

2004

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TEMPORARY CHANGE OF A)
WATER RIGHT 35-7569, 35-24320, 35-7391)
35-7391)
_____)

ORDER AUTHORIZING
TEMPORARY CHANGE

Tc- 35-04

WHEREAS, a drought emergency has been declared for Power County to allow administrative actions to lessen the severe impacts of the drought conditions in the county; and

WHEREAS, section 42-222A, Idaho Code, provides that upon declaration of a drought emergency, the director of the Department of Water Resources ("Department") 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 or temporary exchanges of water authorized under water rights when the director determines that such changes can be accomplished in accordance with the provisions of section 42-222A, *Idaho Code*; and

WHEREAS, on October 29, 2004, Roger Whitnah submitted the attached Temporary Change Application Tc- 35-04 to the Department; and

WHEREAS, 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 right no(s). 35-7569, 35-24320, & 35-7391 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 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 that 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.

**ORDER AUTHORIZING
TEMPORARY CHANGE**

TC-35-04

5. Right(s) 35-7569, 35-2432D, 35-7391D are limited to the irrigation of a total of 269.9 acres in a single irrigation season
6. 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 written consent of such corporation or irrigation district.
7. The applicants agree 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.
8. 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.
9. The applicant is subject to all conditions and limitations listed on the application under the section titled "ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES"
10. The applicant shall measure the amount of water diverted and shall report the amount of water diverted under this approval.
11. The Water master of Water District No. 120 is authorized to administer the temporary change approval.
12. This Temporary change approval expires on November 1, 2004 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 8th day of November, 2004.


Ronald D. Carlson
Eastern Regional Manager

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Ident. No. TC-35-04

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TEMPORARY CHANGE APPLICATION

(To change point of diversion, place of use or purpose of use)

Name of Applicant Whitnash Ranches Phone 226-2760
Post Office Address 29545 Whitnash Rd American Falls, Id 83211

- A. PURPOSE OF TRANSFER 35-2432D
1. ☒ Change point of diversion 35-7391D ☐ Add diversion point(s) ☒ Change place of use 35-2432D
☐ Change purpose of use ☐ Other 35-7569
2. Describe the proposed change(s) and the reason(s) thereof REARRANGE ACRES
and lease of 33 acres from Ralph Breding (35-2432D + 35-7391D)

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

1. Right Number 35-7569 12/9 Priority 1975 Amount (cfs/ac-ft) 2.83 Nature of Use IRR Period of Use 4/1 to 11/01
35-2432D 8/17/1995 0.43 cfs IRR 4/1 to 10/31
35-7391D 3/13/1974 0.04 cfs IRR 4/1 to 10/31
2. Total amount of water being transferred 2.83 ^{3.30} cubic feet per second and/or _____ acre-feet per annum.
3. Source of water GW tributary to _____
4. Point(s) of Diversion:

Ident No.	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		NE	NW	SW	31	7s	30E	Power	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7s	30E	31			14				29	39	39	38	19	33.9	1	39	18		237
																			269.9

Total Acres 237 269.9

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6. General Information:

- a. Who owns the water right to be changed? Applicant
- b. Describe the arrangement allowing use of the right Lease Agreement see enclosed copy
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:
it will be dry
- d. Has the water right sought to be transferred been used this year? yes If yes, explain. used under circles. No for Ralph Breeding
- e. Absent the changes, how would the right be used for the remainder of the year? ---
- f. Describe other water rights used for the same purpose.
NONE
- g. Remarks: ---

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.

Roger J. Whitaker, E.P.
(Signature of applicant)

FOR DEPARTMENT USE ONLY

Received by Kaw Date 10/29/04 Fee 50⁰⁰

Receipted Kaw # E030376 Recommend: --- approve --- deny ---

Watermaster recommendation ---

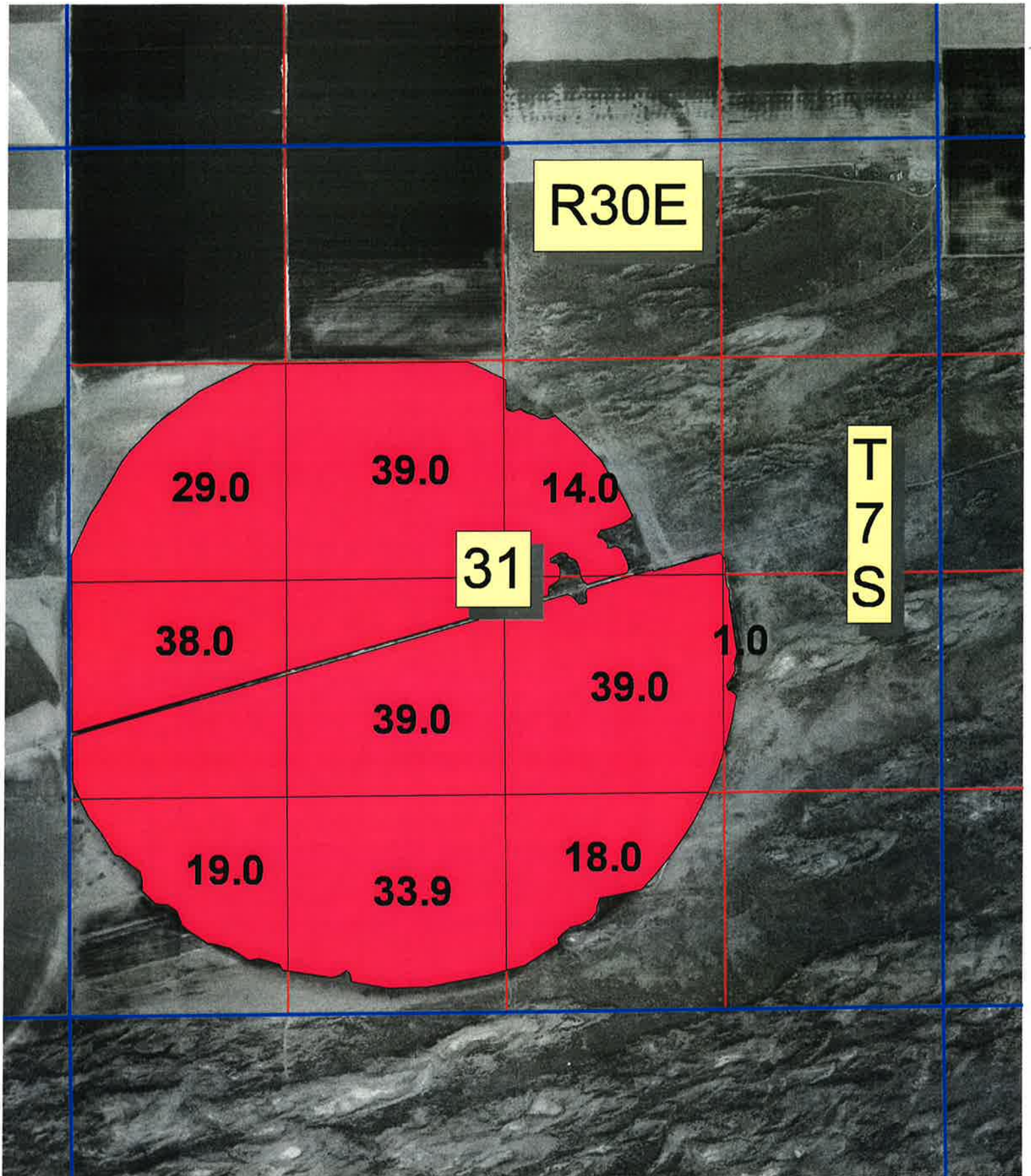
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. TC-35-04

And said application is hereby ---, subject to the following limitations and conditions:

Witness my hand this 8th day of November, 2004.

[Signature]
For the Director



**Whitnah Ranches c/o Roger Whitnah
Temporary Change Place of Use**

To Whom It May Concern:

I, Ralph Breeding, do hereby authorize the temporary change (transfer) of water rights, of the amount necessary, to Roger Whitnah from water rights 35-2435D & 35-7391D, for a total of 33 acres and 0.47 cfs.

11/4/04

Date

Ralph Breeding

Signature

Ralph Breeding

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 35-7391D

WATER RIGHT NUMBER: 35-7391D

Owner TypeName and Address

Current Owner

RALPH E BREIDING, 2875 S VISITING RD, AMERICAN FALLS, ID 83211
(208)226-2240

Priority Date: 03/13/1974

Basis: Decreed

Status: Active

SourceTributary

GROUND WATER

Beneficial Use

From To

Diversion RateAnnual Volume

IRRIGATION

4/01 to 10/31

0.040 CFS

17.00 AF

Total Diversion:

0.040 CFS

17.00 AF

Location of Point(s) of Diversion

GROUND WATER

SE1/4SW1/4

Sec. 25, Twp 07S, Rge 29E, B.M.

POWER County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	29E	36							26.0	7.0									33.0

Total Acres: 33

Conditions of Approval:

1. 067 The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
2. A04 THIS RIGHT INCLUDES A CHANGE IN USE APPROVED BY ADMINISTRATIVE ORDER OF IDWR. THE CHANGE IN USE SHALL BE ACCOMPLISHED WITHIN ONE (1) YEAR OF THE DATE OF THE ADMINISTRATIVE ORDER APPROVING THE CHANGE.
3. A06 FAILURE TO COMPLY WITH THE CONDITIONS OF THE ADMINISTRATIVE ORDER IS CAUSE FOR IDWR TO ISSUE AN ORDER TO SHOW CAUSE WHY THE APPROVAL OF THE TRANSFER SHOULD NOT BE RESCINDED.
4. 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.

Remarks:

1. Explanatory RIGHT NO. 35-02432D IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.
2. Quantity USE OF THIS RIGHT WITH RIGHT NO. 35-02432D IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.47 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 132 AF.
3. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 35-02432D IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 33 ACRES IN A SINGLE IRRIGATION SEASON.

Dates and Other Information:

Decreed Date: 4/1/2003

State or Federal: S

Civil Case Number: 39576

Judicial District: FIFTH

SubCase:

SubCase Number: 35-7391D

Class: 1

SF5 Filed Date:

Special Master Recom Signed Date: 2/26/2003

Attorney Assigned:

Adjudication Agent:

Basis of Claim:

Combined Use Limits:

Rate	Volume	Acres
0.47	132	33
Combined Water Rights: 35-2432D , 35-7391D		

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 35-2432D

WATER RIGHT NUMBER: 35-2432D

Owner Type Name and Address
 Current Owner RALPH E BREDING, 2875 S VISITING RD, AMERICAN FALLS, ID 83211
 (208)226-2240

Priority Date: 08/17/1955

Basis: Decreed

Status: Active

Source Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	0.430 CFS	132.00 AF
<u>Total Diversion:</u>		0.430 CFS	132.00 AF

Location of Point(s) of Diversion

GROUND WATER SE1/4SW1/4 Sec. 25,Twp 07S,Rge 29E, B.M. POWER County

Place of Use IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S 29E 36							26.0	7.0									33.0

Total Acres: 33

Conditions of Approval:

- 067 The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
- A04 THIS RIGHT INCLUDES A CHANGE IN USE APPROVED BY ADMINISTRATIVE ORDER OF IDWR. THE CHANGE IN USE SHALL BE ACCOMPLISHED WITHIN ONE (1) YEAR OF THE DATE OF THE ADMINISTRATIVE ORDER APPROVING THE CHANGE.
- 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.

Remarks:

- Place of Use USE OF THIS RIGHT WITH RIGHT NO. 35-07391D IS LIMITED TO THE IRRIGATION OF A - Irrigation COMBINED TOTAL OF 33 ACRES IN A SINGLE IRRIGATION SEASON.
- Quantity USE OF THIS RIGHT WITH RIGHT NO. 35-07391D IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.47 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 132 AF.
- Explanatory RIGHT NO. 35-07391D IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

Dates and Other Information:

Decreed Date: 1/31/2002
 State or Federal: S
 Civil Case Number: 39576
 Judicial District: FIFTH

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
0.47	132	33

Combined Use Limits:

Combined Water Rights: 35-2432D

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
0.47	132	33

Combined Water Rights: 35-2432D , 35-7391D

SubCase:

SubCase Number: 35-2432D
 Class: 1
 SF5 Filed Date:
 Special Master Recom Signed Date: 11/13/2001
 Attorney Assigned: SARA C DENISTON
 Adjudication Agent:
 Basis of Claim:
 Date Filed: 6/2/1999 Objection Status: Active
 Date Filed: 6/2/1999 Objection Status: Active

Combined Water Rights: 35-2432D

TO WHOM IT MAY CONCERN

I, Ralph Breeding, do hereby authorize the temporary transfer of water rights, of the amount necessary, thirty six (36) acres more or less, to Roger Whitnah from my permit number 35-02432 D.

This transfer is only temporary.

10/28/04

Signed


RALPH BREEDING