

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 84806**

This is to certify that: **NIKI HUTCHINSON**
545 MIDDLEFORK RD
GARDEN VALLEY, ID 83622-5007

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>
65-10844	WR/DECREED	6/1/1900	1.610 cfs	N/A	N/A	62.0	LIGHTNING 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>
65-10844	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>
65-10844	65-10844	1.240 cfs	N/A	N/A	62.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		1.240 cfs	N/A	N/A	62.0		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 28th day of June, 2023


SCOTT STORMS, Water Rights Supervisor

WATER RIGHT NO. 65-10844**As Modified by Transfer No. 84806**

In accordance with the approval of Transfer No. 84806, Water Right No. 65-10844 is now described as follows:

Right Holder: NIKI HUTCHINSON
545 MIDDLEFORK RD
GARDEN VALLEY, ID 83622-5007

Priority Date: 6/1/1900

Source: MIDDLE FORK PAYETTE RIVER **Tributary:** PAYETTE RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	4/01	to 11/01	1.240 cfs 1.240 cfs

LOCATION OF POINT(S) OF DIVERSION

MIDDLE FORK PAYETTE RIVER NWSW Sec 26 Twp 10N Rge 04E BOISE County

PLACE OF USE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10N	04E	26										10.0	31.0						41.0
10N	04E	35						21.0											21.0

POU Total Acres: 62.0

CONDITIONS OF APPROVAL

1. Rights 65-10844, 65-10845 and 65-10847A when combined shall not exceed the irrigation of 62 acres.
2. Diversion from the Middle Fork Payette River is limited to those times water is available for diversion under this right and priority from Lightning Creek at the original point of diversion located in the SENW, Sec. 24, T10N, R04E.
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. 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. 65.
5. 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).

Transfer No. 84806

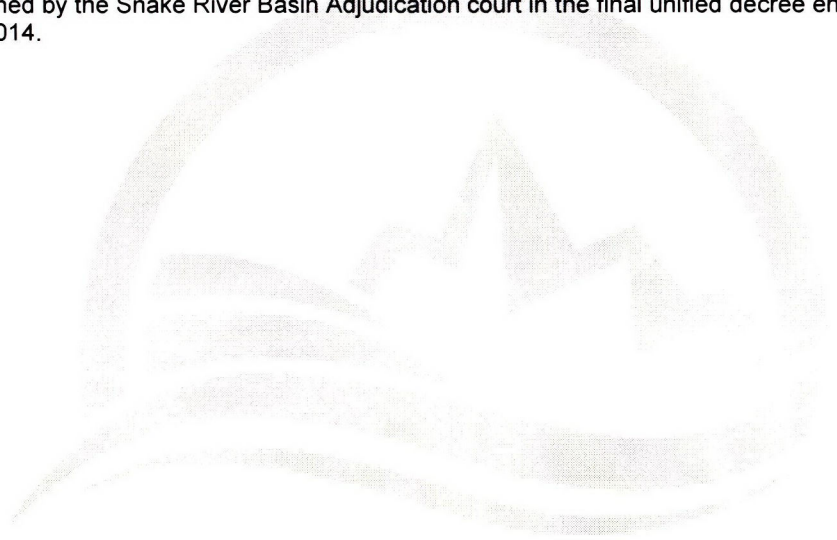
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WATER RIGHT NO. 65-10844
As Modified by Transfer No. 84806

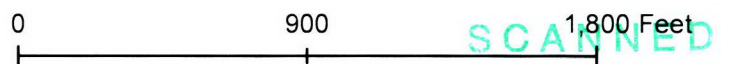
CONDITIONS OF APPROVAL

6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. 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.



Attachment to Transfer No. 84806
Water Right: 65-10844

An aerial photograph of a rural landscape, likely a farm or estate, with a yellow boundary line outlining a specific area. The image is overlaid with a grid of blue lines. Various labels are present: 'NESE' and 'NENE' in the top left; 'SESE' and 'NENE' in the bottom left; 'SWSW' and 'NWNW' in the center; 'NESW' and 'NENW' in the top right; 'SESW' and 'NENW' in the bottom right. Blue numbers '27', '26', '34', and '35' are also visible. A red label '10N04E' is located in the center. A yellow dot is marked near the top center. The terrain is a mix of green fields and brown patches, with some buildings and roads visible on the left side.



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June 30, 2023

NIKI HUTCHINSON
545 MIDDLEFORK RD
GARDEN VALLEY ID 83622-5007

Re: Transfer No: 84806
Water Right No(s): 65-10844

Transfer Approval Notice

Dear Water Right Holder(s):

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.

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

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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) 334-2190.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynne Evans".

Lynne Evans
Administrative Assistant I

Enclosure(s)

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2023 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.: 84806
Water Right No(s): 65-10844

NIKI HUTCHINSON
545 MIDDLEFORK RD
GARDEN VALLEY ID 83622-5007

NEIL SHIPPY
WATER DISTRICT 65
102 N MAIN ST
PAYETTE ID 83661-2522



Lynne Evans
Administrative Assistant I

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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

TO: Transfer No. 84806

FROM: Scott Storms

DATE: 6/28/2023

RE: Evaluation of Application

Summary of Information Submitted

Narrative: Transfer No. 84806 proposes to change the point of diversion for existing water right 65-10844. WR 65-10844 historically pulls water from Lightning Creek which is tributary to the Middle Fork Payette River. Transfer proposes moving the POD of WR 65-10844 from Lightning Creek to a downstream point on the Middle Fork Payette. The site is in Garden Valley, Idaho, immediately west of the Middle Fork Payette River, near the intersection of S Middle Fork Rd. and Outpost Rd.

Authority to File: The application was filed in the name of Nikki Hutchinson. At the time of application, water right 65-10844 was in the name of H. Lloyd Kalblinger. Documentation provided with the application, showed Nikki Hutchinson as appointed personal representative of the Estate of H. Lloyd Kablinger. Additionally, a change of ownership was filed separate from this transfer application and change of ownership was completed for water right 65-10844 to represent Nikki Hutchinson as the owner of said water right. This matches current ownership of water right 65-10844. County tax lot data indicates Nikki Hutchinson owns the property where the proposed diversion is to be located. The place of use (POU) for water right 65-10844 is not changing under this proposed transfer, thus there is no evidence to suggest that the applicant does not have full authority to file this transfer.

Water Right Validity:

Water right 65-10844 was initially decreed in 2000. Review of imagery and remote sensing data covering the irrigation POU found no evidence that the water had been put to that beneficial use at any point over the prior five consecutive years. When asked to provide an exception or defense to forfeiture as provided in Idaho code §42-223, the water right owner proclaimed that the canal that was used to deliver water to the property washed out prior to her purchasing the property and that cost estimates for repair were insurmountable, and therefore her defense was that she has been unable to divert water due to circumstances over which she has no control, as provided by statute §42-223(6).

Overlap Analysis: No POU overlap is found. There are other rights nearby, however because the existing POU will not be changing there is no concern for POU overlap being created through this transfer. No POD overlap is found. The new point of diversion will be at a new replacement well tag # D0095624.

Injury to Other Water Rights: None anticipated. Because the POD is moving a short distance to the south and will be pulling from the similar underground elevations, there is no reason to think that diverting from the new POD will cause any injury to existing water rights. Moreover, because the new point of diversion will not be changing the amount of water sought by this right, there is no evidence to suggest that any injury to other rights will occur as a result of this transfer.

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Enlargement of Use:

Water right 65-10844 authorizes the diversion of 1.61 cfs from Lightning Creek for the irrigation of 62 acres. This amounts to 0.26 cfs per acres, or a total 0.37 cfs more than the standard 0.02 cfs/acre.

Review of the original claim file and recommendation documents show clear evidence that the additional rate was included to account for conveyance losses in the ditch system. Since the proposed new diversion system consists of a pump and closed conduit system, conveyance losses will no longer be of concern. As such, an approved transfer should include a reduction of diversion rate to a standard 0.02 cfs per acre for a total of 1.24 cfs, to prevent additional diversion of water which was never intended to actually be applied to irrigation.

Regarding the potential of an increase of water availability by moving the POD from a tributary stream to a main stem river, condition X53 stating: *Diversion from the Middle Fork Payette River is limited to those times water is available for diversion under this right and priority from Lightning Creek at the original point of diversion located in the SENW, Sec. 24, T10N, R04E.*

No increase in the volume of diversion or season of use would result from approval of this transfer, therefore there are no further concerns of enlargement.

Local Public Interest: The transfer application proposes beneficial use consistent with local public interest.

Beneficial Use/Conservation of Water Resources: The application proposes beneficial use consistent with conservation of water resources in Idaho.

The application is consistent with criteria of I. C. § 42-222 and should be processed.

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Shearer, Justin

From: niki hutchinson <lorretta52@gmail.com>
Sent: Thursday, March 9, 2023 4:40 PM
To: Shearer, Justin
Subject: Re: Hutchinson water right transfer
Attachments: image001.png

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Justin,

I do know that the previous owner of the elk ranch rebuilt his section of the canal, do not know the year. Before my time.

Niki

On Thu, Mar 9, 2023, 4:27 PM Shearer, Justin <Justin.Shearer@idwr.idaho.gov> wrote:

Thanks Niki,

Do you by chance know what year the canal from Lightning Creek washed out?

Thanks,



From: niki hutchinson <lorretta52@gmail.com>
Sent: Thursday, March 9, 2023 1:50 PM
To: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>
Subject: Hutchinson water right transfer

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Good afternoon Justin. In regards to the transfer and non use of lightning creek usage maybe this is helpful.

I inherited this property in 2020. The canal that was used to bring water onto this property, out of lightning creek, washed out. It is not useable. I got a bid to clean out and rebuild, that came in at 70,000.00. I can not afford to go that route. This is why it was suggested to transfer the water rights.

I hope this answers your concerns, and that the permit can go forward.

Any other questions please let me know.

Thank you,

Niki Hutchinson

Shearer, Justin

From: Shearer, Justin
Sent: Wednesday, March 8, 2023 4:34 PM
To: niki hutchinson
Subject: RE: Transfer of Water Right 65-10844

Hi Niki,
Yes of course, I'm happy to elaborate.

If the records available to the department do not establish that a right has been used within the previous, consecutive, five-year period, the applicant must be asked to provide written documentation demonstrating that the right has been used within that time period. Examples of appropriate documentation include power records for pumps used to divert water under the right, Farm Service Agency (FSA) crop production records, receipts or other evidence of expenditures or revenue from the use of water under the right, and adequate affidavits of objective persons having actual knowledge of the uses of water under the right. Alternatively, **if the right has not been used** within the previous, consecutive, five-year period, then the applicant must be asked to provide information showing that exceptions or defenses to forfeiture are applicable. Exceptions or defenses to forfeiture include those set forth in Section 42-223, *Idaho Code*; extensions provided for in Section 42-222, *Idaho Code*; and case law relating to factors such as resumption of use, unavailability of water when needed, or non-use when other water is available. Note that filing an application for transfer does not toll the statutory period for forfeiture of a water right due to non-use.

In your case where it appears that the right has not been used within the previous, consecutive, five-year period, then a defense to forfeiture is applicable. Hopefully this elaboration helps you out.

Feel free to let me know if you still have any questions.

Thanks,



Justin Shearer | Water Resource Agent, Sr.
IDWR Western Region | Phone: (208)-334-2190
Email: justin.shearer@idwr.idaho.gov

From: niki hutchinson <lorretta52@gmail.com>
Sent: Wednesday, March 8, 2023 4:16 PM
To: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>
Subject: Re: Transfer of Water Right 65-10844

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Mr. Shearer,

I received your email, I am not sure exactly what you are wanting. I have reached out to Erin Mora to help me out.

If you could be more specific, I will do my best. I am not familiar with the process.

Thank you,
Niki Hutchinson

On Wed, Mar 8, 2023, 3:59 PM Shearer, Justin <Justin.Shearer@idwr.idaho.gov> wrote:

Good afternoon Niki,

I was forwarded on your email from 2/11/23 from western info explaining that you plan to only use the water allowed as long as lightening creek is full. However, in said email there was no defense of forfeiture as requested in regard to what appears to be non-use exceeding more than a five year period at the Place of Use for water right 65-10844. Please provide a defense of forfeiture, describing why/what limitations are reason for the place of use not being irrigated at your earliest convenience. I cannot process your transfer until such has been provided.

If you have any questions, feel free to contact me.

Thanks and regards,





Permit#65-2141. Attn:Justin Shearer

1 message

niki hutchinson <lorretta52@gmail.com>
To: westerninfo@idwr.idaho.gov

Sat, Feb 11, 2023 at 2:42 PM

To whom it may concern:

This concerns the water rights out of Lighting Creek. I will only use the water allowed as long as lightening creek is full, work with the Water District #65, and personally keep an eye on it.

If you have further questions, please contact me.

Thank you,
Niki Hutchinson

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The Idaho World

P.O. Box 220
Idaho City, ID 83631
(208) 202-9288

State of Idaho)
County of Ada)

Elise Capson, being duly sworn, deposes and says: that she is the Billing Specialist for THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and the State of Idaho; the said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for Two (2) consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy eight weeks past previous to the first publication of this notice. Such notice was published with the issue beginning with April 7, 2021 and ending with the issue of April 14, 2021.

Elise Capson

State of Idaho)
County of Ada)

On this 20th day of April in the year 2021, before me, a notary public, personally appeared Elise Capson known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Kathleen Remington
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires 8-15-2023

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

65-24022
JIM HUTCHINGS
13690 S CLOVERDALE RD
KUNA, ID 83634-2522
Point of Diversion SWNE
S27 T09N R04E BOISE County
Source GROUND WATER
Use: DOMESTIC 01/01 to 12/31
0.07 CFS
Use: IRRIGATION 03/15 to 10/31 0.44 CFS
Total Diversion: 0.44 CFS
Date Filed: 03-15-2021
Place Of Use: DOMESTIC, IRRIGATION
T09N R04E S27 SWNE, SENE

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 84806
NIKI HUTCHINSON, 545 MIDDLE-FORK RD, GARDEN VALLEY, ID 83622-5007 has filed Application No. 84806 for changes to the following water rights within BOISE County(s): Right No(s). 65-10844; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows:
WR 65-10844 historically pulls water from Lightning Creek which is tributary to the Middle Fork Payette River. The purpose of the transfer is to move the POD of WR 65-10844 from Lightning Creek to a downstream point on the Middle Fork Payette. Water will be used at the current place of use in Garden Valley, Idaho, immediately west of the Middle Fork Payette River, near the intersection of S Middle Fork Rd. and Outpost Rd.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208)334-2190. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Western Region, 2735 W AIRPORT WAY, BOISE ID 83705-5082 together with a protest fee of \$25.00 for each application on or before 4/26/2021. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published in the Idaho World on 4/7/2021 and 4/14/2021.

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