

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

IN THE MATTER OF APPLICATION)
FOR TEMPORARY CHANGE OF A)
WATER RIGHT 34-871)
_____)
_____)

**ORDER AUTHORIZING
TEMPORARY CHANGE**

TC-34-76

2007

WHEREAS, a drought emergency has been declared for CUSTER County to all 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 purposes 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

WARD & PRISCILLA WOODS
AND

WHEREAS, on MAY 22, 2007, MARK & ELIZABETH GATES ^(TRUSTEES) submitted the attached Temporary Change Application TC-34-76 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). 34-871 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 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 conditions. 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.

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5. Right(s) 34-871 are limited to the irrigation of a total of 80 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 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 Watermaster of Water District No. 34 is authorized to administer the temporary change approval.
12. This Temporary change approval expires on OCTOBER 31, 2007 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 25TH day of MAY, 2007.



Lyle Swank
Eastern Regional Manager

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

MAY 21 2007

TEMPORARY CHANGE APPLICATION

Department of Water Resources
Eastern Region

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

Name of Applicant Gates Trust Elizabeth W., Mark T. Phone 588-2447
Post Office Address 5306 Zollinger RD Mackay, ID 83251

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 the reason(s) thereof maintain crops that depend 100% on irrigation

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

1. Right Number 34-871 Priority June 1 1885 Amount (cfs/ac-ft) 1.6 cfs Nature of Use irrigation Period of Use 5/1 to 10/15

2. Total amount of water being transferred 1.6 cubic feet per second and/or acre-feet per annum.

3. Source of water Warm Springs Cr. tributary to Mackay Reservoir

4. Point(s) of Diversion:

Ident. No.	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
#1 Gates Pump		SW	NE	NE	6	7 N	23 E	Custer	
#2 Gates Pump		NW	SW	NW	5	7 N	23 E	Custer	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	23E	6	8	36	40	38				40	5								167
7N	23E	5						13	40										53

Total Acres 220

6. General Information:

- a. Who owns the water right to be changed? _____
- b. Describe the arrangement allowing use of the right _____
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:
Will not be irrigated this season
- d. Has the water right sought to be transferred been used this year? NO If yes, explain _____
- e. Absent the changes, how would the right be used for the remainder of the year? Flood irrigation
- f. Describe other water rights used for the same purpose.
34-869 34-870
- 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.

Jim Hugoy
(Signature of applicant)

FOR DEPARTMENT USE ONLY

Received by Michael Holiday Date May 22, 2007 Fee \$50.00
Receipted must # E032925 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-34-76

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

Witness my hand this 25th day of MAY, 2007.

Lyni Swank
For the Director

12/99

DEPARTMENT OF WATER RESOURCES

RECOMMENDATION OF WATERMASTER

Application No: TC-34-76

Applicant's Name: GATES TRUST

Watermaster's Recommendation:

- a) ☒ I do not oppose approval of this application
b) ☐ I do not oppose approval of this application if it is conditioned as

follows: _____

- c) ☐ I oppose approval of this application for the following reasons:

- d) ☐ Additional Comment: _____

Dated this 25 day of MAY, 2007

SENT

Water District No: 34

Robert W. Shaffer
Watermaster's Signature

Use reverse side of page if you need more space.

MAY 22, 2007 11:50A Water District #34

(208) 588-3137

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To Michael Holden
From Jim Gregory
SPECIAL POWER OF ATTORNEY

I, Mark Gates, residing at 700 Emerson Street, Palo Alto, CA 94301, am a Managing Member of Big Lost Ranch, LLC and Warm Springs Ranch, LLC, who are the owners of water rights located in District 34 of the State of Idaho and hereby appoint Jim Gregory, of 5306 Zollinger Road, Mackay, ID 83251, as my Attorney-in-Fact ("Agent").

My Agent shall have full power and authority to act on my behalf, but only to the extent permitted by this Special Power of Attorney. My Agent's powers shall include the power to act on my behalf for Big Lost Ranch, LLC, and Warm Springs Ranch, LLC, on all matters requiring a vote in Water District 34 during the calendar year 2007.

I hereby grant to my Agent the full right, power, and authority to do every act, deed, and thing necessary or advisable to be done regarding any powers, as fully as I could do if personally present and acting.

Any power or authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Attorney from causing (i) my income to be taxable to my Agent, (ii) my assets to be subject to a general power of appointment by my Agent, and (iii) my Agent to have any incidents of ownership with respect to any life insurance policies that I may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

I authorized my agent to indemnify and hold harmless any third party who accepts and acts under this document.

My Agent shall provide an account of all acts performed as my Agent, if I so request or if such a request is made by any authorized personal representative or fiduciary acting on my behalf.

This Power of Attorney shall become effective immediately, shall not be affected by my disability or lack of mental competence, and shall continue effective until December 31, 2007; provided, however, that this Power may be revoked by me at any time by providing written notice to my Agent.

Dated January 30th, 2007 at Palo Alto, California.


Mark T. Gates, Jr.
Managing Member
Big Lost Ranch, LLC
Warm Springs Ranch, LLC

Call me
390-5306