

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 78559**

This is to certify that: CHERYLL TURNER AND
DANNY TURNER
1656 HWY 46
GOODING, ID 83330
AND
CLARELYN ELGAN
4785 N 1115 E
BUHL, ID 83316
AND
DOUGLAS L ELGAN
4785 N 1115 E
BUHL, ID 83316

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>
72-4159A	WR/DECREED	6/18/1888	0.360 cfs	N/A	N/A	7.0	THOMPSON CREEK
72-4159D	WR/DECREED	6/18/1888	0.400 cfs	N/A	N/A	15.4	THOMPSON 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>
72-4159A	NO	YES	NO	NO	NO	NO
72-4159D	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>
72-4159A	72-4159A	0.360 cfs	N/A	N/A	7.0	N/A	N/A	N/A	N/A	N/A
72-4159D	72-4159D	0.400 cfs	N/A	N/A	15.4	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.760 cfs	N/A	N/A	22.4		N/A	N/A	N/A	N/A

SUPPORT DATA

IN FILE # 72-4159A

Transfer No. 78559

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 78559

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 6th day of August, 2013.



Southern Region Manager



WATER RIGHT NO. 72-4159D
As Modified by Transfer No. 78559

In accordance with the approval of Transfer No. 78559, Water Right No. 72-4159D is now described as follows:

Right Holder: DANNY TURNER AND
 CHERYLL TURNER
 1656 HWY 46
 GOODING, ID 83330

Priority Date: 6/18/1888

Source: THOMPSON CREEK **Tributary:** SALMON RIVER

BENEFICIAL USE **From** **To** **Diversion Rate**
 IRRIGATION 4/01 to 10/31 0.400 cfs
 0.400 cfs

LOCATION OF POINT(S) OF DIVERSION

THOMPSON CREEK L5 (NESE) Sec 25 Twp 11N Rge 16E CUSTER County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	16E	25													7.0			0.3	7.3
11N	17E	30										7.7	0.4					L 5	8.1
												L 6	L 6						

POU Total Acres: 15.4

CONDITIONS OF APPROVAL

1. This right shall provide no more than 0.02 cfs per acre at the field headgate for irrigation of the lands in the place of use whenever sprinkler methods of irrigation are used.
2. 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. 72D.
3. 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).
4. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

Transfer No. 78559

WATER RIGHT NO. 72-4159D
As Modified by Transfer No. 78559

CONDITIONS OF APPROVAL

5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. 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. 72-4159A
As Modified by Transfer No. 78559

In accordance with the approval of Transfer No. 78559, Water Right No. 72-4159A is now described as follows:

Right Holder: DOUGLAS L ELGAN
 4785 N 1115 E
 BUHL, ID 83316
 AND
 CLARELYN ELGAN
 4787 N 1115 E
 BUHL, ID 83316

Priority Date: 6/18/1888

Source: THOMPSON CREEK

Tributary: SALMON RIVER

BENEFICIAL USE
 IRRIGATION

From
 4/01

To
 to 10/31

Diversion Rate
 0.360 cfs
 0.360 cfs

LOCATION OF POINT(S) OF DIVERSION

THOMPSON CREEK L5 (NESE) Sec 25 Twp 11N Rge 16E CUSTER County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	17E	30										7.0							7.0
												L 6							

POU Total Acres: 7.0

CONDITIONS OF APPROVAL

1. This right does not grant any right-of-way or easement across the land of another.
2. This right shall provide no more than 0.02 cfs per acre at the field headgate for irrigation of the lands in the place of use whenever sprinkler methods of irrigation are used.
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. 72D.
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(s).

Transfer No. 78559

WATER RIGHT NO. 72-4159A
As Modified by Transfer No. 78559

CONDITIONS OF APPROVAL

5. The right holder shall accomplish the change authorized by this transfer within one year of the date of this 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 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.



State of Idaho
Department of Water Resources

Attachment To Transfer No. 78559

Right: 72-4159a

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.



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

0 0.0475 0.095 0.19 Miles

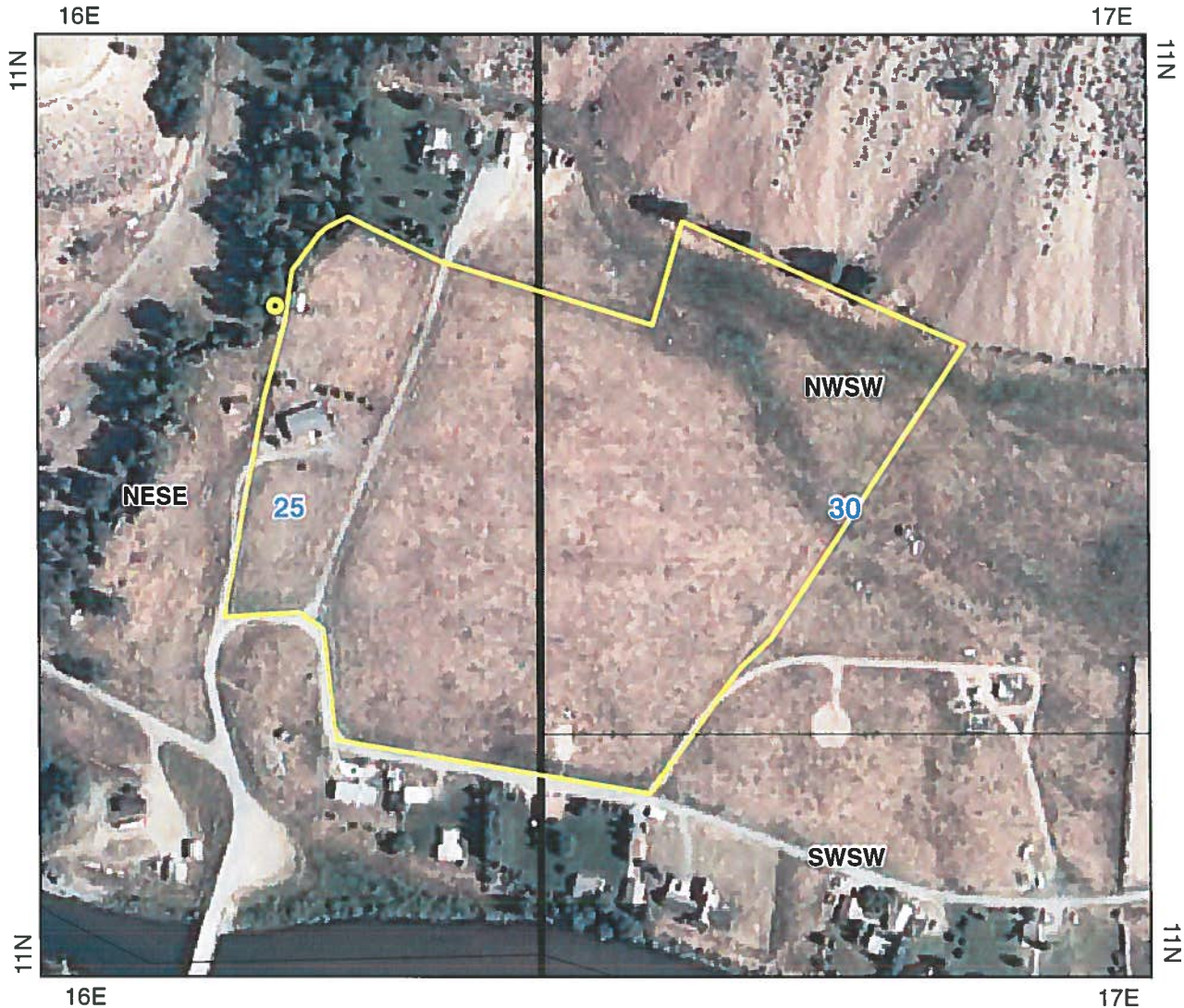


State of Idaho
Department of Water Resources

Attachment To Transfer No. 78559

Right: 72-4159d

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.



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

0 0.0325 0.065 0.13 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 7, 2013

CLARELYN ELGAN
DOUGLAS L ELGAN
4785 N 1115 E
BUHL ID 83316

DANNY TURNER
CHERYLL TURNER
1656 HWY 46
GOODING ID 83330

Re: Transfer No: 78559
Water Right No(s): 72-4159A , 72-4159D

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) 736-3033.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Merritt". The signature is stylized with a large initial "A" and a cursive "Merritt".

Allen Merritt
Southern Region Manager

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

**Re: Transfer No.: 78559
Water Right No(s): 72-4159A , 72-4159D**

**CLARELYN ELGAN
DOUGLAS L ELGAN
4785 N 1115 E
BUHL ID 83316**

**DANNY TURNER
CHERYLL TURNER
1656 HWY 46
GOODING ID 83330**

A handwritten signature in dark ink, reading "Denise Maline", is written over a horizontal line.

**Denise Maline
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.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 7, 2013

ADRIANNE HALL MAYDOLE WATERMASTER
WATER DISTRICT # 72D
HC 68 BOX 327
CALYTON, ID 83227

Re: **APPROVED Transfer No. 78559 (Elgan and Turner)**

Dear Ms. Hall-Maydole:

For your information and records, we have enclosed a copy of an APPROVED Application for Transfer within your District.

If you have any questions, please contact this office, or the applicant.

Sincerely,

A handwritten signature in cursive script that reads "Denise Maline". The signature is written in dark ink and is positioned above the printed name and title.

Denise Maline
Administrative Assistant

Enclosure

MEMORANDUM

Date: August 1, 2013
To: Transfer 78559 File
From: Corey Skinner
Re: Final Pre-Approval Review

Application proposes changing the point of diversion for two Thompson Creek irrigation water rights, 72-4159A and 72-4159D, that allow for the diversion of up to 0.76 cfs for the irrigation of 22.4 acres of land by moving the location from the current ditch diversion to a new pump diversion approximately 0.3 mile downstream from the currently authorized diversion location. IDWR records indicate that right 72-4159F, in the name of Thompson Creek Mining Company, may also be diverted from the original ditch diversion (note that the place of use of this right appears to be on the opposite side of the creek). In addition, the water master comments referenced another user on the ditch. For these reasons, Dylan Lawrence, the attorney for Thompson Creek Mining Company, was contacted regarding any possible concerns that Thompson Creek Mining Company may have with the transfer. Note that the transfer was advertised and was not protested. On July 30th, an e-mail was received from Dylan Lawrence indicating that Thompson Creek Mining Company did not have any concerns or objections regarding the proposed transfer.

Another item of note relates to the rights being decreed at rates greater than the typically allowed irrigation standard of 0.02 cfs per acre. Examination of the SRBA claim files for these two rights indicates that the 72-4159A recommendation was based on a 0.09 cfs conveyance loss allowance and allowing 0.27 cfs for 7.0 acres of irrigation (based on wild flooding irrigation) and the 72-4159D recommendation was based on an additional 0.09 cfs conveyance loss allowance and allowing 0.31 cfs for 15.4 acres of irrigation (based on sprinkler irrigation). Because the conveyance loss allowance through the ditch will no longer be needed and it is likely that the place of use will be irrigated via sprinkler after pumping from the creek, it is recommended that the following condition be implemented as part of the approval:

- *This right shall provide no more than 0.02 cfs per acre at the field headgate for irrigation of the lands in the place of use whenever sprinkler methods of irrigation are used.*

It is recommended that the originally decreed rates be retained as elements of the rights just in case the right holders revert back to a ditch diversion &/or wild flooding type of irrigation method.

Skinner, Corey

From: Dylan Lawrence [DBL@moffatt.com]
Sent: Tuesday, July 30, 2013 9:31 AM
To: Skinner, Corey
Cc: Bert Doughty
Subject: RE: Thompson Creek Mining Company water right out of Thompson Creek

Hi Corey. I hope you've been well.

The Thompson Creek Mine does not have any particular concerns or objections regarding this proposed transfer. Thanks again for checking with Thompson Creek on this, and just let us know if you need anything else.

Thanks,
Dylan

Dylan Lawrence
Moffatt Thomas Barrett Rock & Fields, Chtd.
P.O. Box 829
Boise, Idaho 83701-0829
Phone & fax: (208) 385-5417

From: Dylan Lawrence
Sent: Tuesday, July 16, 2013 1:22 PM
To: 'Skinner, Corey'
Cc: Bert Doughty
Subject: RE: Thompson Creek Mining Company water right out of Thompson Creek

Corey, by way of update, Bert Doughty at the Mine is out of the office through the end of next week.

Dylan

Dylan Lawrence
Moffatt Thomas Barrett Rock & Fields, Chtd.
P.O. Box 829
Boise, Idaho 83701-0829
Phone & fax: (208) 385-5417

From: Skinner, Corey [<mailto:Corey.Skinner@idwr.idaho.gov>]
Sent: Friday, July 12, 2013 2:46 PM
To: Dylan Lawrence
Subject: Thompson Creek Mining Company water right out of Thompson Creek

Dylan,

If you remember I talked to you a while ago regarding a pending water right transfer (# 78559) we have that proposes changing the point of diversion for a couple of irrigation rights (72-4149A and 72-4159D) to a new location further downstream on Thompson Creek. I was wondering what impact, if any, this might possibly have on Thompson Creek Mining Company's right, 72-4159F. Have you had a chance to look into this?

Corey

State of Idaho
Department of Water Resources
Transfer of Water Right(s)
RECOMMENDATION FORM

RECEIVED
JUN 12 2013
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Transfer Application No.: 78559

Water Right No(s): 72-4159A & 72-4159D

Transfer Applicant's Name: DOUGLAS & CLARELYN ELGAN
4785 N 1115 E
BUHL, ID 83316

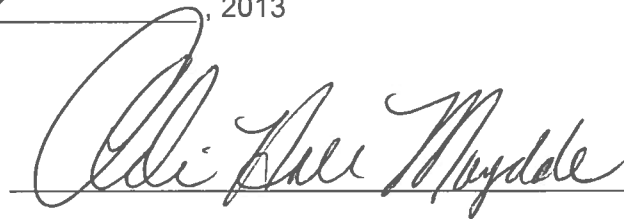
DANNY & CHERYLL TURNER
1656 HWY 46
GOODING, ID 83330

Watermaster's Recommendation:

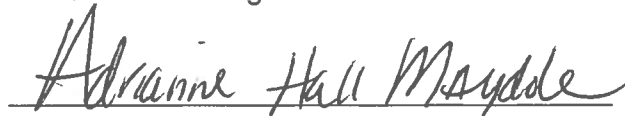
- a) _____ I do not oppose approval of this application.
- b) X I do not oppose approval of this application if it is conditioned as follows:
- c) _____ I oppose approval of this application for the following reasons:
- d) X Additional comments:

Dated this 3rd day of June, 2013

Water District No. 72-D



Watermaster's Signature



Printed Name

Water Right No: 72-4159A + 724179D
(72-4159D)

RECEIVED

JUN 12 2013

DEPT. OF WATER RESOURCES
SOUTHERN REGION

The Current Point of Diversion is from a none use over a long period of time.

I do not see a problem with the current point of use, other than it needs to be cleaned, re-ditched and would be perfectly useable.

Condition #1 An attempt needs to be made to use the Current point of diversion because: if they didn't maintain the first point of diversion, what makes you think they will maintain the Proposed point of Diversion.

Condition #2 By changing the point of diversion I believe they are upsetting a water user above them that is on the same Current point of diversion.

To be sure it doesn't change other users point of diversion

Condition #3

The Proposed point of Diversion will have to be used the first Season & all flow meters - measuring devices installed!!

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Susan Callahan, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated 5/16 2013 and ending with the issue dated 5/23 2013

Susan Callahan

STATE OF IDAHO

COUNTY OF CUSTER

On this 28th day of May in the year of 2013, before me, a Notary Public, personally appeared Susan Callahan, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Rina Sue Tappan

Notary Public for Idaho

Residing at Challis, ID

My commission expires: 12-8-14

NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
TRANSFER NO. 78559

DOUGLAS L and CLARELYN
ELGAN, 4785 N 1115 E, BUHL,
ID 83316; DANNY and CHERYLL
TURNER, 1656 HWY 46, GOOD-
ING, ID 83330;

have filed Application No. 78559 for changes to the following water rights within CUSTER County(s): Right No(s). 72-4159A, 72-4159D; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp. The purpose of the transfer is to change a portion of the above rights as follows: Application proposes changing the point of diversion for two Thompson Creek irrigation water rights that allow for the diversion of up to 0.76 cfs for the irrigation of 22.4 acres of land by moving the location to a new pump diversion

approximately 0.3 mile downstream from the currently authorized diversion location. The new diversion will be located approximately 5.7 miles west and 0.4 miles south of Clayton.

For additional information concerning the property location, contact Southern Region office at (208) 736-3033. 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, Southern Region, 1341 Fillmore St, Suite 200, Twin Falls ID 83301 together with a protest fee of \$25.00 for each application on or before June 3, 2013. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published: May 16 and 23, 2013

RECEIVED

JUN 10 2013

DEPT. OF WATER RESOURCES
SOUTHERN REGION

✓ OK DM
6-13-2013

