



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. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

07/07/2015

MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

JOHN K SIMPSON
BARKER RSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE ID 83702

Re: Withdrawal of Protest against Application for Transfer No. 78428 (Black Mesa Farms LLC)

Dear Parties:

The Department of Water Resources acknowledges receipt of your stipulation for withdrawal of protest ("stipulation") against the above referenced application. The parties have agreed to the protestant's withdrawal if approval of the transfer application is conditioned substantially as provided in the stipulation.

In any conditional withdrawal, the Department must review the agreement to ensure that conditions to be included in an approval are acceptable. As you know, the proposed conditions in your stipulation were modeled after an earlier transfer approved by the Department to authorize late season changes to the irrigated acreage within a permissible place of use. Since that time, in anticipation of similar approvals, the Department has developed a standard condition of approval to address the late season changes in a consistent manner. The enclosed draft transfer approval incorporates the Department's standard condition, as well as other conditions unique to your stipulation.

Please review the draft approval carefully. If you think the draft approval is not substantially in conformance with your stipulated conditions, please contact the Department within 14 days of the date of this letter with your concerns. The application has no remaining protests; therefore, if we do not hear from you, the Department will take the steps necessary to bring the application to final resolution. As always, you may file a petition for reconsideration within 14 days after the preliminary order approving the transfer is issued.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Miller'.

Nick Miller
Regional Manager

Enclosure

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 78428

DRAFT

This is to certify that: BLACK MESA FARMS LLC
PO BOX 82
GLENNS FERRY, ID 83623

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>
2-103	WR/DECREED	5/10/1965	3.960 cfs	N/A	198.0	3948.0	SNAKE RIVER
2-2209B	WR/DECREED	2/25/1963	12.800 cfs	2142.0 af	640.0	3948.0	SNAKE 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>
2-103	NO	NO	YES	NO	NO	NO
2-2209B	NO	NO	YES	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>
2-103	2-103	3.960 cfs	N/A	198.0	3948.0	N/A	N/A	N/A	N/A	N/A
2-2209B	2-2209B	12.800 cfs	2142.0 af	640.0	3948.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		16.760 cfs	N/A	838.0	3948.0		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 _____ day of _____, _____.

Chief, Water Allocation Bureau

WATER RIGHT NO. 2-2209B**As Modified by Transfer No. 78428**

In accordance with the approval of Transfer No. 78428, Water Right No. 2-2209B is now described as follows:

Right Holder: BRENDA BRYANT OR
DON J BRYANT
PO BOX 215
GLENNS FERRY, ID 83623
OR
WESLEY R WOOTAN OR
CHRISTINE W WOOTAN
PO BOX 636
GLENNS FERRY, ID 83623
OR
BLACK MESA FARMS LLC
PO BOX 82
GLENNS FERRY, ID 83623

DRAFT

Priority Date: 2/25/1963

Source: SNAKE RIVER

Tributary: COLUMBIA RIVER

BENEFICIAL USE

IRRIGATION

From

04/01

To

to 10/31

Diversion Rate

12.800 cfs

12.800 cfs

Diversion Volume

2142.0 af

2142.0 af

LOCATION OF POINT(S) OF DIVERSION

SNAKE RIVER L6 (NWSW) Sec 9 Twp 06S Rge 11E ELMORE 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	
06S	10E	1									35.0		39.0	40.0		30.0	40.0	30.0	214.0
06S	10E	2																39.0	39.0
06S	10E	11	40.0		40.0	39.0					40.0	40.0	40.0	40.0	39.0	40.0	40.0	40.0	438.0
06S	10E	12	40.0	40.0	40.0	40.0	40.0	39.0	39.0	40.0	40.0	39.0	38.0	21.0	40.0	40.0	39.0	39.0	614.0
06S	10E	13	39.0	39.0	40.0	40.0	39.0	39.0	40.0	40.0	40.0	40.0			40.0	40.0	40.0	40.0	556.0
06S	10E	14	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	39.0				39.0	30.0			428.0
06S	10E	24	40.0	39.0	40.0	40.0									40.0	40.0			239.0
06S	11E	6											10.0						10.0
													L 7						
06S	11E	7	25.0	25.0	40.0	40.0	30.0	37.0	37.0	40.0	40.0	38.0	37.0	39.0	40.0	40.0	39.0	40.0	587.0
								L 1	L 2			L 3	L 4						
06S	11E	17						40.0	40.0			40.0							120.0
06S	11E	18	38.0	39.0	40.0	39.0	39.0	37.0	38.0	40.0	40.0	38.0	38.0	40.0	40.0	40.0	40.0		586.0
								L 1	L 2			L 3	L 4						
06S	11E	19						39.0	39.0			39.0							117.0
								L 1	L 2			L 3							

Right Acre Limit: 640.0

POU Total Acres: 3948.0

Transfer No. 78428

WATER RIGHT NO. 2-2209B
As Modified by Transfer No. 78428

DRAFT

CONDITIONS OF APPROVAL

1. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 10/31 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than June 15, 2009.
2. This right is limited to the irrigation of 640 acres within the authorized place of use in a single irrigation season.
3. This right does not grant any right-of-way or easement across the land of another.
4. 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. 02.
5. 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.
6. 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.
7. The following rights are diverted through the point of diversion described above: 2-103, 2-2209B, 2-4021, 2-10189 & 2-10450.
8. Combined rights 2-103 and 2-2209B are limited to the irrigation of crops from a specific 838 acres within the 3,948 acre place of use authorized by the rights in a single irrigation season. The specific 838 acres to be irrigated by the right holder are shown in the electronic shape file associated with the rights in the geographic information system component of the water rights database maintained by the Department. Once per irrigation season, the right holder may designate a different 838 acres within the 3,948 acre place of use for irrigation in the next irrigation season. Application of water to the 838 acres designated for irrigation in the next season may commence in the fall of the current irrigation season to till, apply chemicals, or establish fall planting in preparation for the next irrigation season. Before applying water in the fall to the 838 acres to be irrigated in the next irrigation season, the right holder shall submit a new land list and representative electronic shape file or map to the Department and to the watermaster of Water District 02 and shall cease irrigation and complete harvest on the lands that have been irrigated in the current irrigation season and are to be idled in the next irrigation season.
9. The application of water in the fall of the current irrigation season to till, apply chemicals, or establish fall planting in preparation for the next irrigation season shall not include application of water to irrigate crops for harvest in the same fall and shall not exceed 487.5 acre feet in any year.
10. The watermaster of Water District 02 shall monitor the place of use and regulate the use of water under the approved transfer pursuant to these conditions of approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

WATER RIGHT NO. 2-2209B

As Modified by Transfer No. 78428

DRAFT

CONDITIONS OF APPROVAL

12. The right holder shall accomplish the change authorized by this transfer within one year 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.
14. 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 may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

WATER RIGHT NO. 2-103
As Modified by Transfer No. 78428

DRAFT

In accordance with the approval of Transfer No. 78428, Water Right No. 2-103 is now described as follows:

Right Holder: BLACK MESA FARMS LLC
 PO BOX 82
 GLENNS FERRY, ID 83623
 OR
 WESLEY R WOOTAN OR
 CHRISTINE W WOOTAN
 PO BOX 636
 GLENNS FERRY, ID 83623
 OR
 DON J BRYANT OR
 BRENDA BRYANT
 PO BOX 215
 GLENNS FERRY, ID 83623

Priority Date: 5/10/1965

Source: SNAKE RIVER

Tributary: COLUMBIA RIVER

BENEFICIAL USE

IRRIGATION

From

03/15

To

to 11/15

Diversion Rate

3.960 cfs

3.960 cfs

LOCATION OF POINT(S) OF DIVERSION

SNAKE RIVER L6 (NWSW) Sec 9 Twp 06S Rge 11E ELMORE 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	
06S	10E	1									35.0		39.0	40.0		30.0	40.0	30.0	214.0
06S	10E	2																39.0	39.0
06S	10E	11	40.0		40.0	39.0					40.0	40.0	40.0	40.0	39.0	40.0	40.0	40.0	438.0
06S	10E	12	40.0	40.0	40.0	40.0	40.0	39.0	39.0	40.0	40.0	39.0	38.0	21.0	40.0	40.0	39.0	39.0	614.0
06S	10E	13	39.0	39.0	40.0	40.0	39.0	39.0	40.0	40.0	40.0	40.0			40.0	40.0	40.0	40.0	556.0
06S	10E	14	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	39.0				39.0	30.0			428.0
06S	10E	24	40.0	39.0	40.0	40.0									40.0	40.0			239.0
06S	11E	6											10.0						10.0
													L 7						
06S	11E	7	25.0	25.0	40.0	40.0	30.0	37.0	37.0	40.0	40.0	38.0	37.0	39.0	40.0	40.0	39.0	40.0	587.0
								L 1	L 2			L 3	L 4						
06S	11E	17						40.0	40.0			40.0							120.0
06S	11E	18	38.0	39.0	40.0	39.0	39.0	37.0	38.0	40.0	40.0	38.0	38.0	40.0	40.0	40.0	40.0		586.0
								L 1	L 2			L 3	L 4						
06S	11E	19						39.0	39.0			39.0							117.0
								L 1	L 2			L 3							

Right Acre Limit: 198.0

POU Total Acres: 3948.0

Transfer No. 78428

WATER RIGHT NO. 2-103

As Modified by Transfer No. 78428

DRAFT

CONDITIONS OF APPROVAL

1. Other water rights have been decreed with a place of use within portions of the decreed place of use for this water right and water right 2-2209B. However, only water right nos. 2-103 and 2-2209B are currently beneficially used on the decreed place of use for this right and water right 2-2209B. No transfer or other administrative or judicial action affecting the place of use of any other water right shall affect the right to the use of water under this water right or water right no. 2-2209B at the above described place of use.
2. This right is limited to the irrigation of 198 acres within the authorized place of use in a single irrigation season.
3. This right does not grant any right-of-way or easement across the land of another.
4. 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. 02.
5. 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.
6. 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.
7. Combined rights 2-103 and 2-2209B are limited to the irrigation of crops from a specific 838 acres within the 3,948 acre place of use authorized by the rights in a single irrigation season. The specific 838 acres to be irrigated by the right holder are shown in the electronic shape file associated with the rights in the geographic information system component of the water rights database maintained by the Department. Once per irrigation season, the right holder may designate a different 838 acres within the 3,948 acre place of use for irrigation in the next irrigation season. Application of water to the 838 acres designated for irrigation in the next season may commence in the fall of the current irrigation season to till, apply chemicals, or establish fall planting in preparation for the next irrigation season. Before applying water in the fall to the 838 acres to be irrigated in the next irrigation season, the right holder shall submit a new land list and representative electronic shape file or map to the Department and to the watermaster of Water District 02 and shall cease irrigation and complete harvest on the lands that have been irrigated in the current irrigation season and are to be idled in the next irrigation season.
8. The application of water in the fall of the current irrigation season to till, apply chemicals, or establish fall planting in preparation for the next irrigation season shall not include application of water to irrigate crops for harvest in the same fall and shall not exceed 487.5 acre feet in any year.
9. The watermaster of Water District 02 shall monitor the place of use and regulate the use of water under the approved transfer pursuant to these conditions of approval.
10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
11. The following rights are diverted through the point of diversion described above: 2-103, 2-2209B, 2-4021, 2-10189 & 2-10450.

WATER RIGHT NO. 2-103

As Modified by Transfer No. 78428

DRAFT

CONDITIONS OF APPROVAL

12. The right holder shall accomplish the change authorized by this transfer within one year 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.
14. 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 may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.