-14243) so long as they are available under the current agreement and shall not allow the entire remaining portion of the Water Rights to be used for any purpose other than the mitigation of the remaining Water Rights Applications, including mitigation for other consumptive uses.

¹ The Coalition consists of A&B Irrigation District, Burley Irrigation District, Milner Irrigation District,

7. After withdrawal of 35-14244, the Applications, in the aggregate, provided for the ability to develop water rights for the irrigation of up to 1,316.3 acres.

8. In addition, the Parties stipulated to several conditions associated with the mitigation plan for the Applications. Draft permits (with the associated mitigation conditions) were circulated to the parties by the designated hearing officer for review and approval, and ultimately, permits were issued for the Applications on March 3, 2015, with the following conditions (taken from the permit for 35-14240, but consistent with all the Applications):

7. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official records for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or a portion thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
35-14014	Industrial	4.44	3215.5	N/A
35-14015	Industrial	3.95	2858.3	N/A
Combined Limit:			6073.8	

If the specified mitigation rights, or portion thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or a termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.

8. In the event the right holder does not maintain the right to use water rights 35-14014 and 35-14015 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right.

9. The permits issued for the Applications were eventually licensed on August 16, 2019, with the same conditions in the permits, except for a minor change to the water right identification numbers for the mitigation rights (renumbered to 29-2284 and 29-2301) as set forth here (taken from the permit for 35-14240, but consistent with all the Applications):

Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

7. To mitigate for the depletion of water resulting from the use of water under water rights 35-14240, 35-14241, 35-14242 and 35-14243 and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official records for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or a portion thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
29-2284 (previously 35-14014)	Industrial	4.44	3215.5	N/A
29-2301 (previously 35-14015)	Industrial	3.95	2858.3	N/A
Combined Limit:			6073.8	

If the specified mitigation rights, or portion thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or a termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.

8. In the event the right holder does not maintain the right to use water rights 29-2284 and 29-2301 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right.

10. Since the Applications were filed, Water Right Nos. 29-2284 and 29-2301 (the mitigation rights which were renumbered from Water Right Nos. 35-14014 and 35-14015) were purchased by Power County on April 14, 2017. Water Right Nos. 29-2284 and 29-2301 are now referred to below as the “Power County Rights.”

11. Once issued, and continuing through 2018, the permits for the FRI Rights were mitigated as provided in the above conditions by lease and non-use of the Power County Rights.

12. Water Right Transfer Nos. 83782 and 83781 were approved by IDWR on April 16, 2020.

These transfers, filed by Funk, shifted 46.7 acres of the allowed irrigated acres around with some of the more senior water rights on the underlying farm ground. No additional acres were transferred into the farm, and no acres were transferred off the farm. Water Right No. 35-14655 is a split portion of Water Right No. 35-14240 that is associated with these referenced transfers.

13. The FRI Rights were purchased by FRI in conjunction with the purchase of the underlying farm ground on December 20, 2021. Ownership of the FRI Water Rights has been updated on the records of IDWR.

14. After licensing of the FRI Rights and change of ownership of these rights, and including the split of a portion of 35-14240 (numbered as 35-14655), the FRI Rights (which are the subject to this petition) are summarized here:

Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Limitation	Listed Volume Limitation (AFA)	Combined Volume Limitation (AF)	Acres	Point of Diversion
35-14240	Farmland Reserve Inc.	License	Feb. 8, 2012	Ground water	Irrigation	2.44	None	448	None	122	7S 28E Sec. 1 SWSWSE Huse Farm#1
35-14655 (split off portion of 35-14240)						0.15		63.7		46.7	7S 29E Sec. 6 SWSE 7S 29E Sec. 7 NWNE Huse Farm#2
35-14241						5.9		1476.4		369.1	7S 29E Sec. 7 NW/NWNE Huse Farm#2
35-14242						2.39		478		119.5	7S 29E Sec. 8 SW/NESW Huse Farm#3
35-14243						7.88		2636		659	7S 29E Sec. 5 NEM/NNE NP/R Farm
TOTALS						18.76		5102.1		1316.3	

15. For the time period between 2019 and 2023, the Power County Rights were leased to the Aberdeen American Falls Ground Water District (“AAFGWD”) to be used by the AAFGWD as a mitigation source of 6,153.8 acre-feet associated with the AAFGWD’s obligations under the *Settlement Agreement Entered into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of the Idaho Ground Water Appropriators, Inc.*, and its addenda. AAFGWD subleased the necessary amount of Power County Rights to Funk and FRI, in exchange for recharged storage water in the same amount to allow Funk and FRI, to meet the mitigation obligations under the FRI Rights.

16. Commencing in 2024, FRI has been informed by Power County that it has elected to now lease a majority of the volume associated with the Power County Rights to Lamb Weston to be utilized with its American Falls facility expansion.
17. Because of Power County's stated intent to lease a majority of the volume associated with the Power County Rights beginning in 2024 to Lamb Weston, in 2023, FRI pursued and received approval for a transfer to move existing water rights to cover a portion of the place of use of the FRI Rights under T88535 (for 58 acres).
18. Further, FRI has received approval for several water supply bank rentals to cover portions of the places of use of the FRI Rights and intends to submit additional rental applications and additional transfer applications to cover other portions of the place of use of the FRI Rights.
19. The practical effect of the above-described transfers and water supply rentals is a reduction of the extent of use of the FRI Rights and associated mitigation provided by the Power County Rights.
20. While some volume of water associated with the Power County Rights may be available for use by FRI (either through a direct lease with Power County or a sublease with AAFGWD consistent with what was done previously), which FRI wishes to retain as a source of mitigation water under the FRI Rights, it is now necessary for FRI to submit a substitute mitigation plan to include an alternative source of mitigation water for the FRI rights. The process to submit a substitute mitigation plan is authorized and is submitted pursuant to Condition No. 8 of the FRI Rights, which provides:

8. In the event the right holder does not maintain the right to use water rights 29-2284 and 29-2301 for mitigation purposes, the right holder may propose a substitute mitigation plan. The substitute plan must be provided to the Department no later than December 1st in the year immediately prior to the irrigation season where the substitute plan is proposed to be implemented. The Department will advertise the substitute plan to the public and the protestants shall have the right to challenge the substitute plan. If the substitute plan is not approved by the Department, the right holder shall not divert under this right.

21. Based on the foregoing, FRI submits the following substitute mitigation plan.

SUBSTITUTE MITIGATION PLAN

FRI's substitute mitigation plan proposes to retain the current conditions in the FRI Rights which authorize use of the Power County Rights as a mitigation source. As provided in the conditions of the FRI Rights, "[i]f the specified mitigation rights, or portion thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water, a priority call, or termination in lease contract then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights." Accordingly, there is already a built-in formula to adjust the amount of authorized irrigated acres based on the volume of mitigation water available.

FRI requests these conditions remain. The original permits for the FRI Rights authorized, in the aggregate, the irrigation of 1,316.3 acres which was mitigated with the non-diversion of 6,073.8 acre-feet under the Power County Rights, for a calculated amount of 4.614 acre-feet per acre. Consistent with the current approved mitigation plan, to the extent Power County agrees to lease a portion of the Power County Rights to FRI, the volume leased will be divided by 4.614 to calculate the maximum number of acres that will be irrigated each year under the FRI Rights that will be mitigated with the Power County Rights. For example, if Power County agrees to lease 1,305.9 acre-feet for mitigation, FRI will be authorized to irrigate 283 acres under the FRI Rights (283 acres X 4.614 acre-feet per acre = 1,305.9 acre-feet).

In addition to the existing mitigation plan, FRI proposes the addition of new conditions to the FRI Rights that authorize the use of recharged storage water as mitigation for the FRI Rights. FRI will initially utilize water leased from the Shoshone-Bannock Tribes of the Fort Hall Reservation ("Tribes"), although the proposed substitute mitigation plan is broad enough to utilize leased storage water from other storage contract holders. Initially, however, attached as **Exhibit 1** is a lease with terms that FRI and the Tribes have agreed to in principle but is awaiting formal approval by each entity.² The lease provides that FRI may lease up to a certain amount of storage water each year, depending on FRI's needs, which FRI will recharge. The term of the lease is for an initial term of five (5) years, which, if successful, will likely be extended.

Consistent with the same amount of mitigation water per acre provided under the mitigation provided by the Power County Rights already authorized, FRI proposes to recharge 4.614 acre-feet for each acre of property irrigated under the FRI Rights that are not mitigated with the Power County Rights. FRI proposes to recharge the water in recharge sites operated by the Idaho Water Resource Board (the "Board") or other available sites, but with an emphasis on recharge in areas that are nearest to the points of diversion of the FRI Rights to benefit the combined Nearly Blackfoot to Neeley and Neeley to Minidoka reaches of the Snake River, which previously submitted modeling under the Department's model indicates is the most affected of the Snake River reaches. *See Affidavit of Greg W. Sullivan* (and associated exhibits submitted with the affidavit filed in the prior contested case, included here for the convenience of the parties). The Board has historically allowed any water users to utilize its recharge sites for recharge purposes provided necessary fees are paid, and we anticipate similar action by the

² Upon final execution, FRI will submit a fully executed copy of the lease agreement (with financial information redacted). In the unlikely event the lease agreement is not signed, FRI will notify the Department and Protestants accordingly.

Board. An accounting of the accomplished recharge will be included in the annual report. Attached at **Exhibit 2** is a map obtained from the Board of the currently available recharge sites.

As provided in condition 8 of the FRI Rights, we request that the Department advertise this substitute plan to allow for filing of protests, if any. Where it is unclear what the appropriate filing fee is for this type of filing for advertisement, we request that IDWR provide the amount of the filing fee to FRI, which FRI will promptly pay.

DATED this 30th day of November, 2023.



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on 30th day of November, 2023, a true and correct copy of the foregoing document was served by email and addressed to the following:

James Cefalo Hearing Officer IDAHO DEPARTMENT OF WATER RESOURCES 900 N. Skyline Dr., Suite A Idaho Falls, ID 83402-1718 james.cefalo@idwr.idaho.gov file@idwr.idaho.gov	Travis L. Thompson MARTEN LAW LLP PO Box 63 Twin Falls, ID 83303-0063 tthompson@martenlaw.com jnielsen@martenlaw.com
John K. Simpson MARTEN LAW LLP PO Box 2139 Boise, ID 83701-2139 jsimpson@martenlaw.com	Thomas J. Budge Elisheva M. Patterson RACINE OLSON, PLLP PO Box 1391 Pocatello, ID 83204 tj@racineolson.com elisheva@racineolson.com
W. Kent Fletcher FLETCHER LAW OFFICE PO Box 248 Burley, ID 83318 wkf@pmt.org	



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\RLH\22801-001 Farmland Reserve - License Mitigation\Petition Substitute Mitigation Plan.doc

TRIBAL WATER LEASE AGREEMENT

This Tribal Water Lease Agreement ("Lease Agreement") is entered into between the SHOSHONE-BANNOCK TRIBES of the Fort Hall Reservation ("Tribes"), acting through the Tribal Lease Pool Committee in the operation of the Tribal Water Supply Bank and the Fort Hall Business Council, and FARMLAND RESERVE, INC. ("FRI"). The Tribes and FRI may be referred to herein collectively as the "parties" and individually as a "party." This Lease Agreement shall be effective on the date executed by both parties.

RECITALS

A. Pursuant to *The 1990 Fort Hall Indian Water Rights Agreement*, the Tribes are entitled to federal storage contract rights, held in trust for the Tribes by the United States, in an amount of 2.8059% of the storage space in American Falls Reservoir and 6.9917% of the storage space in Palisades Reservoir. These contract storage rights are equivalent to full capacity volumes of 46,931 acre-feet in American Falls Reservoir and 83,900 acre-feet in Palisades Reservoir. These water rights and associated volumes of storage water are referred to herein as the "Tribal Water Supply Bank." Due to sedimentation, the maximum annual volumes accrued to each of the contract storage rights are less than the stated capacity volumes.

B. The Shoshone-Bannock Tribes have adopted the Shoshone-Bannock Tribal Water Supply Bank Rules, which have been duly approved by the Idaho Water Resources Board, for the purposes of leasing storage water held by the Tribes in American Falls Reservoir for delivery and use in the Snake River Basin anywhere within Idaho, and for leasing storage water held by the Tribes in Palisades Reservoir for delivery and use in the Snake River Basin above Milner Dam.

C. The lessee under this Agreement is FRI. FRI desires to lease storage water from the Tribes for any lawful purpose desired by FRI, including but not limited to ground water recharge or direct irrigation purposes, based on the terms herein for use in 2024 through the end of 2028.

AGREEMENT

Now, therefore, and in consideration of the covenants and obligations set forth herein, and for other good and valuable consideration, the Tribes and FRI agree as follows:

1. Leased Water. The Tribes will provide to FRI and FRI will rent from the Tribes, a volume ranging between 0 and 3,000 acre-feet each year, the precise amount of which will be designated by written notice to the Tribes on or before the earlier of (1) June 1st or (2) fourteen (14) days after the Date of Allocation as defined in the *Water District 1 Rental Pool Procedures* (as may be amended from time to time),¹ for each year of the Term (or if no notice is given, then 3,000 acre-feet) (the "Lease Volume"). Water leased under this Lease Agreement is subject to the following terms and conditions:

1.1 The Lease Volume will be supplied from the Tribal Water Supply Bank. Water available for the Lease Volume excludes all other water rights and water assets of the Tribes, and such water rights and assets are not a part of this Lease Agreement.

1.2 The Tribes hold a "Reserve Supply" equal to 25,276 acre-feet that was secured under a 2015 settlement agreement. The Tribes may request delivery of the Reserve Supply each year up to an

¹ As of the date of this Lease Agreement, the "Date of Allocation" is defined as "the date determined each year by the Watermaster of which the maximum accrual of reservoir spaceholders occurs." Procedure 2.14.

Final
Date

annual volume of 10,000 acre-feet to be administered as Tribal storage allocation in American Falls Reservoir. The Tribes, in their sole discretion, may elect to use the Reserve Supply to fulfill Lease Volume commitment defined in Section 1 above. The Reserve Supply will be provided through the Tribal Water Supply Bank.

2. **Water Delivery and Administration.** Delivery of the Lease Volume shall occur when the Lease Volume has been released from either Palisades or American Falls Reservoir, and appropriately deducted from the Tribes' storage account in these reservoirs. The Tribes and FRI shall cooperatively work together to ensure the delivery of the Lease Volume to FRI and the appropriate administration of such water.
 - 2.1 The quantity of water to be leased under this Lease Agreement under Paragraph 1 will be reviewed by the Tribal Rental Pool Committee as required by the Shoshone-Bannock Tribal Water Supply Bank Rules.
 - 2.2 Any carriage or other losses of Lease Volume that may occur downstream from American Falls Reservoir or Palisades Reservoir shall be the responsibility of the Tribes such that the Tribes shall deliver the entire Lease Volume to FRI's designated delivery location(s).
 - 2.3 The scheduling of releases of the Lease Volume shall be in the sole discretion of FRI; provided however, that FRI will notify and cooperate with the Tribes and the U.S. Bureau of Reclamation (Reclamation) to implement any storage release request. The Tribes and FRI will cooperate with Reclamation and Water District 1 in measuring and accounting for delivery of the Lease Volume.
 - 2.4 The Lease Volume shall only be available for use by the FRI or an affiliated entity of FRI and shall not otherwise be available for re-marketing or assignment to a third party, unless such re-marketing or assignment is agreed to in writing by the Tribes.
3. **Term.** The initial term of this Lease Agreement shall be for five (5) years commencing January 1, 2024 and terminating on December 31, 2028. Provided, however, that after expiration of the initial term, this Lease Agreement will automatically renew for subsequent one (1) year terms (commencing on January 1st of each subsequent year and terminating on December 31st of the same year) unless either party provides written notice to the other party is received on or before December 1st of such lease year of the intent to terminate this Lease Agreement.
4. **Agreement Contingencies.** This Lease Agreement, and all obligations hereunder, are expressly contingent upon:
 - 4.1 Payment by FRI pursuant to Section 5 below;
 - 4.2 Delivery of the Lease Volume by the Tribes to FRI prior to November 30, 2023, subject to the provisions of Paragraphs 5-7 below.
5. **Payment.** Payment for the Lease Volume shall consist of two components: (1) an "Option Payment" and (2) a "Water Lease Payment."
 - 5.1 **Option Payment.** For each year of the term, FRI shall be obligated to make the Option Payment for each year of the term to hold open the option each year and reserve water for FRI's use whether or not FRI takes delivery of any amount of the Lease Volume for such year of the term. For 2024, the Option Payment shall be [REDACTED]. Thereafter, the Option

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Payment shall increase each year of the term in accordance with the Consumer Price Index ("CPI") measured as of June 1st of each year of the term.

5.2 Water Lease Payment. For 2024, the Water Lease Payment shall be [REDACTED] per acre foot of the Lease Volume. Thereafter, the Water Lease Payment price per acre foot of the Lease Volume shall increase each year of the term in accordance with the CPI measured as of June 1st of each year of the term. The Option Payment shall be credited towards to the Water Lease Payment each year that FRI elects to lease any of the Lease Volume.

5.3 Possible Reductions of Payment. Notwithstanding the foregoing, if the Tribes are unable to make available for delivery of the full Lease Volume, FRI shall only pay the price per acre foot of the Water Lease Payment of water the Tribes make available for delivery. Provided, however, that in the unlikely but possible event that FRI provides notice to take delivery of a Lease Volume that is of a total amount equal to or in excess of what the Option Payment would cover at the price per acre foot of the Lease Volume, and less than such amount is provided, the Option Payment shall be pro rata reduced to an amount equal to the Water Lease Payment price per acre foot for the water actually delivered by the Tribes.

The Option Payment and Water Lease Payment are collectively referred to herein as the "Lease Payment."

6. Payment Schedule. The Lease Payment shall be payable by FRI as follows:

6.1 50% of the Lease Payment is due by the later of (1) July 31st of each year of the term, or (2) fourteen (14) days after the Date of Allocation as defined in the *Water District 1 Rental Pool Procedures*;

6.2 The balance of the Lease Payment is due by November 1st of each year of the term;

6.3 All payments are payable by wire transfer to the Tribes within five (5) business days of the due date stated above.

7. Termination. Either the Tribes or FRI may terminate this Lease Agreement in accordance with the provisions below:

7.1 The Tribes or FRI may terminate this Lease Agreement:

(a) For any uncured violation or breach of the terms of this Lease Agreement; or

(b) If any of the terms and conditions of any approval of the lease arrangement, or other applicable state or federal law, rule, or regulation, or the administration of the leased water, are inconsistent with the terms of this Lease Agreement.

7.2 Termination shall be effective within 30 days of provision of written notice to the other party detailing the basis for such termination. The party against whom such termination is asserted shall have 30 days to cure the violation or breach that is the basis for the termination.

7.3 Termination may be subject to the Conflict Resolution provisions of Section 10 if the party against whom termination is sought disagrees with the basis of the termination.

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Date

- 7.4 In the event of any such termination, there shall be an accounting of the Lease Payment paid by FRI and the Lease Volume delivered by the Tribes as of the termination date. FRI shall pay for all Lease Volume delivered. If FRI has submitted payment for the Lease Volume that remains undelivered by the termination date, the Tribes shall refund the portion of the Lease Payment received for water that remains undelivered, and the Tribes will not be obligated to provide such water unless the parties otherwise agree in writing.

8. Miscellaneous Provisions.

- 8.1 **Amendments.** No amendment or modification of this Lease Agreement or its provisions shall be effective unless documented in writing and approved and executed by all parties with the same formality as this Lease Agreement.
- 8.2 **Force Majeure.** Delays or inability to perform any of the requirements of this Lease Agreement within the term or time limits prescribed herein shall be excused to the extent that performance is rendered impossible by any event beyond the control of either party including but not limited to drought, governmental acts or orders or restrictions, war, terrorism or any other reason where failure to perform is beyond the reasonable control of and is not caused by the conduct of the non-performing party. A force majeure event shall not include financial inability to complete performance of an obligation.
- 8.3 **Notices.** All notices and other communications under this Lease Agreement shall be in writing. Notices shall be deemed as duly received on the date of service, if served personally on the party to whom notice is to be given. Notices sent by mail shall be deemed as duly received five (5) days from the date said notice is mailed to the party to whom notice is to be given, either by first class mail, registered or certified, postage prepaid or by express delivery with handling prepaid. Notices sent by email shall be deemed delivered when the intended recipient is shown to have received the email. Either party may change its address for notices by sending written notice to the other party in accordance herewith. Notices shall be addressed as follows:

If to the Shoshone-Bannock Tribes:

Chairman, Fort Hall Business Council
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203
**email

With a Copy to:

Tribal Water Engineer
Shoshone-Bannock Tribes Water Resources Department
P.O. Box 306
Fort Hall, Idaho 83203
Phone: (208) 239-4580
**email

If to the FRI

Jared C. Cobell
P.O. Box 10
American Falls, Idaho 83211
Phone: (208) 844-6749

Final
Date

[jacobell@cffarms.com](mailto:jcobell@cffarms.com)

With a Copy to:

Robert L. Harris
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
1000 Riverwalk Dr. Suite 200
Idaho Falls, ID 83402
Phone: 208-523-0620
rharris@holdenlegal.com

- 9. Compliance with Laws and Usage.** The parties, at their own expense, will comply with all federal, state, and tribal laws, ordinances, rules, and regulations applicable to this Lease Agreement and the business conducted pursuant thereto.
- 10. Conflict Resolution.** In the event of any dispute, claim, question, or disagreement arising from or relating to the Lease Agreement or the breach thereof, the Tribes and FRI agree as follows:
- (a) The parties will initially engage in good faith negotiation in an attempt to resolve the conflict cooperatively.
 - (b) If the conflict is not resolved to the satisfaction of either party through good faith negotiation, the parties agree to submit such dispute to non-binding mediation in an effort to resolve the same.
 - (c) If formal legal proceedings are commenced in connection with this Lease Agreement, the parties agree that the Shoshone-Bannock Tribal Court shall be the sole, proper, and exclusive forum and venue for such proceedings.
 - (d) The laws and regulations of the Shoshone-Bannock Tribes shall govern the interpretation of this Lease Agreement and/or any formal legal proceedings commenced regarding this Lease Agreement.
- 11. Attorneys' Fees.** In any action concerning the interpretation or enforcement of this Lease Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees and costs incurred, including any costs and attorneys' fees incurred in appellate proceedings.
- 12. Binding Effect.** All of the covenants, conditions, and provisions of this Lease Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 13. Entire Agreement.** This Lease Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or oral or written agreements between the parties respecting the subject matter hereof.
- 14. Severability.** If any provision of this Lease Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Lease Agreement, and such other provisions shall continue in full force and effect, unless Sections 1, 5 or 6 are held to be invalid or unenforceable.

Final
Date

- 15. Headings.** The headings of paragraphs and sections in this Lease Agreement are inserted only as a matter of convenience and for reference purposes, and they do not define, limit, or describe the scope of this Lease Agreement or the intent of any of the provisions thereof.
- 16. Sovereign Immunity.** Neither the execution of this Lease Agreement, nor any provision contained herein shall be interpreted to act as a waiver of the Shoshone-Bannock Tribes' sovereign immunity. The Shoshone-Bannock Tribes hereby specifically reserves and retains its sovereign immunity and any rights appurtenant thereto. The Shoshone-Bannock Tribes' sovereign immunity from suit may only be waived by resolution of the Fort Hall Business Council.
- 17. Contract Interpretation.** The parties have participated jointly in the negotiation and drafting of this Lease Agreement. If an ambiguity or question of intent or interpretation arises, this Lease Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease Agreement.
- 18. No Third-Party Beneficiary.** This Lease Agreement is exclusively for the benefit of and governs only the parties hereto. The Tribes and FRI are the only parties to this Lease Agreement and are the only parties entitled to enforce the terms of this Lease Agreement. Nothing in this Lease Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.
- 19. Indemnification.** FRI shall indemnify the Tribes and its officers, subsidiaries, agents, and employees (the "Indemnitees") and the FRI shall hold the Indemnitees harmless for any damages, claims, demands, personal injury, illness, death, property damage, or other loss resulting in any manner in connection with FRI's use of the water leased pursuant to this Lease Agreement.
- 20. No Waiver.** Forbearance in enforcing any right or remedy under this Lease Agreement shall not be deemed a waiver nor shall it be the basis for an inference that any party hereto has waived any provision hereof or that a party has waived any right hereunder.

This Lease Agreement shall be effective when signed by both the Tribes and FRI.

SHOSHONE-BANNOCK TRIBES:

Date: _____

By: _____

Chairman
Fort Hall Business Council

FARMLAND RESERVE, INC.

Date: _____

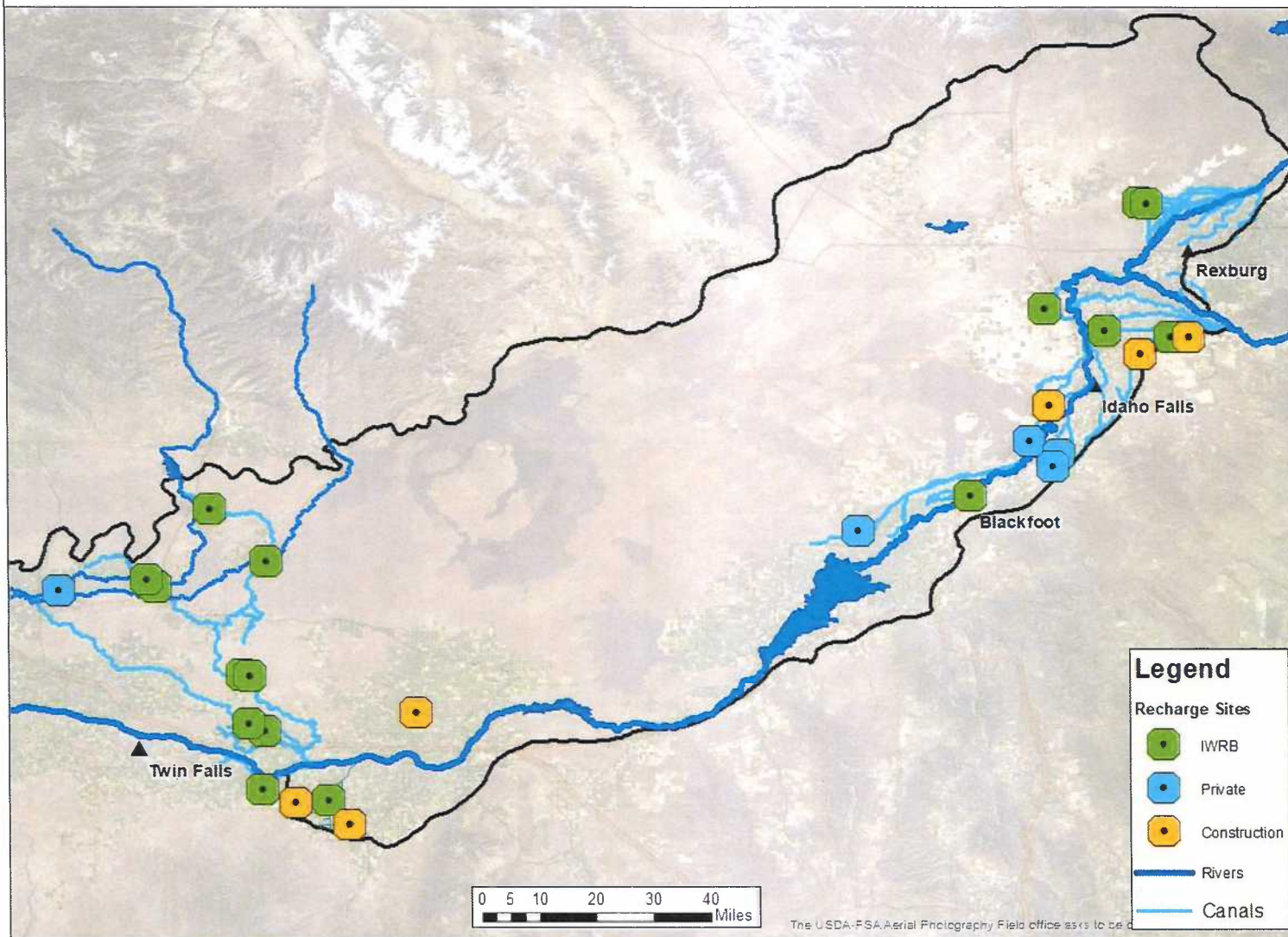
By: _____

Title

86988

Exhibit 2

ESPA Managed Recharge Sites





Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

RECEIVED

DEC 21 2023

Department of Water Resources
Eastern Region

Established in 1896

1000 Riverwalk Drive, Suite 200

PO Box 50130

Idaho Falls, Idaho 83405

Tel: (208) 523-0620

Fax: (208) 523-9518

www.holdenlegal.com

rharris@holdenlegal.com

December 21, 2023

James Cefalo
Eastern Region Office
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: Transfer Application for WR 35-14240, WR 35-14655, WR 35-14241, WR 35-14242, and WR 35-14243 in the Name of Farmland Reserve, Inc.

Dear James:

In accordance with your email from December 5, 2023, enclosed is an *Application for Transfer* for the above-referenced water rights to amend and update the mitigation conditions of the above-referenced water rights. We previously submitted a *Petition for Approval of Substitute Mitigation Plan*, which we believe complied with the conditions. Nevertheless, at your instruction, we submit the enclosed transfer that proposes to accomplish the same request set out in our petition. We have also included the filing fee of \$1,940.00. We appreciate your attention to this matter. If you have any questions or need any further information, please let me know.

Best regards,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

\\law\data\wpdata\rlh\22801-001 farmland reserve - license mitigation\2023.12.21 ltr to cefalo.docx



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

December 27, 2023

FARMLAND RESERVE INC
79 S MAIN ST STE 1000
SALT LAKE CTY, UT 84111-1945

RE: Transfer No. 88699
Water Right No(s). 35-14240, 35-14241, 35-14242, 35-14243, 35-14655

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 POWER COUNTY PRESS, IDAHO STATESMAN, and POST REGISTER on 1/3/2024 and 1/10/2024 and in the TIMES NEWS and LEWISTON TRIBUNE on 1/4/2024 and 1/11/2024. 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:
ROBERT L HARRIS
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS, ID 83405-0130

Henman, Christina

From: Henman, Christina
Sent: Wednesday, December 27, 2023 3:05 PM
To: press1@press-times.com
Subject: Legal Notice for Power County Press
Attachments: 88699 Power County Press, Idaho Statesman.docx

LEGAL NOTICE DEPARTMENT
POWER COUNTY PRESS
PO BOX 547
AMERICAN FALLS, ID 83211

RE: Transfer No. 88699
Water Right No(s). 35-14240, 35-14241, 35-14242, 35-14243, 35-14655

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 1/22/2024. 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

Henman, Christina

From: Henman, Christina
Sent: Wednesday, December 27, 2023 3:06 PM
To: legals@idahostatesman.com
Subject: Legal Notice for Idaho Statesman
Attachments: 88699 Power County Press, Idaho Statesman.docx

LEGAL NOTICE DEPARTMENT
IDAHO STATESMAN
PO BOX 40
BOISE, ID 83707

RE: Transfer No. 88699
Water Right No(s). 35-14240, 35-14241, 35-14242, 35-14243, 35-14655

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 1/22/2024. 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. 88699**

FARMLAND RESERVE INC, 79 S MAIN ST STE 1000, SALT LAKE CTY, UT 84111-1945 has filed Application No. 88699 for changes to the following water rights within POWER County(s): Right No(s). 35-14240, 35-14241, 35-14242, 35-14243, 35-14655; 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: amend the mitigation conditions of the water rights. Applicant filed a Substitute Mitigation Plan that proposes to retain existing conditions (authorizing mitigation through the non-use of water rights 29-2284 and 29-2301) and proposes to mitigate depletions through the recharge of storage water.

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 1/22/2024. The protestant must also send a copy of the protest to the applicant.

MATHEW WEAVER, Director

Published on 1/3/2024 and 1/10/2024

Henman, Christina

From: Henman, Christina
Sent: Wednesday, December 27, 2023 3:05 PM
To: legalnotices@postregister.com
Subject: Legal Notice for Post Register
Attachments: 88691, 88699 Post Register.docx

LEGAL NOTICE DEPARTMENT
POST REGISTER
PO BOX 1800
IDAHO FALLS, ID 83403-1800

RE: Transfer No. 88691, 88699

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 1/22/2024. 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. 88691

MARK & ELLEN BRANDT FAMILY TRUST, 299 W MAIN ST, BRAWLEY, CA 92227-2240 has filed Application No. 88691 for changes to the following water rights within BONNEVILLE County(s): Right No(s). 23-11493; 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, period of use, and nature of use. Applicant proposes to divert 1.32 cfs from Palisades Creek through Palisades Canal for irrigation and recreation storage (new use). Proposed place of use is in SENE and NESE Sec 21 T01N R44E for irrigation of 39.5 acres and NESE Sec 21 T01N R44E for 4.6 af of recreation storage. Proposed period of use for recreation storage is 1/1 to 12/31.

TRANSFER NO. 88699

FARMLAND RESERVE INC, 79 S MAIN ST STE 1000, SALT LAKE CTY, UT 84111-1945 has filed Application No. 88699 for changes to the following water rights within POWER County(s): Right No(s). 35-14240, 35-14241, 35-14242, 35-14243, 35-14655; 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: amend the mitigation conditions of the water rights. Applicant filed a Substitute Mitigation Plan that proposes to retain existing conditions (authorizing mitigation through the non-use of water rights 29-2284 and 29-2301) and proposes to mitigate depletions through the recharge of storage water.

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 1/22/2024. The protestant must also send a copy of the protest to the applicant.

MATHEW WEAVER, Director

Published on 1/3/2024 and 1/10/2024

Henman, Christina

From: Henman, Christina
Sent: Wednesday, December 27, 2023 3:06 PM
To: 'legals@magicvalley.com'
Subject: Legal Notice for Times News
Attachments: 88699 Times News, Lewiston Tribune.docx

LEGAL NOTICE DEPARTMENT
TIMES NEWS
PO BOX 548
TWIN FALLS, ID 83303-0548

RE: Transfer No. 88699
Water Right No(s). 35-14240, 35-14241, 35-14242, 35-14243, 35-14655

Dear Legal Notice Department:

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Thank You,



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

Henman, Christina

From: Henman, Christina
Sent: Wednesday, December 27, 2023 3:06 PM
To: legals@lmtribune.com
Subject: Legal Notice for Lewiston Tribune
Attachments: 88699 Times News, Lewiston Tribune.docx

LEGAL NOTICE DEPARTMENT
LEWISTON TRIBUNE
505 C ST
PO BOX 957
LEWISTON, ID 83501

RE: Transfer No. 88699
Water Right No(s). 35-14240, 35-14241, 35-14242, 35-14243, 35-14655

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 1/22/2024. 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. 88699**

FARMLAND RESERVE INC, 79 S MAIN ST STE 1000, SALT LAKE CTY, UT 84111-1945 has filed Application No. 88699 for changes to the following water rights within POWER County(s): Right No(s). 35-14240, 35-14241, 35-14242, 35-14243, 35-14655; 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: amend the mitigation conditions of the water rights. Applicant filed a Substitute Mitigation Plan that proposes to retain existing conditions (authorizing mitigation through the non-use of water rights 29-2284 and 29-2301) and proposes to mitigate depletions through the recharge of storage water.

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 1/22/2024. The protestant must also send a copy of the protest to the applicant.

MATHEW WEAVER, Director

Published on 1/4/2024 and 1/11/2024