



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

March 29, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

C/O ZACH LATHAM
BROCKWAY ENGINEERING
STE 4
2016 N WASHINGTON ST
TWIN FALLS ID 83301

RE: Transfer No. 68498 Approval Notice

Dear Water Right Holder:

On February 23, 2010, IDWR mailed you a copy of approved water right transfer nos. 68497 and 68498. On March 10, 2010, IDWR received your Petition for Reconsideration (petition). The petition must have been received by IDWR on March 9, 2010, 14 days after the approved transfer was mailed to you, provided by Section §67-5243, Idaho Code. Despite the petition not being filed timely, IDWR reviewed your concerns outlined in the petition and have re-issued transfer no. 68498.

Pursuant to Rule 760 of the IDWR's Rules of Procedure, the Director has substituted the enclosed transfer approval on his own motion. The amended transfer approval changes the diversion rate of water right 37-137C from 0.01 cfs to 0.014 cfs as portrayed in the recommendation IDWR submitted to the Snake River Basin Adjudication court.

IDWR found that the other items in the petition were not warranted and will not be taking further action on those items for the following reasons:

Rights associated with transfers 68497 and 68498 include a condition of approval that says, in pertinent part, "Before changing the 638.1 acres to be irrigated within the 841.1 acre place of use..." This is part of a condition of approval that has been developed by IDWR as a standardized way to insure that enlargement doesn't occur among rights that are part of a permissible place of use. IDWR will not modify this condition to add, "Prior to any material change" because the term "material" is ambiguous and may lead to confusion in both the water right holder and IDWR.

Lastly, condition of approval #2 of transfer 68498 is not limiting the volume of water that can be diverted under the rights in the transfer. The rate of water provided by the rights, 5.67 cfs, can provide no more than 3.5 afa/acre over a 200-day irrigation season. Also, the limitation in the condition is a field headgate volume, not an annual diversion volume limit.

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Transfer No. 68498 Approval Notice

March 25, 2010

The right holder should be able to employ efficient irrigation methods requiring no more than 3.5 af/acre on the field. More volume may be diverted at the source if it is necessary for conveyance losses.

The enclosed amended transfer approval is a final order of IDWR issued pursuant to Rule 760 of the IDWR's Rules of Procedure. Information for appealing a final order is attached to this letter.

Sincerely,


for Shelley W. Keen, Manager
Water Right Permits Section

Enclosures

CERTIFICATE OF SERVICE

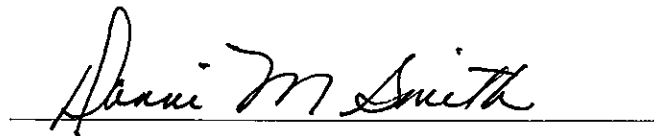
I hereby certify that on March 30, 2010 I mailed a true and correct copy, postage prepaid, of the foregoing AMENDED TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 68498

WATER RIGHTS NOS.	37-137C	37-138C	37-207D	37-137D	37-95G
	37-138D	37-207C	37-426E	37-448D	37-448E
	37-632G	37-706E	37-1082E	37-1082F	

**THE BRETT & PATRICIA BASHAW FAMILY TRUST
BASHAW FAMILY TRUST
C/O GERALD BASHAW
PO BOX 767
PICABO ID 83348**

**BROCKWAY ENGINEERING PLLC
C/O ZACH LATHAM
2016 N WASHINGTON ST STE 4
TWN FALLS ID 83301**

A handwritten signature in black ink, reading "Danni M. Smith", is written over a horizontal line.

**Danni M. Smith
Office Services Supervisor**

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance 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.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.
- (8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **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(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the date of issuance (not service) of the final order, b) the date of issuance of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.