

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4422
WATER RIGHT NO(S). 47-00175/47-00176/47-00187/47-00188

This is to certify that: BRENT FUNK
2951 N 4000 E
HANSEN ID 83334

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. 47-00175 :			
IRRIGATION	04/01 to 10/31	0.40 CFS	169.0 AF
Priority: 01/01/1918			
Right No. 47-00176 :			
IRRIGATION	04/01 to 10/31	1.60 CFS	640.0 AF
Priority: 09/23/1929			
Right No. 47-00187 :			
IRRIGATION	04/01 to 10/31	2.50 CFS	640.0 AF
Priority: 06/29/1911			
Right No. 47-00188 :			
IRRIGATION	04/01 to 10/31	1.17 CFS	494.3 AF
Priority: 11/29/1918			
TOTAL:		* 5.67 CFS	* 1,024.0 AF

SOURCE

ROCK CREEK

TRIBUTARY OF

SNAKE RIVER

LOCATION OF POINT(S) OF DIVERSION:

SWSW , Sec. 1, Township 12S, Range 18E
TWIN FALLS County

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
11S 19E 31	NENE 38	NWNE 39	SWNE 34	
	SENE 36	NESE 33	NWSE 37	
	SWSE 39			256
Total number of acres irrigated:				** 256

TRANSFER NO. 4422
WATER RIGHT NO(S). 47-00175/47-00176/47-00187/47-00188

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 47-O.
2. A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.
- * 3. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.
4. After specific notification by the department, the right holder shall annually report the amount of water diverted to the department.
5. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
6. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
7. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
- ** 8. Combined Right Nos. 47-00175 and 47-00176 are limited to the irrigation of 160 acres in the place of use described above in a single irrigation season.
- ** 9. Right No. 47-00187 is limited to the irrigation of 160 acres in the place of use described above in a single irrigation season.
- ** 10. Right No. 47-00188 is limited to the irrigation of 160 acres in the place of use described above in a single irrigation season.
11. See accompanying Order.

Dated this 10th day of October, 1995


Chief, Water Alloc. Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4422 FILED IN THE)
NAME OF BRENT FUNK)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (department), as a result of the filing of application for transfer no. 4422, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 7, 1994, Brent Funk (applicant) filed application for transfer no. 4422 (application) with the department seeking to change the place of use of water right nos. 47-00175, 47-00176, 47-00187, 47-00188, 47-07529 and 47-00137B. The applicant seeks a permissible place of use for the water rights.

2. Information from the records of the watermaster of Water District No. 47-0 and from water right records of the department do not show that the applicant owns water right no. 47-00137.

3. Water right nos. 47-00175, 47-00176, 47-00187, and 47-00137 provide 0.02 cfs of water for the 256 acre place of use.

CONCLUSIONS OF LAW

1. Section 42-202, Idaho Code, provides in pertinent part as follows:

In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of the land proposed to be irrigated, with the total acreage to be reclaimed as near as may be; provided, that no one shall be authorized to divert for irrigation purposes more than one cubic foot of water per second of the normal flow for each fifty (50) acres of land to be so irrigated unless it can be shown to the satisfaction of the department of water resources that a greater amount is necessary.

2. Section 42-222, Idaho Code, provides in pertinent part as follows:

(1) Any person, entitled to the use of water whether represented by license issued by the department of water

resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

3. The applicant has not shown that he is entitled to the use of water under right no. 47-00137.

4. The applicant is not entitled to divert more than 0.02 cfs of water per acre.

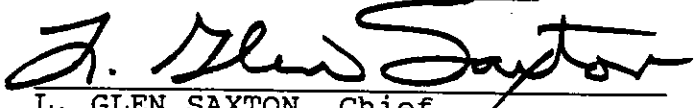
5. The department should not approve transfer no. 4422 authorizing a change in the place of use of right nos. 47-00137 and 47-07529.

ORDER

IT IS THEREFORE, HEREBY ORDERED that application for transfer no. 4422 is **PARTIALLY APPROVED** as shown on the attached transfer document; and

IT IS FURTHER, HEREBY ORDERED that transfer no. 4422 does not make changes to rights 47-00137 or 47-07529.

Dated this 10th day of October, 1995.


L. GLEN SAXTON, Chief
Water Allocation Bureau

47-0-2
45-J-2
✓

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

HARRIET E. McDERMID,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
MAGNUS LARSEN, Watermaster of	:	
Water District #30 of the State	:	
of Idaho in charge of the dis-	:	
tribution of the waters of Rock	:	
Creek, Twin Falls County, Idaho,	:	
	:	
Defendant,	:	
	:	DECREE
and	:	
	:	
CLYDE EDMINSTER, EDNA M. KEMP,	:	
H. B. TILLEY, O. D. TILLEY,	:	
MARIAN GILLETTE, Administratrix	:	
of the Estate of W. H. Turner,	:	
deceased, and Executrix of the	:	
Estate of Cynthia G. Turner,	:	
deceased; KENNETH LARSEN: and	:	
EARL MURRAY,	:	
	:	
Interveners.	:	

The above entitled action came on regularly for trial at the March, 1942 term of the above court, and having been tried by the Court on the 27th day of March, 1942, Honorable James W. Porter, district judge, presiding; James R. Bothwell, Esquire, appearing for plaintiff, Harriet E. McDermid; Messrs. Parry and Thoman appearing for Clyde Edminster, Edna M. Kemp, H. B. Tilley and O. D. Tilley, interveners; Frank L. Stephan, Esquire, appearing for Marian Gillette, administratrix of the estate of W. H. Turner, deceased, and executrix of the estate of Cynthia G. Turner, deceased, intervener; S. T. Hamilton, Esquire, appearing for Kenneth Larsen, intervener; and A. J. Myers, Esquire, appearing for Earl Murray, intervener; and the defendant Magnus Larsen not appearing, and his default having heretofore been entered by the Clerk; and after hearing the allegations and proofs of the parties, which consisted of a Stipulation of Facts,

DO NOT WRITE IN THESE SPACES
OCT 30 1942

Elliott ditch at a point in the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section One (1), Township Twelve (12) South, Range Eighteen (18) East Boise Meridian, Twin Falls County, Idaho. And further there is awarded to the said inter-

vener, Marian Gillette, administratrix and executrix, as afore-

said, the right to conduct at all times sixty (60) inches of

water, which was acquired on the 9th day of April, 1921, from

Henry Jones and Wilmoth Jones, husband and wife, with a priority

April 20, 1880, through said ditch, and sixty-two (62) inches of

water diverted and appropriated from certain wells located in

Section Twelve (12), Township Twelve (12) South, Range Eighteen

(18) East Boise Meridian, Twin Falls County, Idaho, for use after

the flood season and at a time when there is excess capacity in

the ditch.

VII

That there is hereby awarded to Kenneth Larsen, intervener, and his successors in interest, for use upon the following described lands situated in Twin Falls County, Idaho, to-wit:

The East half (E $\frac{1}{2}$) of Section Thirty-one (31), Township Eleven (11) South, Range Nineteen (19) East Boise Meridian,

a water right from Rock Creek, Twin Falls County, Idaho, and its tributaries, of

2 5/10 miner's inches of water per second of time with a priority date of June 29, 1911, for use upon the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty-one (31), Township Eleven (11) South, Range Nineteen (19) East Boise Meridian; and

58.75 miner's inches of water per second of time with a priority date of November 29, 1918, for use upon the Northeast Quarter (NE $\frac{1}{4}$) of Section Thirty-one (31), Township Eleven (11) South, Range Nineteen (19) East Boise Meridian,

all to be diverted from Rock Creek into the Romig-Osborne-Elliott ditch at a point in the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section One (1), Township Twelve (12) South, Range Eighteen (18) East Boise Meridian, Twin Falls County, Idaho.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

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

October 10, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

BRENT FUNK
2951 N 4000 E
HANSEN ID 83334

RE: TRANSFER NO. 4422

Dear Water Right Holder:

Enclosed is a copy of the partially approved Transfer No. 4422 of Water Rights 47-00175/47-00176/47-00187/47-00188. Please be sure to thoroughly review the Conditions/Remarks as listed on the transfer, and the enclosed Preliminary Order.

The accompanying order 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 unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer 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 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. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this 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 Director. The Director retains the right to review the preliminary order on his own motion.

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 Rules of Procedure 302 and 303.

FINAL ORDER

The Director 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 Director 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.

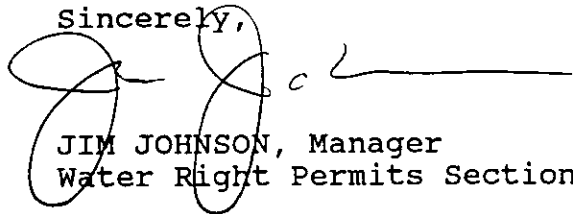
APPEAL OF FINAL ORDER TO DISTRICT COURT

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.

Sincerely,

A handwritten signature in black ink, appearing to be "Jim Johnson", written over the typed name.

JIM JOHNSON, Manager
Water Right Permits Section

JJ:rl

Enclosure

MEMORANDUM

TO: FILE 47-00187

FROM: PAM SKAGGS

RE: TRANSFER # 4422

DATE: 8-16-94

Original Transfer Application, Form and correspondence regarding the above referenced Transfer is located within file # 47-00137.