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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 37-07617A

NAME AND ADDRESS: BEVERLY TABER
DONALD TABER
312 E 20 N
SHOSHONE, ID 83352

SOURCE: GROUND WATER

QUANTITY: 3.64 CFS
744.00 AFY

PRIORITY DATE: 06/02/1977

POINT OF DIVERSION: T06S R18E S03 NWSWN Within Lincoln County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	3.64 CFS 744.00 AFY

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE [APRIL 1] AND AFTER [NOVEMBER 1] UNDER THIS
REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Lincoln County
T06S R18E S03 SWNE 19.5 LOT 3 (NENW) 39.8
LOT 4 (NWNW) 47.2 SWNW 39.7
SENE 39.8
186.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Roger Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5495
WATER RIGHT NO(S) . 37-07617A/37-07617B/37-10221/37-10336

This is to certify that: **DON TABER**
BEVERLY TABER
312 E 20 N
SHOSHONE ID 83352

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 37-07617B :			
Priority: 06/02/1977			
STOCKWATER	01/01 to 12/31	0.14 CFS	21.0 AF
COMMERCIAL	01/01 to 12/31	0.14 CFS	21.0 AF
		0.14 CFS	21.0 AF
Right No. 37-10221 :			
Priority: 06/15/1938			
STOCKWATER	01/01 to 12/31	0.03 CFS	0.7 AF
DOMESTIC	01/01 to 12/31	0.04 CFS	2.4 AF
		0.07 CFS	3.1 AF
Right No. 37-10336 :			
Priority: 08/01/1985			
STOCKWATER	01/01 to 12/31	0.09 CFS	9.8 AF
	SUBTOTAL:	* 0.23 CFS	33.9 AF *
Right No. 37-07617A :			
Priority: 06/02/1977			
IRRIGATION	04/01 to 11/01	3.64 CFS	744.0 AF
	TOTAL:	3.87 CFS	777.9 AF
SOURCE			
GROUNDWATER			

LOCATION OF POINT(S) OF DIVERSION:

Right No. 37-07617A : SWNW , Sec. 3, Township 06S, Range 18E
Right No. 37-07617B/37-10221/37-10336 :
Lot 2 (NWNWNE), Sec. 3, Township 06S, Range 18E
Lot 3 (NENENW), Sec. 3, Township 06S, Range 18E
LINCOLN County

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TRANSFER NO. 5495
WATER RIGHT NO(S). 37-07617A/37-07617B/37-10221/37-10336

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>		<u>ACRES</u>		<u>ACRES</u>	<u>TOTAL</u>
06S	18E	3	SWNE 19.5	Lot 3 (NENW)	39.8	Lot 4 (NWNW)	47.2	
			SWNW 39.7		SENE 39.8			186.0
Total number of acres irrigated:								186.0

PLACE OF USE: STOCKWATER

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>		
06S	18E	3	Lot 2 (NWNE)	Lot 3 (NENW)

PLACE OF USE: COMMERCIAL

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>			
06S	18E	3	Lot 2 (NWNE)	Lot 3 (NENW)	Lot 4 (NWNW)
			SWNW	SENE	

PLACE OF USE: DOMESTIC

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	
06S	18E	3	Lot 3 (NENW)

CONDITIONS OF APPROVAL AND REMARKS

1. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code for Right 37-07617A.
2. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. Water diverted under this approval for commercial use shall not be used for irrigation unless the water is first used in the dairy as authorized by these water rights.
6. The quantity of water decreed for Rights 37-10221 and 37-10336 for stockwater and domestic uses is not a determination of historical beneficial use and shall not exceed 13,000 gallons per day.
7. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion under Rights 37-07617B, 37-10221 and 37-10336 which will allow determination of the total rate of diversion.

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TRANSFER NO. 5495
WATER RIGHT NO(S). 37-07617A/37-07617B/37-10221/37-10336

CONDITIONS OF APPROVAL AND REMARKS

- * 8. The total instantaneous diversion of water from all points of diversion under Rights 37-07617B, 37-10221 and 37-10336 shall not exceed 0.23 cfs, nor total combined annual volume of 33.9 af.
- 9. The well previously used under Right 37-10221 shall be abandoned in a manner which complies with Department well abandonment rules.
- 10. 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
- 11. 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 11/01 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.
- 12. Approval of this transfer does not preclude the opportunity for review of the validity of Right 37-07617A and 37-07617B in the ongoing Snake River Basin Adjudication.
- 13. Commercial use is for a dairy located within the (NENW) Lot 3, S03, T06S, R18E.
- 14. Domestic use is for two (2) homes.
- 15. Two points of diversion are located within (NENENW) Lot 3, S03, T06S, R18E.

Dated this 5th day of June, 2000.


Chief, Water Allocation Bureau

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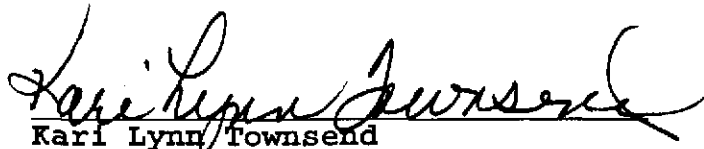
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CERTIFICATE OF MAILING

I hereby certify that on the 5th day of June, 2000 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER OF WATER RIGHTS 37-07617A/37-07617B/37-10221/37-10336
(Transfer 5495)

DON TABER
BEVERLY TABER
312 E 20 N
SHOSHONE ID 83352


Kari Lynn Townsend
Secretary

Microfilm

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**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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. 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 Idaho Water Resource Board (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).

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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 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.

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.