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AUG 24 2001

BEFORE THE DEPARTMENT OF WATER RESOURCES Department of Water Resources

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
 FOR TEMPORARY CHANGE OF A)
 WATER RIGHT TC-37-13 IN THE)
 NAME OF THE D & B TREE FARM)
 _____)

**ORDER AUTHORIZING
 TEMPORARY CHANGE**

WHEREAS, a drought emergency has been declared for Gooding 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, as provided in section 42-240, Idaho Code, when the director determines that such changes can be accomplished in accordance with the provisions of section 42-222A, Idaho Code; and

WHEREAS, on July 31, 2001, the D & B Tree Farm ("applicant") submitted a Temporary Change Application. On August 10, 2001 and then again on August 21, 2001 the applicant amended the application. The attached Temporary Change Application ("application") is the final amended version filed with the Department; and

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

WHEREAS, The applicant assumes all risk and is the responsible party if diversion and use of water under the temporary change approval causes injury to other water rights or constitutes an enlargement in use of the original right;

ORDER

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

1. Diversion and use of right no(s). 36-04157 part and 37-10069 are authorized only at the point of diversion and place of use described on the application or as otherwise approved in this order.
2. This temporary change approval does not authorize construction of a new well as a new point of diversion.

3. 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.
4. Rights 36-04157 and 37-10069 are limited to the irrigation of a total of 8 acres in connection with the commercial tree farm for the remainder of the irrigation season.
5. 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.
6. The applicant agrees 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.
7. 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.
8. This temporary change approval does not prejudice permanent transfer application 69336 which has been filed to make a change of other rights for commercial use at the same tree farm. Transfer application 69336 will be judged on it's own merits.
8. This temporary change approval expires on November 15, 2001, 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 22nd day of August, 2001.



AUTHORIZED PERSON
IDWR

AUG-21-01 12:51 PM

P. 02

Form 42-222A
12/99TC-37-13
Amended

Ident. No.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TEMPORARY CHANGE APPLICATION

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

Name of Applicant David Dawson Hailey Nursery
D & B Tree Farm Phone 788-3161
 Post Office Address P.O. Box 7541 Hailey Id. 83333

A. PURPOSE OF TRANSFER

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

2. Describe the proposed change(s) and the reason(s) thereof Tree Farm needs water later on spring and transplanted trees to require the survival of the trees. This is just for the year (2001). We are applying for a permanent transfer.

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

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>36 04152</u>	<u>06/01/51</u>	<u>0.20/40</u>	<u>Commercial</u>	<u>04/01 to 11/15</u>
<u>37-100109</u>	<u>01/01/1910</u>	<u>0.01</u>	<u>Domestic</u>	<u>1/01 to 12/31</u>

2. Total amount of water being transferred 0.20 cubic feet per second and/or 40 acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

Ident No.	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
					<u>SW 33</u>	<u>05S</u>	<u>15E</u>	<u>Coaling</u>	<u>one existing well</u>

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	
<u>5S</u>	<u>15E</u>	<u>33</u>																	

Total Acres _____

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OCT 11 2001

AUG-21-01 12:51 PM

P. 03

6 General Information:

- a. Who owns the water right to be changed? Del Korte
- b. Describe the arrangement allowing use of the right We would like to use this right for the remainder of irrigation season
- c. Describe the effect on the land now irrigated if the change is approved pursuant to this application. Land will not be irrigated from groundwater well is already closed
- 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 not be used
- f. Describe other water rights used for the same purpose. Canal water has been purchased by new owner
- 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.

Del Korte
(Signature of applicant)

FOR DEPARTMENT USE ONLY

Received by JF Date 8/21/01 Fee \$50 5024210

Receipted _____ # _____ Recommend: ☒ approve _____ deny _____

Watermaster recommendation N/A

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. TC-37-13

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

See attached Order
dated 8/22/01

Witness my hand this 22nd day of August, 2001.

[Signature]
For the Director

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OCT 11 2001

RECEIVED

NOV 28 2000

2000 NOV 27 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

Department of Water Resources

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 37-10069

NAME AND ADDRESS: FLOYD A GOSS
MARY GOSS
1999 E 1775 S
GOODING, ID 83330

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

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

PRIORITY DATE: 01/01/1910

POINT OF DIVERSION: T05S R15E S33 NWSW Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic 1 HOME	01-01 TO 12-31	0.04 CFS

PLACE OF USE: Domestic Within Gooding County
T05S R15E S33 SWSW

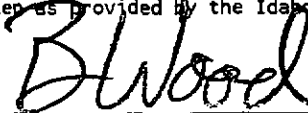
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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

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.


Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

MICROFILMED

OCT 11 2001

801 NORTH MAIN STREET
P.O. BOX 3135
HAILEY, IDAHO
(208) 788-3161
(208) 788-2069 FAX

RECEIVED

AUG 21 2001

Department of Water Resources
Southern Region

HAILEY NURSERY

Fax - 736-3037

To: John Fristoy From: Dave Dawson

Fax: X Date: 8-21-01

Re: Pages:

☐ Urgent ☒ For Review ☐ Please Reply ☐ Please Recycle

• Comments:

THIS IS THE NEW APP
THAT DEL KOLTZ HAD ME FILL
OUT WITH NEW WATER SOURCE.

Any thing else call me

DAVE DAWSON
788-3161

MICROFILMED

OCT 11 2001

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 37-10069 V1

WATER RIGHT NUMBER: 37-10069 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MARY GOSS 1999 E 1775 S GOODING, ID 83330
Current Owner	FLOYD A GOSS 1999 E 1775 S GOODING, ID 83330 (208)934-4244

Priority Date: 01/01/1910

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.040 CFS	
<u>Total Diversion:</u>		0.040 CFS	

Location of Point(s) of Diversion

GROUND WATER NW1/4SW1/4SW1/4 Sec. 33, Twp 05S, Rge 15E, B.M.
GOODING County

Place of Use

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05S	15E	33												X					

Total Acres: 0

Conditions of Approval:

1. N11 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
2. N13 THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Remarks:

1. Explanatory PARCEL NO. 05S15E336000A

Comments:Dates and Other Information:

MICROFILMED
OCT 11 2001

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 37-10069 V1

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag: NONE RECEIVED
State or Federal: S
Owner Name Connector: AND
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

MICROFILMED

OCT 11 2001

AUG 20 2001

7671

Date _____

of

7

To Colon Santos

Front

Allen Nev. 74

Co./Dept.

Ca.

Phone #

Phone #	
---------	--

Fax #

Fax #

Department of Water Resources

Ident. No.

OF IDAHO

WATER RESOURCES

TEMPORARY CHANGE APPLICATION

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

Name of Applicant

David Dawson D+B Tree Farm

Phone

788-3161

Post Office Address

P.O. Box 2541, Harley Td 83323

A. PURPOSE OF TRANSFER

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

2. Describe the proposed change(s) and the reason(s) thereof. Tree form needs water earlier and later in the season (Permanent Transfer) to insure survival of young and transplanted trees. The canal Company (Bore) had been given notice this year that the water will be cut off early. This is the reason for the temporary request.

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

- | 1. Right Number | Priority | Amount (cfs/ac-ft) | Nature of Use | Period of Use |
|-----------------|-----------------|--------------------|-------------------|-----------------------|
| <u>36-02676</u> | <u>12-13-66</u> | <u>0.05/7.5</u> | <u>Commercial</u> | <u>01/01 to 12/31</u> |
| <u>36-07044</u> | <u>10-18-69</u> | <u>0.074/13.2</u> | <u>Commercial</u> | <u>01/01 to 12/31</u> |
| <u>36-07158</u> | <u>02-18-71</u> | <u>0.07/3.3</u> | <u>Commercial</u> | <u>01/01 to 12/31</u> |

2. Total amount of water being transferred 10.10 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Cromwell tributary to

4. Point(s) of Diversion: *X Combined rate of flow 0.0114 cfs/acre*

[illegible]

9. Lands indicated or place of use:

[illegible]

OCT 11 2001

Total Acres

6. General Information:

- a. Who owns the water right to be changed? Kohle-Larson
- b. Describe the arrangement allowing use of the right Permanent transfer application is in place at this time
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application: lands will be dried up and no longer be irrigated
- 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? will not be used
- 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.

[Signature]
(Signature of applicant)

FOR DEPARTMENT USE ONLY

Received by JF Date 7/31 8/10 Fee \$50.00

Receipted JF # 5029210 Recommend: _____ approve _____ deny _____

Watermaster recommendation _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. _____

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

Witness my hand this _____ day of _____

MICROFILMED
OCT 1-1-2001

For the Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 23, 2001

DAVID DAWSON
D & B TREE FARM
PO BOX 2541
HAILEY ID 83333

Re: Temporary Change Application No. TC-37-13

Dear Mr. Dawson:

Your Temporary Change Application as referenced above has been granted.

Please be advised that the enclosed ORDER AUTHORIZING TEMPORARY CHANGE contains special conditions of approval.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

A handwritten signature in cursive script, appearing to read 'AM for', written in dark ink.

Allen D. Merritt, P.E.
Southern Region Manager

Enclosure(s)

MICROFILMED
OCT 11 2001

Merritt, Allen

From: Young, Norm
Sent: Wednesday, August 22, 2001 4:30 PM
To: Saxton, Glen
Cc: Merritt, Allen
Subject: FW: D & B Tree Farm TC-37-13

Glen and Allen: This looks approvable to me. Norm



D & B Tree Farm
TC-37-13

Merritt, Allen

From: Merritt, Allen
Sent: Wednesday, August 22, 2001 3:13 PM
To: Young, Norm
Subject: D & B Tree Farm TC-37-13

D & B Tree Farm has amended their TC application and is now proposing to utilize right 36-04157 that Del Kohtz discussed with you. I have amended my draft order for approval. The proposed right is in the same response zone as the tree farm and the proposal no longer uses rights associated with the property west of Paul that is the subject of numerous protested transfers.



drought TC-37-13
DandB Tree Fa...

Merritt, Allen

From: Merritt, Allen
Sent: Friday, August 17, 2001 2:03 PM
To: Young, Norm
Cc: Saxton, Glen; Ciscell, Michael
Subject: TC-37-13 D&B Tree Farm

After our phone conversation this morning I contacted David Dawson (applicant) and then Bob Wagoner eventually called me back. Both have interests in the Tree Farm.

I told both of them that the administration including the director had reviewed their TC application. I indicated that there was concern over the numerous protests for moving the water rights (those on their TC and permanent transfer) under the various splits being proposed and also there was concern over moving from one response zone to another.

I told them that in light of these concerns the department would like to give them the opportunity to modify their application by identifying a water right within the response zone they are located for their TC. I faxed Mr. Wagoner the 8" x 11" map dated 3/26/99 identifying response zones. Mr. Wagoner asked about moving water from Hailey down to Gooding and I told him that did not look favorable. I told him he should focus in zone IV-1. He asked about a water right that was participating in the IPCO buy out near Gooding and I told him I did not think that would work but I would check. I told him that it would be best to find a valid right that might be in a corner of a pivot not irrigated this year or an area that has new construction that was once irrigated by ground water that the owner would consent for temporary use.

He indicated that he would call Del Kohtz and see if he knew of anything.

Kohtz called shortly after and eventually came into the office. I reviewed with him the map which he indicate he had a copy and we discussed what I discussed with D & B Tree Farm. He indicated he had a copy of the Response Zone Map and had discussed issues with Sutter. He indicated that Sutter gave him the impression IDWR was moving away from response zones. I told him that the processing of TC-37-13, although related to the various transfers, was not a prejudging of the various contested cases. I told him that the response zones are a concern and what ever hydrologic evidence provided at the contested case would probably decide the issue.

He encouraged the combining of the various contested cases and I told him I was working on it but pointed out that each applicant or application needed to put on favorable evidence for each issue so any combined hearing would be somewhat unusual. I told him I still have not heard from all the parties on the possibilities. He commented that the Toste transfer if it is unfavorably decided on flow lines would not set a precedent for the other transfers since their flow lines are different. It told him that was the kind of specific issues that each applicant would need to address separately at a combined hearing

Since we do not have a large map of the response zones I have requested that Mike Ciscell provide an Arc-view overlay for the most recent version. If the director adopts a policy of not moving water out side of response zones I would encourage an Administrative Memo. As you know we have transferred numerous rights outside of response zones and have numerous pending transfers that propose the same. I will forward all to SO with recommendation that administration review before approval. I have alerted our agents of these issues.