

MINIMUM REQUIREMENTS CHECKLIST
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) Idaho Water Company, LLC

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

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

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

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JUL 06 2023

DEPT OF WATER RESOURCES
SOUTHERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Idaho Water Company, LLC Phone (208) 312-1135
Mailing address 1135 Valley Rd South Eden, ID 83325-5245 Email del@idahowatercompany.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 Jason C. Helms, PE Phone (208) 308-2109
Mailing address 3158 NE Follett St. Roseburg, OR 97470 Email jchcivil@outlook.com

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

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

[Signature]
Signature of Applicant or Authorized Representative

Idaho Water Company manager
Print Name and Title if applicable

7/6/23
Date

[Signature]
Signature of Applicant or Authorized Representative

Jason C Helms, PE
Print Name and Title if applicable

6/12/23
Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
☒ Change nature of use

☐ Add diversion point(s)
☐ Change period of use

☒ Change place of use
☐ Other _____
- Is this a transfer for changes pursuant to Idaho Code § 42-221.O.8?
If yes, ☐ attach an explanation and any supporting documentation labeled as **Part 1A.2**.
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.3**.
This transfer seeks to provide a portion of the listed water rights to be authorized for diversion from a single well within the City of Idaho Falls system primarily for peak summer water use. Calculated ESPA impacts are below 2afa additional to all Snake River model reaches.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCE

RECEIVED

JUN 12 2023

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Department of Water Resource
Eastern Region

Name of Applicant(s) Idaho Water Company, LLCPhone (208) 312-1135Mailing address 1135 Valley Rd South Eden, ID 83325-5245Email del@idahowatercompany.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**.
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I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use

☒ Change nature of use ☐ Change period of use ☐ Other
- Is this a transfer for changes pursuant to Idaho Code §42-221.O.8?
If yes, ☐ attach an explanation and any supporting documentation labeled as **Part 1A.2**.
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.3**.
This transfer seeks to provide a portion of the listed water rights to be authorized for diversion from a single well within the City of Idaho Falls system primarily for peak summer water use. Calculated ESPA impacts are below 2afa additional to all Snake River model reaches.

88144

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:
Existing measurement devices in place and annual diversions reported. This transfer only provides additional water rights for diversion from well 18 in the existing water service system.
- b. Who owns the property at the point(s) of diversion? City of Idaho Falls
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
See attached contract for purchase and sale of water rights.
- 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:
Land associated with this portion of the water rights at the existing place of use will be dried up.
- 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:
This transfer will be additive to existing City of Idaho Falls rights which will remain otherwise unchanged.
- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:
Yes No
☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe:

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 27-7017

Current Owner: ALAN FIELDING
Priority Date: 5/3/1971
Origin: Water Right
Status: Active
Basis: Decreed

Source**Tributary**

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 11/01	4.12 CFS	983.5 AF
	<u>Total Diversion</u>	4.12 CFS	983.5 AF

Location of Point(s) of Diversion

GROUND WATER NE1/4NE1/4SE1/4 Sec. 1, Twp 01S, Rge 37E B.M.
BINGHAM County

Place of Use**IRRIGATION Within BINGHAM County**

T01S R37E S1	Lot 1	NENE	11.00	T01S R37E S1	Lot 2	NWNE	13.00
T01S R37E S1		SWNE	40.00	T01S R37E S1		SENE	36.00
T01S R37E S1		NESE	39.00	T01S R37E S1		NWSE	30.00
T01S R38E S6	Lot 5	NWNW	17.00	T01S R38E S6	Lot 4	SWNW	53.00
T01S R38E S6	Lot 3	SENW	4.00	T01S R38E S6		NESW	2.00
T01S R38E S6	Lot 6	NWSW	36.00				

Total Acres: 281

Conditions of Approval:

1. C18 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.
2. E01 Use of this right is combined with water from Idaho Irrigation Dist.
3. C05 Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Decreed Date: 12/11/2006

APPLICATION FOR TRANSFER OF WATER RIGHT PART 2

A. DESCRIPTION OF RIGHT(S) AS RECORDED

For each water right listed in Part 1B.1 of the application, attach a **Part 2A** report obtained from any Department office or from the Department's website @ idwr.idaho.gov, Water Right Transfers, Step 1.
Insert Part 2A reports into the application following Part 1.

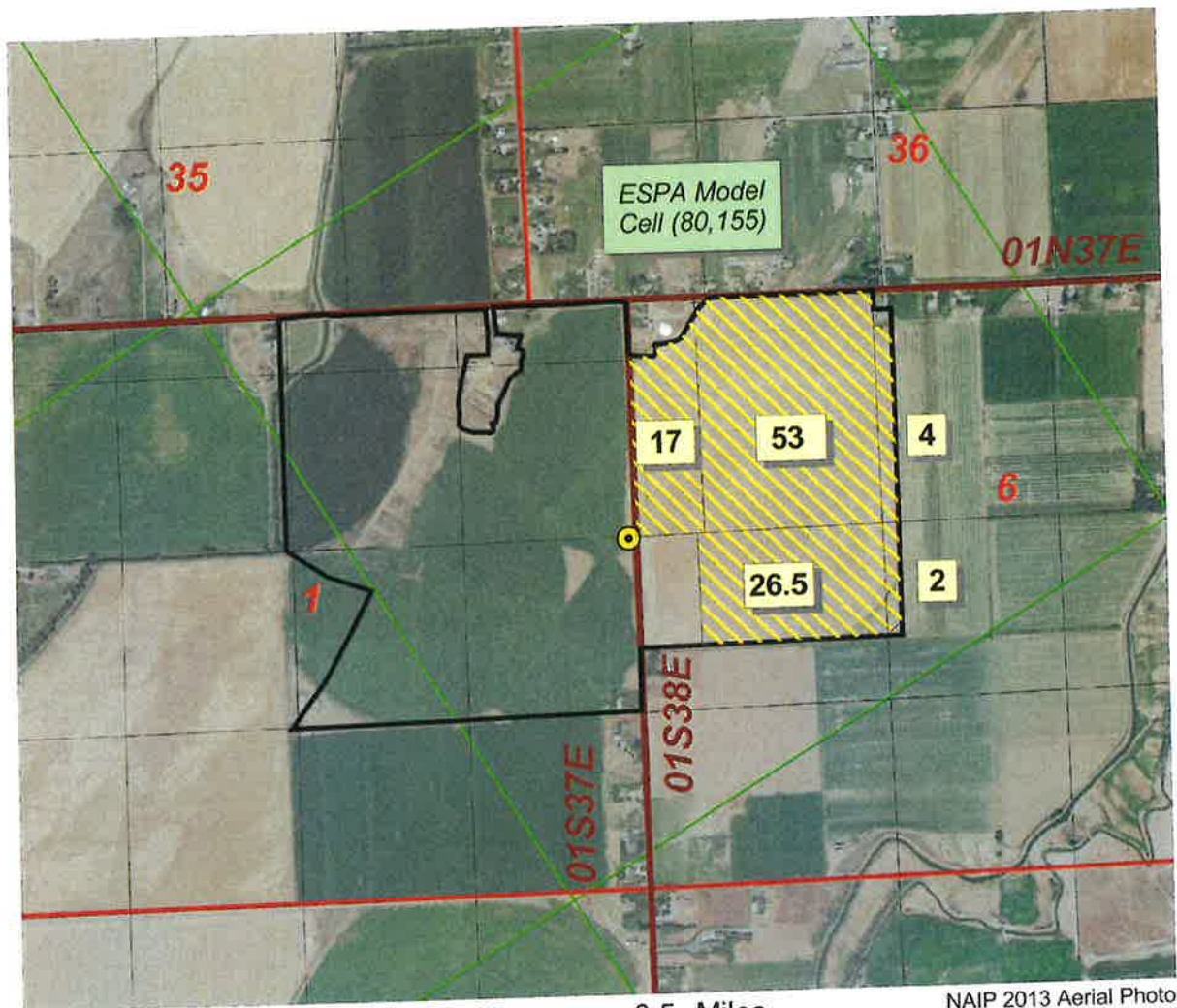
B. IF ONLY A PORTION OF THE RIGHT IS PROPOSED TO BE CHANGED, DESCRIBE THE PORTION BEING CHANGED AS IT APPEARS BEFORE THE REQUESTED CHANGES

- Complete and attach one copy of Part 2B for each right for which only a portion is proposed to be changed. If the entire right is proposed to be changed, Part 2B is not applicable. Additional copies of the **Part 2B** form can be obtained from any Department office or from the Department's website @ idwr.idaho.gov, Water Right Transfers, Step 3, or Water Right Forms, Changes in Use. Insert completed Part 2B forms into the application following Part 2A of the same water right.

Right Number: 27-7017

- Right Number: _____
1. amount 0.76 / 182.0 (cfs/ac-ft) for Irrigation purposes from 04/01 to 11/01
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
2. Lands irrigated or place of use: (If irrigation, identify with number of acres irrigated per $\frac{1}{4}$ $\frac{1}{4}$ tract.)

[illegible]



JCH - 7/5/2023

0 0.25 0.5 Miles

NAIP 2013 Aerial Photo

-  Existing Well 27-7017
-  Combined Dryup $(52.0+30.0+20.5) = 102.5$ ac.
-  Total Authorized Irrigation 281 ac.
-  Township & Range
-  Sections
-  Power County 40's
-  ESPA Model Grid

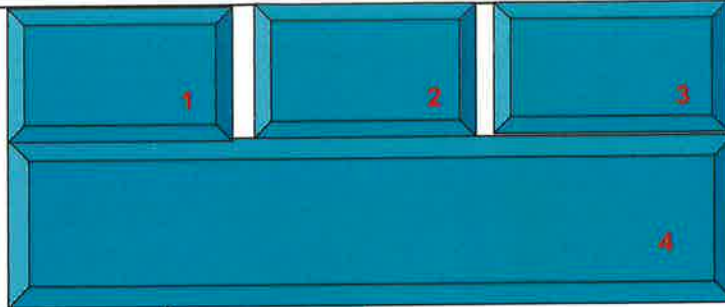


Attachment #7b

Cells this color are
set up for user entries

ENTER STARTING DATE FOR
SIMULATION. THEN PUSH
"UPDATE DATES" BUTTON
YEAR 1962
SEASON

TRANSFER NO:
Idaho Water Co
TRANSFER NAME:
27-7017-IF Well18



acres to transfer:
52.00

ENTER CELL LOCATIONS:

	'TO' CELL	'FROM1' CELL	'FROM2' CELL	'FROM3' CELL
ROW	76	80		
COLUMN	159	155		

27-7017 5/3/1971 182.0

Consumptive use fraction (2.972/3.5): 0.849
Total Maximum CU 154.54
Proposed CU 154.54

TRIMESTER OF ACTIVITY	TO WELL	FROM1 WELL		FROM2 WELL		FROM3 WELL	
	Projected Use AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER
SPR 1962	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SUM 1962	0.00	0.00	0.00	0.00	0.00	0.00	0.00
WIN 1970	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SPR 1971	0.00	51.51	51.51	0.00	0.00	0.00	0.00
SUM 1971	0.00	51.51	51.51	0.00	0.00	0.00	0.00
WIN 1971	0.00	51.51	51.51	0.00	0.00	0.00	0.00
SPR 1972	0.00	51.51	51.51	0.00	0.00	0.00	0.00
SUM 1972	0.00	51.51	51.51	0.00	0.00	0.00	0.00
WIN 1972	0.00	51.51	51.51	0.00	0.00	0.00	0.00
SPR 1973	0.00	51.51	51.51	0.00	0.00	0.00	0.00
SUM 1973	0.00	51.51	51.51	0.00	0.00	0.00	0.00
WIN 1973	0.00	51.51	51.51	0.00	0.00	0.00	0.00
SPR 1974	0.00	51.51	51.51	0.00	0.00	0.00	0.00
SUM 1974	0.00	51.51	51.51	0.00	0.00	0.00	0.00
WIN 1974	0.00	51.51	51.51	0.00	0.00	0.00	0.00
WIN 2022	0.00	51.51	51.51	0.00	0.00	0.00	0.00
SPR 2023	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SUM 2023	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2023	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SPR 2024	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SUM 2024	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2024	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SPR 2025	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SUM 2025	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2025	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SPR 2026	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SUM 2026	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2026	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SPR 2027	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SUM 2027	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2027	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SPR 2028	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SUM 2028	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2028	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SPR 2029	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SUM 2029	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2029	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SPR 2030	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2110	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SPR 2111	51.51	0.00	51.51	0.00	0.00	0.00	0.00
SUM 2111	51.51	0.00	51.51	0.00	0.00	0.00	0.00
WIN 2111	51.51	0.00	51.51	0.00	0.00	0.00	0.00

One-Way Analysis of Independent Transfers

Transfer 27-7017 to single well (TWP 1N,RNG 38E Section 6 SESESW)

WR No.	Div.	Rate	Con. Vol.	No. of Irr.	Priority	POD	Dedicated Vol.	Model
(CFS)			(AFA)	Acres	Date	Location	AFA/ AFT	Node

Transfer 1: Proposed Steady State Impacts following Transfer

Refer to Transfer Application

Transfer 1: Worst Case Transient State Impacts following Transfer

Impact by Reach (AF/Trimester)

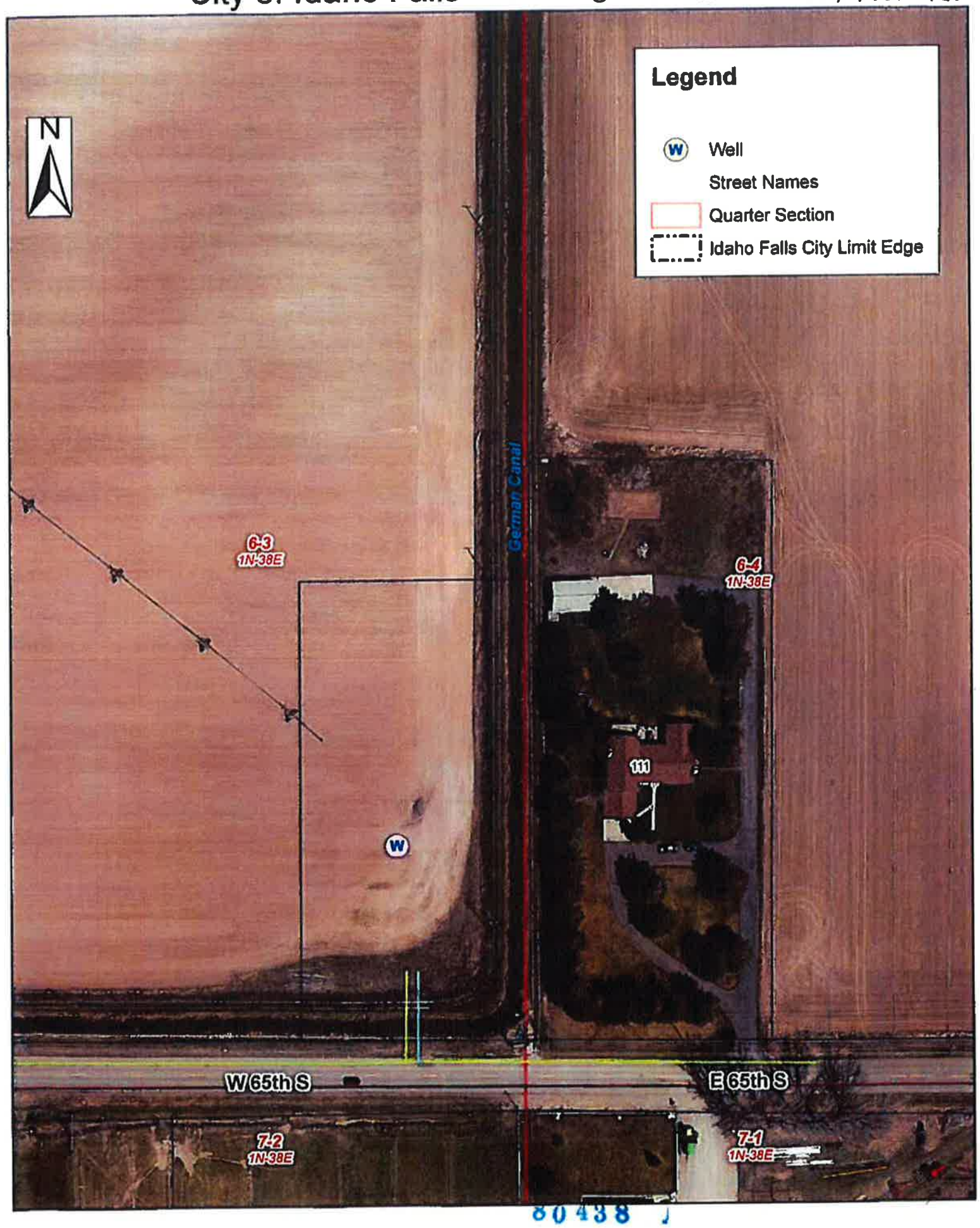
Ashton to Rexburg	Heise to Shelley	Shelley to Nr Blckft	Nr Blckft To Neeley	Neeley to Minidoka	Dev. Wbl. To Buhl	Buhl to Kspr	Kspr	Kspr to Malad	Malad	Malad to Bancroft
1.52	6.00	26.25	16.77	0.23	0.24	0.20	0.09	0.08	0.10	0.01
1.79	7.98	22.25	18.43	0.25	0.27	0.22	0.10	0.09	0.11	0.01

Steady State Analysis	Mitigation Check 1 - >10% of Historical:	17.8%	32.9%	-15.3%	9.9%	10.2%	10.2%	10.2%	10.2%	10.2%	10.2%
	Mitigation Check 2: > 2 AF/T:	0.3	2.0	-4.0	1.7	0.0	0.0	0.0	0.0	0.0	0.0
	Mitigation Check 3 - >10% of Total:	3.5%	15.5%	43.2%	35.8%	0.5%	0.5%	0.4%	0.2%	0.2%	0.0%
	Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
	Mitigation Vol. Req'd (ac-ft):	0.3	2.0	-4.0	1.7	0.0	0.0	0.0	0.0	0.0	0.0
Transient State Analysis	Mitigation Check 1 - >10% of Historical:	17.8%	32.9%	-13.0%	9.9%	10.2%	10.2%	10.2%	10.2%	10.2%	10.2%
	Mitigation Check 2: > 2.01 AF/T:	0.3	2.0	-3.4	1.7	0.0	0.0	0.0	0.0	0.0	0.0
	Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
	Mitigation Vol. Req'd (ac-ft):	0.3	2.0	-3.4	1.7	0.0	0.0	0.0	0.0	0.0	0.0

Read Me

ESPA Impacts Mitigation Analysis Worksheet

City of Idaho Falls - Existing Well 18 - Post Transfer



AGREEMENT TO PURCHASE WATER RIGHT

1.0 EFFECTIVE DATE

This Agreement to Purchase Water Right (the "Agreement") is effective April 25, 2023 (the "Effective Date").

2.0 PARTIES

The parties to this Agreement are Idaho Water Company, LLC an Idaho limited liability company, (the "Seller") and the City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho (the "Buyer"). Buyer and Seller may be referred to herein collectively as the "Parties" or individually as a "Party."

3.0 DESCRIPTION OF WATER RIGHT

Seller holds an Option to Purchase Idaho Water Right No. 27-7017 (the "Water Right"), as it is described in the records of the Idaho Department of Water Resources (hereafter "IDWR" or the "Department"). Seller desires to sell to Buyer, and Buyer agrees to purchase from Seller, the following described *portion* of the Water Right to be used by Seller for municipal purposes on the terms and conditions described in this Agreement:

Source:	Groundwater
Purpose:	Irrigation
Priority Date:	May 3, 1971
Quantity (Diversion Rate):	0.76 cfs of the total authorized 4.12 cfs
Quantity (Volume):	182 acre-feet per annum
Place of Use (Acreage):	52 acres of the 281 authorized acres

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

4.0 PURCHASE PRICE AND EARNEST MONEY DEPOSIT

The purchase price for the Purchased Water Right is [REDACTED] per Purchased Water Right acre for a total of [REDACTED] (the "Purchase Price"). Contemporaneous with the execution of this Agreement, Buyer shall deliver to Seller earnest money in the amount of [REDACTED] (the "Earnest Money"). The Earnest Money shall be applied towards the Purchase Price at closing or otherwise disposed of as provided herein. It is anticipated that IDWR will reduce the volume authorized under the Purchased Water Right as part of the conversion (or "transfer") of the Purchased Water Right from irrigation to municipal use (as described in paragraph 5.0 below) and, in such event, there shall be no reduction in the Purchase Price. However, if IDWR approves the transferred Purchased Water Right for less than the 0.76 cfs of the Purchased Water Right, then the Purchase Price shall be reduced by [REDACTED] for each reduction of 0.0146 cfs¹ or portion thereof in the order from IDWR approving the transfer application described in paragraph 5.0 below.

5.0 TRANSFER APPLICATION

Within 30 days after both Parties sign this Agreement, Buyer will file with IDWR an *Application for Transfer of Water Right* (the "Transfer") to amend and move the Purchased Water Right to Buyer's desired location(s) and amend the nature of use of the Purchased Water Right from irrigation to municipal use in accordance with current IDWR policy. The Buyer's selected Point of Diversion (hereinafter "POD") and Place of Use (hereinafter "POU") will be listed as the "TO" POD and POU in the Transfer prepared by Seller. The Parties will cooperate in obtaining IDWR approval of the Transfer and will provide and execute any necessary documents requested by IDWR. Seller will be responsible

¹ This value is calculated by dividing 0.76 cfs by 52 acres to arrive at a diversion rate per acre of 0.0146 cfs. The diversion rate element of the Purchased Water Right is the critical water right element for Buyer and, as such, a loss of diversion rate equivalent to the diversion rate per acre will result in a reduction in the purchase price of the price per acre to buy the Purchased Water Right [REDACTED]

for the costs to file the Transfer, including its own attorney fees, consultant fees, and filing fees associated with preparation of the Transfer. In the event this Agreement is terminated pursuant to paragraph 7 of this Agreement, Buyer shall at its sole expense take such action as may be required to void or reverse the Transfer to return the Purchased Water Right to the condition they existed on the Effective Date. Buyer will participate in reviewing the Transfer, support Seller in any protest hearings that may occur related to the IDWR transfer application, and not unnecessarily delay or hinder approval of any changes necessary to the Transfer that Seller may propose.

6.0 TRANSFER COSTS

Seller agrees to pay the costs and expenses associated with the Transfer, including without limitation its own consultant fees, mitigation costs and related fees, and its own attorney fees in the case of protests and hearings related to the Transfer. If the Transfer is protested and Buyer decides to pursue the administrative contested case to hearing, Buyer shall be responsible for its own attorney fees and costs associated with the contested case. Title to the Purchased Water Right will remain with either Idaho Water Company, LLC, or the current water right owner, until Seller executes the Special Warranty Deed on the Closing date. Should Buyer choose to be represented by legal counsel in this matter, including during the course of any protests, administrative proceedings or other hearings, Buyer will be responsible for its own attorney fees and costs associated with accomplishing the Transfer.

7.0 CONTINGENCIES

If the Transfer is protested, Buyer may terminate this Agreement and the Parties will have no further obligation to each other. In such a case, the Earnest Money will be retained by the Seller for costs associated with preparing the Transfer and facilitating the application through hearings and other proceedings, including, but not limited to, its costs for engineering, consulting, and attorney fees. In the event IDWR issues a final order denying the Transfer or in the case IDWR approves the Transfer but with adjustments to the diversion rate or imposes conditions that materially devalue the Purchased Water Right for Buyer's intended purposes (in either case, no matter whether the final order results from a contested case or not), then Buyer, in its sole discretion and upon written notice to Seller, may terminate this Agreement and the Parties will have no further obligation to each other. In such a case, the Earnest Money will be retained by the Seller for costs associated with preparing the Transfer and facilitating the application through hearings and other proceedings, including, but not limited to, its costs for engineering, consulting, and attorney fees. Notwithstanding the foregoing, either Party may appeal any order by IDWR concerning the transfer of the Purchased Water Right through the Idaho court system at such Party's sole cost and expense, until there is a final unappealable decision issued by an Idaho court. Buyer shall have fourteen (14) days after the issuance date of a final unappealable decision issued by an Idaho court to terminate this Agreement. If Buyer elects not to terminate this Agreement within the fourteen (14) day period, the Parties shall proceed to close the Agreement within twenty-eight (28) days of the issuance date of a final unappealable decision issued by an Idaho court.

8.0 CLOSING

Closing of the Purchased Water Right (the "Closing") shall occur at the offices of Holden, Kidwell, Hahn & Crapo, P.L.L.C, or at another location mutually agreed by the Parties. At Closing, Buyer and Seller shall execute (with acknowledgements, as needed) and/or deliver all instruments, documents, and the Purchase Price (less the Earnest Money) for the Purchased Water Right. The documents Seller shall deliver to Buyer at closing include: (i) a Special Warranty Deed (the "Deed") for the Purchased Water Right² substantially in the form attached to this Agreement as Exhibit 1; and (ii) any lien release or other documents reasonably requested to confirm the conveyance of the Purchased Water Right free and clear of encumbrances. The cost of recording the Deed shall be paid by Buyer. All other expenses not specifically referenced in this Agreement with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.

² The Parties understand that once the IDWR transfer of the Purchased Water Right is complete, the transferred Purchased Water Right will be given new water right numbers and those numbers will be included on the Special Warranty Deed.

9.0 SELLER'S WARRANTIES

Seller warrants that:

- A. The Purchased Water Right is not subject to past forfeiture or abandonment; and
- B. Seller has not sold the Purchased Water Right contemplated for transfer to any other person or entities.

10.0 OBLIGATION TO AVOID FORFEITURE

While this Agreement is in effect, the Party in possession shall continue use and/or protection of the Purchased Water Right in a manner to avoid forfeiture.

11.0 NO BROKER OR AGENT

Del Kohtz, member of Idaho Water Company, LLC, discloses that he is a licensed real estate agent acting for his own account and does not represent Buyer or Seller as an Agent under this Agreement.

12.0 BENEFITS

The covenants, conditions and terms of this Agreement shall extend to and be binding upon the inure to the benefit of the heirs, administrators, executors, and assigns to the Parties hereto.

13.0 CONSTRUCTION

The Parties acknowledge that each has had opportunity to have this Agreement reviewed by an attorney and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement or any amendments or exhibits and this Agreement shall be construed according to its fair meaning and not strictly for or against either Party.

14.0 COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A PDF or other electronic signature will be considered an original.

15.0 ENTIRE CONTRACT

This Agreement constitutes the entire understanding between the Parties with respect to the Water Right and shall supersede and take the place of any other oral or written agreement of the Parties relating to the Water Right.

IN WITNESS WHEREOF, the Parties have hereunto executed this document consisting of four pages and one exhibit, in duplicate, on the day and year written below.

SELLER:


Idaho Water Company, LLC
By: Delbert Kohtz, Its Authorized Member
DATE: 5/3 /2023

BUYER:


City of Idaho Falls
By: Rebecca L. Noah Casper, Its Authorized Officer
(print name)

DATE 5 / 11 2023

ATTEST


~~Jasmine Marroquin~~ CORRIN WILDE
City Clerk, City of Idaho Falls

EXHIBIT 1 - FORM OF DEED

When Recorded return to:

(Space above line for Recorder's use only)

SPECIAL WARRANTY DEED FOR WATER RIGHT

Idaho Water Company LLC, an Idaho limited liability company, whose address is 1135 Valley Rd. South, Eden, Idaho 83325 ("Grantor"), does hereby grant, bargain, sell, assign, and convey unto _____ (the "Grantee"), whose address is _____, Idaho, and to Grantee's heirs, successors, and assigns forever, that portion of Water Right No. _____ and Water Right No. _____ that had been appurtenant to the _____ County, State of Idaho, real property described as _____ Boise, Meridian (the "Water Right"), and subsequently severed therefrom by Idaho Department of Water Resources transfer # _____.

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

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

Grantor hereby covenants and warrants to Grantee as follows:

that Grantor is the owner in fee simple of the Water Right; and

Grantor has the authority to convey the Water Right to Grantee; and

that Grantor has not conveyed any of the identified portions of the Water Right to anyone other than Grantee; and

the Water Right are free from all liens, claims, or encumbrances.

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

Grantor retains no reversionary interest in the Water Right.

(End of Text, Signature Page Follows)

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

Grantor: IDAHO WATER COMPANY, LLC

Dated: _____

By: // FORM DOCUMENT DO NOT SIGN//

Name: Delbert G. Kohtz

Title: Member, Idaho Water Company, LLC

STATE OF IDAHO,)
) ss.
County of _____)

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Delbert G. Kohtz, known and identified by me to be a Member of Idaho Water Company, LLC, an Idaho limited liability company, that executed this instrument or the person who executed this instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

Notary Public for Idaho
Residing at _____, Idaho
Commission expires: _____

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHTS

THIS OPTION AGREEMENT for Purchase and Sale of Water Rights (the "Option Agreement") is entered into as of the latest date contained within the signature blocks below, (the "Effective Date") by and between **Idaho Water Company, LLC**, an Idaho Limited Liability Company ("Buyer") and Alan Fredlund, 1095 E 1210 N, Shelley, Idaho (the "Seller"). The term "Party" or "Parties" means either Seller, Buyer, or both, as the context requires.

The Parties agree as follows:

1. **Exclusive Option.** Seller hereby grants and sells to Buyer the exclusive option and right ("Option") to purchase, at Buyer's sole discretion, some or all of the Water Rights as defined in section 2. Buyer may exercise the Option only during the Option Period as defined in section 7. Buyer may elect to exercise the Option with respect to any part of the Water Rights, and may continue to exercise the Option incrementally with respect to additional portions of the Remaining Rights as defined in section 2 throughout the Option Period.

2. **Water Rights.** The term "Water Rights" means the following:
 Water Right No. 25-7088, Water Right No. X, Water Right No. X,
 Water Right No. X 7014, Water Right No. X, Water Right No. X,
 Water Right No. X, Water Right No. X, Water Right No. X,
 Water Right No. X, Water Right No. X, Water Right No. X.
 The Water Rights irrigate a total of 258 acres of land. The permissible place of use for the Water Rights may be a different number of acres. The term "Remaining Rights" means those Water Rights that remain in the ownership of Seller and to which the Option continues to apply after Buyer has exercised its Option to acquire some but not all of the Water Rights. If Buyer has not yet exercised its Option as to any of the Water Rights, the term "Remaining Rights" shall refer to all of the Water Rights. The Remaining Rights or portion thereof to which any given exercise of the Option applies under section 16 are referred to as the "Purchased Rights."

3. **Water Purchase Price.** The total unadjusted purchase price for the Purchased Rights shall be \$ [REDACTED] per acre for each acre of land that may be irrigated with the Purchased Rights. A credit for the Earnest Money and any Annual Option Payments paid (to the extent not previously credited at any prior Closing), and a further adjustment pursuant to section 17(d) if applicable, shall be applied to calculate an adjusted purchase price at Closing, referred to herein as the "Water Purchase Price."

4. **Earnest Money.** Upon execution of this Option Agreement, Buyer shall pay to Seller a fee in the amount of \$1000.00 ("Earnest Money"). The Earnest Money is nonrefundable, except in the case of Seller's default as provided in section 28.

5. **Annual Option Payment.** For each year during which the Option is in effect, Buyer shall pay to Seller the amount of \$ [REDACTED] for every acre of land that may be irrigated with the Remaining Rights at the time the Option is extended ("Annual Option Payment").

6. **Due Diligence Period.** Buyer shall have a 30-day period ("Due Diligence Period") following the Effective Date during which to inspect government records, review information provided by Seller, and take other steps to ascertain the validity and value of the Water Rights. The Due Diligence Period may be extended by written agreement between Buyer and Seller.

7. **Initial Option Period.** If Buyer elects to proceed with the Option Agreement, Buyer shall pay to Seller the first Annual Option Payment no later than the first day following the end of the Due Diligence Period. If Buyer for any reason fails to pay the first Annual Option Payment by that day, this Option Agreement shall be terminated, Seller shall retain the Earnest Money, and neither Party shall have any further obligation to the other Party. Upon timely payment of the first Annual Option Payment, the exclusive Option granted herein shall remain in effect for a period of one year ("Initial Option Period"). The term "Option Period" means Initial Option Period as defined in this section and any extension thereof exercised by Buyer pursuant to sections 8, 9, or 10.

8. **First Option Extension.** At any time prior to the end of the Initial Option Period, Buyer may elect to extend the Initial Option Period for an additional year. In the event Buyer so elects, Buyer shall deliver to Seller written notice of its election together with an additional Annual Option Payment.

9. **Second and Third Option Extensions, Only If Transfer Pending.** If Buyer has initiated a Transfer pursuant to section 11, and the Transfer remains pending before the Idaho Department of Water Resources ("IDWR") during the last month of the Option Period then in effect, Buyer may elect to further extend the Option Period in up to two additional one-year increments. Each time Buyer so elects, Buyer shall deliver to Seller written notice of its election together with an additional Annual Option Payment.

10. **Further Option Extensions by Agreement Only.** Any further extensions of the Option Period beyond those provided in section 9 require the written agreement of Buyer and Seller.

11. **Transfer Application to IDWR.** At any time during the Option Period then in effect, Buyer, in its sole discretion, may elect to file with IDWR one or more applications on behalf of Buyer or Seller to transfer some or all the Remaining Rights. The term "Transfer" includes the transfer application itself as well as associated administrative proceedings and any judicial review thereof. If Buyer elects to Transfer less than all the Remaining Rights, Buyer will coordinate with Seller prior to initiating or amending a Transfer in an effort to identify for Transfer those Remaining Rights such that the Dry-Up of appurtenant lands under section 21 will minimize disruption of ongoing farm operations by Seller once the Transfer is completed. Those Remaining Rights that are the subject of a particular Transfer are called the "Transfer Rights." Buyer shall bear all costs associated with each Transfer. Buyer shall provide Seller a copy of

any Transfer application, amendment, or other dispositive filing or order. The Transfer applications may entail a change in any element or condition of the Transfer Rights, or may entail use of the Transfer Water Rights for mitigation or similar purpose. Buyer shall be entitled to any mitigation credits resulting from the Transfer.

12. Cooperation with Transfer Efforts. Seller shall cooperate fully with Buyer throughout with each and every Transfer. At Buyer's request and direction, Seller shall take whatever steps are reasonable and appropriate to support and assist in securing the Transfer, including signing and notarizing Transfer applications, authorizations, and other documents consistent with Buyer's rights under this Option Agreement. Any costs incurred by Seller at Buyer's direction in this regard shall be reimbursed by Buyer.

13. Withdrawal of Transfer Application. At any time and in its sole discretion Buyer may withdraw, amend, or suspend any pending Transfer application or file a new or revised Transfer application.

14. Transfer Pending at End of Option Period. If any Transfer application is still pending upon the expiration of the Option Period and Buyer has failed to exercise its Option to acquire the Transfer Rights, Buyer shall be obligated to take whatever actions are necessary, at Buyer's sole expense, to terminate and withdraw the Transfer application and to fully restore the Transfer Rights to Seller.

15. Approval of Transfer. Upon approval of any Transfer by IDWR, if Buyer has not already exercised its Option with respect to the Transfer Rights, Buyer must either exercise its Option or decline the Transfer. Buyer must give notice to Seller of its decision to exercise or decline within 20 days following the effective date of the final approval of the Transfer by IDWR. If Buyer elects not to exercise, Buyer shall promptly notify IDWR that it declines to accept the Transfer, and Buyer shall take any further action necessary at its sole expense to fully restore to Seller the Transfer Rights. If for any reason Buyer is unable to fully restore Seller's rights, Seller may require Buyer to exercise its Option to acquire the Transfer Rights.

16. Exercise of Option. At any time during the Option Period, Buyer may elect to exercise its Option to purchase the Remaining Rights or any portion thereof, whether or not it has initiated or received approval of a Transfer of such rights. Upon such exercise, Buyer shall deliver to Seller written notice of its exercise. The notice shall identify with specificity the Purchased Rights and the land to which the Purchased Rights are appurtenant. If Buyer exercises its Option with respect to fewer than all of the Remaining Rights, Buyer shall cooperate with Buyer in good faith to select acres within the Irrigated Land for Dry-Up in order to minimize disruption of ongoing farming activities. "Irrigated Land" means the land to which the Remaining Rights are appurtenant prior to exercise of the Option. Following each exercise of the Option, the Parties shall proceed to a Closing as provided in section 18.

17. Encumbrances at Closing. It is Seller's duty to remove all Encumbrances prior to or at Closing, provided that Seller is entitled to use the proceeds of the sale at Closing to do so. If Seller fails to remove all Encumbrances prior to or at Closing, Buyer may elect to (a) agree with Seller on a new Closing date in order to allow further time for Seller to remove the

Encumbrances, (b) void the particular transaction involving the Purchased Rights while keeping the Option Agreement otherwise in force, (c) terminate this Option Agreement pursuant to section 28, or (d) waive the failure to remove all Encumbrances and close despite the remaining Encumbrances in which case Buyer shall be entitled to deduct from the Water Purchase Price the cost associated with removal of any remaining Encumbrances. The cost that may be offset against the Water Purchase Price shall be based on the amount required to be paid to secured parties or other claimants in order to remove the remaining Encumbrances, but shall not include any attorney fees or other actual or anticipated transaction costs involved in removing the remaining Encumbrances, such transaction costs to be borne by Buyer unless otherwise agreed in writing by the Parties.

18. Closing. The term "Closing" means the transaction in which the Purchased Rights are conveyed by Seller to Buyer. If Buyer elects to exercise the Option incrementally, there will be multiple Closings. Upon exercise of the Option, Buyer and Seller shall agree upon a mutually acceptable time and place, at which time Seller shall sell and convey to Buyer the Purchased Rights. At Closing Buyer shall pay to Seller the Water Purchase Price. The documents that Seller shall deliver to Buyer at Closing shall include: (a) an executed water rights deed and appropriate exhibits substantially in conformance with the form set out in Option Exhibit B but corrected or updated as necessary to accurately describe the Purchased Rights, (b) a Notice of Change of Ownership confirming Buyer's ownership of the Purchased Rights and the assignment of the appropriate portion of the Snake River Basin Adjudication claim for the Purchased Rights, and (c) any other documents reasonably requested to complete or confirm the conveyance of the Purchased Rights. In the event any of the Purchased Rights are represented by a permit, rather than license or decree, Seller shall convey such right by bill of sale.

18.1 Multiple Closings Contemplated. Whereas Buyer may apply for more than one transfer of the Water Rights, if the Department approves any single transfer before the remaining transfers, then the Parties will proceed to a closing within (30) thirty days of any final order by the Department approving a transfer of the Water Rights and the Buyer will deliver the Purchase Price balance for water rights transferred as described above.

18.2 Notice of Simultaneous Closings. Notwithstanding anything in this Agreement to the contrary, Buyer may simultaneously close on its purchase of the transferred Water Rights along with other transactions in which Seller is not a party, and Buyer may satisfy encumbrances on the Water Rights with proceeds at closing. All transactions at closing shall be deemed to take place simultaneously and no transaction shall be deemed to have been completed and no document or certificate shall be deemed to have been delivered until all transactions are completed and all documents delivered.

19. Recording. Upon Execution of this Option Agreement, Seller shall execute a Memorandum of Option Agreement substantially in the form set out in Option Exhibit A. Buyer may record the Memorandum of Option Agreement in the records of any county in

which the Irrigated Land is located. This Option Agreement shall *not* be recorded by either Party. After closing, Buyer may record the Deed in the records of any county in which the Irrigated Land is located.

20. Use and Protection of Water Rights. Prior to their conveyance to Buyer at Closing, Seller is authorized to continue to use the Remaining Rights on the Irrigated Land or to place the Remaining Rights in the water supply bank and lease them to others for a period not exceeding one year. Seller shall take all necessary and appropriate actions, including use of the water supply bank, that are reasonably necessary to ensure that the Remaining Rights are not forfeited or abandoned in whole or in part and that time does not run toward forfeiture during the Option Period. Seller shall keep Buyer fully advised of the status and use of the Remaining Rights during the Option Period. At no time during which this Option Agreement is in effect shall Seller take any action that diminishes the value or utility of the Remaining Rights. Seller shall take all appropriate steps to protect and defend at its own expense the Remaining Rights in the Snake River Basin Adjudication during the Option Period.

21. Dry-Up Obligation. The obligations in this section are referred to as "Dry-Up." Upon Closing, Seller (including its renters and lessees) shall forever cease to divert the Purchased Rights to irrigate the land appurtenant thereto unless the Parties have entered into a written agreement authorizing the continued use by Seller of the Purchased Rights. If the Closing occurs during the irrigation season (as specified in the applicable permit, license, or decree) and Seller (or any renter or lessee) is then beneficially using some or all of the Purchased Rights, the user may continue such beneficial use of the Purchased Rights during that irrigation season (subject to approval by IDWR), but shall thereafter be subject to the Dry-Up obligation described in this section. If the Closing does not occur during the irrigation season or if, for whatever reason, the Purchased Rights are not then in beneficial use, the Dry-Up obligation described in this section shall take effect immediately upon Closing.

22. Seller's Disclosure. Prior to the end of the Due Diligence Period, Seller shall disclose to Buyer all Encumbrances and any other information available to Seller affecting the validity or value of the Remaining Rights. Seller shall thereafter timely provide to Buyer any additional such information that becomes available to Seller. Seller promptly shall provide all documents as Buyer may reasonably request to confirm the ownership, condition, status, or transferability of the Water Rights, the Irrigated Land, and the Encumbrances. "Encumbrance" or "Encumbered" refer to any lien, mortgage, deed of trust, claim, security interest, monetary obligation, unpaid tax obligation or assessment, option, lease, license, or other conveyed legal interest upon, affecting or burdening the Irrigated Land or Water Rights (whether or not of record).

23. Further Inquiry. At any time while this Option Agreement is in effect, Buyer or Buyer's agents are authorized to make inquiries of regulatory officials and lenders with respect to the Remaining Rights, the Irrigated Land, and any Encumbrances. If necessary for purposes of evaluating the Remaining Rights for Transfer purposes, Seller shall make the Irrigated Land available for inspection to Buyer and Buyer's agents.

24. Crop Reports. To the extent such reports are available, Seller agrees to secure and provide to Buyer (or to assist Buyer to obtain) Farm Service Agency crop reports for

the Irrigated Land during the last twenty years. Buyer warrants that it has or will obtain any approvals or authorizations necessary from prior owners or others with interests in the Irrigated Land necessary to secure the release of the crop reports.

25. *New Encumbrances.* After the Effective Date, Seller shall not renew, modify, restructure, or refinance the existing Encumbrances or add any new Encumbrance that increases the total net dollar amount required to clear all Encumbrances or otherwise causes the Encumbrances to be more difficult to cure by the time of Closing, without the prior written consent of Buyer, unless Seller secures from its lender in writing advance approval for the complete release of such Encumbrances to enable the conveyance of the Remaining Rights to Buyer at Closing. Upon taking or allowing any action affecting an existing Encumbrance or creating a new Encumbrance (whether or not increasing the total net dollar amount), Seller shall inform Buyer of such action and provide appropriate documentation as requested by Buyer.

26. *Seller's Representations and Warranties.* Seller hereby represents and warrants to Buyer, as of the Effective Date of this Option Agreement and again as of the Closing, as follows:

26.1 *Authority.* Seller owns the Remaining Rights and Irrigated Land in fee simple. Seller has the full legal right, power and authority to enter into and perform this Option Agreement. Seller has acquired or will acquire by the time of Closing all consents and approvals necessary to enter into and perform this Option Agreement. Seller, and each person signing on behalf of Seller, has full power and authority to execute this Option Agreement and perform Seller's obligations hereunder, and all necessary action to authorize this transaction has been taken.

26.2 *No Defaults.* Seller is not in default with respect to any of its obligations or liabilities pertaining to the Irrigated Land or the Remaining Rights.

26.3 *Good Title; Removal of Encumbrances.* To the best of Seller's knowledge, there are no Encumbrances other than those disclosed to Buyer during the Due Diligence Period. Seller warrants that Seller has good and marketable title to the Remaining Rights and is capable of removing and will remove all Encumbrances on the Purchased Rights upon each Closing, provided that Seller is entitled to use the proceeds of each sale to do so.

26.4 *Appurtenant Water Rights.* The Remaining Rights are appurtenant to and have been beneficially used to irrigate the Irrigated Land. The authorized place of use for the Remaining Rights is the Irrigated Land and no other. No other water rights are appurtenant to the Irrigated Land for irrigation purposes.

26.5 *Correct Description.* The description of the Water Rights set out in the Memorandum of Option Agreement (together with any exhibits attached thereto) is accurate and complete to the best of Seller's knowledge.

26.6 *No Supplemental Rights.* Unless expressly disclosed to Seller in writing, the Remaining Rights have served as the primary source of irrigation

water on the Irrigated Land at all relevant times since their inception, and there are no water rights appurtenant to the Irrigated Land other than the Water Rights.

26.7 *No Forfeiture.* To the best of Seller's knowledge, the Remaining Rights have been placed to continual beneficial use on the Irrigated Land, have not been forfeited or abandoned in whole or in part, and have never been subject to a continuous five-year period of non-use except as such non-use may have occurred while the Remaining Rights were in an appropriate water bank or were otherwise exempt from forfeiture.

26.8 *Compliance with Conditions.* The use of the Remaining Rights has been and continues to be in compliance with all conditions stated in any applicable permit, license, order, or decree.

26.9 *No Other Claims* Except for orders or general calls for delivery based on conjunctive management of the Eastern Snake Plain Aquifer and the Snake River, Seller has no knowledge of any claims, actions, suits, arbitrations, proceedings, or investigations by or before any court or arbitration body, any governmental, administrative or regulatory agency, or any other body, pending or threatened against, effecting or relating to the Remaining Rights or the Irrigated Land, nor is Seller aware of any basis for such claim, action, suit, arbitration, proceeding or investigation.

26.10 *Accurate and Complete Information.* To the best of Seller's knowledge, all documents, agreements, and other information that Seller has provided or caused to be provided to Buyer are true and correct in all material respects and do not omit any material fact or condition required to be stated or necessary to make the statement or information not misleading, and there are no other agreements or conditions with respect thereto.

27. *Automatic Termination.* This Option Agreement shall terminate at the end of the Option Period or upon Closing the sale of all of the Water Rights (or the last of the Remaining Rights).

28. *Buyer's Termination for Default by Seller.* Buyer may terminate this Option Agreement at any time for an uncured material default by Seller (including breach of representation or warranty). If Buyer elects to terminate, Buyer first shall provide a written demand to Seller and provide Seller 30 days to cure. If Seller fails to cure within that time, Buyer may terminate this Option Agreement upon written notice to Seller. In the event of a proper termination by Buyer for Seller's default, Buyer is entitled to pursue any or all of the following remedies. Buyer may (a) seek specific performance of this Option Agreement, (b) obtain a refund of the Earnest Money and any Annual Option Payments and purchase money paid to Seller, (c) recover all damages incurred by Buyer, and/or (d) pursue all other remedies available at law or in equity. It is the intent of the Parties that these remedies be cumulative to the extent permitted by law and equity, and that they be liberally enforced so as to adequately and completely compensate Buyer.

29. Seller's Termination for Default by Buyer. Seller may terminate this Option Agreement at any time for an uncured material default by Buyer. If Seller elects to terminate, Seller first shall provide a written demand to Buyer and provide Buyer 30 days to cure. If Buyer fails to cure, Seller may terminate this Option Agreement upon written notice to Buyer. In the event of a proper termination by Seller for Buyer's default, Seller is entitled to retain any Earnest Money and Annual Option Payments paid and is also entitled to seek damages or other relief available in law or equity.

30. Notices. Any notice under this Option Agreement shall be in writing and shall be delivered by certified U.S. mail, commercial overnight service, facsimile, email, or hand delivery. Receipt of any notice given by email, facsimile, or hand delivery shall be confirmed in writing or email by the receiving Party. All notices shall be addressed to the Parties at the addresses set forth below, or at such other addresses as the Parties may from time to time direct in writing. Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal or (b) three days after mailing by certified mail.

30.1 To Buyer:

Idaho Water Company, LLC
1135 Valley Road South
Eden, ID 83325
Email: info@idahowatercompany.com

30.2 To Sellers

Alan Fielding
1095 E 1200 N
Shelley Id 83274

31. Further Acts. In addition to the acts recited herein and contemplated to be performed, the Parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, deeds, assurances, releases, and authorizations as either Party hereto may reasonably require to consummate the transactions contemplated hereunder.

32. Own Account. Seller discloses and Buyer acknowledges that Delbert G. Kohtz is a licensed real estate agent acting herein as principal for his own account and not representing or acting as an agent for Buyer.

33. Successors and Assigns. This Option Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, heirs, and personal representatives. No third-party beneficiaries are created by this Agreement.

34. *Idaho Law.* This Option Agreement shall be governed by the laws of the State of Idaho. The Parties further agree that Idaho law shall apply to and be applied in any proceeding.

35. *Entire Agreement.* This Option Agreement is the entire agreement of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral.

36. *Amendments.* This Option Agreement may be modified only in writing, signed by Buyer and Seller.

37. *Headings.* The headings and captions contained in this Option Agreement are for the convenience of the Parties only and are not intended to alter or limit the meaning of the provisions thereunder.

38. *Severability.* The invalidity or unenforceability of any provision of this Option Agreement shall not affect the validity or enforceability of any other provision hereof.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

BUYER:

By: Delbert G. Kohtz
Delbert G. Kohtz- authorized Member
Idaho Water Company, LLC
Idaho Water Company LLC

SELLER:

By: Alan Fielding 20 Mar 23

By: _____

Exhibits:

Option Exhibit A: Memorandum of Option Agreement
Option Exhibit B: Water Rights Deed

*Fieldings will have the right to pump
the Groundwater during 2023 irrigation season*

AF DK

Water Right Report : 27-7017(Decreed/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Current Owner	FIELDING, ALAN	1095 E 1200 N	SHELLEY	ID	83274
Original Owner	FIELDING, ROY E	RT 2 BOX 263	SHELLEY	ID	83274
Previous Owner	FIELDING, ARVEL W	1115 E 1200 N	SHELLEY	ID	83274
Previous Owner	FIELDING, C KEITH	597 N 1100 E	SHELLEY	ID	83274
Previous Owner	FIELDING, KARMA	597 N 1100 E	SHELLEY	ID	83274

Water Right Status

Priority Date : 5/3/1971

Basis : Decreed

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	01S	37E	1	0	NE	NE	SE	BINGHAM	

Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	4.12 CFS	983.50 AFA
TOTAL			4.12 CFS	983.50 CFS

Places of Use

[Wholesale View](#) [Paged View](#)

Place of Use Legal Description : IRRIGATION (BINGHAM county)

Show 10 entries

Search:

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
01S	37E	1	1		NE	NE	11
01S	37E	1	2		NW	NE	13
01S	37E	1			SW	NE	40
01S	37E	1			SE	NE	36
01S	37E	1			NE	SE	39
01S	37E	1			NW	SE	30
01S	38E	6	5		NW	NW	17
01S	38E	6	4		SW	NW	53
01S	38E	6	3		SE	NW	4
01S	38E	6			NE	SW	2

Irrigation Totals

Total Acres Acre Limit

281.00

Conditions**Code Conditions**

C05 Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

C18 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.

E01 Use of this right is combined with water from Idaho Irrigation Dist.

Dates

Licensed Date :

Decreed Date : 12/11/2006

Permit Proof Due Date :

Permit Proof Made Date :

Permit Approved Date :

Permit Moratorium Expiration Date :

Enlargment Use Priority Date :

Enlargement Statute Priority Date :

Application Received Date:

Protest Deadline Date:

Other Information

State or Federal : S

Water District Number : 120

Generic Max Rate Per Acre : 0

Generic Max Volume Per Acre : 0

Civil Case Number :

Decree Plaintiff :

Decree Defendant :

Swan Falls Trust or Nontrust :

Swan Falls Dismissed :

DLE Act Number :

Cary Act Number :

Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

3/19/2023

When Recorded Return To:

Delbert G. Kohtz
Idaho Water Company, LLC
1135 Valley Road South
Eden, ID 83325
208-825-5617

SPECIAL WARRANTY DEED FOR WATER RIGHTS

[Name of Seller], an Idaho [type of company] company registered to do business in Idaho as [name], whose address is [address] ("Grantor"), does hereby grant, bargain, sell, assign, and convey unto Idaho Water Company, LLC, an Idaho limited liability company, whose address is 1135 Valley Road South, Eden, Idaho 83325 ("Grantee"), and to Grantee's heirs, successors, and assigns forever, all of Grantor's right, title, and interest in the Portion of the water rights described in Exhibits 1 and 2 hereto (collectively the "Water Rights").

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

Grantor hereby covenants and warrants to Grantee as follows:

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

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

[end of text; signature page to follow]

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

Grantor: [NAME OF SELLER]

Dated: _____ By: /This is a form document, do not sign/
Name
Title

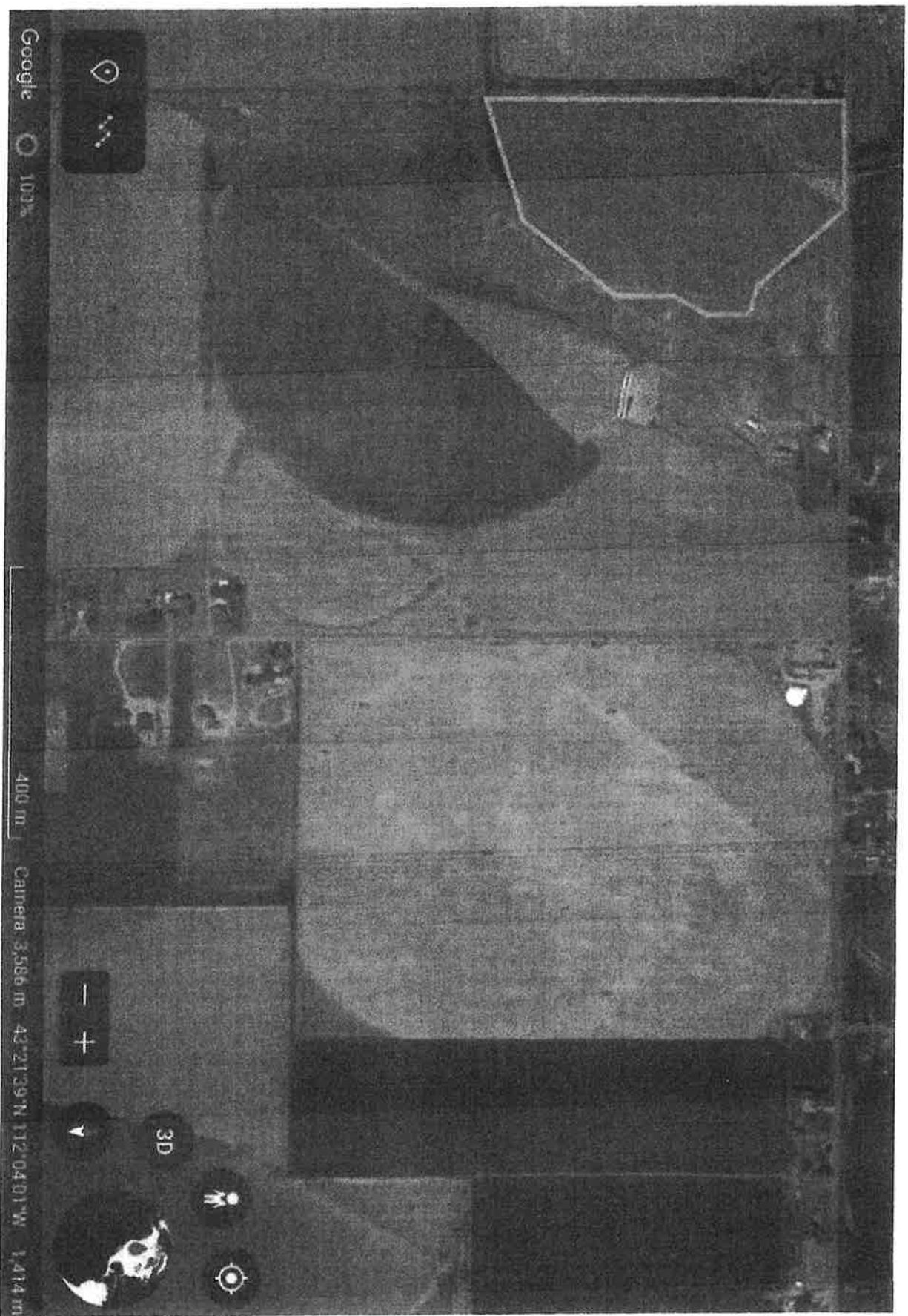
Exhibits:

Exhibit 1 to Water Right Deed: Description of Water Right No. [number]

Exhibit 2 to Water Right Deed: Description of Water Right No. [number]

[Etc.]

[Add appropriate notary forms]





RESOLUTION FOR RATIFICATION OF EXCLUSION OF LANDS

Comes now the board of directors of the Idaho Irrigation District (with the exception of Devin Fielding, who recused himself from participating due to a potential conflict of interest) and upon motion duly brought by Merrill Hanny and seconded by Alan Kelsch, the following Resolution for Ratification of Lands was unanimously adopted:

Whereas, as a result of what can only be determined as a clerical error or lost records, during the years of 1976 and 1977, Arvel W. Fielding made an application to exclude certain lands from the District (the description of which is attached hereto and hereinafter referred to as "Lands"); and

Whereas, based upon the very limited records of the District as to the proposed transaction, based upon the fact that from that period of time forward, the District discontinued to assess the Lands and has never assessed the Lands to the present day; and

Whereas, notwithstanding these facts, which provide ample evidence that the Lands were excluded by the then Board of Directors of the District, no actual order of exclusion can be found in the official records of the District and can only be due to a clerical mistake by the District personnel or loss of the order of exclusion back during the period of time described above;

Now therefore, in order to correct the obvious error or lost records described above, the board hereby officially ratifies the exclusion of the Lands retroactive to when the exclusion took place and what has determined to be during the years of 1976 through 1977.

Furthermore, the clerk of the District is hereby instructed to correct the records of the District to reflect that the Lands were officially excluded from the District as of 1977.



Alan Kelsch, Chairman of the Board

3-10-2023

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Alan D. Kelsch
Alan Kelsch, Chairman of the Board

3-10-2023

James C.
Copy

RECEIVED

June 12, 2023

JUN 12 2023

Jason C. Helms, P.E.

Idaho Department Of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

Department of Water Resources
Eastern Region

JCH Engineering & Consulting
6755 N. Albert Lane
Idaho Falls, ID 83401
(208) 308-2109
jasoncivil@alumni.nd.edu

Re: (3) Transfers 27-7017 in the name of Idaho Water Company, LLC

Dear Processing Agent,

Please find attached applications for transfer for existing water right 27-7017. These transfers seek a change in the nature of use to municipal. Idaho Water Company is the transfer applicant and following transfer approval ownership changes will be provided by the new water right owners. Agreements showing authority to submit the applications is attached.

According to IDWR Transfer Processing Memo No. 24, when an application for transfer seeks a change in the nature of use from irrigation, the highest-year historic consumptive use will be the basis for the annual volume of consumptive use available for transfer. Review of site specific Idaho evapo-transpiration data over the most recent 10 year crop cycle across the authorized water right place of use reveals the highest-year consumptive crop use occurs in 2013. Details showing the ET and CIR calculations intersected across the water right place of use utilizing 2013 growing season ET data are attached showing an average consumptive crop water use of 2.972 acre-ft per acre which was used in the ESPA analyses. These transfers are entirely independent from each other otherwise.

Hopefully, you should also find attached a check for \$2,250 (\$750x3) for the transfer and change in nature of use additional processing fees. As always, if you have any questions or would find any GIS information shown helpful with processing please call me at your convenience. Thanks,



Jason C. Helms, P.E.

cc: Del Kohtz (Idaho Water Company, LLC)

Attachments

- Transfer #1: 27-7017 (0.76 cfs / 154.5 afa / 52.0 ac) City of Idaho Falls Well #18
- Transfer #2: 27-7017 (0.44 cfs / 89.2 afa / 30.0 ac) Falls Water Co Taylor Mtn. Service Area
- Transfer #3: 27-7017 (0.30 cfs / 71.8 afa / 20.5 ac) Falls Water Co Main Service Area
- Attachment #8a
- Agreements Allowing Water Right Transfer (____)
- Check # _____ (\$2,250.⁰⁰)



IDAHO DEPARTMENT OF
WATER RESOURCES

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

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

Governor Brad Little

Director Mathew Weaver

October 30, 2023

IDAHO WATER COMPANY
C/O DEL KOHTZ
1135 VALLEY RD SOUTH
EDEN, ID 83325

RE: Applications for Transfer Nos. 88144, 88145, 88146

Withdrawal of Application

Dear Applicant:

The Department of Water Resources acknowledges receipt of your withdrawal of the applications for transfer referenced above. The withdrawal removes your applications from any further consideration or action by the Department.

A refund of your filing fees has been requested and will be sent separately from our Boise office.

Please feel free to contact this office if you have any questions regarding this matter.

Sincerely,

Christina Henman
Administrative Assistant

CC
JASON C HELMS
3158 NE FOLLETT ST
ROSEBURG, OR 97470

WITHDRAWAL
OF
APPLICATION FOR TRANSFER OF WATER RIGHT(S)

I/We, Idaho Water Co. and _____,
(Applicant's Printed Name) (Applicant's Printed Name)

_____ and _____,
(Applicant's Printed Name) (Applicant's Printed Name)

hereby withdraw our Application for Transfer No. 88144 of Water Right

No(s). 27-7017.

Signed this 10/27th day of October, 20 20.

[Signature]
(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)