

2004

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JUN 10 2004

Form 42-222A  
12/93

Ident. No.

TC-34-48

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 Mark Gates 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. changing water place of use to compensate for drought conditions

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

1. Right Number 34-00871 Priority 6-1-1885 Amount (cfs/ac-ft) 1.6 cfs Nature of Use Irrigation Period of Use 5-25 to 10-152. Total amount of water being transferred 1.6 cfs cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.3. Source of water Warm Springs Cr. tributary to Big Lost River

4. Point(s) of Diversion:

Ident No.	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		<del>SE</del>	<del>SE</del>		<del>6</del>	<del>8N</del>	<del>23E</del>	<del>Custer</del>	<del>Warm Springs*</del>
	1	NE	NE		6	7N	23E	Custer	Gates Pump #1 *
		SW	NW		5	7N	23E	Custer	Gates Pump #2 *

13124305 \*

13124340 \*

## 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	
* 7N	8N	23E	6	40	40	20				40									
* 7N	8N	23E	5						20										

Total Acres 160

\* Changes as per phone call with watermaster's review of decreed water rights &amp; Spacial Data Kcw 6/11/04

## 6. General Information:

- a. Who owns the water right to be changed? Mark Gates
- b. Describe the arrangement allowing use of the right personal transfer
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:  
will be left dry
- 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? would be used on decreed place of use
- 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.

Jim Gregory for  
Mark Gates  
(Signature of applicant)

## FOR DEPARTMENT USE ONLY

Received by KW Date 6/16/04 Fee 5000

Received KW # ED2994L Recommend: ☒ approve ☐ deny

Watermaster recommendation Approval

## ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. TC-34-48

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

Witness my hand this 14<sup>th</sup> day of June, 2004.

[Signature]  
For the Director

**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-34-48

Mark Gates

WHEREAS, a drought emergency has been declared for Custer 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 June 10, 2004, Mark Gates submitted the attached Temporary Change Application TC-34-48 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 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- 34-48

5. Right(s) 34-871 are limited to the irrigation of a total of 160 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 shall measure the amount of water diverted and shall report the amount of water diverted under this approval.
10. The Water master of Water District No. 34 is authorized to administer the temporary change approval.
11. This Temporary change approval expires on December 31, 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 14<sup>th</sup> day of June, 2004.

  
Ronald D. Carlson  
Eastern Regional Manager

State of Idaho  
Department of Water Resources  
Transfer of Water Rights

TC-34-48  
RECEIVED  
JUN 10 2004  
Department of Water Resources  
Eastern Region

RECOMMENDATION OF WATERMASTER

Transfer Application No:

Water Right No(s): 34-00871

Transfer Applicant's Name:

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 7<sup>th</sup>, day of June, 2004

Water District No: 34

  
Watermaster's Signature



## IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 34-871 V1

WATER RIGHT NUMBER: 34-871 V1

INFO ONLY

Owner TypeName and Address

Current Owner

WARD W WOODS  
C/O MARK T GATES  
700 EMERSON ST  
PALO ALTO, CA 94301MARK T or ELIZABETH W GATES TRUSTEE  
700 EMERSON ST  
PALO ALTO, CA 94301  
(415)321-5982

Current Owner

PRISCILLA B WOODS  
C/O MARK T GATES

Priority Date: 06/01/1885

Basis: Decreed

Status: Active

Source

WARM SPRINGS CREEK

Tributary

BIG LOST RIVER

Beneficial Use

From To

Diversion RateAnnual Volume

IRRIGATION

5/01 to 10/15

1.600 CFS

STOCKWATER

1/01 to 12/31

0.020 CFS

Total Diversion: 1.600 CFSLocation of Point(s) of Diversion

WARM SPRINGS CREEK SW1/4SE1/4 Sec. 31, Twp 08N, Rge 23E, B.M. CUSTER 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	
07N 23E 5						30.0											30.0
07N 23E 6	27.0					L 4											27.0
	L 1																
08N 23E 31													35.0	39.0			74.0
08N 23E 32								29.0									29.0

Total Acres: 160

Remarks:

1. Explanatory RIGHT NO. 34-00869 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE. STOCKWATER 800 CATTLE AND HORSES
2. Place of Use USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 397 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHTS: 34-00867/869 & 34-10801 THIS RIGHT IS LIMITED TO THE IRR OF 80 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
3. Quantity USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 7.94 CFS. COMBINED RIGHT NOS.: 34-00867, 34-00869 AND 34-10801

STOCKWATER same as IRRIGATIONDates and Other Information:

Decreed Date:

Notice of Error Flag: RECEIVED - RECOMMENDATION CHANGED

State or Federal: S

Owner Name Connector: AND

Combined Use Limits:

Rate	Volume	Acres
7.94		397

Combined Water Rights: 34-10801 , 34-867 , 34-869 , 34-871

## IDAHO DEPARTMENT OF WATER RESOURCES

## Water Right Report 34-870

WATER RIGHT NUMBER: 34-870

Owner Type

Current Owner

Name and Address

MARK T & ELIZABETH W GATES TRUSTEE  
700 EMERSON ST  
PALO ALTO, CA 94301  
(415)321-5982

WARD W & PRISCILLA B WOODS  
C/O MARK T GATES

Priority Date: 06/01/1893

Basis: Decreed

Status: Active

Source

WARM SPRINGS CREEK

Tributary

BIG LOST RIVER

Beneficial Use

STOCKWATER

From To

01/01 to 12/31

Diversion Rate

0.020 CFS

Annual Volume

7.90 AF

IRRIGATION

05/01 to 10/15

3.460 CFS

605.50 AF

Total Diversion:

3.460 CFS

613.40 AF

Location of Point(s) of Diversion

WARM SPRINGS CREEK SW1/4SE1/4

Sec. 31, Twp 08N, Rge 23E, B.M.

CUSTER County

WARM SPRINGS CREEK SW1/4NE1/4SE1/4

Sec. 34, Twp 08N, Rge 22E, B.M.

CUSTER 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	
07N 23E 5						13.0	40.0										53.0
						L 4											
07N 23E 6	8.0	36.0	40.0	38.0				40.0	5.0								167.0
	L 1	L 2															

Total Acres: 220

STOCKWATER same as IRRIGATIONConditions of Approval:

- The water right holder shall permanently leave 0.74 cfs of water right no. 34-870 in the Upper Fish Hatchery Canal to provide for historic losses associated with delivery of the water right through the Canal to the Gates weir thereby preventing injury to the remaining water rights delivered through the Canal.
- The watermaster shall regulate diversion of water at the new POD in the SWSE Section 31, T8N, R23E, B.M. so that the diversion does not exceed the amount of the water right discharged to Warm Springs Creek from the unnamed natural channel at its confluence with Warm Springs Creek in the NWNW Section 36, T8N, R22E, B.M.
- The maximum authorized rate of diversion under this right at the new POD when combined with water right 34-4137 shall not exceed 4.4 cfs nor a volume of more than 3.5 acre-feet per acre annually at the field headgate.
- The point of diversion for the 0.74 cfs of water right no. 34-870 to be delivered to the Canal shall remain at the original point of diversion of the right in the NESE Section 34, T8N, R22E, B.M.
- The maximum authorized rate of diversion for water right no. 34-870 at the new point of diversion located in the SWSW Section 31, T8N, R23E, B.M. shall not exceed 2.72 cfs.
- X27 This right is limited to the irr of 173 ac within the 220-ac POU in a given irr season.
- X35 Use of this right together with right 34-4137 limited to the irr of a combined total of 220 acres in a given irrigation season.

Remarks:Comments:

- Shelley Keen 10/9/2003 Because Trans 4985 required some of right to be left in the Upper Fish Hatchery Canal to prevent injury to other rights, I indicated that this right includes a mitigation plan.
- Shelley Keen 10/9/The data entry for Trans 4985 occurred after the amended partial decree for Right 34-870. This record contains a mixture of the applicable conditions from the decree and the applicable conditions from the transfer.

Dates and Other Information:

Decreed Date: 6/27/2002  
State or Federal: S  
Owner Name Connector: And  
Civil Case Number: 39576  
Judicial District: FIFTH

Combined Use Limits:

Rate	Volume	Acres
5.43		220
Combined Water Rights: 34-870		

## IDAHO DEPARTMENT OF WATER RESOURCES

## Water Right Report 34-867

WATER RIGHT NUMBER: 34-867

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	PRISCILLA B WOODS C/O MARK T GATES
Current Owner	MARK T & ELIZABETH W GATES TRUSTEE 700 EMERSON ST PALO ALTO, CA 94301 (415)321-5982

WARD W WOODS

Priority Date: 05/01/1893

Basis: Decreed

Status: Active

SourceBIG LOST RIVER  
PARSONS CREEK  
POLE STACKYARD CREEKTributarySINKS  
BIG LOST RIVER  
PARSONS CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	5/01 to 10/15	3.200 CFS	
STOCKWATER	1/01 to 12/31	0.020 CFS	

Total Diversion: 3.200 CFSLocation of Point(s) of Diversion

BIG LOST RIVER	SE1/4NW1/4	Sec. 32, Twp 08N, Rge 23E, B.M.	CUSTER County
POLE STACKYARD CREEK	NW1/4SW1/4	Sec. 32, Twp 08N, Rge 23E, B.M.	CUSTER County
PARSONS CREEK	SE1/4NE1/4	Sec. 31, Twp 08N, Rge 23E, B.M.	CUSTER County
POLE STACKYARD CREEK	SW1/4NE1/4	Sec. 31, Twp 08N, Rge 23E, B.M.	CUSTER County
PARSONS CREEK	SW1/4NW1/4	Sec. 32, Twp 08N, Rge 23E, B.M.	CUSTER 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	
08N	23E	31				38.0									39.0			15.0	92.0
08N	23E	32			36.0			39.0	38.0		37.0	16.0							166.0

Total Acres: 258

STOCKWATER same as IRRIGATIONRemarks:

1. Explanatory STOCKWATER, 800 CATTLE
2. Place of Use USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRR OF A  
- Irrigation COMBINED TOTAL OF **397 ACRES** IN A SINGLE IRR SEASON. COMBINED RIGHTS: 34-869, 34-871 AND 34-10801. **THIS RIGHT IS LIMITED TO THE IRRIGATION OF 160 AC** W/IN THE POU DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
3. Quantity USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 7.94 CFS.

Comments:

1. DCARLSON 4/22/1992 NOTICE OF ERROR  
Comment: ADDED STOCKWATER OUTSIDE IRRIGATION SEASON ADDED PARSON CREEK AS SOURCE ADDED POLE STACKYARD CREEK AS A SOURCE ADDED ACRES. CHANGED REMARKS.

2. DCARLSON 5/6/1992 OWNERSHIP-- ADDED JOLENE  
Comment:

Dates and Other Information:

Decreed Date: 12/14/2001  
State or Federal: S  
Owner Name Connector: AND  
Civil Case Number: 39576  
Judicial District: FIFTH

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
7.94		397

Combined Water Rights: 34-10801 , 34-867



## IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 34-10801

WATER RIGHT NUMBER: 34-10801

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MARK T & ELIZABETH W GATES TRUSTEE 700 EMERSON ST PALO ALTO, CA 94301 (415)321-5982
Current Owner	PRISCILLA B WOODS C/O MARK T GATES
Current Owner	WARD W WOODS C/O MARK T GATES

Priority Date: 03/16/1923

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
PARSONS CREEK	BIG LOST RIVER
POLE STACKYARD CREEK	PARSONS CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	5/01	10/15	1.960 CFS	

Total Diversion: 1.960 CFSLocation of Point(s) of Diversion

PARSONS CREEK	SE1/4NE1/4	Sec. 31, Twp 08N, Rge 23E, B.M.	CUSTER County
PARSONS CREEK	SW1/4NW1/4	Sec. 32, Twp 08N, Rge 23E, B.M.	CUSTER County
POLE STACKYARD CREEK	NW1/4SW1/4	Sec. 32, Twp 08N, Rge 23E, B.M.	CUSTER County
POLE STACKYARD CREEK	SW1/4NE1/4	Sec. 31, Twp 08N, Rge 23E, B.M.	CUSTER 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	
08N 23E 31				38.0									39.0			15.0	92.0
08N 23E 32							39.0	38.0		37.0	16.0						130.0

Total Acres: 222

Remarks:

1. Place of Use - Irrigation USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 397 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 34-00869, 34-00871 AND 34-00867.
2. Quantity USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 7.94 CFS. COMBINED RIGHT NOS.: 34-00869, 34-00871 AND 34-00867.

Dates and Other Information:

Decreed Date: 12/14/2001  
 State or Federal: S  
 Owner Name Connector: AND  
 Civil Case Number: 39576  
 Judicial District: FIFTH

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
7.94		397

Combined Water Rights: 34-10801 , 34-867

## IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 34-869 V1

WATER RIGHT NUMBER: 34-869 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MARK T or ELIZABETH W GATES TRUSTEE 700 EMERSON ST PALO ALTO, CA 94301 (415)321-5982
Current Owner	WARD W WOODS C/O MARK T GATES 700 EMERSON ST PALO ALTO, CA 94301
Current Owner	PRISCILLA B WOODS C/O MARK T GATES

Priority Date: 10/13/1914

Basis: Decreed

Status: Active

Source

WARM SPRINGS CREEK

Tributary

BIG LOST RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	5/01	to 10/15	1.600 CFS	

Total Diversion: 1.600 CFSLocation of Point(s) of Diversion

WARM SPRINGS CREEK SW1/4SE1/4 Sec. 31, Twp 08N, Rge 23E, B.M. CUSTER 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	
07N 23E 5							30.0										30.0
							L 4										
07N 23E 6	27.0																27.0
	L 1																
08N 23E 31															35.0	39.0	74.0
08N 23E 32											29.0						29.0

Total Acres: 160

Remarks:

1. Explanatory RIGHT NO. 34-00871 IS ALSO DIVERTED THROUGH POD DESCRIBED ABOVE.
2. Place of Use - Irrigation USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 397 ACRES IN A SINGLE IRRIGATION SEASON.  
COMBINED RIGHT NOS.: 34-00867, 34-00871 AND 34-10801
3. Quantity USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 7.94 CFS. COMBINED RIGHT NOS.: 34-00867, 34-00871 AND 34-10801

Dates and Other Information:

Decreed Date:  
 Notice of Error Flag: RECEIVED - RECOMMENDATION CHANGED  
 State or Federal: S  
 Owner Name Connector: AND

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
7.94		397

Combined Water Rights: 34-10801 , 34-867 , 34-869 , 34-871