BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 83089 IN THE NAME OF AVONDALE IRRIGATION DISTRICT	))))	**PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL**

This matter having come before the Idaho Department of Water Resources ("Department") as the result of clerical errors discovered in a transfer approval, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On March 7, 2019, Avondale Irrigation District filed Application for Transfer 83089, proposing to add a point of diversion to water rights 95-8774, 95-8867, and 95-8909.

2. The proposed new point of diversion for water rights 95-8774, 95-8867, and 95-8909 was to be located in the SWNW of Section 11, T51N, R04W.

3. The Department published notice of Application 83089 on April 4 and 11, 2019 and no protests were filed against the application.

4. The Department approved Transfer 83089 on May 15, 2019. The new point of diversion for water rights 95-8774 and 95-8909 was not described correctly in the transfer approval. Transfer Approval for 95-8774 described the point of diversion in L0 (SWNW) and 95-8909 described it in the SWNE rather than the SWNW.

CONCLUSIONS OF LAW

Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe the new point of diversion for water rights 95-8774 and 95-8909 in Transfer Approval 83089. The new point of diversion for water rights 95-8774 and 95-8909 should have been described in the SWNW. The Department has the authority to issue Amended Transfer Approval 83089, correcting the error described above.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 83089 is CORRECTED as set forth in Amended Transfer Approval 83089 issued in conjunction with this order.

Dated this 18th day of December, 2019.

Douglas Jones
Northern Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of December 2019, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL to the person(s) listed below:

Tammy Alleman
Administrative Assistant 1

US MAIL
RE: PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL (83089)

AVONDALE IRRIGATION DISTRICT
PO BOX 81
HAYDEN LAKE, ID 83835

AMENDED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

TRANSFER OF WATER RIGHT
TRANSFER NO. 83089

This is to certify that: AVONDALE IRRIGATION DISTRICT
PO BOX 81
HAYDEN LAKE, ID 83835

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

Water Right	Origin/Basis	Priority Date	Diversion Rate	Diversion Volume	Acre Limit	Total Acres	Source
95-8774	AR/LICENSE	10/20/1992	3.000 cfs	N/A	N/A	N/A	GROUND WATER
95-8867	AR/LICENSE	5/13/1994	2.000 cfs	N/A	N/A	N/A	GROUND WATER
95-8909	AR/LICENSE	3/8/1995	3.000 cfs	N/A	N/A	N/A	GROUND WATER

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
95-8774	NO	NO	NO	YES	NO	NO
95-8867	NO	NO	NO	YES	NO	NO
95-8909	NO	NO	NO	YES	NO	NO

Summary Of Water Rights After the Approved Change

Existing Right	New No. (Changed Portion)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	New No. (remaining portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
95-8774	95-8774	3.000 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
95-8867	95-8867	2.000 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
95-8909	95-8909	3.000 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		**8.000 cfs**	**N/A**	**N/A**	**N/A**		**N/A**	**N/A**	**N/A**	**N/A**

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 18th day of December, 2019.

Douglas Jones

Douglas Jones, Northern Regional Manager

Transfer No. 83089

WATER RIGHT NO. 95-8867

As Modified by Transfer No. 83089

In accordance with the approval of Transfer No. 83089, Water Right No. 95-8867 is now described as follows:

Right Holder: AVONDALE IRRIGATION DISTRICT
PO BOX 81
HAYDEN LAKE, ID 83835

Priority Date: 5/13/1994

Source: GROUND WATER

BENEFICIAL USE	From		To	Diversion Rate
MUNICIPAL	01/01	to	12/31	2.000 cfs
				2.000 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SWNW	Sec 11 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NESW	Sec 15 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NESW	Sec 15 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	SWSW	Sec 24 Twp 51N Rge 04W KOOTENAI County

CONDITIONS OF APPROVAL

1. 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.

2. The right holder shall maintain a totalizing measuring device of a type approved by the Department as a part of the diverting works.

3. This right does not grant any right-of-way or easement across the land of another.

4. Place of Use is within the service area boundary of the Avondale Irrigation District pursuant to Section 43-323, Idaho Code.

5. The water system described in this right has been assigned Public Water Supply ID 1280008 by the Idaho Department of Environmental Quality.

6. Right Nos. 95-7558, 95-8144, 95-8321, 95-8687, 95-8774, 95-8867, and 95-8909 are limited to a total combined diversion rate of 18.05 cfs.

7. Place of Use may include lands outside the boundary of the Avondale Irrigation District pursuant to Section 43-1901, Idaho Code.

WATER RIGHT NO. 95-8774

As Modified by Transfer No. 83089

In accordance with the approval of Transfer No. 83089, Water Right No. 95-8774 is now described as follows:

Right Holder: AVONDALE IRRIGATION DISTRICT
PO BOX 81
HAYDEN LAKE, ID 83835

Priority Date: 10/21/1992

Source: GROUND WATER

BENEFICIAL USE	From		To	Diversion Rate
MUNICIPAL	01/01	to	12/31	3.000 cfs
				3.000 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SWNW	Sec 11 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NESW	Sec 15 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NESW	Sec 15 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	SWSW	Sec 24 Twp 51N Rge 04W KOOTENAI County

CONDITIONS OF APPROVAL

1. 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.

2. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.

3. This right does not grant any right-of-way or easement across the land of another.

4. The water system described in this right has been assigned Public Water Supply ID 1280008 by the Idaho Department of Environmental Quality.

5. Place of use is within the service area boundary of Avondale Irrigation District pursuant to Section 43-323, Idaho Code.

6. Place of Use may include lands outside the boundary of the Avondale Irrigation District pursuant to Section 43-1901, Idaho Code.

7. Right Nos. 95-7558, 95-8144, 95-8321, 95-8687, 95-8774, 95-8867, and 95-8909 are limited to a total combined diversion rate of 18.05 cfs.

WATER RIGHT NO. 95-8909

As Modified by Transfer No. 83089

In accordance with the approval of Transfer No. 83089, Water Right No. 95-8909 is now described as follows:

Right Holder: AVONDALE IRRIGATION DISTRICT
PO BOX 81
HAYDEN LAKE, ID 83835

Priority Date: 3/8/1995

Source: GROUND WATER

BENEFICIAL USE	From		To	Diversion Rate
MUNICIPAL	01/01	to	12/31	3.000 cfs
				3.000 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SWNW	Sec 11 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NWSE	Sec 14 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NESW	Sec 15 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	NESW	Sec 15 Twp 51N Rge 04W KOOTENAI County
GROUND WATER	SWSW	Sec 24 Twp 51N Rge 04W KOOTENAI County

CONDITIONS OF APPROVAL

1. 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.

2. This right does not grant any right-of-way or easement across the land of another.

3. Place of Use is within the service area boundary of the Avondale Irrigation District pursuant to Section 43-323, Idaho Code.

4. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

5. The water system described in this right has been assigned Public Water Supply ID 1280008 by the Idaho Department of Environmental Quality.

6. Right Nos. 95-7558, 95-8144, 95-8321, 95-8687, 95-8774, 95-8867, and 95-8909 are limited to a total combined diversion rate of 18.05 cfs.

7. Place of Use may include lands outside the boundary of the Avondale Irrigation District pursuant to Section 43-1901, Idaho Code.

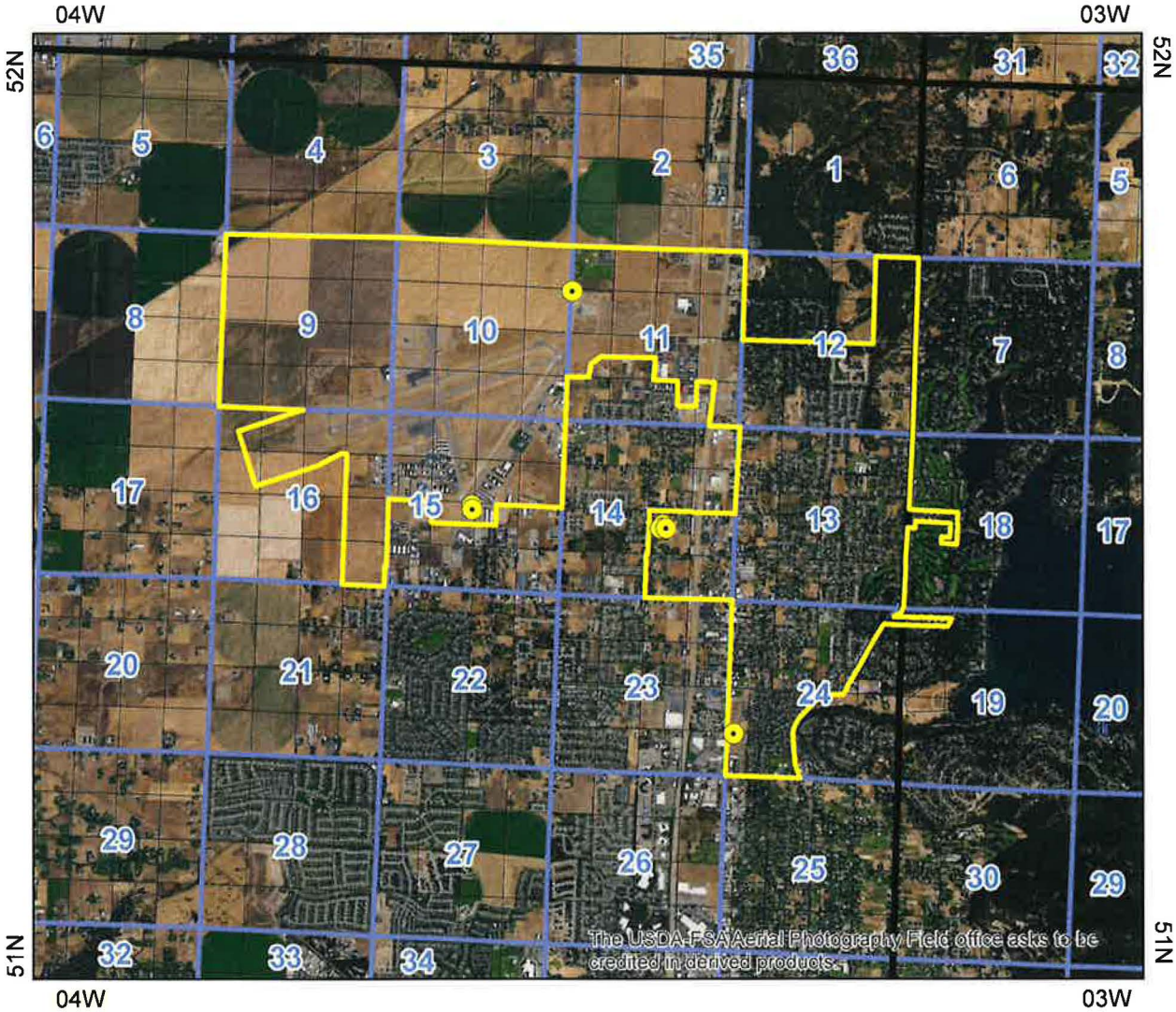
Transfer No. 83089

Avondale Irrigation District

Attachment to Amended Transfer # 83089

Rights 95-8774, 95-8867, and 95-8909

This map depicts the MUNICIPAL place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



Point of Diversion

Water Service Area Boundary

Townships

PLS Sections

Quarter Quarters

0 0.5 1 2 Miles

N

State of Idaho
DEPARTMENT OF WATER RESOURCES
Northern Region • 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815-7763
Phone: (208) 762-2800 • Fax: (208) 762-2819 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 18, 2019

AVONDALE IRRIGATION DISTRICT
PO BOX 81
HAYDEN LAKE, ID 83835

RE: Preliminary Order Correcting **Transfer 83089** Approval: **Water Right Nos. 95-8774 & 95-8909**

Dear Permit Holder:

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 208-762-2800.

Sincerely,

Douglas Jones, P.E.
Northern Regional Manager

Enclosure(s)

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

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

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

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, requests 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 IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director 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.