

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 86387**

This is to certify that: **LARRY D WHITTIER**
4402 PAHSIMEROI RD
MAY, ID 83253-4913

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
73-186	WR/DECREED	5/30/1908	3.200 cfs	N/A	N/A	138.0	BIG CREEK

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
73-186	NO	YES	NO	NO	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
73-186	73-186	3.200 cfs	N/A	N/A	138.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		3.200 cfs	N/A	N/A	138.0		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 3rd day of October, 2022.



Regional Manager

Transfer No. 86387

SCANNED

OCT 04 2022

WATER RIGHT NO. 73-186

As Modified by Transfer No. 86387

In accordance with the approval of Transfer No. 86387, Water Right No. 73-186 is now described as follows:

Right Holder: LARRY D WHITTIER
4402 PAHSIMEROI RD
MAY, ID 83253-4913

Priority Date: 5/30/1908

Source: BIG CREEK

Tributary: PAHSIMEROI RIVER

BENEFICIAL USE

IRRIGATION

From

04/01

To

to 10/31

Diversion Rate

3.200 cfs

3.200 cfs

LOCATION OF POINT(S) OF DIVERSION

BIG CREEK

NWNW

Sec 20 Twp 13N Rge 24E CUSTER County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13N	24E	19	24.0	38.0			38.0			38.0									138.0

POU Total Acres: 138.0

CONDITIONS OF APPROVAL

1. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 73.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
4. This right does not grant any right-of-way or easement across the land of another.
5. The right holder shall accomplish the change authorized by this transfer within one 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.

Transfer No. 86387

SCANNED

OCT 04 2022

WATER RIGHT NO. 73-186
As Modified by Transfer No. 86387

CONDITIONS OF APPROVAL

7. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

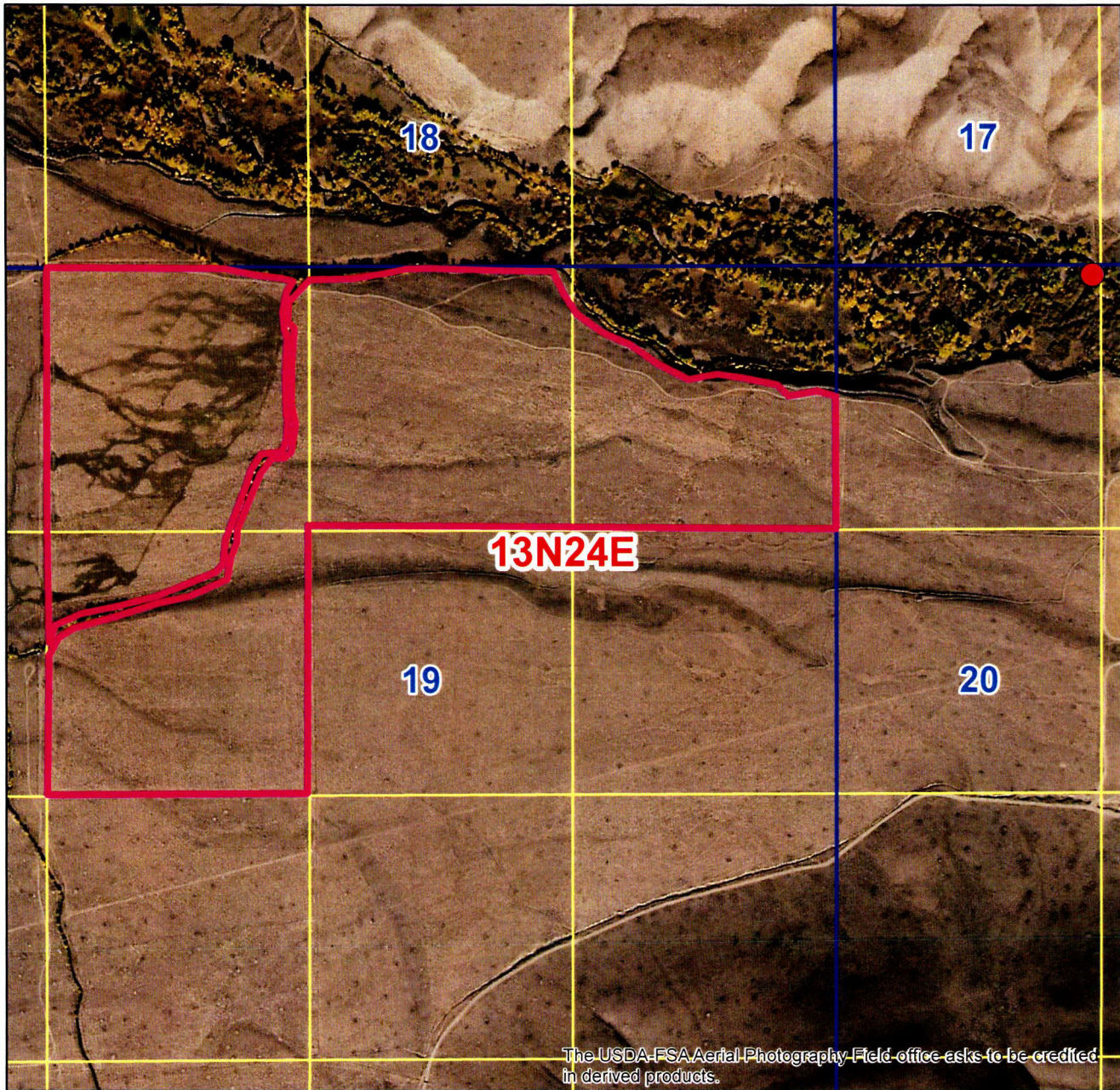


Transfer No. 86387

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Attachment to Transfer Approval 86387

This map depicts the place of use boundary at the time of this transfer approval and is attached to the approval document solely for illustrative purposes.

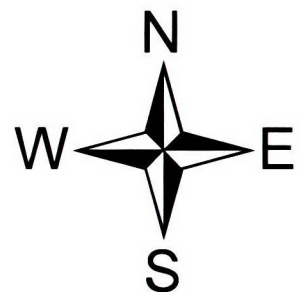


The USDA-FSA Aerial Photography Field office asks to be credited in derived products.

Legend

- WR POD
- WR POU
- Township/Range
- Sections
- QQ

0 375 750 1,500 Feet



SCANNED
Date: 10/3/2022
OCT 04 2022



Governor Brad Little

Director Gary Spackman

October 03, 2022

LARRY D WHITTIER
4402 PAHSIMEROI RD
MAY ID 83253-4913

Re: Transfer No: 86387
Water Right No(s): 73-186

Transfer Approval Notice

Dear Water Right Holder:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) 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 by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

SCANNED
OCT 04 2022

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 525-7161.

Sincerely,



Christina Henman
Administrative Assistant

Enclosure
CC:

THE BANK OF COMMERCE
C/O WESTERN AGCREDIT
PO BOX 95850
SOUTH JORDAN UT 84095-0850

SCANNED
OCT 04 2022

CERTIFICATE OF SERVICE

I hereby certify that on October 03, 2022 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

Re: Transfer No.: 86387

Water Right No(s): 73-186

**LARRY D WHITTIER
4402 PAHSIMEROI RD
MAY ID 83253-4913**

**THE BANK OF COMMERCE
C/O WESTERN AGCREDIT
PO BOX 95850
SOUTH JORDAN UT 84095-0850**



**Christina Henman
Administrative Assistant**

SCANNED
OCT 04 2022

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document 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 of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing 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 this order. **Note: the petition must be received by the department within this fourteen (14) day period.** 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 fourteen (14) 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 with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

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 IDAPA Rules 37.01.01302 and 37.01.01303 (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 service date 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

Date: August 12, 2022
To: Transfer 86387
From: Jake Nebeker
Re: Review & Evaluation of Sufficiency of Information

The purpose of this transfer is to change the legal description of the point of diversion for water right 73-186 to correct a clerical error. The applicant is proposing to change the point of diversion to an administered diversion point 50 ft downstream across a section line. The actual point of diversion will not change. The transfer will simply update the legal description for the point of diversion to match the physical location of the diversion dam.

Authority to File:

The applicant is the current water right owner of record. Custer county tax lot data shows the applicant as the owner of the current place of use.

Water Right Validity:

The right included in this transfer was decreed in the SRBA in 2010. I spoke with the water master of Water District 73 about the water right. He mentioned that this is a junior right on Big Creek and only receives a week or two of water in most years before the right is curtailed. In the past when the applicants place of use has been irrigated, it was from the proposed point of diversion. Based on this rights priority the current source does not provide an adequate water supply. Forfeiture does not appear to be an issue.

Injury to Other Water Rights:

Other rights do not appear to be injured by the proposed change. The quantity authorized to be diverted will not change as a result of the transfer. The water master was notified and did not provide a comment. The transfer was advertised without protest.

Enlargement of Use:

The proposed change does not appear to result in enlargement because neither rate nor irrigated acreage will increase as a result of the transfer.

Local Public interest:

No issues identified.

Beneficial Use/Conservation of Water Resources:

No issues identified.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

SCANNED
OCT 04 2022