



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

June 6, 2003

J TYLER EKARD  
KERRI L EKARD  
3023 HIGHWAY 45  
MELBA ID 83641

RE: Transfer No.: 70445 - Water Rights 63-3491B, 63-3175B  
Transfer Approval Notice

Dear Water Right Holder(s):

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

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

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

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

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

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If you have any questions, please contact me at 208-327-7940.

Sincerely,

*Camela S Skaggs*

fr Jeff Peppersack, Manager  
Water Rights Permits Section

JP:klt

Enclosure(s)

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SEP 09 2003

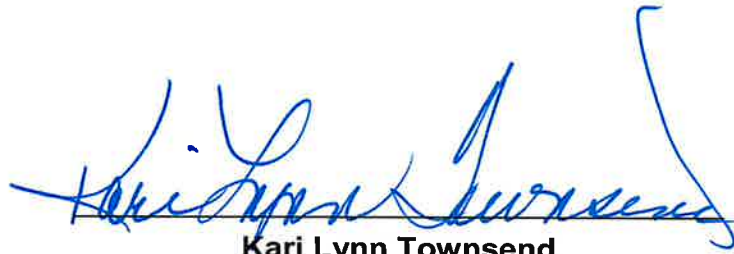
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SEP 09 2003

## **CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2003 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

**RE: TRANSFER NO. 70445 - WATER RIGHTS 63-3491B, 63-3175B**

**J TYLER EKARD  
KERRI L EKARD  
3023 HIGHWAY 45  
MELBA ID 83641**



**Kari Lynn Townsend  
Secretary**

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SEP 09 2003**

**EXPLANATORY INFORMATION  
TO ACCOMPANY A  
PRELIMINARY ORDER**

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

**PETITION FOR RECONSIDERATION**

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

**EXCEPTIONS AND BRIEFS**

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

**REQUEST FOR HEARING**

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

**ORAL ARGUMENT**

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

**CERTIFICATE OF SERVICE**

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

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### FINAL ORDER

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

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

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

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

### APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

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JUN - 6 2003

## FINAL TRANSFER REVIEW CHECKLIST Department of Water Resources

Trans # 70445 Date Reviewed 7-18-2002 Reviewer DANRight No(s).\* 63-3175 B 63-34913  
Split? Y X N Y X N Y N Y NAREA OF CONCERN: X No Yes, identify \_\_\_\_\_RightID's of From & To records correct? Y N (resolve with State Office personnel)PROCESSING  
BUND.

NOTE: Check for Partial Decree issuance, etc. since time of application's entry

PROOF OF OWNERSHIP COMPLETE FOR OID &amp; NEW P/U \_\_\_\_\_ Lien Holder Release \_\_\_\_\_

## GROUNDWATER:

## DRILLING PERMIT

All wells - 046  
DP upgrade req'd Y X N (contact GW personnel)WMD - North/East/West≤ 0.24 cfs/5 acres - No MD> 0.24 cfs/5 acres - 067

## WMD

≤ 0.24 cfs/5 acres - No MD> 0.24 cfs/5 acres - 01M or 01QSUPPLEMENTAL (irr = only use) - 065-104SUPPLEMENTAL (irr + other uses) - 100-105

## SURFACE WATER:

WD - R05 (WD# \_\_\_\_\_) WM comments rec'd \_\_\_\_\_≤ 0.20 cfs/others - R02, 01P or No MD> 0.20 cfs - R43

WD, SPRINGS/SINK, INACTIVE WD &amp; REST OF STATE

≤ 0.24 cfs/5 acres - No MD> 0.24 cfs/5 acres - 01M or 01QSTANDARD SEASON 3/1 to 11/15 (use X61 if extended season)STANDARD VOLUME 4.5 af/ac

CONSUMPTIVE USE VOLUME \_\_\_\_\_ af/ac (only N/U change)

## USES:

STORAGE - 18C-R02-01P-18B-NAIRR ≤ 5 ac - R66/R67/R68/R69 (0.03 cfs/ac)> 5 ac - R62/R63/R64/R65 (0.02 cfs/ac) R65STOCKWATER - R37 (all BLM/USFS)MINING - 054-106FISH PROP - 029(70'S only)-007-122-106HEAT/COOL - R07 (injection well)FIRE PROT. - 077DAIRY - 082 (zoning if a concern)-106-WD8

## USES:

POWER - 17H-17K (+uses)-025-106

## MUNICIPAL

Restricted area - 022-075 RAFN - 007-109-X64Irr., GW supp to SW - 102

## DOMESTIC

Surface water - WB5 (Big Wood or Boise above Star Bridge)- 27A (Payette River)>1 in restricted area - 070-071-075 (no parks/common areas, etc)Irr use listed separate - WB5

## MISC CONDITIONS:

T07 - 1 yr to developT08 - comply or rescind

T17 - measure all p/d's (used with WB4)

T18 - Special T17 & R43 combined -  
multiple pds in WDProtested - 020-X19Water Quality - 106-R07

X27 - Number of acres/season in ppu

X35 - Combined totals of multiple rts

X49 - measure p/d's (source chg'd to orig trib)

X51 - 2+ yrs to develop

X53 - Use ltd to orig. source availability

X54 - forfeited ac/rate (used rarely)

X55 - (transfer shrinks total water to less ac)

004 - no right-of-way

X58 - pending claim (statutory or AJ b/u claim)

X61 - extended irr season

X62 - replaces N11 and N13

X63 - replaces C12

WB4 - + p/ds, cfs &amp; afa (used with T17)

WB8 - land application of waste water

01Q - used instead of 01M when there's another meas. Cond (i.e. T17 & 01m)

## Apply one to chg'd and unchg'd rts:

T09 - on-going SRBA (no Dir Rpt  
or Recomm yet)T19 - replaces C18  
(if at Recommendation  
or Partial Decree stage)T20 - use instead of T09 where  
not ongoing in SRBAOTHER CONDITIONS X 36

## COMMENTS \_\_\_\_\_

Database files updated XApproval form saved VShape files created X (optional printing)

Special Mailing Instructions (cc's, etc) \_\_\_\_\_

S.O. ONLY: Final database update after approval CS \*Comment to WR No(s). 63-3175 & 63-3491

6-6-03

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JUN 04 2003

Initial

## INITIAL TRANSFER REVIEW CHECKLIST

Applicant TERRY S. KERR: EKARD Transfer No. \_\_\_\_\_  
 Reviewed by DAN Date 7-18-2002  
 Data entered by \_\_\_\_\_

1. Type of right \_\_\_\_\_ Decree X License OR X AJ Record

**Caution**

**before processing:** \_\_\_\_\_ Partial Decree to WR \_\_\_\_\_ Ownership Change filed & split completed

\_\_\_\_\_ Informal AJ split completed prior to transfer processing only if needed

2. Purpose of transfer \_\_\_\_\_ Change P/D X Add P/D \_\_\_\_\_ Change P/U  
 \_\_\_\_\_ Change N/U \_\_\_\_\_ Change Period X Other (identify)

*Change ownership*

3. Check Existing Right X Source X Priority X Amount  
X Purpose X Period X SRBA Claim  
X Description of original point(s) of diversion  
X Description of original place of use  
X Overlapping rights for original P/D &/or P/U

4. Check **Proposed** Right for amount of land &/or water transferred:

- a. \_\_\_\_\_ Analysis memo – always include unless justify why not needed
- b. X All of right
- c. \_\_\_\_\_ Part of right – Note: Part B should normally be completed only if part of right is owned by applicant
- d. X Description of point(s) of diversion
- e. X Description of place of use
- f. X Map showing proposed P/D &/or P/U
- g. X Correct notarized signature and fee – see Transfer Memo #23 about fees if necessary
- h. X Proof of ownership of right &/or land from which water is transferred
- i. NO Expansion in use of right: check rate of flow, diversion volume and consumptive volume. Discuss in memo.
- j. NO Surface water source: IDFG letter; notify Water Planning Bureau if protected river or minimum flow reach.

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JUN 04 2003

Final

k. ☒ Overlapping rights for current & proposed scenariosCurrent 63-3491 & 63-3175Proposed same as above.l. ☒ SRBA Claim(s) 63-3491 & 63-3175

m. ☒ Comment letters ☐ Yes as follows ☒ No

☐ Water District # ☐ IDFG ☒ ☐ or, list below or attached

**PUBLICATION REVIEW**

## 1. Comment Letters

Watermaster comments received \_\_\_\_\_ (date)

Other comment letters received ☐ Yes ☐ No2. Affidavit of publication received: ☒ Yes3. Published correctly: ☒ Yes ☐ NoIf No, re-publication required: ☐ Yes ☐ No4. Protests received: ☐ Yes ☒ No ☐ If yes, acknowledgement sent**RECOMMENDATIONS**

See electronic transfer folder.

Folder name = applicant last name + transfer application #.

Recommendations = see file name "draft approval" &amp;/or "review memo"

**FORWARDING FILE TO S.O. – see Supplemental Checklist for Scanning**1. Scanning completed & Supplemental Review Sheet filed in Western WR file(s) ☒ Yes

2. File forwarded to S.O.

6-4-03

Date

**SCANNED**  
JUN 04 2003

# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO )  
 ) SS.  
County of Canyon )

Rae L. Barbosa  
of Nampa, Canyon County, Idaho, being  
first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principal Clerk of the Idaho Press-Tribune, a daily newspaper published in the City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 time(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.
4. That said notice was published the following:  
05/15/2003, 05/22/2003

*Rae L. Barbosa*

STATE OF IDAHO )  
County of Canyon )

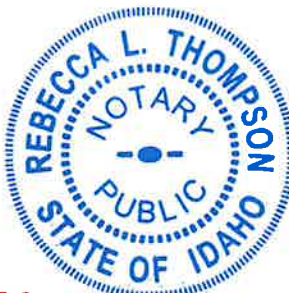
On the 22nd day of May in the year of 2003  
before me, a Notary Public, personally appeared.  
Rae L. Barbosa,  
known or identified to me to be the person  
whose name is subscribed to the within  
instrument, and being by me first duly sworn,  
declared that the statements therein are true, and  
acknowledge to me that he/she executed the same.

*Rebecca L. Thompson*  
Notary Public for Idaho  
Residing at Nampa  
My commission expires April 19, 2008

RECEIVED

MAY 27 2003

WATER RESOURCES  
WESTERN REGION



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## NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 70445

J TYLER EKARD  
3023 HIGHWAY 45

MELBA ID 83641  
KERRI L EKARD  
3023 HIGHWAY 45

MELBA ID 83641, has filed Application No. 70445 for changes to the following water rights within CANYON County:

Right No. 63-3491B

Priority 3/4/1966  
Source GROUND WATER  
Use IRRIGATION (15.2 acres)  
0.20 CFS

Total Amount 0.20 CFS

Point(s) of Diversion

S16 T01N R02W

Place of Use

S16 T01N R02W

Right No. 63-3175B

Priority 12/9/1959  
Source GROUND WATER  
Use IRRIGATION (15.2 acres)  
0.10 CFS

Total Amount 0.10 CFS

Point(s) of Diversion

S16 T01N R02W

Place of Use

S16 T01N R02W

Remark: This transfer proposes to change the ownership of the water rights and add a well to service the applicants portion of the water right. The well and the 15.2 acres associated with this right will be located in the SESE S16 T1N R2W.

Protests may be submitted based on the criteria of Sec 42-222, Idaho Code.

Any protest against the proposed change must be filed with the Department of Water Resources, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before June 02, 2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

May 15, 22, 2003 04512144

## **MEMORANDUM**

TO: FILE  
FROM: DANIEL A. NELSON  
DATE: 4/24/2003

**RE: TYLER AND KERRI EKARD TRANSFER NUMBER 70445**

The transfer proposes to change the ownership of the water rights and add a well to service the applicant's portion of the water right. The well will be located in the SESE S16 T1N R2W.

### **DOCUMENTS AND APPLICATION PREPARATION**

The application consists of 8 pages and 6 attachments. Note the location of the following application items

Attach. A – Warranty Deed as proof of ownership. (A1-A2)

Attach. B – 1997 aerial photo showing irrigation.

Attach. C – Letter showing last use of the well.

Attach. D – Notice of original well agreement. (D1 – D2)

Attach E – Letter from previous owner stating that there has only been one well for both water rights.

Attach. F – Affidavit from lender allowing transfer.

Applicant prepared the application.

Other information used in this review includes a diagram of water delivery system attached to this memo.

### **AUTHORITY TO FILE:**

The applicant supplied a Warranty Deed showing they currently own the property involved in the transfer and purchase the property from the current owner on the water right. Therefore, ownership to file this transfer has been proven.

### **WATER RIGHT VALIDITY:**

A 1997 aerial photo shows that the land was irrigated during that year, and a review of the 1987 aerial photo shows the land was irrigated during that year. The well agreement also suggests the land has been irrigated and that there was a formal agreement to irrigate the property. I have reviewed the water rights with Jan Shurte of our adjudication staff and we could not find any reason to discount the validity of the water rights.

**MICROFILMED** **SCANNED**  
**SEP 09 2003** **SEP 09 2003**

**INJURY TO OTHER WATER RIGHTS:**

The well for this transfer will not increase the total diversion of water from the aquifer within the same 40-acre tract. There will be two wells used instead of one well, but there is no available information to suggest that two wells will increase or decrease the water levels or the draw down in the aquifer.

**ENLARGEMENT OF USE:**

The applicant is not asking to irrigate additional land or to increase their diversion rate. Therefore, there is no information that suggests an enlargement.

**LOCAL PUBLIC INTEREST:**

This land has been irrigated prior to 1998 and there is no record of any complaint during that time. Our office has no information to suggest that this application is not within the local public interest.

**BENEFICIAL USE/CONSERVATION OF WATER RESOURCES:**

The application proposes beneficial use consistent with conservation of water resources in Idaho and has been operating using licensed water rights with the State of Idaho.

**Review of the application finds there is no clear inconsistency with criteria of I.C. § 42-222 preventing processing of the application.**

**NARRATIVE**

There was a question concerning whether the original water rights were licensed for one well or whether there were two wells. The applicant supplied a letter from the owner of the property before the original 35 acres were split that says they have only been one well on the property for as long as they have owned the property. The applicant has supplied a letter from the mortgage company agreeing to the transfer.

**CONDITIONS AND SUGGESTIONS**

This transfer seems acceptable as listed on the front page of the transfer with the inclusion of the following conditions:

**63-3175B →**

X36 Right 63-3491B is also diverted through the point(s) of diversion described above.

X35 Rights 63-3175B and 63-3491B when combined shall not exceed a total diversion rate of 0.30 cfs, a total annual maximum diversion volume of 68.4 af at the field headgate, and the irrigation of 15 acres.

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SEP 09 2003

- 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
- 01M 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 determine the amount of water diverted from power records and shall annually report the information to the Department.
- R65 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
- T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
- T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
- T09 Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.

63-3491B →

- X36 Right 63-3175B is also diverted through the point(s) of diversion described above.
- X35 Rights 63-3175B and 63-3491B when combined shall not exceed a total diversion rate of 0.30 cfs, a total annual maximum diversion volume of 68.4 af at the field headgate, and the irrigation of 15 acres.
- 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
- 01M 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 determine the amount of water diverted from power records and shall annually report the information to the Department.
- X61 The period of use for the irrigation described in this approval may be extended to a beginning date of 3/1 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 3/15 and after 11/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.
- T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
- T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
- T09 Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.
- R65 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.

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SEP 09 2003

SEP 09 2003

May 07, 2003

**Legal Notice Department**

Press-Tribune

PO Box 9399

Nampa ID 83652

RE: Transfer No. 70445

Water Right No(s). 63-3491B 63-3175B

**Dear LEGAL NOTICE DEPARTMENT:**

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 06/02/2003. Your cooperation is appreciated.

Sincerely

Sue Taylor  
Senior Secretary

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SEP 09 2003

SCANNED  
MAY 07 2003

NOTICE OF PROPOSED CHANGE OF WATER RIGHT  
TRANSFER NO. 70445

J TYLER EKARD  
3023 HIGHWAY 45

MELBA ID 83641  
KERRI L EKARD  
3023 HIGHWAY 45

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Source GROUND WATER

Use IRRIGATION (15.2 acres) 0.20 CFS

Total Amount 0.20 CFS

Point(s) of Diversion S16 T01N R02W

Place of Use S16 T01N R02W

Right No. 63-3175B

Priority 12/9/1959

Source GROUND WATER

Use IRRIGATION (15.2 acres) 0.10 CFS

Total Amount 0.10 CFS

Point(s) of Diversion S16 T01N R02W

Place of Use S16 T01N R02W

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KARL J DREHER, Director

Published in the Press-Tribune on May 15 and 22, 2003.

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SEP 09 2003

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MAY 07 2003