

MOUNTAIN SPRINGS RANCH DIVERSIONS
AND ADJACENT DIVERSIONS FROM THE
BIG LOST RIVER AND PARSONS CREEK
September 9, 2003

DRAFT



13122920 MOUNTAIN SPRINGS RANCH 1

13122925 MOUNTAIN SPRINGS RANCH 4

13122205 MOUNTAIN SPRINGS RANCH 3

13122930 MOUNTAIN SPRINGS RANCH 2

13122950 DONAHUE 2

13122230 DONAHUE 1 POD

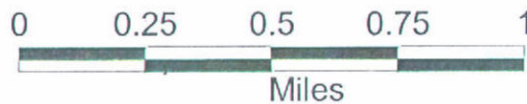
BOX STRUCTURE
FOR DONAHUE 1

13122245 ZOLLINGER 1

13122960 SIMMONS

LEGEND

- ▲ Physical diversion location based on IDWR GPS survey
- Legal point of diversion location based on IDWR water rights database



WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
34-00142	MOUNTAIN SPRINGS RANCH LLC	C	06/30/1897	D/	BIG LOST RIVER PARSONS CREEK	P DECR	WR
X34-00142	MOUNTAIN SPRINGS RANCH LLC	C	06/30/1897	D/	BIG LOST RIVER PARSONS CREEK	IRR	WR

*34-00142	MOUNTAIN SPRINGS RANCH LLC	C	06/30/1897	D/	BIG LOST RIVER PARSONS CREEK	P DECR	AJ
A34-00142	SAN FELIPE RANCHES	C	06/30/1897	D/	BIG LOST RIVER	IRR	AJ
R34-00142	MOUNTAIN SPRINGS RANCH LLC	C	06/30/1897	D/	BIG LOST RIVER PARSONS CREEK	P DECR	AJ

SEP 22 1999

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Department of Water Resources

2001 SEP 19 PM 4:55

SRBA
IDAHO
FILED

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 34-00142
	)	
	)	ORDER AMENDING IRRIGATION PERIOD OF USE
	)	ELEMENT IN PARTIAL DECREE and
Case No. 39576	)	INCORPORATING INTO PARTIAL DECREES AN
	)	EXPRESS STATEMENT REGARDING GENERAL
	)	PROVISIONS, <i>NUNC PRO TUNC</i>

A *Partial Decree* was entered for the above-captioned irrigation water right on December 8, 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, on June 24, 1999, 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. On July 30, 1999, Claimant Mountain Springs Ranch, LLC filed an objection to the season of use recommendation, but withdrew the objection on April 20, 2001.

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

PERIOD OF USE 05-01 to 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

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

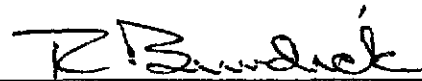
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

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 September 19, 2001



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER AMENDING IRRIGATION PERIOD OF USE & INCORPORATING EXPRESS STATEMENT REGARDING GENERAL PROVISIONS was mailed on September 20, 2001, with sufficient first-class postage to the following:

STATE OF IDAHO

Represented by:
HARRIET A. HENSLEY
PO BOX 83720
BOISE, ID 83720-0010
Phone: 208-334-4543

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

MOUNTAIN SPRINGS RANCH LLC
5550 BARTON FLAT RD
MACKAY, ID 83251
Phone: 208-588-2805

MOUNTAIN SPRINGS RANCH LLC
5550 BARTON FLAT ROAD
MACKAY, ID 83251
Phone: 208-588-3110

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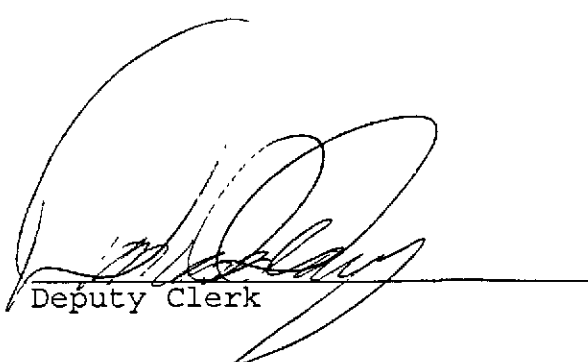
SEP 21 2001

ORDER AMENDING PARTIAL DECREE

Page 1 9/19/01

FILE COPY FOR 01862

Deputy Clerk

A large, stylized handwritten signature in black ink, likely belonging to the Deputy Clerk, is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4706
WATER RIGHT NO(S). 34-00142/34-00611B/34-00612B
34-00613B/34-10553B

This is to certify that: MOUNTAIN SPRINGS RANCH LLC
5550 BARTON FLAT RD
MACKAY ID 83251

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. 34-00142 :			
IRRIGATION	05/01 to 10/15	2.40 CFS	420.0 AF
Priority: 06/30/1897			
Right No. 34-00611B :			
IRRIGATION	05/01 to 10/15	1.50 CFS	262.5 AF
Priority: 06/01/1882			
Right No. 34-00612B :			
IRRIGATION	05/01 to 10/15	0.80 CFS	140.0 AF
Priority: 06/01/1886			
Right No. 34-00613B :			
IRRIGATION	05/01 to 10/15	0.50 CFS	87.5 AF
Priority: 11/01/1898			
Right No. 34-10553B :			
IRRIGATION	05/01 to 10/15	5.52 CFS	1648.5 AF
Priority: 05/01/1910			
TOTAL:		* 10.72 CFS	* 1648.5 AF

SOURCE

BIG LOST RIVER
PARSONS CREEK

TRIBUTARY OF

SINKS
BIG LOST RIVER

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TRANSFER NO. 4706
 WATER RIGHT NO(S) . 34-00142/34-00611B/34-00612B
 34-00613B/34-10553B

LOCATION OF POINT(S) OF DIVERSION:

SWSESE , Sec. 3, Township 08N, Range 22E
 NENESE , Sec. 11, Township 08N, Range 22E
 NWNESE , Sec. 11, Township 08N, Range 22E
 SWNWSW , Sec. 12, Township 08N, Range 22E
 SWNENW , Sec. 13, Township 08N, Range 22E
 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>
08N	22E	11	NESW 20	SESW 15	NESE 20	
			NWSE 40	SWSE 30	SESE 33	158
		12	SWSW 18			18
		13	NWNW 30	SWNW 40	SENEW 23	
			NESW 25	NWSW 30	SESW 30	
			SWSE 17			195
		14	NENE 40	NWNE 10	SENE 30	
			NESE 20			100
Total number of acres irrigated:						** 471

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 34.
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 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. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works form all authorized points of diversion that is acceptable to the watermaster and will provide suitable control of the diversions.
- * 6. The total instantaneous diversion of water from all points of diversion under Transfer 4706 shall not exceed 10.72 cfs.
- ** 7. Right 34-00142 is limited to the irrigation of 120.0 acres in the place of use described above in a single irrigation season.
- ** 8. Right 34-00611B is limited to the irrigation of 75.0 acres in the place of use described above in a single irrigation season.
- ** 9. Right 34-00612B is limited to the irrigation of 40.0 acres in the place of use described above in a single irrigation season.
- ** 10. Right 34-00613B is limited to the irrigation of 25.0 acres in the place of use described above in a single irrigation season.

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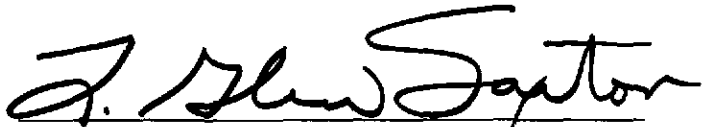
SEP 22 1999

TRANSFER NO. 4706
WATER RIGHT NO(S). 34-00142/34-00611B/34-00612B
34-00613B/34-10553B

CONDITIONS OF APPROVAL AND REMARKS

- * ** 11. Rights 34-00142, 34-00611B, 34-00612B, 34-00613B and 34-10553B when combined shall not exceed a total diversion rate of 10.72 cfs, a total annual maximum diversion volume of 1648.5 af at the field headgate, and the irrigation of 471.0 acres.
12. 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 watermaster for Water District 34.

Dated this 3rd day of September, 1999.


Chief, Water Allocation Bureau

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PAGE 1
DEC-3-1997



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 11, 2003

Mountain Springs Ranch
5550 Barton Flat Rd
Mackay, ID 83251
Attention: Shane Rosenkrance

RE: **Potential Illegal Points of Diversion**

Dear Mr. Rosenkrance:

The Idaho Department of Water Resources (IDWR) has collected GPS data locating physical diversions from Parsons Creek used by Mountain Springs Ranch. According to our records, two of these locations are not legal points of diversion for your water rights.

According to our records, Mountain Springs Ranch owns five surface water rights with points of diversion downstream of the Chilly Bridge. Water right numbers 34-00142, 34-00611B, 34-00612B, 34-00613B, and 34-10553B have a combined place of use of 471 acres and have five legal points of diversion. Transfer number 4706, which was approved in September 1999, changed the place of use for these water rights and split water right number 34-10553 between Mountain Springs Ranch and Dennie Donahue. This transfer did not change the points of diversion, which are described as follows.

1. PARSONS CREEK SW ¼ SE ¼ SE ¼ Sec. 3, Twp 08N, Rge 22E, B.M.
2. BIG LOST RIVER NE ¼ NE ¼ SE ¼ Sec. 11, Twp 08N, Rge 22E, B.M.
3. BIG LOST RIVER NW ¼ NE ¼ SE ¼ Sec. 11, Twp 08N, Rge 22E, B.M.
4. BIG LOST RIVER SW ¼ NW ¼ SW ¼ Sec. 12, Twp 08N, Rge 22E, B.M.
5. BIG LOST RIVER SW ¼ NE ¼ NW ¼ Sec. 13, Twp 08N, Rge 22E, B.M.

The legal point of diversion locations are shown as purple circles on the attached map. Based on IDWR field visits conducted between October 2002 and June 2003, IDWR has identified four physical diversions for your ranch. These physical diversions are shown as red triangles on the attached map. As illustrated on the map, two of your physical diversions from Parsons Creek (Mountain Springs 2 and Mountain Springs 4) are not legal points of diversion for your water rights.

↑ ↑
Spatial Data ID 298205 Spatial Data ID 298203

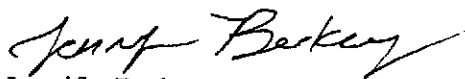
In order for Mountain Springs Ranch to change the location of your points of diversion for these water rights, you must file an Application for Transfer of Water Right with IDWR, as required by Idaho Code §42-222. A copy of the application form is attached. Additional copies of the application form can be obtained from our website at http://www.idwr.state.id.us/water/rights/water_rights_forms.htm, or from any IDWR office. The application needs to be submitted to the Eastern Region office at the address listed on the last page of the instructions. Please contact the Eastern Region office at 208-525-7161 if you

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have questions regarding the application process. I recommend that you apply for the transfer as soon as possible, because diversion of water at the locations of Mountain Springs Ranch 2 and 4 will not be legal until the transfer has been approved by IDWR.

If you believe our records are in error regarding your point of diversion locations, or have questions concerning this notice, please contact me at 208-327-7871.

Respectfully,



Jennifer Berkey
Water Distribution Section

cc: Robert Duke, Water District 34 Watermaster
Ron Carlson, IDWR Eastern Regional Manager

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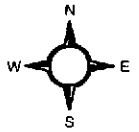
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2003

MOUNTAIN SPRINGS RANCH DIVERSIONS
AND ADJACENT DIVERSIONS FROM THE
BIG LOST RIVER AND PARSONS CREEK

September 9, 2003

DRAFT



13122920 MOUNTAIN SPRINGS RANCH 1

13122925 MOUNTAIN SPRINGS RANCH 4

13122205 MOUNTAIN SPRINGS RANCH 3

13122930 MOUNTAIN SPRINGS RANCH 2

13122950 DONAHUE 2

13122230 DONAHUE 1 POD

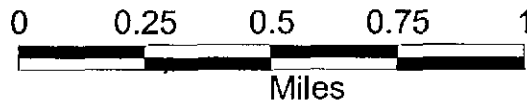
BOX STRUCTURE
FOR DONAHUE 1

13122245 ZOLLINGER

13122960 SIMMONS

LEGEND

- ▲ Physical diversion location based on IDWR GPS survey
- Legal point of diversion location based on IDWR water rights database





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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 7, 1999

MOUNTAIN SPRINGS RANCH LLC
5550 BARTON FLAT RD
MACKAY ID 83251

RE: TRANSFER OF WATER RIGHTS 34-00142/34-00611B/34-00612B/
34-00613B/34-10553B (Transfer 4706)

Dear Water Right Holder(s):

Enclosed are the copies of your approved Transfer of Water Right for the above referenced water rights (Transfer 4706). Please be sure to thoroughly read the Conditions and Remarks listed on the transfers. Also, please be advised that the accompanying transfer approvals should be considered and treated as **preliminary orders** 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 transfers.

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,

Jeff Peppersack, Manager
Water Right Permits Sections

JP:klt

Enclosures

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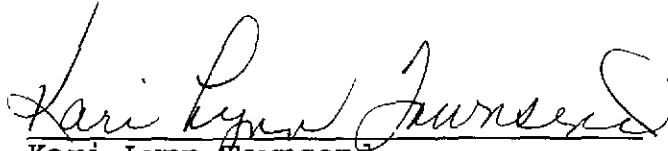
SEP 22 1999

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of **September, 1999** 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 34-00142/34-00611B/34-00612B/
34-00613B/34-10553B (Transfer 4706)**

**MOUNTAIN SPRINGS RANCH LLC
5550 BARTON FLAT RD
MACKAY ID 83251**


Kari Lynn Townsend
Secretary

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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

September 7, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

DOUG ROSENKRANCE
WATERMASTER
PO BOX 53
MACKAY ID 83251

RE: TRANSFER OF WATER RIGHTS 34-00142/34-00611B/
34-00612B/34-00613B/34-10553B (Transfer 4706)

Dear Doug:

Enclosed is a copy of the recently approved Transfer of Water Right for the above referenced water rights (Transfer 4706) in the name of Mountain Springs Ranch LLC.

Also enclosed is a copy of the reviewers notes.

If you have any questions, please call me at 208-327-7940.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jeff Peppersack'.

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

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Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief 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 the 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 twenty-one (21) 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 a 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. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department orders otherwise, all oral arguments will be heard in Boise, Idaho.

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MEMORANDUM

TO: Files 34-00142, 34-00611B, 34-00612B, 34-00613B & 34-10553

FROM: Pam Skaggs²⁸/State Office

SUBJECT: Transfer 4706

DATE: September 3, 1999

Transfer 4706 changes the place of use under all of Rights 34-00142, 34-00611B, 34-00612B and 34-00613B, and a portion of Right 34-10553, splitting this right into Parts A & B.

The applicant owned the entire property and sold 44 acres with 0.88 cfs of Right 34-10553. The transfer proposes to change the permissible place of use under the rest of the rights to reflect the remaining 471 irrigated acres, with a small adjustment moving 8 acres from the SESW to the SWSW of Section 12, T08N, R22E to consolidate the acres

A change of ownership form from the Donahues for the 44 acres will be processed following the approval of this transfer for Right 34-10553A. These rights in the SRBA already reflect a change in ownership to Mountain Springs Ranch LLC as the owner of the 471 irrigated acre parcel of land. Custer County Assessor's office confirmed the chain of ownership of these acres, first to the Donahues and then the remainder to Mountain Spring Ranch LLC

These rights have been resubmitted to the SRBA court in an amended report to address the irrigation season. Other recommended conditions include measuring devices & lockable controlling works, watermaster control, irrigation overlap, permissible place of use limits, combined right limits and standard transfer conditions.

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SEP 22 1999