



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

January 2, 2020

CASA DEL NORTE LP
11204 N BAR 21 DR
GLENN'S FERRY ID 83623

RE: Transfer No. 80342

Dear Permit Holder(s):

The accompanying order is a "**preliminary order**" issued by the department pursuant to Rule 730 of the department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action of the department unless any party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-287-4947.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Shelley W. Keen'.

for Shelley W. Keen
Water Allocations Bureau Chief

Enclosure(s)

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 80342 IN THE)
NAME OF CASA DEL NORTE L.P.)
_____)

**PRELIMINARY ORDER APPROVING
APPLICATION FOR TRANSFER**

PROCEDURAL HISTORY

On August 7, 2015, Casa Del Norte L.P. (“CDN”) submitted application for transfer No. 80342 (“Transfer Application”) to the Idaho Department of Water Resources (“Department”). CDN seeks authorization to add a third point of diversion (“POD”) for its use of ground water authorized by water right nos. 61-2095A, 61-2199A, 61-2209A, and 61-11887A (“the four water rights”).

On the Transfer Application, CDN initially described the location of the proposed new POD as within the SW¼NW¼ of Section 10, Township 04S, Range 09E, B.M. The Department published notice of the Transfer Application in the *Mountain Home News* on April 20 and 27, 2016. Double Anchor Ranches Inc. (“DAR”) filed a timely protest against the Transfer Application. IDWR Exhibit No. 3. DAR’s protest states:

[T]he transfer application proposes a point of diversion for groundwater within an area and water bearing zone that may be connected and contribute to the source(s) from which Protestant diverts water pursuant to valid water rights. Thus, the proposed new point of diversion may injure Protestant. The transfer application also references the fact that the place of use under this proposed transfer is to be the place of use proposed in unpublished transfer application nos. 79528 and 79945 – in other words, it presumes approval of the proposed place of use under those unpublished transfers. As those unpublished transfers may injure Protestant, or otherwise not comply with the requirements of I.C. §42-222, Protestant must protest this transfer application on the grounds that the proposed change in place of use may result in injury to Protestant.

On March 8, 2018, Department staff held a prehearing conference to discuss the Transfer Application. All parties attended, but they did not reach an agreement regarding the Transfer Application.

On December 20, 2018, CDN amended the Transfer Application to change the location of the proposed new POD. The change moved the proposed location to coincide with the location of a new well (“Riverside Well”) completed on October 17, 2019, in the NW¼NW¼ of Section 10, Township 04S, Range 09E, B.M. The Department published notice of the amendment to the Transfer Application in the *Mountain Home News* on January 16 and 23, 2019. Kelly Riggs filed a timely protest against the Transfer Application. IDWR Exhibit No. 4. Kelly Riggs’s protest

states, “I am concerned that this transfer will injure my water rights and/or impact the water supply.”

On June 20, 2019, the Department held another prehearing conference to discuss the Transfer Application. The parties did not reach an agreement and the Department subsequently issued a *Notice of Hearing and Scheduling Order*.

The Department held the hearing on this matter on September 24 and 27, 2019. Shelley Keen of the Department served as the Hearing Officer. Attorney Norman Semanko represented CDN. Scott King (“King”) and Terry Scanlan (“Scanlan”), both of SPF Engineering, testified as expert witnesses for CDN. Attorney Charles Honsinger represented DAR. Ed Squires (“Squires”) of Hydrologic, Inc., testified as an expert witness for DAR. Harley Riggs also testified for DAR. Kelly Riggs represented himself and testified on his own behalf.

Based on careful consideration of the administrative record, including the application file and evidence and testimony presented at the hearing, the Hearing Officer finds, concludes, and orders as follows:

FINDINGS OF FACT

Cold Springs Creek

1. Cold Springs Creek flows out of the Boise National Forest on the southeast side of Bennett Mountain in Elmore County and flows southward several miles through a canyon until it emerges onto an alluvial fan in Section 35, Township 3 South, Range 9 East, B.M. From there, Cold Springs Creek continues southward to where it drops into the Snake River Canyon in Section 20, Township 5 South, Range 9 East, B.M. From there, Cold Springs Creek continues southward approximately 2.5 additional miles and enters the Snake River approximately 1.5 miles east of Hammett, Idaho.
2. Cold Springs Creek and its tributaries are the sources of water for approximately 80 water rights, many with priority dates in the 1800s. CDN, DAR, and Kelly Riggs all own water rights authorizing the diversion and use of water from Cold Springs Creek.
3. The watermaster of Water District 61E administers all surface water rights in the Cold Springs Creek drainage basin.

Aquifer System

4. The subsurface around the existing and proposed PODs for the four water rights is composed of three distinct aquifers: a shallow alluvial aquifer, a middle aquifer occurring in mostly clays and some volcanic rocks, and a deeper hot water aquifer found in basalt and rhyolite. Scanlan Testimony; Squires Testimony.
5. Vertical and high-angle normal faults exist along the mountain front where Cold Springs Creek emerges from the canyon. Exhibit Nos. 103 and 104; Squires Testimony. These faults

are dipped to the south. Squires Testimony; Exhibit No. 105. Fractured fault zones can act as conduits for the movement of surface water into the subsurface. Squires Testimony; Exhibit No. 101.

6. Groundwater emerges from the aquifer system as springs in the vicinity of the DAR property downslope on the alluvial fan. Kelly Riggs Testimony; IDWR Exhibit No. 5.
7. The watermaster of Water District 161 administers ground water rights in the Cold Springs Creek drainage basin. Squires Testimony; Scanlan Testimony. Water District 161 requires that measuring devices be installed on ground water diversions within the district. Squires Testimony; Scanlan Testimony. The measuring devices must be Department approved totalizing flow meters. Scanlan Testimony. If the Transfer Application is approved, the new well will be equipped with a lockable controlling device and measurement device as required by Water District 161. Exhibit No. 7.

Casa Del Norte's Water Use and Water Rights

8. CDN proposes to add a POD to the following four water rights:

Number	Basis	Priority Date	Source	Diversion Rate (cfs)	Diversion Volume (AF)	Water Use	Total Acres	Acre Limit
61-2095A	Decreed	3/7/1953	GROUND WATER	3.05	1,260.0	IRRIGATION	800.9	315.0
61-2199A	Decreed	7/19/1966	GROUND WATER	5.88		IRRIGATION	800.9	
61-2209A	Decreed	9/12/1966	GROUND WATER	0.41		IRRIGATION	800.9	
61-11887A	Decreed	3/15/1977	GROUND WATER	2.36		IRRIGATION	800.9	

IDWR Exhibit No. 2.

9. The Snake River Basin Adjudication ("SRBA") Court issued a partial decree for each of the four water rights on August 8, 2008.
10. The four water rights currently authorize the use of ground water at a total combined diversion rate of 9.34 cfs and a total combined annual diversion volume of 3,203.6 af for the irrigation of 800.9 acres. IDWR Exhibit No. 2.
11. The four water rights currently share two wells as authorized PODs. One of the two wells is called the Trout Pond Well and the other is called the Upper Bench Well. The two wells are located as follows:

- Trout Pond Well -- NE¼SW¼NE¼, Section 10, Township 4 South, Range 9 East, B.M.

Exhibit No. 25; Exhibit No. 28; Scanlan Testimony.

- Upper Bench Well -- NE¼NW¼NW¼, Section 10, Township 4 South, Range 9 East, B.M.

Exhibit No. 25; Scanlan Testimony.

12. Both the Trout Pond Well and the Upper Bench Well have declined in productivity over time and no longer produce the diversion rate authorized by the four water rights. King Testimony; Exhibit No. 8.
13. The four water rights are part of an irrigation system that commingles ground water and surface water for distribution and irrigation use on approximately 1,586 acres. Exhibit No. 7.
14. Aerial imagery of the place of use for the four rights shows irrigation has taken place within the last 5 years. Ground water diverted under the four water rights has been used on the full number of irrigated acres authorized by the four rights (800.9 acres). Scanlan Testimony; King Testimony; Squires Testimony.

The Existing and Proposed PODs

15. The Upper Bench Well was completed in 1955. Scanlan Testimony. It has a 12-inch diameter casing from 0 to 118 feet and is open hole (uncased) from 118 feet below ground surface to the bottom of the well at 449 feet below ground surface. Exhibit No. 23. The Upper Bench Well produces water from within shale and basalt strata from 245 feet below ground surface to the bottom of the well. Scanlan Testimony; Exhibit No. 23.
16. The Trout Pond Well was completed in 1966. It has 16-inch diameter casing from 0 to 37 feet below ground surface and perforated 14-inch casing from 270 feet below ground surface to a depth of 470 feet below ground surface. The well was drilled to a depth of 600 feet. Exhibit No. 25. The well produces water from within a sand and gravel interbed located 322 feet to 345 feet below ground surface between layers of igneous rock. Exhibit No. 25; Scanlan Testimony. The relatively cool water produced from the Trout Pond Well may be evidence of an interconnection with Cold Springs Creek via the fault system along the mountain front in the area. Squires Testimony.
17. The proposed third point of diversion is an existing well located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, Township 4 South, Range 9 East, B. M. ("Riverside Well"). IDWR Exhibit No. 2. The Riverside Well was completed in 2018. It has 16-inch casing in three intervals from 2 feet above the ground surface to a depth of 390 feet, from 490 to 510 feet below ground surface, and from 520 to 640 feet below ground surface. The Riverside Well was completed to a depth of 740 feet. Screens (sections of the well that contain slits or other open areas that permit water to enter the well) were placed between the cased sections from 390 to 490 feet below ground surface, from 510 to 520 feet below ground surface, and from 640 to 680 feet below ground surface. Exhibit No. 13. The well produces water from these screened sections, which are in shales, pea gravels, black basalt, and clay layers. Scanlan Testimony. The well construction included a bentonite chip seal from the ground surface to a depth of 351 feet to preclude hydraulic connection with surface water sources. Exhibit nos. 8 and 13; Scanlan Testimony.
18. The Upper Bench Well, Trout Pond Well, and Riverside Well are completed in similar geologic sections and produce water from the same aquifer. Scanlan Testimony; Squires Testimony.

19. The installation and use of flow meters and lockable controlling works on the Upper Bench Well, Trout Pond Well, and Riverside Well would result in control over the diversion rates and volumes of water diverted individually and collectively from the three wells into the interconnected irrigation system. Scanlan Testimony; Squires Testimony; King Testimony.

Double Anchor Ranch's Water Use and Water Rights

20. DAR is a cattle ranch located along Cold Springs Creek roughly 4.5 miles south of the wells used as PODs for the four water rights. Harley Riggs Testimony; IDWR Exhibit No. 5.

21. DAR's water rights diverted and used in the Cold Springs Creek drainage basin are as follows:

Number	Basis	Priority Date	Diversion Rate	Source	Tributary To	Water Use(s)	Total Acres	Acre Limit
61-10296	Decreed	1/1/1800	0.23	SPRINGS	COLD SPRINGS CREEK	DOMESTIC, STOCKWATER		
61-322	Decreed	5/1/1871	0.08	SPRING	COLD SPRINGS CREEK	IRRIGATION	74.7	
61-323	Decreed	5/1/1872	1.00	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	708.5	
61-10349	Decreed	5/1/1873	1.26	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	708.5	
61-326	Decreed	5/1/1878	1.00	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	708.5	
61-327	Decreed	5/1/1879	2.50	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	708.5	
61-330	Decreed	5/1/1884	0.36	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	708.5	
61-331	Decreed	5/1/1886	1.00	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	708.5	
61-10304	Decreed	1/1/1890	0.23	SPRINGS	COLD SPRINGS CREEK	DOMESTIC, STOCKWATER		
61-2036	Decreed	7/10/1913	1.20	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	708.5	60.0
61-4147	Decreed	3/15/1971	10.00	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	708.5	

IDWR Exhibit No. 5.

22. DAR irrigates using one $\frac{3}{4}$ pivot and one full pivot to grow cattle feed. The rest of the DAR irrigated land is flood irrigated pasture. Harley Riggs Testimony. DAR diverts irrigation water from Cold Springs Creek within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 04S, Range 09E, B.M. IDWR Exhibit No. 5; Harley Riggs Testimony. DAR uses one ground water well for domestic and stockwater purposes. Harley Riggs Testimony.
23. DAR is the owner of record for water right No. 61-322, which authorizes the use of water from springs tributary to Cold Springs Creek for irrigation of 74.7 acres. According to the water right record, the spring source is located south and downstream of the CDN property in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 04S, Range 09E, B.M. Exhibit No. 121.
24. DAR also uses springs existing on its property to supply drinking water to four homes. The springs are not used for stock water or irrigation. Harley Riggs Testimony.

Kelly Riggs's Water Use and Water Rights

25. Kelly Riggs owns and irrigates property along Cold Springs Creek approximately three miles south of the wells used as PODs for the four water rights. IDWR Exhibit No. 5.
26. Kelly Riggs owns the following water rights for diversion and use in the Cold Springs Creek drainage basin:

Number	Basis	Priority Date	Diversion Rate	Source	Tributary To	Water Use(s)	Total Acres
61-341	Decreed	5/7/1887	1.22	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	120.0
61-342	Decreed	6/30/1887	1.18	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	120.0
61-10299	Decreed	3/15/1943	6.73	COLD SPRINGS CREEK	SNAKE RIVER	IRRIGATION	120.0
61-10300	Decreed	4/16/1960	0.09	GROUND WATER		STOCKWATER	
61-12323	Permit	9/13/2017	0.07	GROUND WATER		DOMESTIC, HEATING	

IDWR Exhibit No. 5.

27. Kelly Riggs diverts water out of Cold Springs Creek using a weir and open ditch to convey water to his property to grow hay by field flooding 120 acres. Kelly Riggs Testimony.
28. Kelly Riggs also owns water right No. 61-10300, which authorizes the diversion of ground water for stock watering purposes from a well located approximately 3.5 miles south of the Riverside Well. IDWR Exhibit No. 5. Due to the Riverside Well's close proximity to the Upper Bench Well and the Trout Pond Well relative to Kelly Riggs's well, pumping from the Riverside Well is unlikely to result in a measurable change in water level in Riggs's well compared to the impact of CDN's historic pumping from the Upper Bench Well and the Trout Pond Well. Scanlan Testimony; Exhibit No. 8.

APPLICABLE STATUTES

Idaho Code § 42-222(1) states that a person "entitled to the use of water" may apply to the Department to change certain elements of the authorized water use.

Idaho Code § 42-222(1) also sets forth the criteria for evaluating an application for transfer of water rights:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve

reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.

Idaho Code § 42-222(2) states:

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

Idaho Code § 42-223(6) states:

No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

CONCLUSIONS OF LAW

When evaluating a transfer application, the Department first determines whether the applicant is “entitled to the use of water” as required by Idaho Code Idaho Code § 42-222(1). The Department interprets this requirement to mean that the water right(s) proposed to be changed must be valid. To determine water right validity, the Department requires evidence of a license, claim, or decree. The Department then applies the forfeiture provisions of Idaho Code § 42-222(2). If the water rights proposed to be changed are not valid, the proposed change cannot be approved, and any further analysis is moot. If the water rights proposed to be changed are valid, the Department applies the transfer evaluation criteria in Idaho Code § 42-222(1).

Water Right Validity

1. As stated in Finding of Fact No. 9, the SRBA court issued a partial decree for each of the four water rights on August 8, 2008.
2. CDN had no control over the decline in productivity of the Upper Bench Well and the Trout Pond Well. Pursuant to Idaho Code § 42-223(6), the reduction in diversion rate does not constitute forfeiture. Because CDN diverted what water it could from the Upper Bench Well and the Trout Pond Well to irrigate at least 800.9 acres in a single irrigation season within the last five years, the four water rights have not been forfeited.

Enlargement

3. Idaho Code § 42-222(1) states that the change proposed in an application for transfer must “not constitute an enlargement in use of the original right.” Enlargement will occur if the total diversion rate, annual volume diverted, or the number of acres irrigated, increases beyond what is authorized by the water rights prior to the proposed transfer. Pursuant to Idaho Code § 42-222(1), the Department “may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement of the original water right.”
4. DAR and Kelly Riggs both expressed their concern about the control methods and monitoring that currently exist on the CDN system. They assert the current operation of the CDN irrigation system may have resulted in enlargement of the four water rights in two ways. First, the lack of control, measurement, and reporting on use of the Upper Bench Well and the Trout Pond Well may have allowed CDN to divert and use a larger volume of ground water than authorized by the four rights. Second, the integration of the ground water delivery system for the four water rights with CDN’s delivery system for its other water rights, including its Cold Springs Creek water rights, may have allowed CDN to apply ground water diverted under the four water rights to more than 800.9 acres. Harley Riggs Testimony; Kelly Riggs Testimony. By spreading its ground water to more acres, CDN may increase the evapotranspiration of ground water, i.e. consumptive use, under the four water rights or change the location of return flows that benefit the springs and reaches of Cold Springs Creek that DAR and Kelly Riggs rely on.
5. Scanlan, King, and Squires testified consistently that CDN’s integrated irrigation system can be managed so that the amount of water diverted from the two existing PODs (Upper Bench Well and Trout Pond Well) and the one new POD (Riverside Well), when used in combination, can be kept within the authorized limits of the four water rights. CDN’s ground water diversions are subject to regulation by the watermaster of Water District 161 and the Department to ensure compliance with the water rights. CDN has measuring devices on the Upper Bench Well and the Trout Pond Well, and the Water District 161 measuring device requirement would apply to the Riverside Well also. In addition, the Department can require CDN to install lockable controlling works on its PODs. Through regular monitoring of the measuring devices and use of the lockable controlling works, the watermaster of Water District 161 can ensure CDN does not divert more ground water than the four water rights authorize. With measuring devices, lockable controlling works, and watermaster oversight all in place, the addition of a third well as a point of diversion to the ground water rights will not result in enlargement of the rate or volume of water diverted.
6. Applying water to an expanded area (more acres) of irrigated land is likely to result in an increase in evapotranspiration of water. Therefore, enlarging the irrigated place of use enlarges the consumptive use of a water right. DAR and Kelly Riggs allege CDN’s integrated irrigation system results in application of water under the four water rights to more acres than authorized by the water rights. However, CDN does not propose to change the place of use authorized by the four water rights. According to Idaho Code § 42-222(1), a protest may be filed against a “proposed change” to a water right. Idaho Code § 42-222(1)

also grants the Department the authority to evaluate the “proposed change.” Issues that are not related to the proposed change on the application fall outside the scope of the Department’s review authority for transfer applications and will not be evaluated. Because CDN does not propose to change the authorized place of use for the four water rights, the Department will not evaluate the Transfer Application for a change in place of use. Because no change in place of use is proposed, the Department expects CDN to limit its irrigation using water from the four water rights to the authorized place of use stated on the partial decrees.¹

7. The proposed change will not enlarge the use of the original water rights.

Injury

8. Idaho Code § 42-222(1) establishes that an application for transfer cannot be approved if “other water rights are injured thereby.” DAR and Kelly Riggs are concerned that pumping from the Riverside Well could injure them by reducing the Cold Springs Creek flows they are entitled to divert and use. Squires postulates that structural faulting may create an interconnection between Cold Springs Creek and the Riverside Well that would cause pumping from the Riverside Well to deplete the flow of water in Cold Springs Creek upstream from DAR’s and Kelly Riggs’s points of diversion from Cold Springs Creek. If so, CDN’s use of the Riverside Well could affect the availability of water in Cold Springs Creek and tributary springs, and thus to DAR and Kelly Riggs, differently than use of water from the Upper Bench Well and the Trout Pond Well. However, the record shows that the Riverside Well is completed into – and would draw water from – the same aquifer as the Trout Pond and Upper Bench Wells. The diversion and use of water from the Riverside Well under the four water rights would not be a change from one water source to another. CDN is already entitled to divert and use the full extent of the four water rights from existing wells which produce water from the same aquifer as the Riverside Well. With measuring devices, controlling works, and watermaster administration in place to keep water use within the limits of established water rights, impacts on the ground water resource and on Cold Springs Creek as a result of pumping from the Riverside Well, Trout Pond Well, and Upper Bench Well together will be the same as the impacts resulting from the historic withdrawals from the Trout Pond Well and the Upper Bench Well. If the diversion of ground water in the decreed amounts reduces the amount of water available to senior surface water right holders, the appropriate avenue for redress is a delivery call and the conjunctive administration of surface and ground water rights by priority.

¹ The Hearing Officer notes from the record that CDN’s integrated irrigation system makes it difficult to discern that CDN has complied with the place of use limits of the four water rights involved in the Transfer Application. Testimony in the Transfer Application record suggests CDN intends to file another transfer application to change the places of use for its water rights. Meanwhile, the place of use for the four water rights remains as decreed in the SRBA. The Hearing Officer’s decision on this Transfer Application anticipates that CDN’s water use under the four water rights will be consistent the decreed place of use when irrigation commences in 2020. Changes to CDN’s irrigation practices or changes to its water rights may be necessary to achieve compliance. Water use inconsistent with the elements of the water rights as they were defined by SRBA decree and updated through the transfer process may result in watermaster regulation or an enforcement action pursuant to the Department’s statutory authorities.

9. The Riverside Well is sufficiently close to the Upper Bench Well and the Trout Pond Well that the impacts on other wells serving as PODs for area water rights – such as Kelly Riggs’s domestic well – will not be different than the historic pumping from the Upper Bench Well and the Trout Pond Well in the amounts of water authorized by the four water rights.

10. The proposed change will not injure other water rights.

Conservation of Water Resources

11. Idaho Code § 42-222(1) states that an application for transfer is not approvable unless “the change is consistent with the conservation of water resources within the State of Idaho.”

This requirement has been interpreted by the Department to mean the proposed water use must be efficient so that beneficial use is accomplished while preserving as much water as possible for benefit of other users and future development.

12. CDN’s irrigation is accomplished by delivering water through pressurized pipelines and applying the water through a series of full or partial circle pivots, some wheel lines, and some handlines. Exhibits No. 7. The applicant does not propose changes to the irrigation system (other than the addition of a third POD). Scanlan testified, “By irrigating with pivots you’re effectively using that water supply. You’re increasing your yields. It’s a good use of water.” Neither DAR nor Kelly Riggs presented evidence or testimony demonstrating CDN’s irrigation practices are not efficient.

13. The proposed change is consistent with the conservation of water within the State of Idaho.

Local Public Interest

14. Idaho Code § 42-222(1) states that the change proposed in an application for transfer must be “in the local public interest as defined in section 42-202B, Idaho Code.” Section 42-202B(3), Idaho Code states:

“Local public interest” is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water supply.

15. The transfer opportunity authorized by Idaho Code § 42-222(1) was created to recognize that the changing needs of water users sometimes require changes to their water rights. As Policy 1C of the Idaho State Water Plan states, “Changes in the use of a water right should be allowed to meet changing needs and to provide for optimum use of the state’s water resources.” Use of a third POD will help CDN develop the ground water supply to the full extent authorized under its four water rights. Changes to water rights that allow for the full utilization of existing valid water rights promote the optimal use of the State’s water resources.

16. The interests of DAR and Kelly Riggs in the water supply in the Cold Springs Creek watershed are defined by their rights to divert and use the water. As explained in the sections

above, CDN's impact on the water resources of the Cold Springs Creek drainage and on the water rights of DAR and Kelly Riggs will not be different than it has been in the past. CDN's proposed change will simply allow it to re-establish water use consistent with its decreed water rights.

17. Because CDN's proposal optimizes its ability to use water pursuant to its existing water rights without changing CDN's historic impact on the water resource, the addition of a third POD for the four water rights is in the local public interest.

Economy of the Watershed or Local Area

18. Idaho Code § 42-222(1) states that the change proposed in an application for transfer must "not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates."
19. The Transfer Application does not propose any meaningful change to historic water use practices in the Cold Springs Creek watershed or local area. It does not propose to remove water from the watershed or local area where it originates, nor does it propose to change the nature of use from the agricultural production to which the four water rights have been used historically. It also will not injure other water rights, as explained above, or reduce their economic impact on the local area.
20. Approval of the Transfer Application will not adversely affect the local economy of the watershed or area where the four water rights are used.

ORDER

IT IS HEREBY ORDERED that the Transfer Application is **APPROVED** and a new point of diversion is authorized for each of the four water rights within the NW¼NW¼ of Section 10, Township 4 South, Range 9 East, B.M.

IT IS FURTHER HEREBY ORDERED that conditions of approval for the four water rights are **MODIFIED** as follows:

Right 61-2095A

1. This right is limited to the irrigation of 315 acres within the authorized place of use in a single irrigation season.
2. Rights 61-301A, 61-301B, 61-332, 61-333, 61-334, 61-335, 61-336, 61-337, 61-338, 61-339, 61-340, 61-343, 61-364, 61-2008, 61-2095A, 61-2199A, 61-2209A, 61-10363, 61-11844, 61-11847, 61-11854 and 61-11887A when combined shall not exceed the irrigation of 1368 acres.

3. Rights 61-2095A, 61-2199A, 61-2209A, and 61-11887A when combined shall not exceed a total diversion rate of 9.34 cfs, a total annual maximum diversion volume of 3200 af at the field headgate, and the irrigation of 800.9 acres.
4. Rights 61-2095A, 61-2199A and 61-2209A when combined shall not exceed a total annual maximum diversion volume of 2390 af at the field headgate and the irrigation of 598 acres.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
6. Prior to the diversion and use of water under Transfer Approval 80342, the right holder shall install and maintain on each point of diversion a measuring device and lockable controlling works of a type acceptable to the Department.
7. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 161.
8. Right No. 61-11887A is an enlargement of this right, 61-2199A, and 61-2209A pursuant to Idaho Code § 42-1426.
9. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
10. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
12. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Right 61-2199A

1. Rights 61-301A, 61-301B, 61-332, 61-333, 61-334, 61-335, 61-336, 61-337, 61-338, 61-339, 61-340, 61-343, 61-364, 61-2008, 61-2095A, 61-2199A, 61-2209A, 61-10363, 61-11844, 61-11847, 61-11854 and 61-11887A when combined shall not exceed the irrigation of 1368 acres.
2. Rights 61-2095A, 61-2199A, 61-2209A and 61-11887A when combined shall not exceed a total diversion rate of 9.34 cfs, a total annual maximum diversion volume of 3200 af at the field headgate, and the irrigation of 800.9 acres.

3. Rights 61-2095A, 61-2199A and 61-2209A when combined shall not exceed a total annual maximum diversion volume of 2390 af at the field headgate and the irrigation of 598 acres.
4. Rights 61-2199A and 61-2209A when combined shall not exceed the irrigation of 401 acres.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
6. Prior to diversion and use of water under Transfer Approval 80342, the right holder shall install and maintain on each point of diversion a measuring device and lockable controlling works of a type acceptable to the Department.
7. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 161.
8. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/15 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 04/01 and after 11/01 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 08/28/2002.
9. Right No. 61-11887A is an enlargement of this right, 61-2095A, and 61-2209A pursuant to Idaho Code § 42-1426.
10. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
11. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
12. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
13. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Right 61-2209A

1. Rights 61-301A, 61-301B, 61-332, 61-333, 61-334, 61-335, 61-336, 61-337, 61-338, 61-339, 61-340, 61-343, 61-364, 61-2008, 61-2095A, 61-2199A, 61-2209A, 61-10363, 61-11844, 61-11847, 61-11854 and 61-11887A when combined shall not exceed the irrigation of 1368 acres.

2. Rights 61-2095A, 61-2199A, 61-2209A and 61-11887A when combined shall not exceed a total diversion rate of 9.34 cfs, a total annual maximum diversion volume of 3200 af at the field headgate, and the irrigation of 800.9 acres.
3. Rights 61-2095A, 61-2199A and 61-2209A when combined shall not exceed a total annual maximum diversion volume of 2390 af at the field headgate and the irrigation of 598 acres.
4. Rights 61-2199A and 61-2209A when combined shall not exceed the irrigation of 401 acres.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
6. Prior to diversion and use of water under Transfer Approval 80342, the right holder shall install and maintain on each point of diversion a measuring device and lockable controlling works of a type acceptable to the Department.
7. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 161.
8. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/15 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 04/01 and after 11/01 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 08/28/2002.
9. Right No. 61-11887A is an enlargement of this right, 61-2095A, and 61-2209A pursuant to Idaho Code § 42-1426.
10. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
11. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
12. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
13. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Right 61-11887A

1. Rights 61-301A, 61-301B, 61-332, 61-333, 61-334, 61-335, 61-336, 61-337, 61-338, 61-339, 61-340, 61-343, 61-364, 61-2008, 61-2095A, 61-2199A, 61-2209A, 61-10363, 61-11844, 61-11847, 61-11854 and 61-11887A when combined shall not exceed the irrigation of 1368 acres.
2. Rights 61-2095A, 61-2199A, 61-2209A and 61-11887A when combined shall not exceed a total diversion rate of 9.34 cfs, a total annual maximum diversion volume of 3200 af at the field headgate, and the irrigation of 800.9 acres.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
4. Prior to diversion and use of water under Transfer Approval 80342, the right holder shall install and maintain on each point of diversion a measuring device and lockable controlling works of a type acceptable to the Department.
5. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 161.
6. This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Idaho Code § 42-1426. As between water rights decreed as enlargements pursuant to Idaho Code § 42-1426, the earlier priority right is the superior right.
7. This right is based upon an enlargement of Right Nos. 61-2095A, 61-2199A, and 61-2209A pursuant to Idaho Code § 42-1426.
8. This right is for an enlargement of 206.9 acres within the place of use described for this right.
9. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
10. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
12. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Dated this 2nd day of January, 2020.

Shelley W. Keen

Shelley W. Keen
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2020, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER APPROVING APPLICATION FOR TRANSFER** to the person (s) listed below:

RE: TRANSFER NO: 80342
WATER RIGHT NOS: 61-2095A, 61-2199A, 61-2209A, 61-11887A

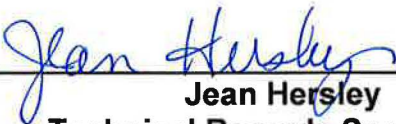
CASA DEL NORTE LP
11204 N BAR 21 DR
GLENNS FERRY ID 83623

NORMAN M SEMANKO
PARSON BEHLE & LATIMER
800 W MAIN ST STE 1300
BOISE ID 83702

DOUBLE ANCHOR RANCHES, INC
PO BOX 160
GLENNS FERRY ID 83623

CHARLES L HONSINGER
HONSINGER LAW PLLC
PO BOX 517
BOISE ID 83701

KELLY RIGGS
5420 W DOUBLE ANCHOR DR
GLENNS FERRY ID 83623



Jean Hersley
Technical Records Specialist II

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

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

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 service date 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.