

No Color
Documents
In File



RECEIVED

JUN 10 2004

Ident. No. TC-34-48STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

TEMPORARY CHANGE APPLICATION

JUN 25 2004

DEPARTMENT OF
WATER RESOURCES

(To change point of diversion, place of use or purpose of use)

Name of Applicant Mark Gates Phone 588-2447
Post Office Address 5306 Zollinger RD, Mackay, Id 83251

A. PURPOSE OF TRANSFER

- 1.
- ☒
- Change point of diversion
- ☐
- Add diversion point(s)
- ☒
- Change place of use
-
- ☐
- Change purpose of use
- ☐
- Other

2. Describe the proposed change(s) and the reason(s) thereof changing water
place of use to compensate for drought
conditions

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number 34-00871 Priority 6-1-1885 Amount (cfs/ac-ft) 1.6 cfs Nature of Use Irrigation Period of Use 5-25 to 10-152. Total amount of water being transferred 1.6 cfs cubic feet per second and/or acre-feet per annum.3. Source of water Warm Springs Cr. tributary to Big Lost River

4. Point(s) of Diversion:

Ident No.	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		SE	SE		6	8N	23E	Custer	Warm Springs *
	1	NE	NE		6	7N	23E	Custer	Gates Pump #1 *
		SW	NW		5	7N	23E	Custer	Gates Pump #2 *

13124305 *
13124340 *

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
* 7N	8N	23E	6		40	40	20			40									
* 7N	8N	23E	5						20										

Total Acres 160* Changes as per phone call with watermaster; review
of decreed water rights & special Data Kew 6/11/04

6. General Information.

- a. Who owns the water right to be changed? Mark Gates
- b. Describe the arrangement allowing use of the right personal transfer
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:
will be left dry
- d. Has the water right sought to be transferred been used this year? No If yes, explain _____
- e. Absent the changes, how would the right be used for the remainder of the year? would be used on decreed place of use
- f. Describe other water rights used for the same purpose
None
- g. Remarks: _____

I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and 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.

Jim Gregory for
Mark Gates
(Signature of applicant)

FOR DEPARTMENT USE ONLY

Received by KW Date 6/11/04 Fee 5000

Receipted KW # ED29946 Recommend: ☒ approve ☐ deny

Watermaster recommendation Optional

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. TC-34-48

And said application is hereby Approved, subject to the following limitations and conditions.

Witness my hand this 14th day of June 2004.

[Signature]
For the Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TEMPORARY CHANGE OF A)
WATER RIGHT 34-871)
_____))
Mark Gates)

ORDER AUTHORIZING
TEMPORARY CHANGE

Tc-34-48

WHEREAS, a drought emergency has been declared for Custer County to allow administrative actions to lessen the severe impacts of the drought conditions in the county; and

WHEREAS, section 42-222A, Idaho Code, provides that upon declaration of a drought emergency, the director of the Department of Water Resources ("Department") is authorized to allow temporary changes in the point of diversion, the place of use, and the purpose of use for valid existing water rights or temporary exchanges of water authorized under water rights when the director determines that such changes can be accomplished in accordance with the provisions of section 42-222A, *Idaho Code*; and

WHEREAS, on June 10, 2004, Mark Gates submitted the attached Temporary Change Application Tc-34-48 to the Department; and

WHEREAS, the Department has reviewed the application and has determined the application can be approved with certain conditions;

ORDER

IT IS HEREBY ORDERED that the application is **APPROVED** subject to the following conditions:

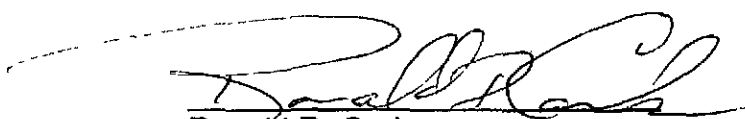
1. Diversion and use of right no(s) 34-871 is authorized only at the point of diversion and place of use described on the application.
2. This temporary Change approval does not authorize construction of a new well as a new point of diversion.
3. The applicant assumes all risk of curtailment or mitigation should the diversion and use of water under the temporary change approval cause injury to other water rights, constitute an enlargement in use of the original right, be inconsistent with the conservation of water resources within the state of Idaho, or not be in the local public interest.
4. This temporary change approval may only be used to provide a replacement water supply to lands or other uses that normally have a full water supply, except for the drought condition. This temporary change approval may not be used to provide water for new development or to allow expansion of the use of water under existing water rights.

ORDER AUTHORIZING
TEMPORARY CHANGE

TC - 34-48

5. Right(s) 34 - 871 are limited to the irrigation of a total of 160 acres in a single irrigation season
6. This temporary approval does not authorize the use of diversion works or a delivery system owned by or managed by a corporation or an irrigation district without the written consent of such corporation or irrigation district.
7. The applicants agree to hold the director and the state of Idaho harmless from all liability on account of the diversion and use of water under this temporary change approval.
8. This temporary change approval does not grant any right-of-way or easement to use the diversion works or conveyance works of another person or entity.
9. The applicant shall measure the amount of water diverted and shall report the amount of water diverted under this approval.
10. The Water master of Water District No. 34 is authorized to administer the temporary change approval.
11. This Temporary change approval expires on December 31, 2004 unless rescinded or extended by the director. Thereafter, the water right shall revert to the point of diversion, place of use, and nature of use existing prior to the temporary change approval..

DATED this 14th day of June, 2009.


Ronald D. Carlson
Eastern Regional Manager

Important Information About Your Water Right

December 14, 2001

PRISCILLA B WOODS
WARD W WOODS
"C/O MARK T GATES
700 EMERSON ST"
PALO ALTO, CA 94301

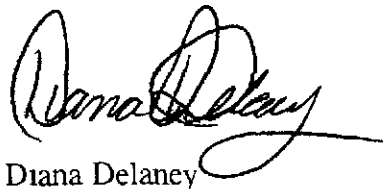
Dear Water Right Claimant(s):

The reverse side of this letter contains a copy of an *Order Amending Irrigation Period of Use Element in Partial Decree, Nunc Pro Tunc* (hereinafter "*Order*") for water right number 34-00871. According to Idaho Department of Water Resources (IDWR) records, you are the current owner of this water right. If you are not the current owner, please contact IDWR immediately at:

Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706
800-451-4129

The Purpose of the *Order* is to set forth beginning and ending dates for the irrigation period of use for this water right. As stated in the face of the *Order*, this action was necessary following the decision of the Idaho Supreme Court in *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998). This *Order* also incorporates into the *Partial Decree* an express statement that the *Partial Decree* is subject to such general provisions necessary for the definition or for the efficient administration of the water right. This express statement is necessary to comply with the requirements of Idaho Code section 42-1412(6). This *Order* in combination with the *Partial Decree* that was issued for this water right on December 29, 1997, sets forth all of the elements of your water right. The Snake River Basin Adjudication (SRBA) Court suggests that you keep this document in a safe location together with a copy of the *Partial Decree* to show evidence of the water right. The original of this *Order* and the original of the *Partial Decree* for this water right are on file with SRBA Court. If you do not have a copy of the original *Partial Decree*, one can be obtained by contacting the SRBA Court at (208) 736-3011. Please note that the *Order* is entered *Nunc Pro Tunc*, meaning that the *Order* will be treated as if it were issued the same date that the *Partial Decree* was originally issued.

Sincerely,



Diana Delaney
Case Administrator

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)

Water Right 34-00871

Case No. 39576)

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on December 29, 1997. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 1, IDWR Basin 34, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 05-01 10-15

THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

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).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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.

Dated December 14, 2001


ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

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 34-00871

1997 DEC 29 PM 4:49

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

NAME & ADDRESS: ELIZABETH W GATES TRUSTEE
MARK T GATES TRUSTEE
700 EMERSON ST
PALO ALTO CA 94301

WARD W WOODS
PRISCILLA B WOODS
C/O MARK T GATES
700 EMERSON ST
PALO ALTO CA 94301

SOURCE: WARM SPRINGS CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 1.6 CFS

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER
DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT
WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED.

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE
SHALL NOT EXCEED 13,000 GALLONS PER DAY.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 7.94 CFS.
COMBINED RIGHT NOS.: 34-00867, 34-00869 AND 34-10801

PRIORITY DATE: 06/01/1885

POINT OF DIVERSION: T08N R23E S31 SWSE Within CUSTER County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	1.6 CFS
	STOCKWATER	01-01 12-31	0.02 CFS

PLACE OF USE: IRRIGATION Within CUSTER County
T07N R23E S05 Lot 4 (NWNW)30
S06 Lot 1 (NENE)27
T08N R23E S31 SWSE 35 SESE 39
S32 SWSW 29
160 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 397 ACRES IN A SINGLE
IRRIGATION SEASON.

COMBINED RIGHT NOS.: 34-00867, 34-00869 AND 34-10801

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 80 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Place of use for STOCKWATER is same as IRRIGATION

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-00871

PAGE 1
DEC-18-1997

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.



DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication