

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

TRANSFER OF WATER RIGHT
TRANSFER NO. 81738

This is to certify that: BOGUS BASIN RECREATIONAL ASSN INC
2600 BOGUS BASIN RD
BOISE, ID 83702

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

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
65-13382	WR/LICENSE	5/7/1992	0.340 cfs	32.0 af	N/A	N/A	BOGUS CREEK

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
65-13382	NO	NO	YES	YES	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
65-13382	65-13382	0.340 cfs	32.0 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.340 cfs	32.0 af	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 May, 2018.


for _____
Chief, Water Allocation Bureau

AMENDED**WATER RIGHT NO. 65-13382****As Modified by Transfer No. 81738**

In accordance with the approval of Transfer No. 81738, Water Right No. 65-13382 is now described as follows:

Right Holder: BOGUS BASIN RECREATIONAL ASSN INC
C/O BRAD WILSON 2600 BOGUS BASIN RD
BOISE, ID 83702

Priority Date: 5/7/1992

Source: BOGUS CREEK

Tributary: SHAFER CREEK

BENEFICIAL USE	From	To	Diversion Rate	Diversion Volume
COMMERCIAL	11/01	to 03/31	0.340 cfs	32.0 af
COMMERCIAL FROM STORAGE	11/01	to 03/31		32.0 af
COMMERCIAL STORAGE	01/01	to 12/31		32.0 af
DIVERSION TO STORAGE	01/01	to 12/31	0.080 cfs	
			0.340 cfs	32.0 af

LOCATION OF POINT(S) OF DIVERSION

BOGUS CREEK SESE Sec 16 Twp 05N Rge 03E BOISE County
BOGUS CREEK SWSW Sec 16 Twp 05N Rge 03E BOISE County

PLACE OF USE: COMMERCIAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	03E	15										X	X						
05N	03E	16			X	X					X			X	X	X	X	X	
05N	03E	21	X	X	X	X	X								X	X			
05N	03E	22						X	X			X							

PLACE OF USE: COMMERCIAL FROM STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	03E	15										X	X						
05N	03E	16			X	X					X			X	X	X	X	X	
05N	03E	21	X	X	X	X	X								X	X			
05N	03E	22						X	X			X							

PLACE OF USE: COMMERCIAL STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	03E	16			X								X						

Transfer No. 81738

WATER RIGHT NO. 65-13382

As Modified by Transfer No. 81738

AMENDED

CONDITIONS OF APPROVAL

1. Rights 65-13381, 65-13382, and 65-13466 when combined shall not exceed a total diversion rate of 0.34 cfs and a total annual maximum diversion volume of 32.0 af.
2. Consumptive losses of an estimated 5.3 acre feet associated with the storage reservoir in the SWSW of Section 16, T05N, R03E are provided by water right 63-23703.
3. Use of water under this right shall be non-consumptive.
4. Commercial use and commercial from storage use is for snowmaking at Bogus Basin Ski Resort.
5. Snowmaking under this right is limited to 32 acres within the authorized place of use in a single snowmaking season.
6. 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. 65.
7. Prior to diversion of water under this right, the right holder shall provide a means acceptable to the department to measure the amount of water entering the reservoir and the amount of water released from the reservoir.
8. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
9. This water right does not establish any water right under the Federal Reserved Water Right Doctrine.
10. Prior to diversion and use of water under this approval, the right holder shall obtain Forest Service authorization necessary to access the point of diversion or place of use or to convey water across federal land.
11. This right does not grant any right-of-way or easement across the land of another.
12. The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.
13. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BLITCH" OTTER
Governor

GARY SPACEMAN
Director

May 18, 2018

BOGUS BASIN RECREATIONAL ASSN INC
2600 BOGUS BASIN RD
BOISE ID 83702

Re: Transfer No: 81738
Water Right No(s): 65-13382

Amended Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

The Department of Water Resources has issued the enclosed amended approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) 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 by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action 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 Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the amended transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee.

Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 334-2190.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Neely for: Nick Miller". The signature is written in dark ink.

Nick Miller
Regional Manager

Enclosure

CC:

CHRIS M BROMLEY
MC HUGH BROMLEY PLLC
380 S 4TH ST STE 103
BOISE ID 83702

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2018 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Amended Approved Transfer) to the person(s) listed below:

**Re: Transfer No.: 81738
Water Right No(s): 65-13382**

**CHRIS M BROMLEY
MC HUGH BROMLEY PLLC
380 S 4TH ST STE 103
BOISE ID 83702**

**BOGUS BASIN RECREATIONAL ASSN INC
C/O BRAD WILSON
2600 BOGUS BASIN RD
BOISE ID 83702**



**Rachel Neely
Administrative Assistant**

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.

MEMORANDUM

TO: Transfer 81738 File
FROM: Nick Miller
DATE: May 18, 2018
RE: Amended Transfer Approval

On May 11, 2018, the Department issued an approval for Transfer 81738 that included a standard one-year timeframe to accomplish the change. The applicant had included on the application a request for a five year period to accomplish the change. I elected to issue an amended approval with the five-year period to align it with the development period for the accompanying water right permit 65-23703 that authorizes the new reservoir that will be used in accomplishing the transfer.