

AMENDED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

TRANSFER OF WATER RIGHT
TRANSFER NO. 78258

This is to certify that: JULIA WHITING AND
ROBERT WHITING
6122 W DRY CREEK RD
BOISE, ID 83714

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>
63-32713	WR/DECREED	7/14/1959	0.090 cfs	45.0 af	N/A	10.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

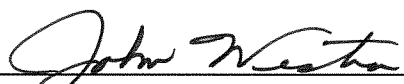
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
63-32713	NO	YES	NO	NO	NO	NO

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>
63-32713	63-32713	0.090 cfs	45.0 af	N/A	10.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.090 cfs	45.0 af	N/A	10.0		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 17th day of July, 2013.


Western Regional Manager

Transfer No. 78258

WATER RIGHT NO. 63-32713
As Modified by Transfer No. 78258

In accordance with the approval of Transfer No. 78258, Water Right No. 63-32713 is now described as follows:

Right Holder: JULIA WHITING AND
 ROBERT WHITING
 6122 W DRY CREEK RD
 BOISE, ID 83714

Priority Date: 7/14/1959

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	03/01	to 11/15	0.090 cfs	45.0 af
			0.090 cfs	45.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SENW Sec 31 Twp 05N Rge 02E ADA 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	
05N	02E	31					0.9			9.1									10.0

POU Total Acres: 10.0

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
2. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
3. 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.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

Transfer No. 78258

WATER RIGHT NO. 63-32713
As Modified by Transfer No. 78258

CONDITIONS OF APPROVAL

5. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
6. If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
7. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
8. Rights 63-32403, 63-31738, 63-32404, 63-32405, 63-32407, 63-32408, 63-32637, 63-32638, 63-32707, 63-32708, 63-32709, 63-32710, 63-33243, 63-33244, 63-32412, 63-31740, 63-32413, 63-32414, 63-32416, 63-32417, 63-32639, 63-32640, 63-32712, 63-32713, 63-32714, 63-32715, 63-33246 and 63-33247 when combined shall not exceed a total diversion rate of 2.78 cfs, and the irrigation of 139 acres.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 78258 IN THE NAME OF)
JULIA AND ROBERT WHITING)
_____)**

**PRELIMINARY ORDER AMENDING
APPROVAL OF TRANSFER APPLICATION**

FINDINGS OF FACT

1. The Idaho Department of Water Resources (IDWR) approved Transfer No. 78258 on April 25, 2013.
2. The approval authorized a change in point of diversion for Water Right No. 63-32713 from a community irrigation well to a well on Whiting property.
3. Early in the transfer process, IDWR concluded the water bearing zone for the community well did not include ground water shallower than 200 feet deep. That shallow ground water is considered tributary to the fully appropriated reach of the Boise River upstream from the Star Bridge.
4. The transfer approval included a condition of approval as follows:

To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, the new well used as a point of diversion for this water right shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 200 feet or more below ground surface.
5. Additional information discovered later in transfer processing indicated the community well did intercept shallow ground water, mitigating against use of that condition of approval.
6. The condition of approval was removed from the IDWR database prior to approval of the transfer application. However, IDWR failed to remove this condition from the draft approval document prepared earlier in application processing and later used to approve the application.

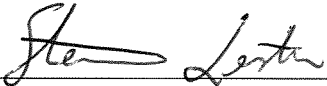
CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, authorizes a change in point of diversion for a water right.
2. The Director is authorized to approve transfer applications subject to conditions of approval.
3. IDWR water right records should be accurate.
4. IDWR should amend Application No. 78258 to remove the condition of approval noted in Finding of Fact No. 4.

ORDER

IT IS HEREBY ORDERED that approval of Application No. 78258 in the name of Julia and Robert Whiting is **AMENDED** to remove the condition of approval noted in Finding of Fact No. 4.

Dated this 1ST day of July, 2013

for 

John Westra
Manager, Western Regional Office

CERTIFICATE OF SERVICE

I certify that on this 1ST day of JULY, 2013, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER** to the person(s) listed below:



Rachel Sommer
Administrative Assistant I

JULIA AND ROBERT WHITING
6122 W DRY CREEK RD
BOISE ID 83714

BARKER ROSHOLT & SIMPSON LLP
ATTN ALBERT BARKER
PO BOX 2139
BOISE ID 83701-2139



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

July 17, 2013

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
~~Deputy~~ Director

ROBERT WHITING
JULIA WHITING
6122 W DRY CREEK RD
BOISE ID 83714

Re: Transfer No. 78258
Water Right No. 63-32713

Amended Transfer Approval Notice

Dear Water Right Holders:

The Department has enclosed the Amended approved Transfer of Water Rights. Please notice the removed condition as explained in the enclosed Preliminary Order.

If you have any questions, please contact this office at 208-334-2190.

Sincerely,

Rachel Sommer
Administrative assistant
Western Regional Office

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing AMENDED TRANSFER APPROVAL to the persons listed below:

**Re: Transfer No. 78258
Water Right No. 63-32713**

**ROBERT WHITING
6122 W DRY CREEK RD
BOISE ID 83714**

**JULIA WHITING
6122 W DRY CREEK RD
BOISE ID 83714**

**BARKER ROSHOLT & SIMPSON LLP
ATTN: ALBERT BARKER
1010 W JEFFERSON STE 102
PO BOX 2139
BOISE ID 83701-2139**



**Rachel Sommer
Administrative Assistant I**

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.