

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

OCT 13 2022

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Department of Water Resources
Eastern Region

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column. If the water right is leased to the Water Supply Bank, check "Yes". If you are not sure if the water right is leased to the Water Supply Bank, [see #7](#) of the instructions.

WD 01

Water Right/Claim No.	Split?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
22-12784 OK	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐

2. Previous Owner's Name: Mark Harrington
Name of current water right holder/claimant
3. New Owner(s)/Claimant(s): Ferrone Family Living Trust
New owner(s) as listed on the conveyance document Name connector ☐ and ☐ or
- 8 Ryan Ave Mill Valley CA 94941-2124
Mailing address City State Zip
- 415-265-4144 jferrone@plathco.com
Telephone Email
4. If the water rights and/or adjudication claims were split, how did the division occur?
☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.
5. Date you acquired the water rights and/or claims listed above: _____.
6. Do you own the land identified as the water right place of use? Yes ☐ No ☐
☐ If no, attach evidence that written notice of the change of water right ownership has been delivered to the landowner of record.
7. This form must be signed and submitted with the following **REQUIRED** items:
☒ A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
☐ Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
☒ Filing fee (see instructions for further explanation):
☐ \$25 per undivided water right.
☐ \$100 per split water right.
☐ No fee is required for pending adjudication claims.
☐ If water right(s) are leased to the Water Supply Bank AND there are multiple owners, a Lessor Designation form is required.
☐ If water right(s) are leased to the Water Supply Bank, the individual owner or designated lessor must complete, sign and submit an IRS Form W-9.

8. Signature: [Signature] _____ 1/12/22
Signature of new owner/claimant Title, if applicable Date

J. Ferrone
Print name

Signature: _____ _____ _____
Signature of new owner/claimant Title, if applicable Date

Print name

For IDWR Office Use Only:

Received by CH Date 10/13/2022 Receipt No. E048626 Receipt Amt. \$25.00

Active in the Water Supply Bank? Yes ☐ No ☐ If yes, forward to the State Office for processing W-9 received? Yes ☐ No ☐

Name on W-9 _____ Approved by [Signature] Processed by [Signature] Date 10/20/2022

OCT 26 2022

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Rocky Mountain Environmental Associates, Inc.
482 Constitution Way Ste 303
Idaho Falls, ID 83402

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHTS

MARK HARRINGTON, a single man, whose address is PO Box 300, Driggs, ID 83422 (hereinafter collectively "Grantor") does hereby grant, bargain, sell, assign, and convey unto John B Ferrarone, as trustee of **THE FERRARONE FAMILY LIVING TRUST** dated February 4, 2015, whose address is 8 Ryan Ave, Mill Valley, CA 94941 (hereinafter "Grantee") and to Grantee's heirs and assigns forever, all of Grantor's right, title, and interest in water right described on Exhibit A attached hereto (hereinafter the "Water Right").

Grantor hereby covenants and warrants to Grantee as follows:

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

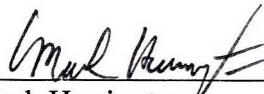
Grantor makes no other covenants or warranties as to the Water Right.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

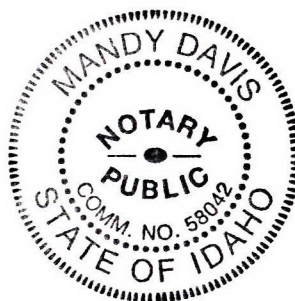
DATED this 5th day of October, 2022

"GRANTOR"


Mark Harrington

STATE OF IDAHO)
)ss.
County of Madison)

This record was acknowledged before me on the 5th day of October 2022, by **Mark Harrington**.



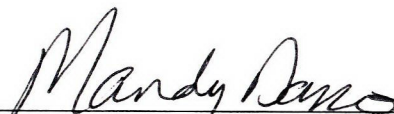

Notary Public for Idaho
My Commission Expires: 06/24/23

EXHIBIT A
WATER RIGHT DESCRIPTION

Page 2 of 7

WATER RIGHT NO. 22-12784

As Modified by Transfer No. 86096

In accordance with the approval of Transfer No. 86096, Water Right No. 22-12784 is now described as follows:

Right Holder: MARK HARRINGTON
PO BOX 300
DRIGGS, ID 83422

Priority Date: 6/1/1896

Source: DARBY CREEK

Tributary: TETON RIVER

BENEFICIAL USE	From	To	Diversion Rate
IRRIGATION	04/15	to 10/31	0.940 cfs 0.940 cfs

LOCATION OF POINT(S) OF DIVERSION

DARBY CREEK SENE Sec 9 Twp 04N Rge 45E TETON County

PLACE OF USE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	45E	9			40.0				40.0	40.0									120.0

Right Acre Limit: 47.0
POU Total Acres: 120.0

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of a specific 47 acres within the 120 acre place of use authorized by this right in a single irrigation season. The specific 47 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 47 acres to be irrigated within the 120 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
2. Rights 22-2124A, 22-4083 and 22-12784 when combined shall not exceed the irrigation of 114.5 acres.
3. This right shall only be diverted when Dick Creek and Darby Creek are connected to the Teton River and water rights on those creeks are regulated in conjunction with water rights from the Teton River.
4. Use of water under this right may 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. 01.

Transfer No. 86096

OCT 26 2022

WATER RIGHT NO. 22-12784
As Modified by Transfer No. 86096

CONDITIONS OF APPROVAL

5. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
6. Diversion of water under this right is limited to those times when water is available for diversion under the priority of this right at the original point of diversion from Darby Creek in T04N, R46E, Sec 17, Lot 1 (SWNWNE).
7. Authorized point of diversion is from Dick Creek.
8. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
9. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
11. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Transfer No. 86096

OCT 26 2022

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 86096**

This is to certify that: FERRARONE FAMILY LIVING TRUST
8 RYAN AVE
MILL VALLEY, CA 94941-2124

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
22-12784	WR/DECREED	6/1/1896	0.940 cfs	N/A	N/A	47.0	DARBY CREEK

Associated Water Rights Also Included in the Transfer Approval (Conditions Updated)

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
22-2124A	WR/DECREED	10/11/1937	0.600 cfs	N/A	30.0	100.0	DICK CREEK
22-4083	WR/DECREED	11/29/1942	2.000 cfs	N/A	53.0	100.0	DICK CREEK
22-13974	WR/DECREED	10/31/1945	0.310 cfs	N/A		15.5	SPRING

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
22-12784	NO	YES	YES	NO	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
22-12784	22-12784	0.940 cfs	N/A	47.0	120.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.940 cfs	N/A	47.0	120.0		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 30th day of August, 2022.



SUPPORT DATA

Regional Manager

Transfer No. 86096

IN FILE # 22-12784

SCANNED

SEP 01 2022

WATER RIGHT NO. 22-12784

As Modified by Transfer No. 86096

In accordance with the approval of Transfer No. 86096, Water Right No. 22-12784 is now described as follows:

Right Holder: MARK HARRINGTON
PO BOX 300
DRIGGS, ID 83422

Priority Date: 6/1/1896

Source: DARBY CREEK

Tributary: TETON RIVER

BENEFICIAL USE

IRRIGATION

From

04/15

To

to 10/31

Diversion Rate

0.940 cfs

0.940 cfs

LOCATION OF POINT(S) OF DIVERSION

DARBY CREEK

SENE

Sec 9 Twp 04N Rge 45E TETON County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	45E	9			40.0				40.0	40.0									120.0

Right Acre Limit: 47.0

POU Total Acres: 120.0

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of a specific 47 acres within the 120 acre place of use authorized by this right in a single irrigation season. The specific 47 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 47 acres to be irrigated within the 120 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
2. Rights 22-2124A, 22-4083 and 22-12784 when combined shall not exceed the irrigation of 114.5 acres.
3. This right shall only be diverted when Dick Creek and Darby Creek are connected to the Teton River and water rights on those creeks are regulated in conjunction with water rights from the Teton River.
4. Use of water under this right may 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. 01.

Transfer No. 86096

SCANNED

SEP 01 2022

WATER RIGHT NO. 22-12784

As Modified by Transfer No. 86096

CONDITIONS OF APPROVAL

5. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
6. Diversion of water under this right is limited to those times when water is available for diversion under the priority of this right at the original point of diversion from Darby Creek in T04N, R46E, Sec 17, Lot 1 (SWNWNE).
7. Authorized point of diversion is from Dick Creek.
8. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
9. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
11. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

WATER RIGHT NO. 22-2124A

As Modified by Transfer No. 86096

In accordance with the approval of Transfer No. 86096, Water Right No. 22-2124A is now described as follows:

Right Holder: FERRARONE FAMILY LIVING TRUST
8 RYAN AVE
MILL VALLEY, CA 94941-2124

Priority Date: 10/11/1937

Source: DICK CREEK

Tributary: TETON RIVER

BENEFICIAL USE

IRRIGATION

From

04/15

To

to 10/31

Diversion Rate

0.600 cfs

0.600 cfs

LOCATION OF POINT(S) OF DIVERSION

DICK CREEK

SENE

Sec 9 Twp 04N Rge 45E TETON County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	45E	9			32.0				37.0	31.0									100.0

Right Acre Limit: 30.0

POU Total Acres: 100.0

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of 30 acres within the authorized place of use in a single irrigation season.
2. Rights 22-2124A and 22-4083 when combined shall not exceed the irrigation of 83 acres.
3. Rights 22-2124A, 22-4083 and 22-12784 when combined shall not exceed the irrigation of 114.5 acres.
4. Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
5. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Transfer No. 86096

SCANNED
SEP 01 2022

WATER RIGHT NO. 22-4083**As Modified by Transfer No. 86096**

In accordance with the approval of Transfer No. 86096, Water Right No. 22-4083 is now described as follows:

Right Holder: FERRARONE FAMILY LIVING TRUST
8 RYAN AVE
MILL VALLEY, CA 94941-2124

Priority Date: 11/29/1942

Source: DICK CREEK

Tributary: TETON RIVER

BENEFICIAL USE

	From	To	Diversion Rate
IRRIGATION	04/15	to 10/31	2.000 cfs
STOCKWATER	01/01	to 12/31	0.050 cfs
			2.000 cfs

LOCATION OF POINT(S) OF DIVERSION

DICK CREEK SESENE Sec 9 Twp 04N Rge 45E TETON County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	45E	9			32.0				37.0	31.0									100.0

Right Acre Limit: 53.0

POU Total Acres: 100.0

PLACE OF USE: STOCKWATER

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	45E	9			X				X	X									

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of 53 acres within the authorized place of use in a single irrigation season.
2. Rights 22-2124A and 22-4083 when combined shall not exceed the irrigation of 83 acres.
3. Rights 22-2124A, 22-4083 and 22-12784 when combined shall not exceed the irrigation of 114.5 acres.
4. Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Transfer No. 86096

SCANNED
SEP 01 2022

WATER RIGHT NO. 22-4083
As Modified by Transfer No. 86096

CONDITIONS OF APPROVAL

5. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.



WATER RIGHT NO. 22-13974

As Modified by Transfer No. 86096

In accordance with the approval of Transfer No. 86096, Water Right No. 22-13974 is now described as follows:

Right Holder: MARK HARRINGTON
PO BOX 300
DRIGGS, ID 83422

Priority Date: 10/31/1945

Source: SPRING

Tributary: FISH CREEK

BENEFICIAL USE

IRRIGATION

From

04/15

To

to 10/31

Diversion Rate

0.310 cfs

0.310 cfs

LOCATION OF POINT(S) OF DIVERSION

SPRING

SWSWNE

Sec 15 Twp 04N Rge 45E TETON County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	45E	15									5.1	10.4							15.5

POU Total Acres: 15.5

CONDITIONS OF APPROVAL

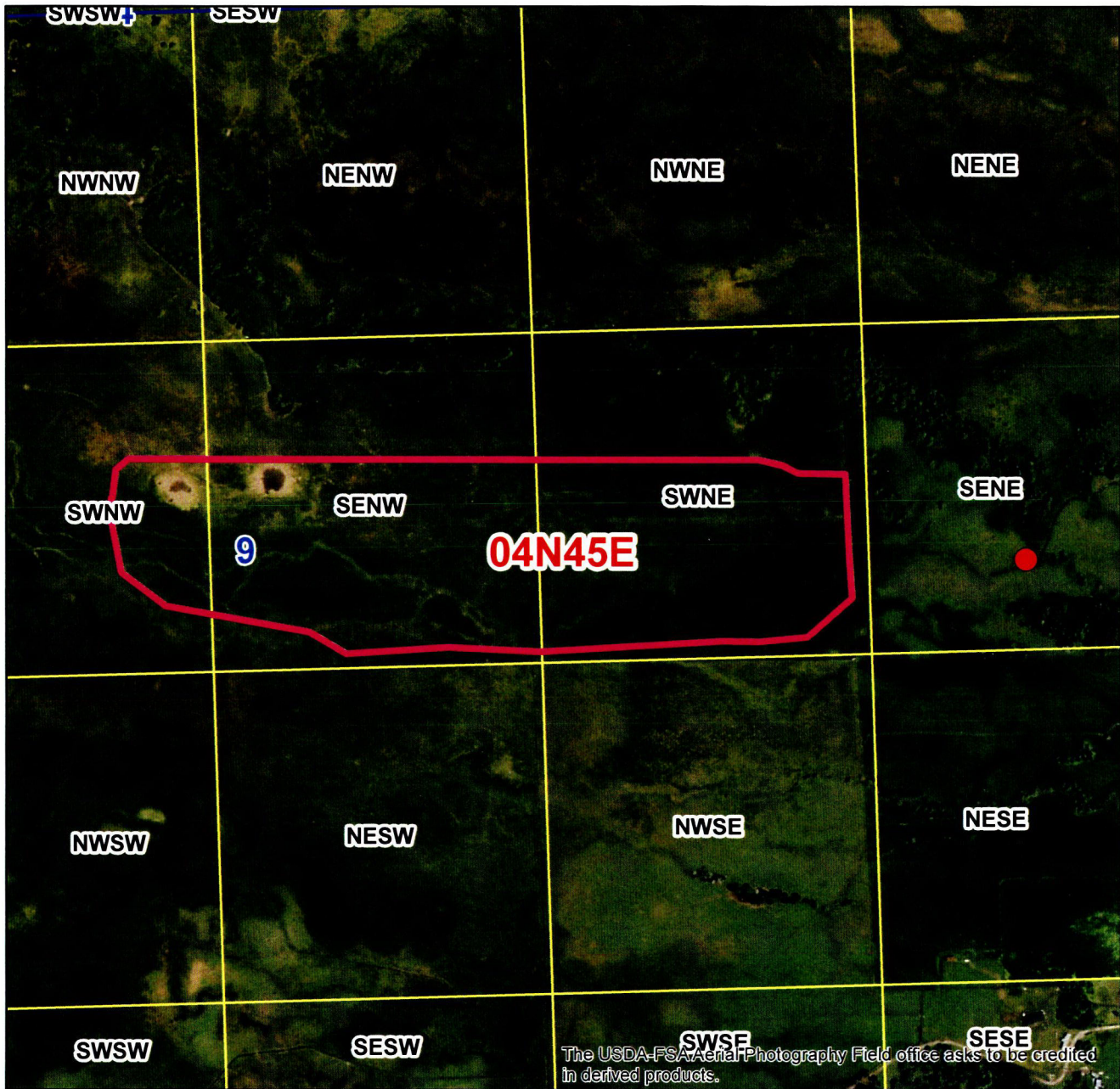
1. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Transfer No. 86096

SCANNED
SEP 01 2022

Attachment to Transfer Approval 86096

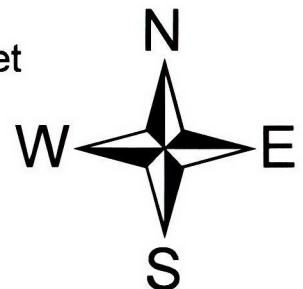
This map depicts the place of use boundary at the time of this transfer approval and is attached to the approval document solely for illustrative purposes.



Legend

- WR POD
- WR POU
- Township/Range
- Sections
- QQ

0 375 750 1,500 Feet



SCANNED
SEP 01 2022

Date: 8/30/2022



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 Gary Spackman

October 20, 2022

THE FERRARONE FAMILY LIVING TRUST
8 RYAN AVE
MILL VALLEY CA 94941-2124

Re: Change in Ownership for Water Right No(s): 22-12784

Dear Water Right Holder(s):

The Department of Water Resources (Department) acknowledges the receipt of correspondence changing ownership of the above referenced water right(s) to you. The Department has modified its records and has enclosed a computer-generated report for you.

Updating the ownership record for a water right does not reconfirm the validity of the right. When processing a Notice of Change in Water Right Ownership, the Department does not review the history of water use to determine if the right has been forfeited or deliberately abandoned through five years or more of non-use. To read more about water right forfeiture, including how to protect a water right from forfeiture, please see Idaho Code §§ 42-222 and 42-223.

Please note, water right owners are required to report any change of water right ownership and any change of mailing address to the Department within 120 days of the change. Reporting forms are available from any office of the Department, or from the Department's website.

If you have any questions concerning the enclosed information, please contact me at (208) 497-3787.

Sincerely,

Jonie Barg
Technical Records Specialist 1

Enclosure(s)

cc: Water District 01

SCANNED

OCT 26 2022



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 Gary Spackman

August 30, 2022

FERRARONE FAMILY LIVING TRUST
8 RYAN AVE
MILL VALLEY CA 94941-2124

Re: Transfer No: 86096
Water Right No(s): 22-2124A , 22-4083, 22-12784, 22-13974

Transfer Approval Notice

Dear Water Right Holder:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

SCANNED

SEP 01 2022

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 525-7161.

Sincerely,



Christina Henman
Administrative Assistant

Enclosure
CC:

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

MARK HARRINGTON
PO BOX 300
DRIGGS ID 83422

SCANNED
SEP 01 2022

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2022 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

Re: Transfer No.: 86096

Water Right No(s): 22-2124A , 22-4083, 22-12784, 22-13974

**FERRARONE FAMILY LIVING TRUST
8 RYAN AVE
MILL VALLEY CA 94941-2124**

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

**MARK HARRINGTON
PO BOX 300
DRIGGS ID 83422**



**Christina Henman
Administrative Assistant**

SCANNED
SEP 01 2022

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Cefalo, James

From: Cefalo, James
Sent: Thursday, July 14, 2022 3:00 PM
To: Kristin Moore
Subject: Application for Transfer 86096 (Ferrarone Trust)

Kristin,

I am conducting a final review of Application for Transfer 86096 filed by the Ferrarone Family Trust. I appreciate all of the work you put into the application. The data provided about flows in Darby Creek was helpful. I was hoping you could connect a few more dots for me. How is the water split between Dick Creek and Darby Creek? Is there a structure that divides the flow or does the creek split naturally? If this transfer were approved, would Ferrarone Trust have the authority to change the splitter to send more water down Dick Creek? Would water right 22-12784 be available once Darby Creek and Dick Creek become disconnected from the Teton River? If I understand your analysis correctly, it says that the rights on Darby Creek are curtailed before they would be curtailed by downstream senior rights on the Teton River. All of the rights 1896 and senior on Darby Creek are located at or east of the Cherry Grove canal. Once curtailment reaches the 1896 rights, there would be no way to deliver water to the proposed place of use, even if right 22-12784 were entitled to a portion of the water in the creek. Is that correct? *No No No Yes*

James



IDAHO DEPARTMENT OF
WATER RESOURCES

James Cefalo | Regional Manager
900 N Skyline Drive, Idaho Falls, ID 83402
(208) 525-7161 | www.idwr.idaho.gov

MEMORANDUM

Date: July 6, 2022
To: Transfer 86096
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the place of use and point of diversion for water right 22-12784. Downstream of the existing point of diversion, Darby Creek splits into two streams: Darby Creek and Dick Creek. The proposed point of diversion is on the Dick Creek channel.

Authority to File:

The applicant, Ferrarone Family Living Trust, has the authority to file. Mark Harrington is the owner of record for water right 22-12784 and the owner of the existing place of use for the right. The post-transfer place of use was owned by the applicant, according to Teton County taxlot data. An Agreement for Purchase and Sale of a Water Right, included in the application, was signed by Mark Harrington and JB Ferrarone, Trustee of Ferrarone Family Living Trust. The Agreement authorized this transfer. A Warranty Deed conveying the water rights will be executed after transfer approval, after which ownership will be updated. The proposed point of diversion is an existing diversion on Dick Creek, used to deliver water rights 22-2124A and 22-4083, which are held by Ferrarone Family Living Trust. The application was signed by JB Ferrarone.

Water Right Validity:

The water right is valid for transfer. The right was decreed in 2008. Review of post-decree aerial photography demonstrates consistent usage of the right.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer. The transfer was advertised and was not protested. The Watermaster for Water District 1 was notified of the transfer and did not provide comment. Prior to the transfer, the right was diverted from the Cherry Grove Canal. Cherry Grove Canal Company authorized the right's removal from their canal in a letter included in the transfer application. The post-transfer source is Dick Creek, a branch of Darby Creek. Moving 22-12784 into Dick Creek creates the potential for injury because water right 22-12784 would become the most senior water right on Dick Creek. Based on an injury analysis provided with the application, the applicant is seeking to improve its priority date relative to the Teton River. Every summer, the flow in Darby Creek drops to a point where the creek becomes disconnected from the Teton River and is regulated separate from the Teton River rights. By that time, water right 22-12784 is no longer available. To prevent injury to existing water rights on Dick Creek or Darby Creek the right will be conditioned to only be available when Dick Creek and Darby Creek are connected to the Teton River and are being regulated in conjunction with Teton River water rights. Further, a condition was added to the right limiting the diversion to the amount of water available at the original point of diversion.

Enlargement of Use:

No enlargement of use will result from this transfer's approval. At the pre-transfer place of use, the transferred right was stacked with water right 22-13974, a 15.5-acre irrigation right from a local spring. The two rights overlapped over 15.5 acres. That means 31.5 acres of water right 22-12784 was not stacked with any other right. At the 120-acre post-transfer place of use the right will be stacked with water rights 22-2124B and 22-4083. These rights authorize a combined 83 acres of irrigation within the 120-acre permissible place of use. Right 22-12784 will be combined with water rights 22-2124B and 22-4083 over 15.5 acres. All three rights will bear a combined acre limit of 114.5 acres. The stacked rights at the post-transfer place of use are senior to the right at the pre-transfer place of use. 22-13974 (pre-transfer) has a priority date of October 31, 1945. 22-2124B has a priority date of October 11, 1937, while 22-4083 has a priority date of November 29, 1942.

Rate nor irrigated acres are authorized to increase as a result of this transfer's approval.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.