

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)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 72-10107

2001 JAN 16 PM 2:16
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: CHERYL LAVERTY CUTLER
PO BOX 8
CHALLIS, ID 83226

SOURCE: SALMON RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 3.06 CFS
105.00 AFY

PRIORITY DATE: 01/15/1886

POINT OF DIVERSION: T13N R19E S16 LOT 06 (SWSWSE) Within Custer County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	3.06 CFS 105.00 AFY

PLACE OF USE:	Irrigation	Within Custer County
	T13N R19E S09 SWSE 12.0 S16 NWNE 15.0 30.0 Acres Total	SESE 3.0

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
Presiding Judge of the
Snake River Basin Adjudication

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5583
WATER RIGHT NO. 72-10107

This is to certify that: CHERYL LAVERTY CUTLER
PO BOX 8
CHALLIS ID 83226

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>
IRRIGATION	04/01 to 10/31	3.06 CFS	105.0 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
SALMON RIVER	SNAKE RIVER

Priority: 01/15/1886

LOCATION OF POINT(S) OF DIVERSION: Lot 6 (SWSWSE), Sec 16, Township 13N, Range 19E
CUSTER County

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>
13N	19E	9	SWSE 12	SESE 3		15
		16	NWNE 15			15
Total number of acres irrigated:						30

CONDITIONS OF APPROVAL AND REMARKS

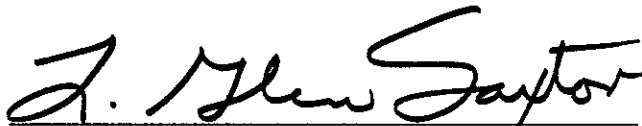
1. After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
2. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
3. The right holder shall comply with all fish screening requirements of the Idaho Department of Fish and Game.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.

TRANSFER NO. 5583
WATER RIGHT NO. 72-10107

CONDITIONS OF APPROVAL AND REMARKS

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. All water rights within Basin 72 are from connected sources of water in the Snake River Basin and shall be administered conjunctively.
7. Approval of Transfer 5583 does not grant any right-of-way or easement for use of a delivery system or lands owned by person(s) other than the right owner.

Dated this 19th day of June, 2000


Chief, Water Allocation Bureau

PART 1

6. General Information:

a. Description of diversion system Wing dam in Salmon River diverts water through headgate into Gini Ditch for delivery to ditch users.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? N/A Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
N/A

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

Page 3 of 6Transfer No. 5583

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by: See Attachment A for water right descriptions on file with the Dept. of Water Resources

- a. Decree No. _____ Decreed to _____
 in case of _____ vs. _____
 dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purpose:

amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. R72-10107

STAGE: DECREED

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/01 to 10/31	3.06 CFS

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
SALMON RIVER	SNAKE RIVER

Priority: 01/15/1886

LOCATION OF POINT(S) OF DIVERSION: SWSE , Sec. 16, Township 13N, Range 19E
CUSTER County

PLACE OF USE:

IRRIGATION

		NE				NW				SW				SE				
		NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R S	: Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac	SUM
13N	19E 9	:				:				:				:		12	03	15.0
13N	19E 16	:		15		:				:				:				15.0
																	TOTAL ACRES	30.0

CONDITIONS/REMARKS:

1. THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 72 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 72:

WATER RIGHT NO.	SOURCE
NONE	NONE

THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 72 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN THE SNAKE RIVER BASIN:

WATER RIGHT NO.	SOURCE
NONE	NONE

ALL WATER RIGHTS WITHIN BASIN 72 ARE FROM CONNECTED SOURCES OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED CONJUNCTIVELY.

2. WATER IS DELIVERED THROUGH LAVERTY DITCH.

Page ____ of ____

TRANS NO. 5583

Water Right No. R72-10107

Describe any other water rights used for the same purpose as described above:

To your knowledge has any portion of this water right undergone a period of five or more consecutive years of non-use? ____ If yes, describe:

Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☐ Warranty Deed

☐ Other _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3**

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.
See IDWR G.I.S photo & map.**

[illegible]

Page 6 of 6Transfer No. 5583**PART 3****1. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

2. Quantity and quality of return flows and location of discharge:**3. Describe effects on other water uses resulting from the proposed change:**

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Cheryl Lowerty Butler
(Signature of Applicant)

Subscribed and sworn to before me this 12th day of September, 19 99.

Charlotte S. Miller
(Notary Public)

My commission expires 4-10-2004

Custer County
State of Idaho

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 0 attachments

Received by GLS Date 03 Sept 1999 Protest filed by _____

Prelim. check by " Fee \$100 SO 72525

Recelpted by _____ Date 03 Sept 1999

Published in Challis Messenger Copies of protest forwarded by _____

Pub. dates 12/16 & 12/23/99 Hearing held by _____ Date _____

Watermaster recommendation requested on N/A Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

MEMO

TO: File

DATE: 11-1-1999

FROM: J E STANTON

SUBJECT: Apps. For Transfer #5578, 5582, 5583

These apps were all filed by Charlie Honsinger for his clients to consolidate their various existing rights into the Gini Ditch. They now also plan to replace their gravity irrigation systems with pivots, which will require a change in places of use. I told Charlie to file corrected applications instead of filing brand new transfers. The existing apps have been computerized but not advertised, so I wasn't sure if an amendment fee would be needed; I suggested he call Pam on this. Please hold these applications until the new ones are received, which should occur within the next couple of weeks according to Charlie.

7-4-500



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

June 20, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

CHERYL LAVERTY CUTLER
PO BOX 8
CHALLIS ID 83226

RE: Water Right 72-10107 (Transfer 5583)

Dear Water Right Holder(s):

Enclosed is the copy of your approved Transfer of Water Right for the above referenced water right (Transfer 5583). Please be sure to thoroughly read the Conditions and Remarks listed on the transfer. Also, please be advised that the accompanying transfer approval should be considered and treated as a **preliminary order** of the department issued pursuant to section 67-5243, Idaho Code. Enclosed are instructions for responding to **Preliminary Orders** if you are in disagreement with the approved transfer.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact the department if you have questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jeff Peppersack', is written over the printed name.

for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the 20th 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: WATER RIGHT 72-10107 (Transfer 5583)

**CHERYL LAVERTY CUTLER
PO BOX 8
CHALLIS ID 83226**


**Kari Lynn Townsend
Secretary**

**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).

TRANSFER REVIEW SHEET

(10-99)

Transfer # 5583

Date Reviewed 06-10-2000
CS

Right(s) 72-10107 - SRBA Recommendations

☒ WRQ/Split Summary ^{NAP} ☒ SRBA Status NA Run POU Comparison Report

☒ B: Change P/D C: Add P/D D: Change P/U E: Change Nature of Use
F: Change Period of Use G: Other H: Change P/D & Add P/D
I: Change P/D & P/U J: Add P/D & Change P/U

Proof of Ownership Per SRBA - P/D change Only - Region ☒

Transfer ☒ All of Right ☐ Portion of Right

Resulting Split(s) NONE

Check Transfer Against Recorded Right:

Standard Season 4-1 to 10-31 Standard Volume 3.5 / 2.5

(1) ☒ Priority (2) ☒ Use (3) ☒ Season/W61 (4) ☒ Rate (5) ☐ Volume

(6) ☒ Source (7) ☐ P/D (8) ☒ P/U (9) ☒ Proof/Owner (10) ☒ Map

(11) NA Water District (12) Yes Pertinent Conditions (13) No Expansion

(5) Standard Vol = $3.5 \times 30 \text{ a/c} = 105 \text{ a/c}$

(7) Change P/D

BLM letter states it is possible to inc all 12 acres w/in SWSE on private ground.
Not necessary to define PU to Q-Q-Q & QQQQ per standards.

Transfer Remarks W63 W57

Conditions 01M, R59, 029 T07, T08

Database/Processing Notes Standard ☐ Non-Standard ☒

Copy approved version to an X prefix on ~~AD~~ Database. ☒ Delete T

Copies of app-review sheet & approval/letter to Vault file.

"T" Files Update Complete ☒ Approval Form ☒ Transfer Memo

Database Updated Following Approval ☒ Memo/Form Files Deleted ☒

Water Right Number - X72-10107 Prefix Translation: XFER OF RECOM. CLAIM Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
CUTLER

CHERYL LAVERTY

1 - PO BOX 8

2 -

3 -

City- CHALLIS

State- ID Zip- 83226

Phone - 208-879-2339

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
01/15/1886 17 SOUTHERN D - DECREED

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
SALMON RIVER SNAKE RIVER

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County

13N 19E 16 SW SW SE 6 (37) CUSTER GINI DITCH

Code	Description	Period From	Period To	Water Use	Diversion Rate	Diversion Volume
01 - IRRIGATION		04/01	10/31		3.060	105.00

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
3.060 105.00 0.0

Twn	Rng	Sec	Tract	Lot	Acres	Place of Use	Description	County
13N	19E	9	SW SE		12.0	01 IRRIGATION		(37) CUSTER
13N	19E	9	SE SE		3.0	01 IRRIGATION		(37) CUSTER
13N	19E	16	NW NE		15.0	01 IRRIGATION		(37) CUSTER

Total Acres: 30.0

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - NONE

+ - - - - Remarks - - - - - +

GEN All water rights within Basin 72 are from connected sources of water in the Snake River Basin and shall be administered conjunctively.
Approval of Transfer 5583 does not grant any right-of-way or easement for use of a delivery system or lands owned by person(s) other than the right owner.

Water right number - X72-10107

Prefix Translation: XFER OF RECOM. CLAIM

+ - - - - Old Water Right Numbers - - - - - +
+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers Found

+ - - - - Conditions of Approval - - - - - +
01M - After specific notification by the department, the right holder
- shall install a suitable measuring device or shall enter into an
- agreement with the department to determine the amount of water
- diverted from power records and shall annually report the
- information to the department.
R59 - This right when combined with all other rights shall provide no
- more than 3.5 afa per acre at the field headgate for irrigation
- of the lands above.
029 - The right holder shall comply with all fish screening
- requirements of the Idaho Department of Fish and Game.
T07 - The right holder shall accomplish the change authorized by this
- transfer within one (1) year of the date of this approval.
T08 - Failure of the right holder to comply with the conditions of this
- transfer is cause for the Director to rescind approval of the
- transfer.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
CHARLES B. JENSON ET AL RICHARD BENNETTS ET AL 00/00/0000

+ - - - - Comments - - - - - +
Date: 08/19/1998 User Id: SCLELLAN Subject: COPIED FROM REMARKS
THIS CLAIM REPRESENTS A PORTION OF DECREED RIGHT 72-00182.
Date: 11/18/1998 User Id: SCLELLAN Subject: REFORMAT & GIS UPDATE
REFORMAT & GIS UPDATE
Date: 11/21/1998 User Id: AJU10-DS Subject: AJU10 CONDITION UPDATE
CONDITION CODE(S) C16 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.
Date: 06/10/2000 User Id: PSKAGGS Subject: TRANSFER 5583
Transfer 5583 changes the point of diversion of Right 72-10107.

+ - - Audit Fields - - +
06/19/00 PSKAGGS

+ - - - - Adjudication Rights Dates and Flags Area - - - - - +
Court Report Filing - 00/00/0000 Field Inspection Made - 00/00/0000 Civil Case Number - 39576
Objection Filed Date - 00/00/0000 Field Inspection Flag - Old Case Number -
Response Filed Date - 00/00/0000 Verified Date - 00/00/0000 Old Judicial District -
Claim Received Date - 00/00/0000 Last Amended Date - 00/00/0000 Temporary Right - P
Receipt Number - X777777 Water District -
POU Ownership Flag - Y Federal/State Indicator - S
Name Connector - Presumption Flag -
Notice of Error Flag -