

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 80942**

This is to certify that: **MIDDLE FORK LAND & CATTLE LLC**
10220 NW 27 ST
TERREBONNE, OR 97760

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>
67-85A	WR/DECREED	5/1/1891	0.480 cfs	N/A	24.0	24.0	MIDDLE FORK WEISER RIVER
67-86	WR/DECREED	5/1/1901	0.480 cfs	N/A	24.0	24.0	MIDDLE FORK WEISER RIVER

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>
67-85A	NO	YES	NO	NO	NO	NO
67-86	NO	YES	NO	NO	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>
67-85A	67-85A	0.480 cfs	N/A	N/A	24.0	N/A	N/A	N/A	N/A	N/A
67-86	67-86	0.480 cfs	N/A	N/A	24.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.480 cfs	N/A	24.0	48.0		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 18 day of AUGUST, 2016.



Chief, Water Allocation Bureau

SUPPORT DATA
IN FILE # 67-85A

Transfer No. 80942

WATER RIGHT NO. 67-85A

As Modified by Transfer No. 80942

In accordance with the approval of Transfer No. 80942, Water Right No. 67-85A is now described as follows:

Right Holder: MIDDLE FORK LAND & CATTLE LLC
10220 NW 27 ST
TERREBONNE, OR 97760

Priority Date: 5/1/1891

Source: MIDDLE FORK WEISER RIVER **Tributary:** WEISER RIVER

BENEFICIAL USE **From** **To** **Diversion Rate**
IRRIGATION 03/15 to 10/31 0.480 cfs
0.480 cfs

LOCATION OF POINT(S) OF DIVERSION

MIDDLE FORK WEISER RIVER SWSW Sec 4 Twp 15N Rge 01W ADAMS County

PLACE OF USE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15N	01W	4									4.0	5.0	5.0	5.0					19.0
15N	01W	5													5.0				5.0

POU Total Acres: 24.0

CONDITIONS OF APPROVAL

1. Rights 67-85A and 67-86 when combined shall not exceed a total diversion rate of 0.48 cfs and the irrigation of 24 acres.
2. 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.
3. Use of water under this right will 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. 67.
4. 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.
5. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

Transfer No. 80942

WATER RIGHT NO. 67-85A
As Modified by Transfer No. 80942

CONDITIONS OF APPROVAL

6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
7. Pursuant to Section 42-1412(6), Idaho Code, 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.



WATER RIGHT NO. 67-86

As Modified by Transfer No. 80942

In accordance with the approval of Transfer No. 80942, Water Right No. 67-86 is now described as follows:

Right Holder: MIDDLE FORK LAND & CATTLE LLC
10220 NW 27 ST
TERREBONNE, OR 97760

Priority Date: 5/1/1901

Source: MIDDLE FORK WEISER RIVER **Tributary:** WEISER RIVER

BENEFICIAL USE **From** **To** **Diversion Rate**
IRRIGATION 03/15 to 10/31 0.480 cfs
0.480 cfs

LOCATION OF POINT(S) OF DIVERSION

MIDDLE FORK WEISER RIVER SWSW Sec 4 Twp 15N Rge 01W ADAMS County

PLACE OF USE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15N	01W	4									4.0	5.0	5.0	5.0					19.0
15N	01W	5													5.0				5.0

POU Total Acres: 24.0

CONDITIONS OF APPROVAL

1. Rights 67-85A and 67-86 when combined shall not exceed a total diversion rate of 0.48 cfs and the irrigation of 24 acres.
2. 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.
3. Use of water under this right will 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. 67.
4. 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.
5. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

Transfer No. 80942

WATER RIGHT NO. 67-86
As Modified by Transfer No. 80942

CONDITIONS OF APPROVAL

6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
7. Pursuant to Section 42-1412(6), Idaho Code, 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.



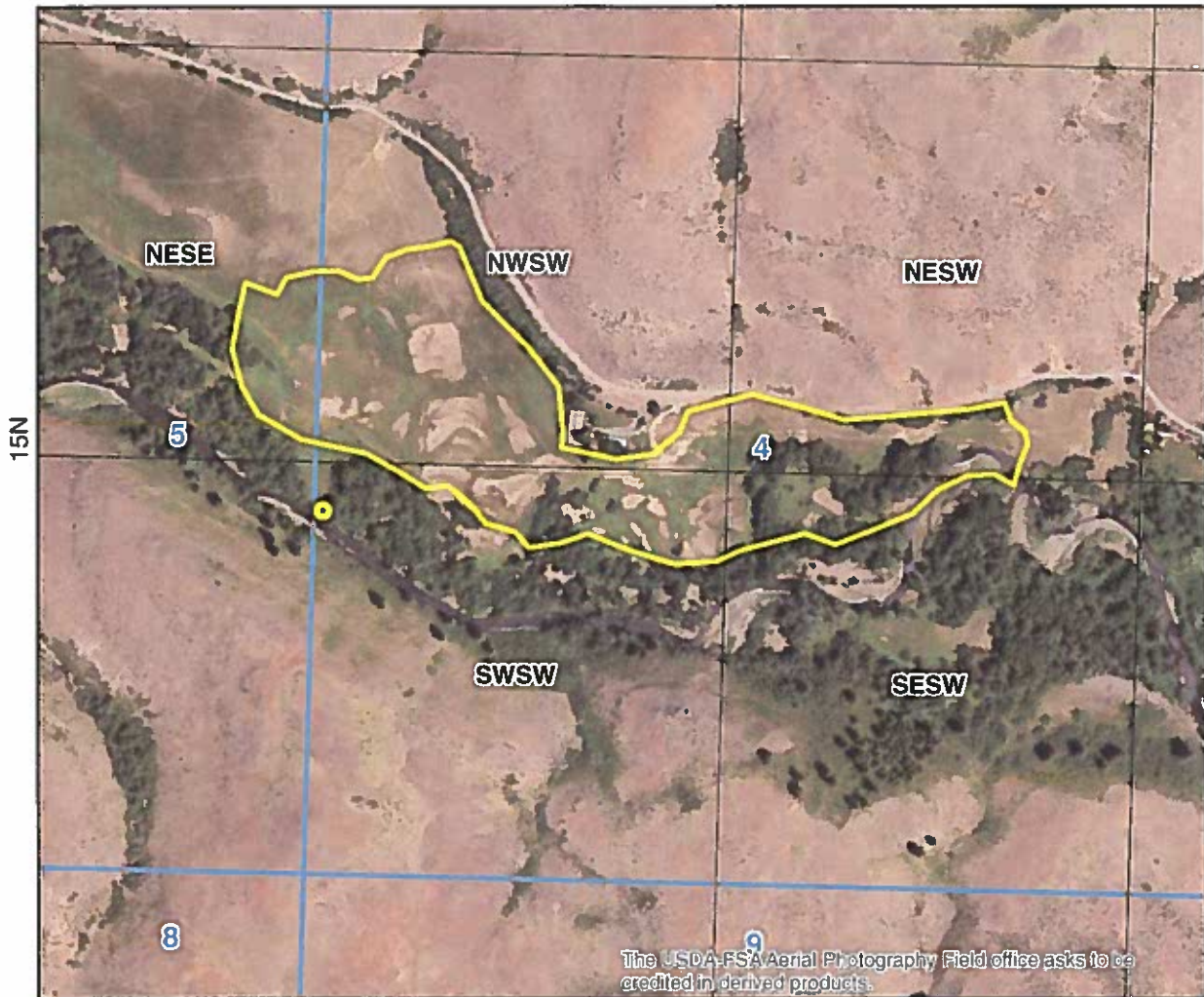
State of Idaho
Department of Water Resources

Attachment to Application for Transfer 80942

67-85A and 67-86

This map depicts the IRRIGATION 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.

01W



0 0.05 0.1 0.2 Miles

- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

August 18, 2016

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

MIDDLE FORK LAND CATTLE LLC
10220 NW 27 ST
TERREBONNE OR 97760

Re: Transfer No: 80942
Water Right No(s): 67-85A , 67-86

Transfer Approval Notice

Dear Water Right Holder <and other Interested Persons>:

The Department of Water Resources has issued the enclosed 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 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,

 Reece Neal

Nick Miller

Western Regional Manager

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2016 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

Re: Transfer No.: 80942
Water Right No(s): 67-85A , 67-86

MIDDLE FORK LAND CATTLE LLC
10220 NW 27 ST
TERREBONNE OR 97760

BRANDI S. BONNER
WATERMASTER OF DISTRICT 67
2297 SNAPP LN
MIDVALE ID 83645



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 No. 80942
FROM: Patrick Kelly
DATE: 8/16/2016
RE: Evaluation of Application

Summary of Information Submitted

Narrative: In 2011, a washout of the diverting system pertinent to Middle Fork Weiser River rights 67-85A and 67-86. Transfer No, 80942 proposes to change the point of diversion further downstream approximately one mile closer to the place of use.

Authority to File: The transfer application was signed by Martinel and Robin Ziniker. Robin Ziniker is the registered member of Middle Fork Land & Cattle LLC according to the ID Sec of State records. Middle Fork Land & Cattle LLC are current water right owners of 67-85A and 67-86.

Water Right Validity: 2011 aerial imagery and LandSat data suggests irrigation within the last 5 years. A watermaster recommendation form was received from watermaster 67 Brandi S Horton-Bonner. The watermaster expressed concerns that irrigation use had not occurred since the headgate washed out in 2010. If we acknowledge beneficial use prior to the washout occurring, the owner would have to resume use by the end of the 2016 season. The Idaho court does not rule favorably toward water right forfeiture so the maximum 5 year window is considered. Since the transfer application was received in May of 2016, the right is still considered valid and protected from forfeiture based on Department policy. The watermaster did not imply injury concerns to other users. For these reasons, the water rights are still valid.

Overlap Analysis: Overlap review finds water rights 67-85A and 67-86 share a quarter quarter with 67-7633, however since the source and ownership are different for the single acre, no actual overlap is anticipated. POD overlap at the pre-transfer location contains water rights 67-84 and 67-15002 owned by Robert J Gilman.

Injury to Other Water Rights: None anticipated. The change in diversion location downstream does not appear to injure active water users within the mile stretch of river between both locations. Comment letters will be sent to Robert J. Gilman and watermaster for Basin 67.

Enlargement of Use: None anticipated. There are no significant tributaries between the pre-transfer POD and the proposed POD. The availability of water is assumed to be equal at both locations.

Local Public Interest: Review staff has no information to suggest this application is inconsistent with the local public interest. While many POD transfers are not advertised, this application will be since user is removing their water from an established conveyance system.

Beneficial Use/Conservation of Water Resources: The application proposes beneficial use consistent with conservation of water resources in Idaho.

The application is consistent with criteria of I. C. § 42-222 and should be processed.

RECEIVED
AUG 07 2015
WATER RESOURCES
WESTERN REGION

State of Idaho

Department Of Water Resources

WATERMASTER RECOMMENDATION FORM

Water District # 67

Application # Transfer No. 80942

Applicant Name Middle Fork Land & Cattle LLC

Watermaster 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:

To the best of my knowledge, water under these water rights has not been diverted or put to beneficial use in many years.

- d) ☒ Additional comments:

The applicant states that flooding on the Middle Fork has rendered the current point of diversion unusable. The most recent flooding of that magnitude on the Middle Fork was in June 2010. This means that no water has been diverted at that location in the last six years at the very least. In my understanding, the law states that a water right not used in a period of five years or more is no longer a valid right. In the ten seasons that I've been watermaster I haven't witnessed water under these water rights being diverted from their existing point of diversion, nor I have I seen evidence of its use at the place of use. Doesn't this mean that these water rights are no longer valid?

Dated this 6th day of August, 2016

Brandi S. Horton-Bonner

Neely, Rachel

From: Brandi Horton - Bonner [watermaster67@hotmail.com]
Sent: Sunday, August 07, 2016 3:59 PM
To: Neely, Rachel
Subject: RE: Application for Transfer No. 80942
Attachments: Watermaster Recommendation for Transfer 80942 (Middle Fork Land & Cattle LLC).docx

Hi Rachel,

Just slipping this recommendation in under the wire....sorry! Been a busy summer.

Have a great day!

Brandi Horton-Bonner
Watermaster-Dist.67
2297 Snapp Lane
Midvale, ID 83645
(208) 550-0313

Sent from [Mail](#) for Windows 10

From: [Neely, Rachel](#)
Sent: Thursday, July 14, 2016 9:18 AM
To: [Brandi Horton](#)
Subject: Application for Transfer No. 80942

July 14, 2016

BRANDI HORTON
WATER DISTRICT #67
2297 SNAPP LN
MIDVALE ID 83645

RE: Application for Transfer No. 80942

Dear Watermaster:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right application(s). A copy of the application(s) is enclosed with this email for your reference. Please review the application(s), complete the enclosed recommendation form, and submit your reply, if any, to this office by the protest deadline of August 8, 2016.

If you desire to formally protest approval of this application, you may do so by filing a written protest along with a \$25.00 filing fee for each protested application by the protest deadline..

IDWR will assume you do not object to this application(s) if a timely response is not received. Please contact me if you have any questions in this matter. Thank you for your help.

Sincerely,

Rachel Neely

Administrative Assistant I

IDWR-Western Region

2735 Airport Way Boise, ID 83705

Rachel.Neely@idwr.idaho.gov

RECEIVED

AUG 03 2016

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO)
) SS
COUNTY OF ADAMS)

Chelsea L Coon being duly sworn, deposes and says that she is the Principle Clerk of the Adams County Record, a weekly newspaper printed and published at Council, Adams County, State of Idaho and having a general circulation therein and which said newspaper has been published continuously and uninterrupted in said County for a period of seventy-eight (78) consecutive weeks prior to the first publication of the advertisement, a copy of which is attached thereto: that advertisement was published in the regular edition of The Adams County Record for two (2) insertions beginning with the Issue of July 20, 2016 and ending with the Issue of July 27, 2016.

Chelsea Coon

On this 2nd day of August, 2016, before me, a Notary Public, personally appeared Chelsea L Coon, known or identified to me to be the person whose name subscribed to the written instrument, and being by me first and duly sworn, declared that the statements therein are true and acknowledged to me that she executed the same.

ASHLEY SCOTT
Notary Public
State of Idaho

Ashley Scott
Notary Public of Idaho
Residing at Council, ID
My Commission Expires 11/24/2020

To: IDWR

Subject: TRANSFER 80942

LEGAL NOTICE

The following applications have been filed to appropriate the public waters of the State of Idaho:

78-12439

EDWARD KALINOWSKI

PO BOX 127

NEW MEADOWS, ID 83654

Point of Diversion L3(NWNWSW) S9 T19N R02E ADAMS County Source SPRING

Tributary THREEMILE CREEK

Use: IRRIGATION 04/01 to 10/31 0.12 CFS

Use: STOCKWATER 01/01 to 12/31 0.02 CFS

Total Diversion: 0.12 CFS

Date Filed: 5/2/2016

Places of Use: IRRIGATION, STOCKWATER

T19N R02E S9 L3(NWSW)

Total Acres: 4

✓OK RN 8/10/16

Published in the Adams County Record on July 20, 2016 • July 27, 2016

LEGAL NOTICE

NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 80942

MIDDLE FORK LAND & CATTLE LLC, 10220 NW 27 ST, TERREBONNE, OR 97760; has filed Application No. 80942 for changes to the following water rights within ADAMS County(s): Right No(s). 67-85A, 67-86; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. Transfer proposes to change the point of diversion further downstream approximately one mile closer to the place of use. Water use is located 5 miles south of Council, west of Hwy 95.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at 208-334-2190; or for a full description of the right(s) or proposed transfer (s) please see www.idwr.idaho.gov/WaterManagement/WaterRights. Protests may be submitted based on the criteria of Idaho Code §§ 42-203A and 42-222. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705 together with a protest fee of \$25.00 for each application on or before 8/8/2016. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Direct

✓OK RN 8/10/16

Published in the Adams County Record on July 20, 2016 • July 27, 2016