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IDAHO DEPARTMENT OF WATER RESOURCES
PREFIX/SPLIT QUERY

DATE: 06/10/99

TIME: 11:44:24

PAGE: 1

WATER RIGHT NO.	NAME	OWNER	PRIORITY	DATE	STG/STS	SOURCE	USE DESC	SYSTEM
37-08883				00/00/0000	/Z			WR
X37-08883	BLACK BUTTE PROPERTIES LLC	C		03/25/1974	L/	GROUNDWATER	REC S AES S DIV S	WR

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5098
WATER RIGHT NO. ~~36-07460V~~
37-08883

This is to certify that: **BLACK BUTTE PROPERTIES LLC**
PO BOX 1877
KETCHUM ID 83340

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>
RECREATION STORAGE	01/01 to 12/31		56.4 AF
AESTHETIC STORAGE	01/01 to 12/31		56.4 AF
DIVERSION TO STORA	01/01 to 12/31	0.25 CFS	
	Totals	* 0.25 CFS	* 56.4 AF

SOURCE

GROUNDWATER

Priority: 03/25/1974

LOCATION OF POINT(S) OF DIVERSION:

** NENE , Sec. 29, Township 04S, Range 17E
LINCOLN County

PLACE OF USE: RECREATION STORAGE

TWN RGE SEC

04S 17E 29	NENE	NWNE	SWNE
	NENW	SENE	

PLACE OF USE: AESTHETIC STORAGE

TWN RGE SEC

04S 17E 29	NENE	NWNE	SWNE
	NENW	SENE	

CONDITIONS OF APPROVAL AND REMARKS

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. 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.

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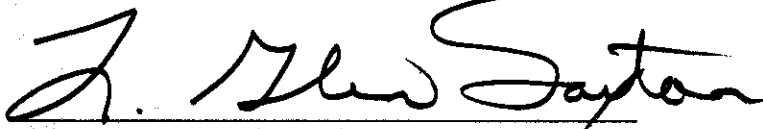
FEB 11 1999

TRANSFER NO. 5098
WATER RIGHT NO. 36-07460V

CONDITIONS OF APPROVAL AND REMARKS

3. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.
4. Use of water under this right may be affected by an agreement between the protestant and the right holder.
5. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
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 which will allow determination of the total rate of diversion.
- * 8. The total instantaneous diversion of water from all points of diversion under Transfer 5098 shall not exceed 0.25 cfs, nor a total combined annual volume of 56.4 af.
- ** 9. Two points of diversion are located within NENE, S29, T04S, R17E.

Dated this 21st day of October, 1998


Chief, Water Allocation Bureau

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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

October 22, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

BLACK BUTTE PROPERTIES LLC
PO BOX 1877
KETCHUM ID 83340

RE: Water Right 36-07460V Renumbered as 37-08883(Transfer 5098)

Dear Water Right Holder(s):

Enclosed is the copy of your approved Transfer of Water Right for the above referenced water right (Transfer 5098). 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.

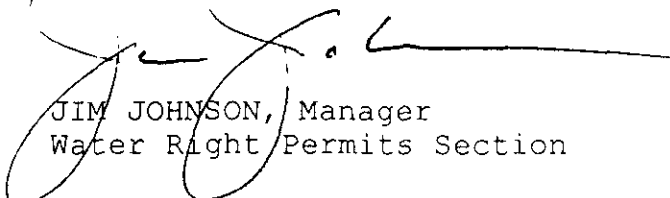
As of July 1, 1996, all water right owners are required to report any change in water right ownership and any change of mailing address to the department.

If you have acquired any other water right or have changed your mailing address **PRIOR TO** July 1, 1996, you have until July 30, 1998, to record the ownership and/or address change with the department.

If you acquired other water rights or changed your mailing address **AFTER** July 1, 1996, you must notify the department within 120 days of the change.

Failure to report these changes in a timely manner could result in a \$100 late filing fee. You can contact any office of the department for more information. If you have any questions concerning your water right listed above you can contact me at (208) 327-7947.

Sincerely,


JIM JOHNSON, Manager
Water Right Permits Section

JJ:klt
Enclosures

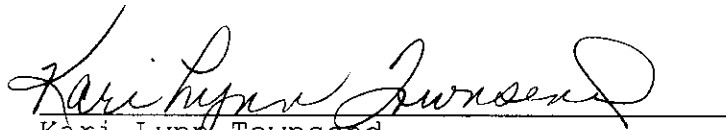
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CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of October, 1998, I mailed a true and correct copy, postage prepaid, of the foregoing **TRANSFER APPROVAL** to the person(s) listed below:

WATER RIGHT 36-07460V Renumbered as 37-08883 (Transfer 5098)

BLACK BUTTE PROPERTIES LLC
PO BOX 1877
KETCHUM ID 83340


Kari Lynn Townsend
Secretary

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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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CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Department in connection with a preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Department 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.

MEMORANDUM

TO: File 36-07460R

FROM: Pam Skaggs/State Office

SUBJECT: Transfer 5098

DATE: October 19, 1998

Transfer 5098 is another in a series of transfers resulting from Branchflowers' sale of their portion of Right 36-07460 as originally described in the SRBA Amended Stipulation of Right 36-07460C. Multiple transfers have been processed in an effort to move all of Branchflower's portion of the water right off Janss Farm's land.

The transfer is processed on Right 36-07460R and the transferred portion is identified as Part V. The remaining untransferred portion of the right will be split by ownership between Janss Farms (Part T) and Branchflowers (Part U) to reduce confusion in the future as the remaining portion under Part U is transferred.

Black Butte Properties has purchased a portion of Right 36-07460R to provide year round water from two existing wells to an existing irrigation regulation pond. The transferred water right will provide water to maintain the pond levels and keep the pond liner wet during non-irrigation season and other times water from the Big Wood Canal Company is not available.

The transfer application was protested and an agreement reached between the parties. The original application was amended and reduced to conform to limits set by the agreement. When the transfer is approved, Part V will be renumbered to Basin 37.

Recommended conditions include drilling permit requirements, measuring & annual reporting requirements, no authorization for new wells, protest agreement, multiple points of diversion, approved diversion limits and standard transfer conditions.

Change in Nature of Use Evaluation

Before:	10.39 cfs	IRR	584.5 acres	2338.0 afa/1753.5 afa
Tranferred				
Portion:	0.25 cfs	IRR	14.1 acres	56.4 afa/ 42.3 afa
Part V:	0.25 cfs	Div. &	(14.1 acres)	56.4 afa/ 42.3 afa
		Storage	Uses	

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WR0749NP
No. 37-08883

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 10/21/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD		DIVERSION RATE	DIVERSION VOLUME
				FROM	TO		
C	BLACK BUTTE PROPERTIES LLC PO BOX 1877 KETCHUM ID 83340 (208) 726-8816	03/25/1974	RECREATION STORAGE	01/01	12/31		56.40 AFA
			AESTHETIC STORAGE	01/01	12/31		56.40 AFA
			DIVERSION TO STORAGE	01/01	12/31	0.250 CFS	
			TOTAL DIVERSION:			0.250 CFS	56.40 AFA

Water Source: GROUNDWATER

Tributary to:

Stage: LICENSE

Point(s) of Diversion: T04S R17E S29 NENE LINCOLN County

Place of use Legal Description for: RECREATION STORAGE

NE				NW				SW				SE									
NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENE	:	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	:
04S	17E	29	:	R		R		R		:	R		R	:							:

Place of use Legal Description for: AESTHETIC STORAGE

04S	17E	29	:	A		A		A		:	A		A	:							:
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Pou County: LINCOLN

Conditions of Approval:

- 046 - Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
- 067 - 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.
- 068 - This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.
- 020 - Use of water under this right may be affected by an agreement between the protestant and the right holder.
- 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.
- T17 - 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 which will allow determination of the total rate of diversion.

Remarks: GEN The total instantaneous diversion of water from all points of diversion under Transfer 5098 shall not exceed 0.25 cfs, nor a total combined annual volume of 56.4 af.
Two points of diversion are located within NENE, S29, T04S, R17E.

=====

Dates:	App. Received:	06/18/1998	Priority Date:	03/25/1974
	Proof Due Date:		Proof Made Date:	
	Exam Made Date:		Exam Sent to S.O.:	
	Licensed Date:			

Misc: Water District Number: 37 Field Exam Fee:

Comments: Date: 11/26/1991 User-ID: CLELLAND Subject: COPIED FROM REMARKS
ACREAGE DISTRIBUTION ON LICENSE APPEARS TO BE INCORRECT, AS WE
HAVE NOT CHANGED THE IRRIGATION SYSTEM SINCE WE BOUGHT THE FARM
IN 1979.
LAND IN SESW SEC. 21 & NENW SEC. 28 WAS DRIED UP IN 1982 SO SENE
& NESE SEC. 29 COULD BE IRRIGATED. APPLICATION FOR PERMIT WAS
MADE IN 1985 TO COVER THESE LANDS.
WATER RIGHT SPLIT: TRANSFER #3684
JANSS-- 13.16 CFS, A36-07460A
BRANCHFLOWER--1.04 CFS, A36-07460B

Date: 12/23/1991 User-ID: CLELLAND Subject: TRANSFER 3767 INFO
THE RECOMMENDATIONS LISTED HERE ARE THE SAME AS IN R36-07460A.
HOWEVER, TRANSFER 3767 HAS BEEN ALLOWED SINCE THE PERIOD OF
FIVE YEAR NON-USE OF PORTIONS OF THIS RIGHT RANGED FROM 1987 TO
1991 AND THE TRANSFER WAS FILED IN 1990. IT APPEARS THAT IS THE
LAST PENDING TRANSFER AGAINST THE FORFEITED/ABANDONED PORTION OF
THIS RIGHT. ANY FURTHER TRANSFERS ON THE NON-IRRIGATED PORTION OF
THIS RIGHT SHOULD NOT BE ALLOWED.

Date: 03/18/1994 User-ID: SKAGGS Subject: TRANSFER NO. 4051
Transfer No. 4051 was filed to change the point of diversion and
the place of use under a portion of Right No. 36-07460C,
splitting the right into parts H and J. The transfer was
processed using the SRBA Claim as recommended to the court and
will be stored under an X prefix on the water right database
pending conclusion of the adjudication.

Date: 01/31/1996 User-ID: MBALDWIN Subject: TRANSFER NO. 4761
T# 4761 filed on 12/22/95 proposes to add diversion point(s),
change place of use, change nature of use, change period of use,
under a portion of Right 36-07460H, splitting the right into
Parts K & L. Based on adjusted rates per SRBA stipulation
agreement. SEE X36-07460K & X36-07460L.

Date: 02/08/1996 User-ID: MBALDWIN Subject: TRANSFER NO. 4765
T# 4765 filed on 1/29/96 proposes to to add diversion point(s),
change place of use, change nature of use, change period of use,
under a portion of Right X36-07460K, splitting the right into
parts M & N. SEE X36-07460M & X36-07460N.

Date: 10/01/1997 User-ID: PSKAGGS Subject: TRANSFER NO. 5114
Transfer No. 5114 changes the point of diversion, place, season &

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Comments: Date: 10/01/1997 User-ID: PSKAGGS Subject: TRANSFER NO. 5114
nature of use under a portion of Right No. X36-07460M, splitting
the right into Parts P & Q. SEE RIGHTS X36-07460P & X36-07460Q.

Date: 12/16/1997 User-ID: PSKAGGS Subject: TRANSFER 5160
Transfer 5160 adds a point of diversion, changes the nature,
season & place of use under all of Right 36-10656 & a portion of
Right X36-07460P, splitting the right into parts R & S.
SEE RIGHTS X36-07460R, X36-07460S & X36-10656.

Date: 10/16/1998 User-ID: PSKAGGS Subject: TRANSFER 5098
Transfer 5098 changes & adds points of diversion, changes the
place, nature & season of use of a portion of Right 34-07460R
identified as Part V. The remaining unchanged portion of Part R
was split into Parts T & U by ownership as identified by SRBA
stipulation agreement.

Date: 10/21/1998 User-ID: PSKAGGS Subject: Right Renumbered
This right renumbered from X36-07460V.

Audit: 10/21/98 PSKAGGS 10/21/98 PSKAGGS