

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

TRANSFER OF WATER RIGHT
TRANSFER NO. 85719

This is to certify that: VEOLIA WATER IDAHO INC
8248 W VICTORY RD
BOISE, ID 83709-4165

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>
63-11798	WR/LICENSE	4/17/1992	1.340 cfs	N/A	N/A	N/A	GROUND WATER
63-12147	WR/LICENSE	9/29/1994	5.000 cfs	N/A	N/A	N/A	GROUND WATER
63-12559	WR/LICENSE	12/15/1999	3.000 cfs	N/A	N/A	N/A	GROUND WATER
63-7368	WR/DECREED	11/15/1970	2.000 cfs	N/A	N/A	N/A	GROUND WATER
63-7618	WR/DECREED	10/25/1972	1.400 cfs	N/A	N/A	N/A	GROUND WATER
63-9245	WR/DECREED	6/8/1979	3.500 cfs	N/A	N/A	N/A	GROUND WATER

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>
63-11798	NO	NO	NO	YES	NO	NO
63-12147	NO	NO	NO	YES	NO	NO
63-12559	NO	NO	NO	YES	NO	NO
63-7368	NO	NO	NO	YES	NO	NO
63-7618	NO	NO	NO	YES	NO	NO
63-9245	NO	NO	NO	YES	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>
63-11798	63-11798	1.340 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
63-12147	63-12147	5.000 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
63-12559	63-12559	3.000 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
63-7368	63-7368	2.000 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
63-7618	63-7618	1.400 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
63-9245	63-9245	3.500 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		13.840 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

SUPPORT DATA

IN FILE # 63-7368

SCANNED

Transfer No. 85719

FEB 03 2023

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 85719

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 2nd day of February, 2023.



Nick Miller Manager, IDWR Western Region

AMENDED

WATER RIGHT NO. 63-7368

As Modified by Transfer No. 85719

In accordance with the approval of Transfer No. 85719, Water Right No. 63-7368 is now described as follows:

Right Holder: VEOLIA WATER IDAHO INC
8248 W VICTORY RD
BOISE, ID 83709-4165

Priority Date: 11/15/1970

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
FIRE PROTECTION	1/01	to 12/31	2.000 cfs
MUNICIPAL	1/01	to 12/31	2.000 cfs
			2.000 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NWNW	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	SWSW	Sec 8 Twp 04N Rge 01E	ADA County
GROUND WATER	SENE	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of Veolia Water Idaho Inc. as provided for under Idaho law.
2. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 2/6/2009.
3. A map generally depicting the service area for this water right at the time of this approval is attached to this document for illustrative purposes.
4. Transfer 85719 authorizes the following additional well(s) as point(s) of diversion under this right as of the date of the approval: Well #4 is located in T04N R01E S15 NWNW. Well #6 is located in T04N R01E S8 SWSW. Well #7 is located in T04N R01E S15 NESW L3. Well #8 is located in T04N R01E S15 NESW.
5. To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, any replacement of the well used as a point of diversion for this water right located within the NESW, S15, T4N, R1E shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 200 feet or more below ground surface.

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WATER RIGHT NO. 63-7368
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CONDITIONS OF APPROVAL

6. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. 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. 63-11798

As Modified by Transfer No. 85719

In accordance with the approval of Transfer No. 85719, Water Right No. 63-11798 is now described as follows:

Right Holder: VEOLIA WATER IDAHO INC
8248 W VICTORY RD
BOISE, ID 83709-4165

Priority Date: 4/17/1992

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	1/01	to 12/31	1.340 cfs
			1.340 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NWNW	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	SWSW	Sec 8 Twp 04N Rge 01E	ADA County
GROUND WATER	SENE	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County

CONDITIONS OF APPROVAL

1. Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.
2. Domestic uses authorized under this right shall not exceed 13,000 gallons per day in accordance with the provisions in Section 42-111, Idaho Code.
3. Place of use is within the service area of Veolia Water Idaho Inc. as provided for under Idaho law.
4. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license dated 9/30/1994.
5. A map generally depicting the service area for this water right at the time of this approval is attached to this document for illustrative purposes.
6. Transfer 85719 authorizes the following additional well(s) as point(s) of diversion under this right as of the date of the approval: Wells #1 is located in T04N R01E S9 SWNW. Well #2 is located in T04N R01E S9 SWNW. Well #3 is located in T04N R01E S9 SENE. Well #6 is located in T04N R01E S8 SWSW. Well #7 is located in T04N R01E S15 NESW L3. Well #8 is located in T04N R01E S15 NESW.

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WATER RIGHT NO. 63-11798
As Modified by Transfer No. 85719

CONDITIONS OF APPROVAL

7. To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, any replacement of the well used as a point of diversion for this water right located within the NESW, S15, T4N, R1E shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 200 feet or more below ground surface.
8. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
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.

WATER RIGHT NO. 63-7618

As Modified by Transfer No. 85719

In accordance with the approval of Transfer No. 85719, Water Right No. 63-7618 is now described as follows:

Right Holder: VEOLIA WATER IDAHO INC
8248 W VICTORY RD
BOISE, ID 83709-4165

Priority Date: 10/25/1972

Source: GROUND WATER

BENEFICIAL USE

MUNICIPAL

From

01/01

To

to 12/31

Diversion Rate

1.400 cfs

1.400 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NWNW	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	SWSW	Sec 8 Twp 04N Rge 01E	ADA County
GROUND WATER	SENE	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of Veolia Water Idaho Inc. as provided for under Idaho law.
2. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 4/3/2009.
3. A map generally depicting the service area for this water right at the time of this approval is attached to this document for illustrative purposes.
4. Transfer 85719 authorizes the following additional well(s) as point(s) of diversion under this right as of the date of the approval: Well #4 is located in T04N R01E S15 NWNW. Well #6 is located in T04N R01E S8 SWSW. Well #7 is located in T04N R01E S15 NESW L3. Well #8 is located in T04N R01E S15 NESW.
5. To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, any replacement of the well used as a point of diversion for this water right located within the NESW, S15, T4N, R1E shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 200 feet or more below ground surface.

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WATER RIGHT NO. 63-7618
As Modified by Transfer No. 85719

CONDITIONS OF APPROVAL

6. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. 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. 63-9245

As Modified by Transfer No. 85719

In accordance with the approval of Transfer No. 85719, Water Right No. 63-9245 is now described as follows:

Right Holder: VEOLIA WATER IDAHO INC
8248 W VICTORY RD
BOISE, ID 83709-4165

Priority Date: 6/8/1979

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
FIRE PROTECTION	01/01	to 12/31	3.500 cfs
MUNICIPAL	01/01	to 12/31	1.100 cfs
			3.500 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NWNW	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	SWSW	Sec 8 Twp 04N Rge 01E	ADA County
GROUND WATER	SENE	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County

CONDITIONS OF APPROVAL

1. This right when combined with Right Nos. 63-7368 and 63-7618 shall not exceed 4.5 cfs per acre.
2. Place of use is within the service area of Veolia Water Idaho Inc. as provided for under Idaho law.
3. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 10/21/2009.
4. A map generally depicting the service area for this water right at the time of this approval is attached to this document for illustrative purposes.
5. Transfer 85719 authorizes the following additional well(s) as point(s) of diversion under this right as of the date of the approval: Well #4 is located in T04N R01E S15 NWNW. Well #6 is located in T04N R01E S8 SWSW. Well #7 is located in T04N R01E S15 NESW L3.
6. To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, the new well used as a point of diversion for this water right located within the NESW, S15, T4N, R1E shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 200 feet or more below ground surface.

Transfer No. 85719

SCANNED
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WATER RIGHT NO. 63-9245

As Modified by Transfer No. 85719

CONDITIONS OF APPROVAL

7. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. 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. 63-12147

As Modified by Transfer No. 85719

In accordance with the approval of Transfer No. 85719, Water Right No. 63-12147 is now described as follows:

Right Holder: VEOLIA WATER IDAHO INC
8248 W VICTORY RD
BOISE, ID 83709-4165

Priority Date: 9/29/1994

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	1/01	to 12/31	5.000 cfs 5.000 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NWNW	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	SWSW	Sec 8 Twp 04N Rge 01E	ADA County
GROUND WATER	SENE	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of Veolia Water Idaho Inc. as provided for under Idaho law.
2. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license dated 5/12/2016.
3. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.
4. Transfer 85719 authorizes the following additional well(s) as point(s) of diversion under this right as of the date of the approval: Wells #1 is located in T04N R01E S9 SWNW. Well #2 is located in T04N R01E S9 SWNW. Well #3 is located in T04N R01E S9 SENE. Well #7 is located in T04N R01E S15 NESW L3. Well #8 is located in T04N R01E S15 NESW.
5. To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, any replacement of the well used as a point of diversion for this water right located within the NESW, S15, T4N, R1E shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 200 feet or more below ground surface.

Transfer No. 85719

SCANNED

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WATER RIGHT NO. 63-12147
As Modified by Transfer No. 85719

CONDITIONS OF APPROVAL

6. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
7. This right does not grant any right-of-way or easement across the land of another.
8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

WATER RIGHT NO. 63-12559

As Modified by Transfer No. 85719

In accordance with the approval of Transfer No. 85719, Water Right No. 63-12559 is now described as follows:

Right Holder: VEOLIA WATER IDAHO INC
8248 W VICTORY RD
BOISE, ID 83709-4165

Priority Date: 12/15/1999

Source: GROUND WATER

BENEFICIAL USE

MUNICIPAL

From

01/01

To

to 12/31

Diversion Rate

3.000 cfs

3.000 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NWNW	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	L3 (NESW)	Sec 15 Twp 04N Rge 01E	ADA County
GROUND WATER	SWSW	Sec 8 Twp 04N Rge 01E	ADA County
GROUND WATER	SENE	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County
GROUND WATER	SWNW	Sec 9 Twp 04N Rge 01E	ADA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of Veolia Water Idaho Inc. as provided for under Idaho law.
2. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license dated 9/1/2016.
3. A map generally depicting the service area for this water right at the time of this approval is attached to this document for illustrative purposes.
4. Transfer 85719 authorizes the following additional well(s) as point(s) of diversion under this right as of the date of the approval: Wells #1 is located in T04N R01E S9 SWNW. Well #2 is located in T04N R01E S9 SWNW. Well #3 is located in T04N R01E S9 SENE. Well #4 is located in T04N R01E S15 NWNW. Well #6 is located in T04N R01E S8 SWSW. Well #8 is located in T04N R01E S15 NESW.
5. To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, any replacement of the well used as a point of diversion for this water right located within the NESW, S15, T4N, R1E shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 200 feet or more below ground surface.

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WATER RIGHT NO. 63-12559
As Modified by Transfer No. 85719

CONDITIONS OF APPROVAL

6. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
7. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
8. The issuance of this right does not grant any right-of-way or easement across the land of another.
9. Water bearing zone originally appropriated is 330 to 400 feet.
10. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.
11. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
12. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

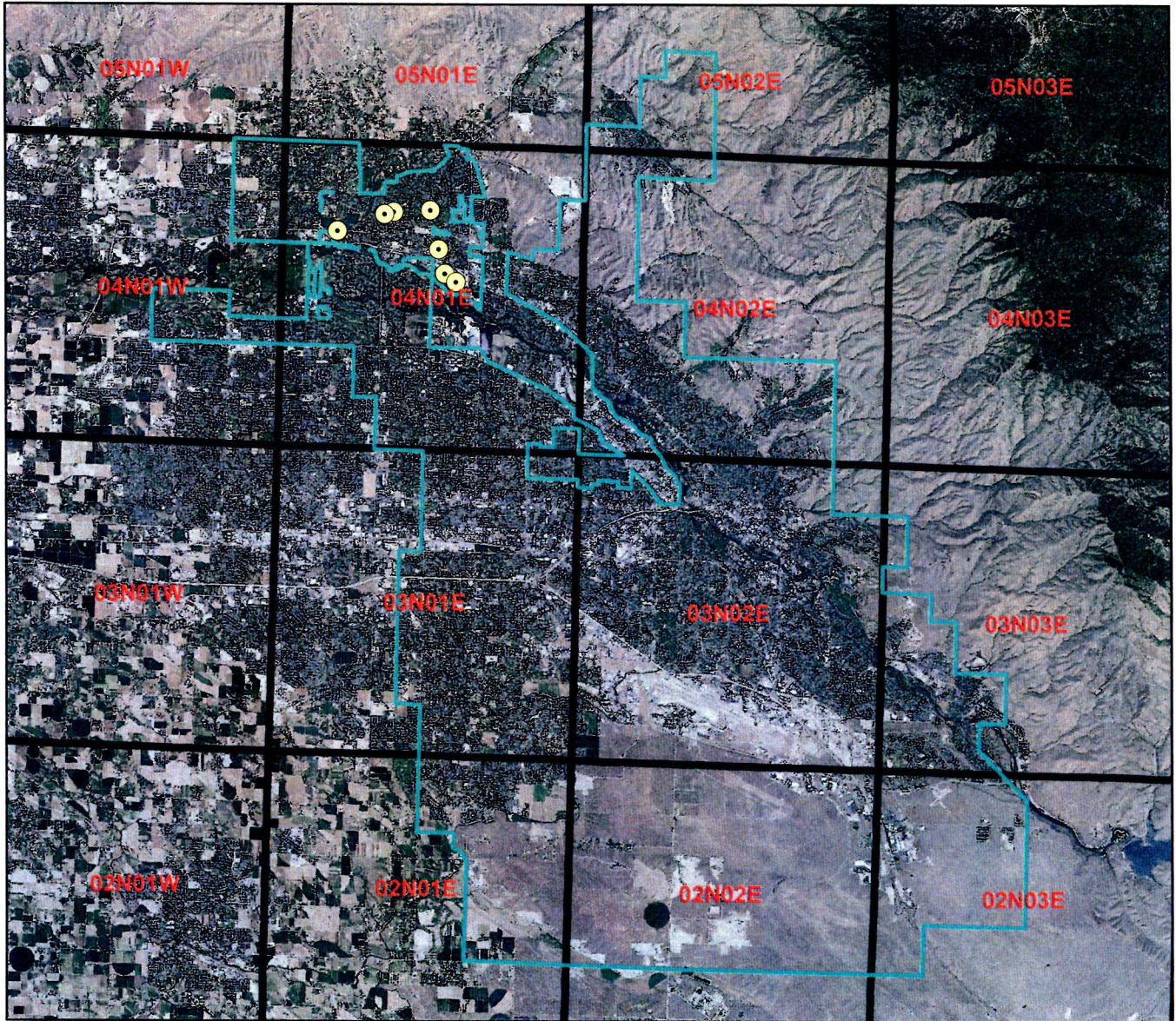
State of Idaho
Department of Water Resources

Attachment to Transfer No. 85719

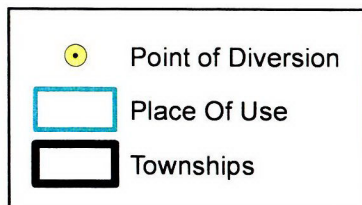
Water Right(s): 63-7368, 63-7618, 63-9245, 63-11798, 63-12147, & 63-12559

AMENDED

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



0 2.25 4.5 9 Miles



SCANNED
FEB 03 2023

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
AUG - 4 2023	
By _____	Clerk
_____	Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA Case No. 39576 	) Subcase No. 63-9245)) ORDER GRANTING MOTION TO SET) ASIDE FINAL UNIFIED DECREE AND) TO CORRECT OR AMEND THE) PARTIAL DECREE FOR WATER) RIGHT 63-9245)) ORDER OF AMENDED PARTIAL) DECREE))))
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I.

BACKGROUND

A *Partial Decree* for water right 63-9245 was entered in the Snake River Basin Adjudication ("SRBA") on October 21, 2009. The *Partial Decree* was entered in the name of Eagle Water Co., Inc. The *Partial Decree* authorizes the diversion of 3.50 cfs of ground water for municipal and fire protection purposes. The quantity element of the right includes a remark providing: "This right when combined with Right Nos. 63-7368 and 63-7618 shall not exceed 4.5 cfs per acre." The *Final Unified Decree* was entered in the SRBA on August 26, 2014.

On March 27, 2023, Veolia Water Idaho, Inc. ("Veolia") filed a *Motion to Set Aside the Final Unified Decree* for the limited purpose of amending the *Partial Decree* entered for water right 63-9245. In particular, Veolia seeks to amend the quantity remark to omit the language "per acre". The *Motion to Set Aside* is made pursuant to Idaho Rule of Civil Procedure 60(a) and 60(b)(6). The State of Idaho opposes the *Motion*. A hearing on the *Motion* was held before the Court on July 27, 2023.

II. ANALYSIS

A. Idaho Rule of Civil Procedure 60(a).

Idaho Rule of Civil Procedure 60(a) provides for the correction of “a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Clerical mistakes are described as follows:

errors in which the “type of mistake or omission [is] mechanical in nature which is apparent in the record and which does not involve a legal decision or judgment by an attorney. The clerical mistake ... can only be used to make the judgment or record speak the truth and cannot be used to make it say something other than what was originally pronounced.

City of Middleton v. Coleman Homes, LLC, 163 Idaho 716, 731, 418 P.3d 1225, 1240 (2018). There is no express time limit with respect to when a clerical mistake may be corrected under Rule 60(a). The decision to grant or deny a Rule 60(a) motion is committed to the discretion of the district court. *Cf., Dawson v. Cheyovich Family Trust*, 149 Idaho 375, 380, 234 P.3d 699, 704 (2010) (stating, “[t]he decision to grant or deny a motion under I.R.C.P. 60(b) is committed to the discretion of the district court”).

The history of water right 63-9245 is not in dispute. The right was licensed to Eagle Ranch Water Company on May 24, 1982. *Tuthill Dec.*, Ex. A. The license authorized the diversion of 3.50 cfs of ground water for municipal and fire protection purposes. *Id.* The license included a remark providing: “This right when combined with Right Nos. 63-7368 and 63-7618 shall not exceed 4.5 cfs.” *Id.* Of significance, the remark in the license did not include the additional “per acre” language limitation presently found in the *Partial Decree*.

The right was subsequently claimed in the SRBA consistent with the license. The record reflects that David Tutill, former Director of the Idaho Department of Water Resources, investigated the claim.¹ *Tuthill Dec.*, Ex. B. In 2005, he drafted an internal memorandum to the file for the right stating that “[t]he key to the rate of flow for this water right is the following condition in the license: ‘This right when combined with Right Nos. 63-7368 and 63-7618 shall not exceed 4.5 cfs.’” *Id.* The internal memorandum did not include the additional “per acre” language limitation presently found in the *Partial Decree*. In September 2006, Tuthill drafted a

¹ At the time of investigation, Tuthill was the administrator of the water management division of the Department. Tuthill subsequently became the Director in 2007. *Tuthill Dec.*, ¶2.

draft preliminary recommendation for the right which included the following quantity remark: "This right when combined with Right Nos. 63-7368 and 63-7618 shall not exceed 4.5 cfs." *Id.* The draft preliminary recommendation did not include the additional "per acre" language limitation and Tuthill testified he did not intend it to. *Tuthill Dec.*, ¶4.

On November 7, 2006, Department staff prepared an updated preliminary recommendation for the right which included a quantity remark stating: "This right when combined with Right Nos. 63-7368 and 63-7618 shall not exceed 4.5 cfs *per acre*." *Tuthill Dec.* Ex. C (emphasis added). This is the first time the additional "per acre" limitation appears in the record. Tuthill, who was the administrator of the water management division of the Department at the time, testified that he did not instruct anyone to include the additional "per acre" limitation in the updated preliminary recommendation. *Tuthill Dec.*, ¶5. He concludes the words were inadvertently included as a result of clerical error. *Id.* In addition to being contrary to the license issued for the right, Tuthill testified that the inclusion of the "per acre" limitation is nonsensical and must be the result of clerical error "because municipal rights do not have acre limitations."² *Id.* The "per acre" limitation contained in the updated preliminary recommendation was ultimately carried over into subsequent Director's recommendations that were filed in the SRBA for this water right. Since no objection was filed to the recommendations, the SRBA District Court entered a *Partial Decree* for the right consistent with the recommendations. As a result, the *Partial Decree* included the "per acre" limitation. The *Final Unified Decree* was subsequently entered in the SRBA on August 26, 2014.

Meanwhile, prior to the issuance of the *Partial Decree*, water right 63-9245 was involved in two administrative transfer proceedings before the Department. These were transfer numbers 74820 and 76035. *Baser Dec.*, Ex. E & Ex. G. The transfer proceedings concluded in July 2008 and August 2008 respectively. *Id.* The Department's orders approving the respective transfers included the following quantity remark: "This right when combined with Right Nos. 63-7368 and 63-7618 shall not exceed 4.5 cfs." *Id.* Of significance, the remark in the Department's orders did not include the additional "per acre" language limitation. Notwithstanding, the Department's *Notices of Completed Administrative Proceeding* filed with the SRBA District

² The *Tuthill Declaration* further establishes that "per acre" limitations are utilized for irrigation rights. *Id.*

Court following the completion of the administrative transfer proceedings did include the “per acre” limitation. *Baser Dec.*, Ex. F & Ex. H.³

As the Department’s orders approving the transfers did not contain the “per acre” limitation, Tuthill testified that the amended recommendations contained in the respective *Notices of Completed Administrative Proceeding* should not have contained the “per acre” limitation. *Tuthill Dec.*, ¶7. He testified that the original clerical error which resulted in the “per acre” limitation being included in the updated preliminary recommendation dated November 7, 2006, “carried forward unnoticed and uncorrected in the amended recommendations attached to the subsequent Notices of Completed Administrative Proceedings.” *Id.* He testified that “in actuality, the amended recommendations attached to the Notices of Completed Administrative Proceeding should have precisely matched the elements and conditions in the transfer approvals, because those transfer approvals reflected the actual administrative determination of the rights elements and conditions.” *Id.*

Veolia acquired the above-captioned water right on December 30, 2021. Upon learning of the “per acre” language in the *Partial Decree* it filed the present *Motion to Set Aside the Final Unified Decree* with this Court in an attempt to have the language removed.

In reviewing the record, the Court finds the inclusion of the “per acre” limitation in the *Partial Decree* to be the result of a Rule 60(a) clerical mistake. In making this determination, the Court first relies upon the plain language of the 1982 license and the subsequent administrative orders in 2008 approving the transfers. Of significance, the “per acre” limitation was not included in the original license issued for this water right in 1982. The record reflects there was no subsequent administrative transfer proceeding which altered the quantity remark to include the “per acre” limitation. To the contrary, in the two subsequent administrative transfer proceedings involving the right the “per acre” limitation was not included in the Department’s orders approving those transfers. Thus, the plain language of both the license and subsequent transfer orders establish this right was never intended to be subject to a “per acre” limitation.

The Court further relies on the uncontroverted testimony of former Director Tuthill. He testified that in addition to being contrary to the license and transfer orders, the inclusion of the “per acre” limitation is nonsensical as a practical matter and must be the result of clerical error

³ The *Notices of Completed Administrative Proceeding* were filed with the SRBA District Court on July 30, 2008 and August 27, 2008, respectively.

“because municipal rights do not have acre limitations.” He further testified that as the administrator of the water management division of the Department at the time, he did not intend for the “per acre” limitation to be in the Department’s recommendations to the Court, and did not instruct any Department staff to include it in any of the Department’s recommendations. Rather, he testified the “per acre” limitation was included in the Department’s recommendations due to clerical error. This Court agrees. In fact, no plausible reason has been presented to this Court why a “per acre” limitation would be included in the Department’s recommendation for a municipal and/or fire protection right. The absence of any plausible reason, coupled with the knowledge that such a limitation is at odds with the purpose of use of a municipal water right, supports the finding of a clerical mistake.

However, in considering Veolia’s argument under Rule 60(a), it is of particular significance to the Court that no water user in the basin has come forth asserting reliance on the *Partial Decree* as presently constituted. If an affected water user had come forward with such an assertion the Court’s Rule 60(a) analysis would take into account that additional factor and the results may differ. However, in this case the Court need not reach the issue.

Last, the State of Idaho opposes the *Motion* on the basis it offends the finality of the *Final Unified Decree*. The Court recognizes and is sensitive to the issue of the finality of the *Final Unified Decree*. Water users in the Snake River Basin have an interest in according finality to the *Final Unified Decree*. That said, the concept of finality in this instance is subject to the limited relief available under the Idaho Rules of Civil Procedure, including Rule 60(a). In this case, the Court can control the potential disruptive effect of granting a motion to set aside the *Final Unified Decree* by ordering that the same is set aside in this case for the limited purpose of correcting a Rule 60(a) clerical mistake in the *Partial Decree* issued for water right 63-9245.

For these reasons, the Court in an exercise of its discretion will grant the *Motion to Set Aside the Final Unified Decree* under Rule 60(a) for the limited purpose of correcting the “per acre” clerical mistake in the *Partial Decree* issued for water right 63-9245.

B. Idaho Rule of Civil Procedure 60(b)(6)

Veolia alternatively moves to set aside the *Final Unified Decree* under Rule 60(b)(6). Since the Court finds the “per acre” limitation in the *Partial Decree* to be the result of a Rule 60(a) clerical mistake, it need not reach the Rule 60(b)(6) arguments raised in this proceeding.

III.
ORDER

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The *Motion to Set Aside Final Unified Decree and to Correct or Amend the Partial Decree for Water Right No. 63-9245* is hereby granted.
2. The *Final Unified Decree* entered in the SRBA on August 26, 2014, is hereby set aside for the sole and limited purpose of issuing an *Amended Partial Decree* for the above-captioned water right that removes the language "per acre" from the following remark presently included in the quantity element of the *Partial Decree*: "This right when combined with Right Nos. 63-7368 and 63-7618 shall not exceed 4.5 cfs per acre."
3. The *Partial Decree* entered for the above-captioned water right is set aside and amended as set forth in the attached *Amended Partial Decree*. The previously issued *Partial Decree* is superseded thereby.

IT IS SO ORDERED.

DATED: August 4, 2023.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AMENDED

In Re SRBA)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 63-09245

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

AUG - 4 2023

By _____ Clerk

Deputy Clerk

NAME AND ADDRESS: EAGLE WATER CO INC
PO BOX 455
EAGLE, ID 83616-0455

SOURCE: GROUND WATER

QUANTITY: 3.50 CFS

This right when combined with Right Nos. 63-7368 and 63-7618
shall not exceed 4.5 cfs.

PRIORITY DATE: 06/08/1979

POINT OF DIVERSION: T04N R01E S09 NESENE Within Ada County
SWSWNW
NESWNW
S15 NESW

To prevent injury to prior water rights appropriating water from
the Boise River and/or the underlying shallow aquifer tributary
to the Boise River, the new well used as a point of diversion for
this water right located within the NESW, S15, T4N, R1E shall be
constructed and maintained with unperforated casing and sealed
into the first significant confining layer located 200 feet or
more below ground surface.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Municipal	01-01 TO 12-31	1.10 CFS
	Fire Protection	01-01 TO 12-31	3.50 CFS

PLACE OF USE:
Place of use is within the service area of the Eagle Water
Company municipal water supply system as provided for under
Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

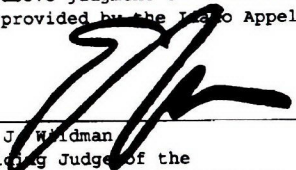
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

SRBA - Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

ORDER TO DISMISS

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the Court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Eric J. Waldman
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO SET ASIDE; ORDER OF AMENDED PARTIAL DECREE was mailed on August 04, 2023, with sufficient first-class postage to the following:

VEOLIA WATER IDAHO INC
Represented by:
CHARLIE S BASER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

PO BOX 83720
BOISE, ID 83720-0098

STATE OF IDAHO
Represented by:
CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 83720
BOISE, ID 83720-0010
Phone: 208-334-2400

STATE OF IDAHO
Represented by:
JOY VEGA
DEPUTY ATTORNEY GENERAL
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STATE OF IDAHO
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EAGLE WATER CO INC
PO BOX 455
EAGLE, ID 83616-0455

DIRECTOR OF IDWR

ORDER

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Deputy Clerk

