

MAY 19 2016

DEPARTMENT OF
WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the [Application for Transfer Instructions](#) for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

- ☒ Change diversion point(s) ☐ Add diversion point(s) ☐ Ownership change ☐ Ownership split

1. **APPLICANT(S)** Sydney M. and Karen A. Dowton Phone 208-833-4225

2. MAILING ADDRESS PO Box 7 City Ellis

State ID Zip 83235 Email ksad@custertel.net

- ☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.
- ☒ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.
- ☒ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the [fee schedule](#).

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
- ☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

- ☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. LIST WATER RIGHT NUMBER(S) 73-2170

- ☒ Attach a copy of the water right(s) as recorded, available at www.idwr.idaho.gov, *Water Right Transfers, Step 1*, or by contacting any Department office.

4. **TOTAL AMOUNT OF WATER** transferred is 1.60 cubic feet per second and/or _____ acre-feet per annum.
(diversion rate) (storage volume)

5. POINT OF DIVERSION – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

- ☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at www.idwr.idaho.gov, *Water Right Transfers, Online Resources*.

[illegible]

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/13/2016

Water Right 73-2170

Owner Type **Name**
Current Owner MARIA ELENA DOWTON
Current Owner JIMMIE L DOWTON
Priority Date: 2/10/1961
Basis: Decreed
Status: Active

Source **Tributary**
PAHSIMEROI RIVER SALMON RIVER

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	1.600 CFS	
	Total Diversion		1.600 CFS	

Source and Point(s) of Diversion

PAHSIMEROI RIVER SENW Sec. 21, Twp 15N, Rge 21E, LEMHI County

Place Of Use

IRRIGATION within LEMHI County

T15N R21E S16	NESW	39.0
T15N R21E S16	SWSW	23.0
POU Total Acres:		62.0

Conditions of Approval:

1. Patterson Creek is locally known as Spring Creek.
2. C18 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.
3. R05 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. 73.
4. R43 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).
5. R59 This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
6. 029 Prior to the diversion and use of water under this approval, the right holder shall comply with all fish screening and/or fish passage requirements of the Idaho Department of Fish and Game.
7. 004 This right does not grant any right-of-way or easement across the land of another.
8. X53 Diversion of water from the Pahsimeroi River is limited to those times water is available for diversion under this right and priority from Peterson Springs at the original points of diversion in the NESWNW, S26, T15N, R21E, and to the amount of water that actually reaches the Pahsimeroi River.
9. X49 Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the department for measuring the flow in Peterson Springs

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/13/2016

- at the original point of diversion, at the mouth of Patterson Creek where it discharges into the Pahsimeroi River and at the point of diversion from the Pahsimeroi River.
10. T07 The right holder shall accomplish the change authorized by this transfer by January 21, 2009.
11. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Dates and Other Information

Decreed Date: 10/30/2009

Civil Case Number: 39576

Judicial District: FIFTH

State or Federal: S

Owner Name Connector: OR

Water District Number: 73

Mitigation Plan: False

Combined Use Limits

N/A

SubCase:

N/A

Water Supply Bank:

N/A

6. GENERAL INFORMATION

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Pump to 1 wheel line and a pivot. Flowmeter will be installed. Lock at power supply.

- b. Who owns the property at the point(s) of diversion? Applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

☐☒

undergone a period of five or more consecutive years of non-use,

☐☒

currently used in a mitigation plan limiting the use of water under the right(s), or

☐☒

currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

- d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☒ No

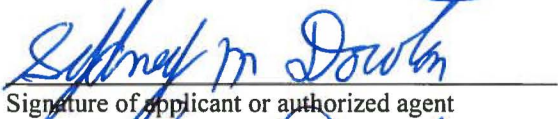
☐ If yes and there are multiple owners, attach a [Lessor Designation](#) form.

☐ If yes, the individual owner or designated lessor must complete, sign and attach an [IRS Form W-9](#).

(Disregard if these items are on file and ownership has not changed.)

7. **MAP** - ☒ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ of section information. The *Map Tool*, available at maps.idwr.idaho.gov/TransferApplicationLayouts/ provides a satisfactory template for creating the required map.

8. **SIGNATURE** - The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

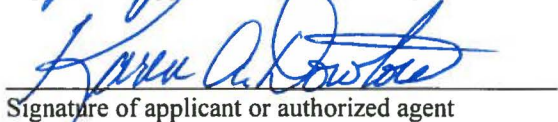

Signature of applicant or authorized agent

Sydney M. Dowton

Print name and title if applicable

5/13/2016

Date


Signature of applicant or authorized agent

Karen A. Dowton

Print name and title if applicable

5/13/2016

Date

9. **FEE** - ☒ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The [Fee Schedule](#) is available at www.idwr.idaho.gov, *Water Right Transfers, Step 4* and in the [Application for Transfer Instructions](#).

FOR DEPARTMENT USE ONLY

Transfer includes 3 pages of attachments. Received by _____ Date _____

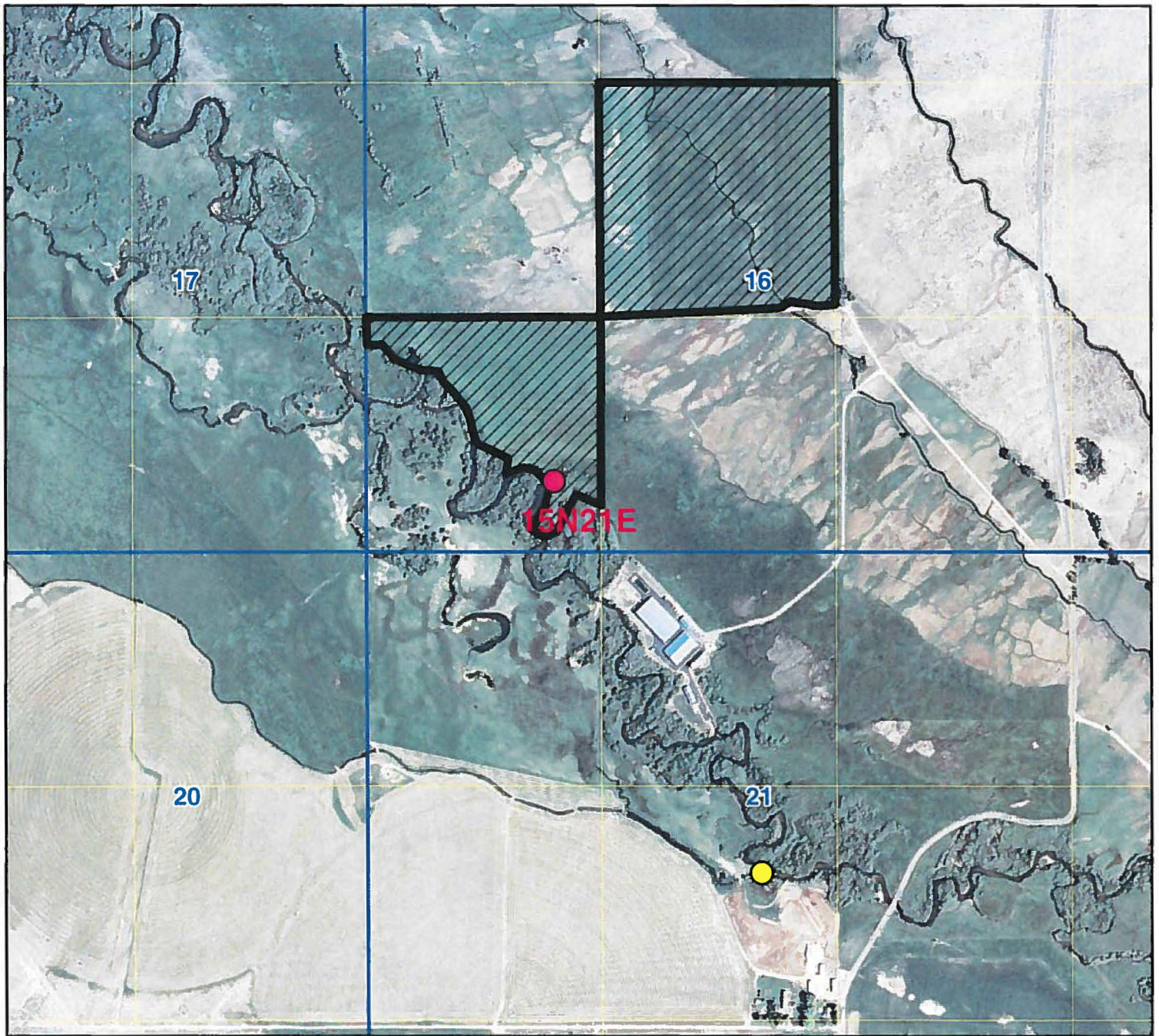
Fee paid 580.00 - Date 5-13-2016 Receipted by [Signature] Receipt # E042094

Preliminary review by Ownership Change Date _____ Active in the Water Supply Bank? Yes ☐ No ☒

W-9 received? Yes ☐ No ☒ Name on W-9 N/A W-9 forwarded to fiscal? Yes ☐ No ☒

(Do NOT scan the W-9 – confidential information is held by fiscal only)

State of Idaho
Department of Water Resources
Transfer of Right No. 73-2170



Legend

-  Current_POD
-  Proposed POD
-  Place of use
-  Township/Range
-  Sections
-  QQ

0 0.175 0.35 0.7 Miles



Map prepared by Michael Holliday

for 1065 and 21

Instrument # 251647

CHALLIS, CUSTER, IDAHO

03-23-2016

03:52:06

No. of Pages: 2

Recorded for: ALLIANCE TITLE - REXBURG OFFICE

Lura H. Baker

Fee: \$13.00

Ex-Officio Recorder Deputy: rr

WARRANTY DEED

Alliance Title & Escrow Corp. Order No.:303670

FOR VALUE RECEIVED**Jim Dowton Ranch, LLC, a dissolved Idaho limited liability company**

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Sydney M. Dowton and Karen A. Dowton husband and wife

whose current address is

PO Box 7**Ellis, ID 83235**

the grantee(s), the following described premises, in Custer County, Idaho, TO WIT:

PARCEL I:**TOWNSHIP 15 NORTH, RANGE 21 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 21: SOUTHEAST QUARTER SOUTHEAST QUARTER NORTHWEST QUARTER.****PARCEL II:****THE NORTHEAST QUARTER SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 15
NORTH, RANGE 21 EAST, BOISE MERIDIAN, LEMHI COUNTY, IDAHO.****AND****ALL OF THAT PART OF THE SOUTHWEST QUARTER SOUTHWEST QUARTER, SECTION
16, TOWNSHIP 15 NORTH, RANGE 21 EAST, BOISE MERIDIAN, LEMHI COUNTY, IDAHO
LYING AND BEING ON THE NORTH AND EAST SIDE OF THE PAHSIMAROI RIVER.****PARCEL III****ALL THAT PART OF THE SOUTHEAST QUARTER SOUTHEAST QUARTER, SECTION 17,
TOWNSHIP 15 NORTH, RANGE 21 EAST, BOISE MERIDIAN, LEMHI COUNTY, IDAHO
LYING AND BEING ON THE NORTH AND EAST SIDE OF THE PAHSIMAROI RIVER.****PARCEL IV****ALL THAT PART OF THE SOUTHEAST QUARTER NORTHWEST QUARTER, SECTION 21,
TOWNSHIP 15 NORTH, RANGE 21 EAST, BOISE MERIDIAN, LEMHI COUNTY, IDAHO
LYING AND BEING ON THE NORTH AND EAST SIDE OF THE PAHSIMAROI RIVER.**

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

File No. 303670

transfer 465
80936

Dated:

3/16/2016

[Signature]
Paul L. Arrington, on behalf of the Court and of Jim Downton Ranch, LLC and/or Jimmie Downton Custom Farming, LLC, pursuant to the Order authorizing Sale & Appointment, dated February 23, 2016, in the matter of Bank of Idaho v. Downton, et al. (Fremont Cty. Case No. CV-2011-584)

State of Idaho) ss

County of Twin Falls

On this 16 day of March, 2016, before me, Jessica Nielsen, a Notary Public in and for said state, personally appeared Paul Arrington, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Jessica Nielsen
Notary Public for the State of Idaho
Residing at: Twin Falls
Commission Expires: 4/3/18





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

June 28, 2016

IDAHO DEPARTMENT OF FISH & GAME
ATTN: TOM BASSISTA
4279 COMMERCE WAY
IDAHO FALLS ID 83401

RE: Application for Transfer No.: Application for Transfer No.: 80936 Water Right No. 73-2170
Application for Permit No. 75-14842 and 75-14843

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right applications for permit and transfers. You can find copies of the applications at: <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

This office can publish notice of the applications and transfers as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact this office if you have any questions regarding the application.

Sincerely,

A handwritten signature in black ink, appearing to read "Jean Hersley", is written over a horizontal line.

Jean Hersley
Technical Records Specialist II

Enclosure(s)

c: Dept of Fish & Game- Salmon office



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

June 28, 2016

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
900 NORTH SKYLINE SUITE B
IDAHO FALLS ID 83402

RE: Application for Transfer No.: 80936 Water Right No. 73-2170
Application for Permit No. 75-14842 and 75-14843

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right transfer and applications for permit. You can find copies of the applications at: <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

This office can publish notice of the applications and transfers as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of these applications, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact this office if you have any questions regarding the application.

Sincerely,

A handwritten signature in black ink that reads "Jean Hersley". The signature is written in a cursive, flowing style.

Jean Hersley
Technical Records Specialist II

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

June 28, 2016

TED O NEAL
WATER DISTRICT #73
81 FUREY LN
MAY ID 83253

RE: Application for Transfer 80936
Water Right No. 73-2170

Dear Watermaster:

The Department of Water Resources is seeking written comment and/or recommendations from you regarding the above referenced water right application for transfer. You can find copies of the application at: <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

If the application is approved, IDWR will include appropriate standard conditions of approval for a water right located within a water district, such as regulation by the watermaster, lockable controlling works, and/or measuring devices. Any special conditions or other concerns you have related to this application should be specifically addressed in your recommendation.

IDWR's offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Sincerely,

Jean Hersley
Technical Records Specialist

Enclosure(s)

State of Idaho
Department of Water Resources
Application for Permit

RECOMMENDATION FORM

Application No.: 80936
Water Right No. 73-2170

Applicant's Name:
KAREN DOWTON
SYDNEY DOWTON

Watermaster's Recommendation:

- a) _____ I do not oppose approval of this application.
- b) _____ I do not oppose approval of this application if it is conditioned as follows:
- c) _____ I oppose approval of this application for the following reasons:
- d) _____ Additional comments:

Dated this _____ day of _____, 2016

Water District No. 73

Watermaster's Signature _____

Hersley, Jean

From: Hersley, Jean
Sent: Tuesday, June 28, 2016 9:15 AM
To: Yenter, Cindy; Clark, Cynthia (Bridge)
Subject: Application for Transfer and Applications for Permit

Transfer number 80936 for water right 73-2170 and Applications for Permit number 75-14842 and 75-14843 will be advertised on July 7 and 14 with the protest end date as July 25, 2016. If you have any comments or concerns, please let me know before the protest end date. Thank you.

*Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942*



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

June 28, 2016

KAREN A DOWTON
SYDNEY M DOWTON
PO BOX 7
ELLIS, ID 83235

RE: Transfer No. 80936
Water Right No(s). 73-2170

Dear Applicant(s):

The Department of Water Resources has received your water right transfer application. Please refer to the transfer number referenced above in all future correspondence regarding this transfer.

A legal notice of the application has been prepared and is scheduled for publication in the RECORDER HERALD on 7/7/2016 and 7/14/2016. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the approval document.

Please contact this office if you have any questions regarding the application.

Sincerely,

Jean Hersley
Technical Records Specialist

Hersley, Jean

From: Hersley, Jean
Sent: Tuesday, June 28, 2016 8:56 AM
To: rhlegals@custertel.net
Subject: Legal Notice for Notice of Proposed Change of Water Right and Applications to appropriate the public waters of the State of Idaho

A COPY WILL BE FAXED TO YOU ALSO. Thank you. Jean
June 28, 2016

208-756-2222 Page 1

Legal Notice Department

Recorder Herald
PO Box 310
Salmon ID 83467

RE: Legal Ad for your paper

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office, PO Box 83720, Boise, Idaho, 83720-0098 before July 25, 2016. Your cooperation is appreciated.

Sincerely

Jean Hersley
Technical Records Specialist II
IDWR State Office
322 E Front St
Boise ID 83720
208-287-4942
jean.hersley@idwr.idaho.gov

.....
**NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 80936**

KAREN A DOWTON and SYDNEY M DOWTON, PO BOX 7, ELLIS, ID 83235; has filed Application No. 80936 for changes to the following water rights within LEMHI County(s): Right No(s). 73-2170; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change a portion of the above rights as follows:

To change the point of diversion to SWSW, Sec 16, T15N, R21E for 1.60 cfs from the Pahsimeroi River adjacent to the place of use. For additional information concerning the property location, contact IDWR State office at (208) 287-4800; or for a full description of the transfer, please see <http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm> Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, 322 E Front St, PO Box 83720, Boise ID 83720-0098 together with a protest fee of \$25.00 for each application on or before 7/25/2016. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 7/7/2016 and 7/14/2016

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

75-14842

JOHN L HARRIS & SUSAN KAY HARRIS FAMILY TRUST
PO BOX 86
CARMEN, ID 83462
Point of Diversion SENWNW S29 T24N R22E LEMHI County
Source SPRING Tributary FOURTH OF JULY CREEK
Use: DOMESTIC
01/01 to 12/31

0.04 CFS

Total Diversion:

0.04 CFS

Date Filed: 4/18/2016

Place Of Use: DOMESTIC

T24N R22E S29 NWNW

This application proposes the diversion and use of water from a tributary of the Salmon Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because it is for domestic purposes.

75-14843

CAMERON L ROLLE

TIMOTHY D CARROLL

10 W INFANGER CT

SALMON, ID 83467

Point of Diversion L1(NENE) S1 T20N R21E LEMHI County

Source GROUND WATER

Use: DOMESTIC

01/01 to 12/31

0.04 CFS

Use: IRRIGATION

04/01 to 10/31

0.12 CFS

Total Diversion:

0.16 CFS

Date Filed: 5/26/2016

Place Of Use: DOMESTIC and IRRIGATION

T20N R21E S1 L1(NENE)

Total Acres: 4

This application proposes the diversion and use of water from ground water tributary to the Salmon Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the diversion rate 0.16 will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact the State office at (208) 287-4800; or for a full description of the right(s), please see www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, State Office, 322 E Front St, PO Box 83720, Boise, ID 83720 together with a protest fee of \$25.00 for each application on or before 7/25/2016. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 7/7/2016 and 7/14/2016

MEMORANDUM

Date: June 7, 2016
To: Transfer 80936
From: Michele Edl
Re: Review & Evaluation of Sufficiency of Information

The purpose of the transfer is to change the POD for water right 73-2170. The right is diverted from the Pahsimeroi River for irrigation of a 62-acre POU. The new POD will be located on the applicant's property in the SWSW of Sec 16, T15N, R21E.

Authority to File: According to available Lemhi County taxlot information the Jim Dowton Ranch, LLC owns the property containing the POU and the proposed POD. However, ISOS shows that the Jim Dowton Ranch, LLC was dissolved in 2011. A Warranty Deed which accompanied this application for transfer shows that Sydney M Dowton and Karen A Dowton are the new owners of the property. The taxlot information is dated from before the deed and so does not recognize this more recent change in property ownership.

The applicant is not the owner-of-record for decreed water right 73-2170 either. However, processing fees sufficient to cover both the change of water right ownership and the transfer action have been provided. An ownership change will be processed on the right before the transfer is completed.

Water Right Validity: The water right is conditionally presumed to be valid. The partial decree was issued by the SRBA on 10/30/2009. A review of aerial photography shows that the portion of the property nearest the Pahsimeroi River, (the 23.0-acre portion in the SWSW) appears to have been partially irrigated. But the 39.0-acre portion in the NESW has not been obviously irrigated since 2009.

Forfeiture was a concern. I requested information from the watermaster and from the applicant with respect to the validity of the right. The applicant provided sufficient information to address forfeiture concerns. (For more detail please refer to the forfeiture review memo.)

Injury to Other Water Rights: No injury is expected. The diversion is for an existing use and will continue to be under watermaster control. Between the original POD and the new POD proposed by this transfer, is an Idaho Power Co fish propagation-acclimatization facility. That use is presumed non-consumptive and is authorized by two licenses with priority dates junior to that of 73-2170. So, if the rate is available at the old POD, then it should be available at the new one.

Enlargement of Use: No enlargement is anticipated. No change to the flow rate or the number of irrigated acres is proposed.

Local Public Interest: No negative impact is anticipated. The application will be advertised.

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

Effect on Economy the Local Area: Review staff has no information to suggest that this transfer will negatively impact the economy of the local area.

Effect on Agricultural Base of the Local Area: Review staff has no information to suggest that this transfer will negatively impact the agricultural base of the local area.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

MEMORANDUM

Date: June 7, 2016
To: Transfer 80936
From: Michele Edl
Re: Forfeiture Review

A review of aerial photography indicated that this water right had not been exercised since 2009. Validity of the right was in question.

I requested additional information from the right holder and spoke to the watermaster.

The right holder provided two documents via email: a brief letter summarizing the recent history of the property and a copy of the Sheriff's Certificate on Sale of Real Estate Under Execution, Case No. CV-2011-584. Those documents indicate that litigation of the Dowton Ranch, LLC's property began in 2010 as Case No. 2010-111 in Custer County Court and did not conclude until September 20, 2012 at the earliest. As a result, ownership of the property was uncertain for at least two irrigation seasons.

The WD73 watermaster, Ted O Neal confirmed that the property had been tied up in the courts for several years.

Although the water right was idled for more than 5 years, it has not been forfeited. The evidence provided by the current right holder and confirmed by the watermaster are sufficient defense to forfeiture.

Edl, Michele

From: Karen [ksad@custertel.net]
Sent: Tuesday, June 07, 2016 6:33 AM
To: Edl, Michele
Subject: Emailing: Scan_20160607 (2).jpg, Scan_20160607.jpg



Emailing:
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

BANK OF IDAHO, an Idaho banking
corporation,

Plaintiff,

vs.

JIM DOWTON RANCH, LLC, an Idaho
limited liability company; JIMMIE DOWTON
CUSTOM FARMING, LLC, an Idaho limited
liability company; JIMMIE D. DOWTON and
DENISE R. DOWTON, husband and wife; and
JIMMIE L. DOWTON and MARIA E.
DOWTON, husband and wife, CAPITOL
LAW GROUP, PLLC, an Idaho professional
limited liability company,

Defendants.

Case No: CV-2011-584

(Formerly Custer County Case No.
CV-2010-111)

SHERIFF'S CERTIFICATE ON SALE OF
REAL ESTATE UNDER EXECUTION

STATE OF IDAHO)
)
County of Custer)

Stuart Lumpkin, Sheriff of Custer County, Idaho, do hereby certify:

1. That by virtue of an execution in the above-entitled action, issued the
3rd day of August, 2012, to me directed, setting forth a judgment in the amount of

7, lawful money of the United States, with interest thereon from August 3,
2012 through September 10, 2012 at the rate of \$271.98 per day, costs of record and costs
of sale, to be satisfied out of the real property described herein and belonging to the said
Defendant, JIM DOWTON RANCH, LLC, on the day said execution was levied herein,

SHERIFF'S CERTIFICATE ON SALE OF REAL ESTATE UNDER EXECUTION - 1

according to said writ and the statutes provided in such cases, I have levied on and this day sold at public auction the following described real property to _____

Bank of Idaho

who was the highest bidder, for the sum of \$ 11, lawful

money of the United States, which was the whole price paid by Credit bid

for the right, claim and interest of the within named Defendant, as aforesaid, in and to the real estate particularly described as follows, to wit:

See attached "Exhibit A"

2. That the real estate is subject to redemption within one (1) year after the sale on this date and pursuant to the provisions of Idaho Code §11-401 et seq.

Given under my hand this 20th day of September, 2012.

STUART LUMPKIN

Sheriff of Custer County, State of Idaho

[Signature]
By: _____, Deputy

SHERIFF'S CERTIFICATE ON SALE OF REAL ESTATE UNDER EXECUTION - 2

Edl, Michele

From: Karen [ksad@custertel.net]
Sent: Monday, June 06, 2016 9:54 AM
To: Edl, Michele
Subject: WATER RIGHT

WATER RIGHT 23-2170

THIS WATER RIGHT {FORMER JIMMIE DOWTON RANCH} HAS BEEN IN BANK FORECLOSURE FOR 5 YEARS. THERE WAS A SHERIFF SALE WHERE THE MAJORITY OF THE RANCH WAS SOLD TO A PERSON WHO IS DOING BUSINESS AS WESTERN SKY II.

JIMMIE DOWTON RANCH THAT WAS NOT SOLD AT THE SHERRIFF SALE WAS ORDERED BY A JUDGE IN 2016 TO BE SOLD TO SATISFY THE DEBTS WITH THE LAWYERS.

I PURCHASED THE REMAINING PROPERTY WITH THE WATER RIGHT 23-2170, HOWEVER WESTERN SKIES II IS DENYING ME THE USE OF THE POINT OF DIVERSION AS IT IS ON THEIR PROPERTY, SO I PREFER TO CHANGE THE POINT OF DIVERSION RATHER THAN GOING INTO LITIGATION WITH THE PROPERTY OWNER.

THIS POINT OF DIVERSION WOULD BE MUCH APPRECIATED.

THANKS

SYDNEY DOWTON



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

June 2, 2016

KAREN A DOWTON
SYDNEY M DOWTON
PO BOX 7
ELLIS ID 83235

RE: APPLICATION FOR TRANSFER OF WATER RIGHT NO. 73-2170

Dear Applicant:

On May 19, 2016, the Department of Water Resources (Department) received your Application for Transfer of Water Right – Point of Diversion which acts on water right 73-2170. I have been assigned to review your application and if possible to process it and authorize the change that you have requested.

As part of the review, I am required to evaluate whether the water right has been lost through abandonment or forfeiture as defined by Section 42-222(2), Idaho Code. Section 42-222(2) states, in part,

"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."

I have completed a review of aerial photography between 2009, (when the right was partially decreed in the Snake River Basin Adjudication), and 2015. I found no evidence of irrigation of the 39.0-acre field located in T15N, R21E, S16, NESW and less than full irrigation of the 23.0 acre field located in T15N, R21E, S16, SWSW. For quick reference, I have attached a map of the two fields as they appeared in 2015.

Because the aerial photography indicates more than five years of non-use, I cannot confirm the validity of Water Right 73-2170. Based on the initial review, it appears that the right has been forfeited, at least in part. The requirements for approval of the transfer cannot be met and the status of Water Right 73-2170 is in jeopardy unless you can provide information to the contrary.

An exception or defense to forfeiture would be additional information which shows either, that the beneficial use has occurred but was not obvious enough for aerial photography, or that circumstances prevented the beneficial use from occurring. (For example: if the right was involved in litigation, or the water was unavailable when needed). Please provide the additional information within thirty (30) days. If I do not receive a response from you before July 3, 2016, I will assume that you no longer have an interest in Water Right 73-2170 or this transfer.

If you have any questions regarding this matter, please contact me as soon as possible by phone at (208) 287-4946 or by email at Michele.Edl@idwr.idaho.gov.

Sincerely,

Michele D Edl
Sr Water Resource Agent

Attachment



Edl, Michele

From: Edl, Michele
Sent: Thursday, June 02, 2016 11:26 AM
To: 'ksad@custertel.net'
Subject: Application for transfer 80936
Attachments: Dowton 5 yrs Non-Use ltr.docx

Karen A Dowton and/or Sydney M Dowton,

I am the agent assigned to review your application for transfer 80936.
I have attached an early-bird copy of a letter which will be mailed either today or tomorrow from the State Office of IDWR.
I am concerned that water right 73-2170 has been at least partially forfeited.

Yesterday I spoke over the phone with Ted O Neal, watermaster of water district 73. He was familiar with the history of the water right and stated that you may have had a problem accessing the point-of-diversion for this right. If that's true, then that's the sort of information I need to be able to consider in my review of your application for transfer.

Don't hesitate to call or email me regarding this issue.
Sincerely
Michele Edl

Edl, Michele

To: Edl, Michele
Subject: RE: WD73 or WD170

From: Yenter, Cindy
Sent: Wednesday, June 01, 2016 11:24 AM
To: Edl, Michele
Subject: RE: WD73 or WD170

Here's a bit more information... When the 2008 transfer was approved, the Dowton right was to have been flumed back across the Pahsimeroi to the place of use. Dowton had other rights also in the P-8 diversion, and some rights from P-7 and/or P-9 were also transferred into P-8 at some point – P-7 was abandoned and most of those rights and lands have now changed hands. The 2008 watermaster record is non-existent. The 2009 records are better, but right 73-2107 is NOT listed at the P-8 diversion. Watermaster records for 2009 show a total of 15.89 cfs deliverable to Dowton at P-8 (not always delivered). There are also no records for Peterson Spring or Patterson Creek that might correspond to water availability there. The POU is irrigated in 2009.

Two or three years ago the P-8 diversion was improved and a pump station was built, using some cost-share funds, to pressurize irrigation off the P-8 ditch to the Dowton farm and make it easier to convey water across the river. Most of the lands are on the diversion side of the river but the 62 acres under 2107 are across the river. Around that same time, Dowton lost the farm, and only retained the 62 acres. A separate pump, pipeline and flowmeter were installed for the retained lands across the river. However, once the new owner took over (Western Sky Two), the farm operator supposedly has not allowed Syd to access the pump station, which is now on Western Sky's property. I may have a little of the timeline mixed up, but that's the basic story.

Watermaster records 2011-12 note Dowton holding 19.09 cfs in P-8, but no wr numbers are listed. In subsequent years there seems to be some uncertainty as to how much Dowton is entitled to. During 2011-2015 total deliveries to P-8 range from 8 cfs to 15 cfs.

Hope you hear from Ted.

From: Edl, Michele
Sent: Wednesday, June 01, 2016 9:02 AM
To: Yenter, Cindy
Subject: RE: WD73 or WD170

OK

So maybe this transfer is not so simple.

A previous transfer (74097) approved in 2008 changed the source of 73-2170 from Peterson Springs to the Pahsimeroi River. The successful execution of that transfer relied on as many as 3 measurements from 3 different measuring devices and reports of those measurements to be submitted to the WM.

I left a voice-mail message with Ted O Neal late yesterday afternoon and I do hope to hear from him soon. But before I push this current transfer (80936) forward, I'd like to know that I'm working with a valid water right. I can't tell if the Dowtons are in compliance with the conditions of the water right. Where is the archive of the measurements or pertinent reports?

Michele



IDAHO SECRETARY OF STATE Viewing Business Entity

Lawrence Denney, Secretary of State

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JIM DOWTON RANCH, LLC

5500 CUSTER ROAD
ELLIS, ID 83235

Type of Business: LIMITED LIABILITY COMPANY

Status: ADMIN DISSOLVED 03 Nov 2011

State of Origin: IDAHO

Date of 13 Aug 2008

Origination/Authorization:

Current Registered Agent: JIMMIE D DOWTON
5500 CUSTER ROAD
ELLIS, ID 83235

File Number: W76843

Date of Last Annual Report: 16 Jun 2010

Original Filing:

Filed 13 Aug 2008 ARTICLES OF
ORGANIZATION

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Comments, questions or suggestions can be emailed to: sosinfo@sos.idaho.gov