

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

May 30, 2013

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MAY 31 2013

DEPARTMENT OF
WATER RESOURCES

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

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JUN 03 2013

WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: In the Matters of Transfer Nos. 78260 and 78276

Dear Sir/Madam:

Enclosed are the original and two (2) copies of the Withdrawal of Petition for Reconsideration in the above-referenced matters.

Please file the enclosed original and one (1) copy in each of the above-referenced files and please conform the second copy and return the conformed copy to me in the enclosed addressed and stamped envelope. Please contact me if you have any questions about this matter. Thank you for your assistance with this matter.

Sincerely,

HOFSTETTER LAW OFFICE, L.L.C.



Dana L. Hofstetter

Enclosures
4072.3/10394

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MAY 31 2013

WATER RESOURCES
WESTERN REGION

Dana L. Hofstetter, ISB #3867
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Boise, Idaho 83702
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E-Mail: Dana@IdahoWaterLaw.com

Attorney for Basin and Range Resource Company, LLC, Petitioner

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

**In the Matter of Transfer No. 78260 and)
Transfer No. 78276)
_____)**

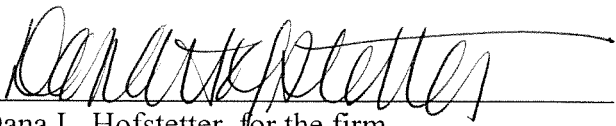
**WITHDRAWAL OF
PETITION FOR
RECONSIDERATION**

Petitioner, Basin and Range Resource Company, LLC ("BRRC") by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, pursuant to Title 67, Chapter 52, Idaho Code and IDAPA 37.01.01, hereby respectfully withdraws its Petition for Reconsideration of the Preliminary Orders Approving Transfer Nos. 78260 and 78276. In its Petition for Reconsideration, Petitioner sought clarification that Conditions of Approval No. 6 on both Transfer Approvals were intended to have the same meaning and effect as the "Period of Use" remarks on the respective SRBA Partial Decrees for the subject water rights. This Withdrawal of Petition for Reconsideration is based on the May 15, 2013, email from Shelley Keen of the Idaho Department of Water Resources to BRRC's legal counsel (copy attached hereto as Exhibit A), confirming that, "From IDWR's perspective, both the SRBA version of the

condition and the transfer version are intended to authorize exactly the same thing.”

DATED this 30th day of May, 2013.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Basin and Range Resource
Company, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of May, 2013, I caused the foregoing
WITHDRAWAL OF PETITION FOR RECONSIDERATION (with any attachments) to be
served by the pre-paid method(s) indicated on the following:

Original to:

Gary Spackman
Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
X U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Copies to:

Shelley Keen
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
X U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

John Westra
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082
X U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

Subject: Water Right Season of Use Question
From: "Keen, Shelley" <Shelley.Keen@idwr.idaho.gov>
Date: 5/15/2013 4:50 PM
To: <dana@idahowaterlaw.com>

Dana,

Sorry I wasn't able to reply earlier. It's my office day, and I've had a steady stream of customers.

I've attached a memorandum that is the origin of the transfer version of the "shoulder season" condition. Note that it instructs staff to employ a condition "like the following . . . "

In our database, we also have the following usage description in the transfer version of the condition:

Used when the standard irrigation season is longer than the original licensed or decreed season. The first set of dates are for the standard irrigation season. The second set of dates are for the original licensed or decreed dates. If a similar remark originating from an SRBA partial decree or from a previous transfer exists, the actual decree or approval date should be inserted in place of <the date of this approval> at the end of the last sentence. See Transfer Processing memo #16 dated 10/12/99. This condition should not be applied to a water right that has a short season for a particular reason, ie as a result of a contested case hearing involving a protested application, a settlement of a contested case hearing, a specific finding that the shorter season is necessary, to prevent interference with other water rights, or for cases where historical deliveries have been limited to a shorter season.

From IDWR's perspective, both the SRBA version of the condition and the transfer version are intended to authorize exactly the same thing. Recognizing that there are at least two ways to say the same thing, we are willing to be flexible with the language.

Please call or email if it would help to discuss it further.

Regards,

Shelley Keen
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4947
shelley.keen@idwr.idaho.gov

— Attachments: —

Transfer%20Process%2016.pdf

136 KB



ADMINISTRATOR'S MEMORANDUM

To: Water Management Division
Adjudication Bureau

Application Processing Memo #52
Licensing Memo #9
Transfer Processing Memo #16;
Adjudication Memo #39

From: Norman C. Young *NCH*

Re: STANDARDS FOR IRRIGATION CONSUMPTIVE USE REQUIREMENTS,
IRRIGATION FIELD HEADGATE REQUIREMENTS, AND IRRIGATION SEASON OF
USE

Date: October 12, 1999

A new 1:1,000,000 scale map of the "Irrigation Season of Use" presents a new standard for use in water right adjudication and water right licenses, permits, and transfers. A reduced reproduction of the map is attached to this memo; the reduced reproduction is for illustrative purpose only. The official version of the map is in digital format and can be accessed by contacting the Adjudication Bureau. A full-size copy of the map is available in the SRBA map case.

The 1:1,000,000 scale map of the state of Idaho dated December 1991 and entitled "Consumptive Irrigation Requirement, Field Headgate Requirement and Season of Use" is still necessary for the Consumptive Irrigation and Field Headgate Requirements. A reduced reproduction of the map is also attached to this memo; the reduced reproduction is for illustrative purpose only. An official copy of the map is available in the SRBA map case.

The purpose of these maps is to provide consistent standards in a simple format. Further information concerning the foundation for these standards is available from Jeff Peppersack.

The standard season from the new map is to be used for a new permit regardless of the season stated on the application unless it can be shown to the satisfaction of the director that a different season of use is necessary. Likewise, the standard season from the new map is to be used for a new license regardless of the season stated on the permit unless it can be shown to the satisfaction of the director that a different season of use is necessary.

For a transfer of a license or decreed water right, the transfer approval should retain the licensed or decreed season. However, when the new standard season is longer than the licensed or decreed season, an approval condition like the following may be added:

The period of use for the irrigation described in this approval may be extended to a beginning date of new standard and an ending date of new standard provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before licensed or decreed date and after licensed or decreed date is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.

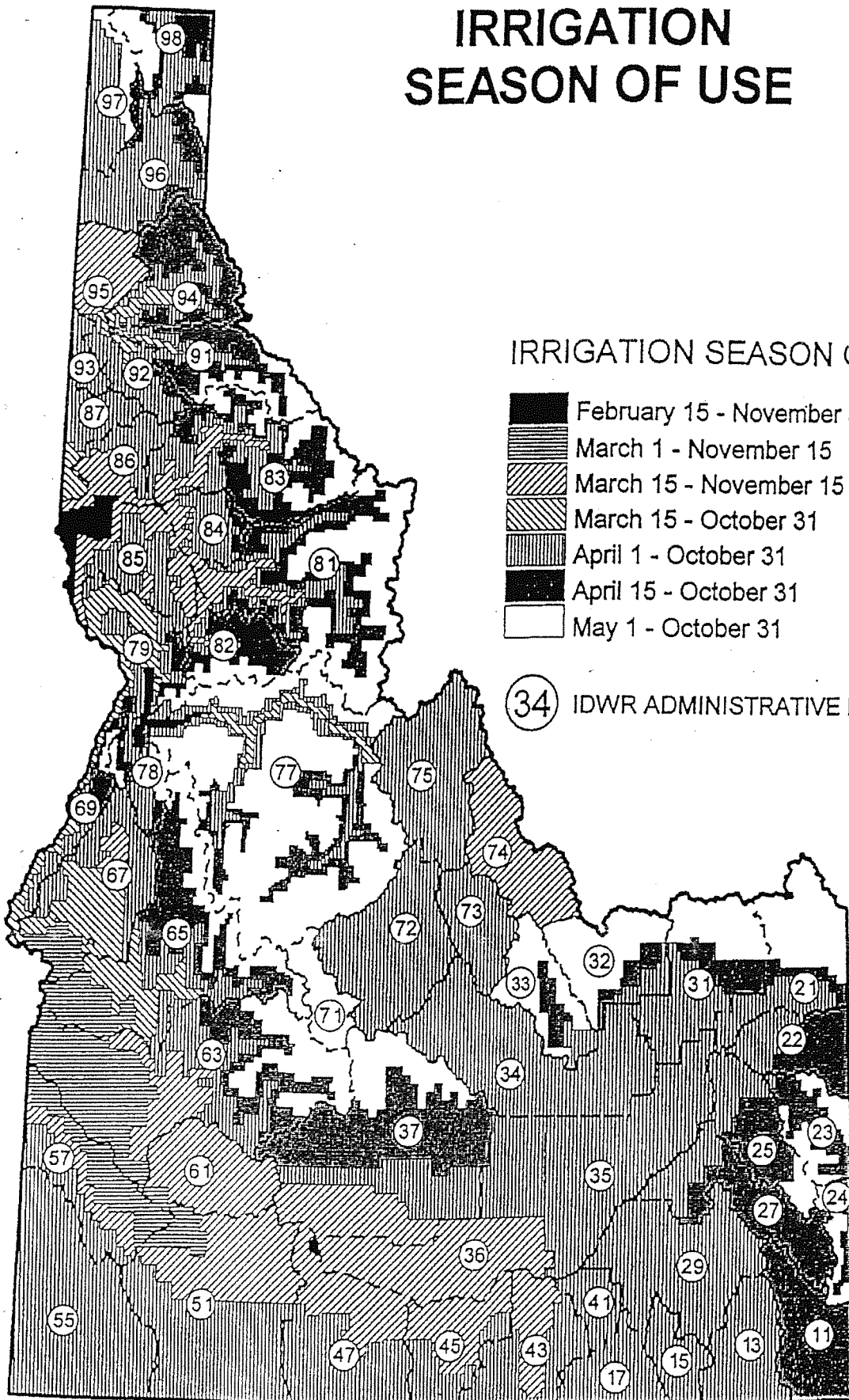
The standard season from the new map is to be used for recommendations in the SRBA as described in the Claim Investigation Handbook.

IRRIGATION SEASON OF USE

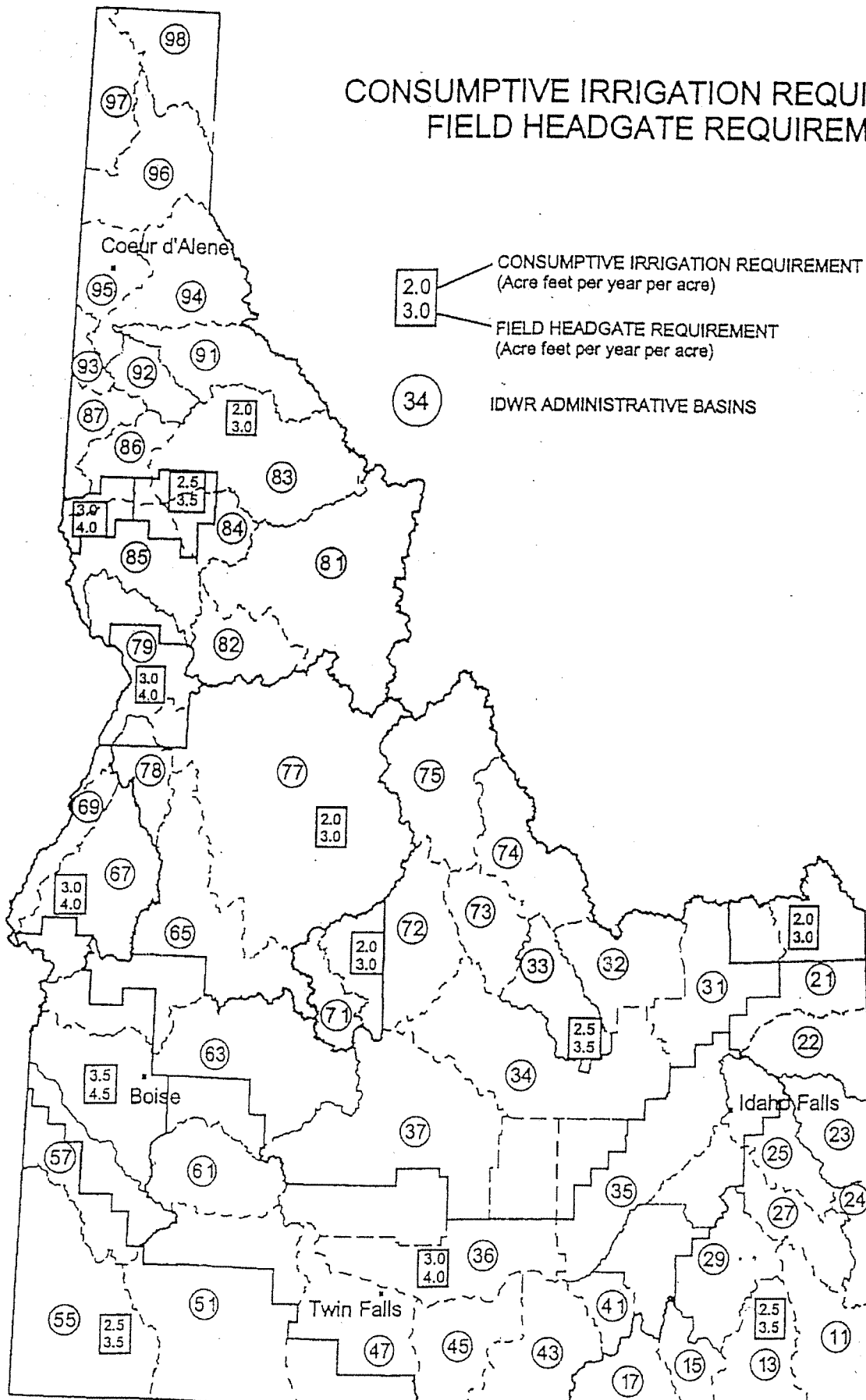
IRRIGATION SEASON OF USE

-  February 15 - November 30
-  March 1 - November 15
-  March 15 - November 15
-  March 15 - October 31
-  April 1 - October 31
-  April 15 - October 31
-  May 1 - October 31

 IDWR ADMINISTRATIVE BASINS



CONSUMPTIVE IRRIGATION REQUIREMENT, FIELD HEADGATE REQUIREMENT



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E-Mail: Dana@IdahoWaterLaw.com

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WATER RESOURCES
WESTERN REGION

Attorney for Basin and Range Resource Company, LLC, Petitioner

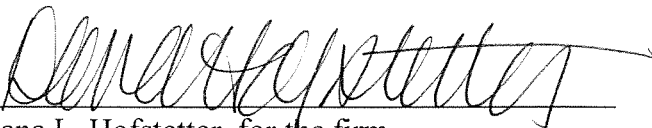
**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**In the Matter of Transfer No. 78260 and)
Transfer No. 78276) PETITION FOR
_____) RECONSIDERATION**

Petitioner, Basin and Range Resource Company, by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, pursuant to Title 67, Chapter 52, Idaho Code and IDAPA 37.01.01, respectfully files this Petition for Reconsideration of the Preliminary Orders approving Transfer Nos. 78260 and 78276. Petitioner seeks clarification that Conditions of Approval No. 6 on both Transfer Approvals are intended to have the same meaning and effect as the "Period of Use" remarks on the respective SRBA Partial Decrees for the subject water rights.

DATED this 15th day of May, 2013.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Basin and Range Resource
Company, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of May, 2013, I caused the foregoing
PETITION FOR RECONSIDERATION (with any attachments) to be served by the pre-paid
method(s) indicated on the following:

Facsimile Original to:

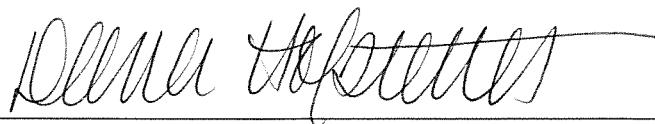
Gary Spackman
Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
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WATER RESOURCES
WESTERN REGION

Copies to:

Shelley Keen
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
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John Westra
Western Region
Idaho Department of Water Resources
2735 Airport Way
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Dana L. Hofstetter