

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)
FOR TEMPORARY CHANGE OF)
WATER RIGHT NO.: 29-4411 & 29-4424)
)
_____)

**ORDER AUTHORIZING
TEMPORARY CHANGE**

TC-29-18

A drought emergency has been declared for Bannock County to allow administrative actions to lessen the severe impacts of the drought conditions in the county; and

Idaho Code §42-222A provides that upon declaration of a drought emergency, the director of the Department of Water Resources is authorized to allow temporary changes in the point of diversion, the place of use, and the purpose of use for valid existing water rights when the director determines that such changes can be accomplished in accordance with the provisions of Idaho Code §42-222A; and

On June 16, 2022, Christopher Robinson submitted the attached Temporary Change Application to the Department; and

The Department has reviewed the application and has determined the application can be approved with certain conditions;

ORDER

IT IS HEREBY ORDERED that the application is APPROVED subject to the following conditions:

1. Diversion and use of the changed portions of Right No(s). 29-4411 and 29-4424 is authorized only at the point of diversion and place of use described on the application.
2. This temporary change approval does not authorize construction of a new well or diversion works as a new point of diversion.
3. The applicant assumes all risk of curtailment or mitigation should the diversion and use of water under the temporary change approval cause injury to other water rights, constitute an enlargement in use of the original right, be inconsistent with the conservation of water resources within the state of Idaho, or not be in the local public interest.
4. This temporary change approval may only be used to provide a replacement water supply to lands or other uses which normally have a full water supply, except for the drought condition. This temporary change approval may not be used to provide water for new development or to allow expansion of the use of water under existing water rights.

5. Right 29-4411 is limited to the irrigation of 47 acres within the authorized place of use. Right(s) 29-4411 and 29-4424 when combined are limited to the irrigation of a total of 57.4 acres for the remainder of the irrigation season in 2022 at the place of use described in the application. The rights cannot be moved back to the place of use under whence they originated for the remainder of this irrigation season.
6. Diversion of water from Marsh Creek is limited to those times water is available for diversion under rights 29-4411 and 29-4424 at their decreed points of diversion from their decreed sources (known locally as Cohn Creek and House Creek).
7. This temporary approval does not authorize the use of diversion works or a delivery system owned by or managed by a corporation or an irrigation district without the consent of such corporation or irrigation district.
8. The applicant agrees to hold the Director and the State of Idaho harmless from all liability on account of the diversion and use of water under this temporary change approval.
9. This temporary change approval does not grant any right-of-way or easement to use the diversion works or conveyance works of another person or entity.
10. The watermaster of Water District No. 29H is authorized to administer the temporary change approval.
11. This temporary change approval expires on October 31, 2022 unless rescinded or extended by the director. Thereafter, the water right shall revert to the point of diversion, place of use and nature of use existing prior to the temporary change approval.

DATED this 21st day of June, 2022.



James Cefalo
Eastern Region Manager

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BUREAU OF WATER RIGHTS

RECEIVED
Jun 14, 2022
DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TEMPORARY CHANGE APPLICATION **TC-29-18**

(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)

Name of Applicant Christopher Robinson (Potter Creek Ranch LC) Phone (801) 677-6400
Mailing Address PO BOX 540478 North Salt Lake, UT 84054 Email crobenson@theensigngro

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change purpose of use ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed.
Wanting to temporarily move the point of diversion and place of use of one water right to the point of diversion and place of use of another water right who's use is being currently curtailed for the purpose of having a crop of triticales hay to harvest.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
29-4424	01/10/1880	1.14 CFS	Irrigation	04/01 to 10/31
29-4411	01/01/1880	.94 CFS	Irrigation	04/01 to 10/31

2. Describe
Wanting to temporarily
2. Total amount of water being transferred 2.08 cubic feet per second and/or 2.06 acre-feet per annum.
3. Source of water Cohn Creek and House Creek tributary to Marsh Creek
4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag number
11S	36E	14		SW	NW	NE	Bannock	Marsh Creek	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	36E	14																18.4	22
11S	36E	14																18	21

CHANGES IN RED, BASED ON TELECON W/ APPLICANT ON 6/21/22. MTH Total Acres 57.4 ~~61~~

6. General Information:

- a. Who owns the water right to be changed? Potter Creek Ranch LC
- b. Describe the arrangement allowing use of the right. We already have an existing diversion works in place.
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:
We would be able to save our triticale and hay crop that is planted there.
- d. Has the water right sought to be transferred been used this year? ☒ Yes ☐ No If yes, explain. We have irrigated meadows with it starting in May
- e. Absent the changes, how would the right be used for the remainder of the year? It would continue to water the meadows
- f. Describe other water rights used for the same purpose. 29-2295 F was watering the crop prior to curtailment
- g. Remarks: This is for watering the current crop to keep our hay production so as to feed our cows this winter.

I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. 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 voiding its approval.

Signature of Applicant [Signature]

Date 06/14/2022

FOR DEPARTMENT USE ONLY

Received by Cath Date 6/16/22 \$50 fee received by Cath Receipt No. E048242

Recommend: ☐ approve ☐ deny Watermaster recommendation

I hereby assist

change and

this application is true to
application may result in

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

Signature This is to certify that I have examined Temporary Change Application No. _____, and said application is hereby _____, subject to the following limitations and conditions:

see attached order

Recommend: ☐

Temporary Change Expiration Date _____

application may result in

Signed this _____ day of _____

This is to

application is hereby

For the Director

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

6/17/2022

Water Right 29-4411

Owner Type

Current Owner
Current Owner

Name

ARIMO CORP
ARIMO CORP

Priority Date: 1/1/1880

Basis: Decreed

Status: Active

Source

UNNAMED STREAM

Tributary

MARSH CREEK

Beneficial Use

IRRIGATION
STOCKWATER

From

04/01

To

10/31

Diversion Rate

0.940 CFS

Volume

01/01

12/31

0.070 CFS

Total Diversion

0.940 CFS

Source and Point(s) of Diversion:

UNNAMED STREAM L5()

Sec. 6, Twp 10S, Rge 37E, BANNOCK County

UNNAMED STREAM L5()

Sec. 6, Twp 10S, Rge 37E, BANNOCK County

Place Of Use:

IRRIGATION within BANNOCK County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	36E	1		1.9 L2	18.0	13.0				1.0					15.0				48.9

Right Acre Limit: 47.00
POU Total Acres: 57.4

STOCKWATER Same as IRRIGATION

Conditions of Approval:

1. B01 SOURCE IS ALSO KNOWN AS HOUSE CREEK.
2. N05 THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
3. 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.
4. K06 THIS RIGHT IS LIMITED TO THE IRRIGATION OF 47.0 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
5. E55 USE OF THIS RIGHT WITH RIGHT NO. 29-4424 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 57.4 ACRES IN A SINGLE IRRIGATION SEASON.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

6/17/2022

6. N08 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL
BENEFICIAL USE.

Dates and Other Information:

Decreed Date: 3/22/2004

Civil Case Number: 39576

Judicial District: FIFTH

State or Federal: S

Water District Number: 29H

Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

6/17/2022

Water Right 29-4424

Owner Type

Current Owner
Current Owner

Name

ARIMO CORP
ARIMO CORP

Priority Date: 1/1/1880

Basis: Decreed

Status: Active

Source

UNNAMED STREAM

Tributary

MARSH CREEK

Beneficial Use

IRRIGATION
STOCKWATER

From

04/01

To

10/31

Diversion Rate

1.140 CFS

Volume

0.190 CFS

Total Diversion

1.140 CFS

Source and Point(s) of Diversion:

UNNAMED STREAM

NESENE

Sec. 1, Twp 10S, Rge 36E, BANNOCK County

Place Of Use:

IRRIGATION within BANNOCK County

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	36E	1		1.9 L2	18.0	13.0				1.0					15.0				48.9
10S	37E	6						0.9 L5	7.6 L8										8.5

POU Total Acres: 57.4

STOCKWATER Same as IRRIGATION

Conditions of Approval:

1. B01 SOURCE IS ALSO KNOWN AS CHON CREEK.
2. N08 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3. 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.
4. E55 USE OF THIS RIGHT WITH RIGHT NO. 29-4411 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 57.4 ACRES IN A SINGLE IRRIGATION SEASON.
5. N05 THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Holliday, Michael

From: Chris Robinson <crobinson@theensigngroup.com>
Sent: Friday, June 17, 2022 4:32 PM
To: Holliday, Michael; Cefalo, James
Cc: Kristin Evans; Cade Willoughby; Chris Redman; Luke Marchant; Jeff Young
Subject: Re: temporary water right change application

Michael and James,

Thanks for taking my call late this afternoon.

As I mentioned, water has been available and withdrawn in non-drought years from Marsh Creek on late, 1950's priority, water rights for decades. Last year's curtailment order affecting any rights having a priority date later than 1900 was the first time we have not had access to Marsh Creek water.

You mentioned that the key area for study was way downstream on the Portneuf near Pocatello where even in non-drought years a 1950s priority would have full water as required under Idaho Code 42-222A (6).

We are proposing the temporary transfer of two 1880 priority water rights.

Our crops are hanging on but in dire need of irrigation.

As mentioned, Luke is working on a permanent transfer application but that won't help this current situation.

You indicated that the statute requires consultation with the Water Master, which in this case for District 29H is Kristin Evans who is cc'd here and who has been helping us.

We would appreciate a quick turnaround on your decision so we can save this crop.

Have a great weekend and thanks for your help!

Best,

Chris
801-599-4397

From: "Holliday, Michael" <Michael.Holliday@idwr.idaho.gov>
Date: Friday, June 17, 2022 at 3:28 PM
To: Christopher Robinson <crobinson@theensigngroup.com>
Subject: temporary water right change application

Christopher,

Yesterday we received your temporary change application, which you filed to change the point of diversion and place of use of water rights 29-4411 and 29-4424. The only water right associated with the proposed place of use is right 29-2295F.

Idaho Code 42-222A (6) says in part: "Temporary changes shall only be approved for the purpose of providing a replacement water supply to lands or other uses which normally have a full water supply except for a drought condition.

Temporary changes may not be approved to provide water for new projects or to allow expansion of the use of water under existing water rights.”

Since right 29-2295F is a relatively junior priority right on Marsh Creek, we are concerned that the proposed place of use may not normally have a full water supply. My analysis of water availability over the last 10 non-drought years shows that water right 29-2295F would not normally be deliverable past June 25.

Please provide us with any additional evidence you would like us to consider by June 24, 2022. Feel free to contact me if you have any questions. Thanks.

Michael Holliday
Water Rights Supervisor
Phone: 208-525-7161
Fax: 208-525-7177

Holliday, Michael

From: Holliday, Michael
Sent: Friday, June 17, 2022 4:56 PM
To: evankris@isu.edu; kristinevans@isu.edu
Cc: crobinson@theensigngroup.com
Subject: temporary water right change application
Attachments: tc-29-18.pdf

Kristin,

Attached is a temp change for your comments. Your prompt response will ensure that your recommendation can be considered. If IDWR has not received your written recommendation by June 20, 2022, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider. Let me know if you have any questions. Thanks.

Michael Holliday
Water Rights Supervisor
Phone: 208-525-7161
Fax: 208-525-7177