

**BEFORE THE DEPARTMENT OF WATER RESOURCES**  
**OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION            )  
FOR TRANSFER NO. 79307 IN THE        )  
NAME OF RICH ESTATE                    )**

**PRELIMINARY ORDER  
CORRECTING TRANSFER  
APPROVAL**

This matter having come before the Idaho Department of Water Resources (“Department”) as the result of clerical errors discovered in a transfer approval, the Department finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. On May 13, 2014, Rich Estate filed Application for Transfer 79307, proposing to add points of diversion to water right 11-72.
2. Water right 11-72 was originally described in the 1932 Decree for Paris Creek. The decree assigned a priority date of May 1, 1864, for water right 11-72. Transfer Approval 79307, issued by the Department on June 17, 2014, incorrectly described the priority date for water right 11-72 as May 2, 1864.
3. Application for Transfer 79307 did not propose to make any changes to the priority date for water right 11-72. Further, the priority date was not intentionally changed to mitigate for injury concerns. Rather, the priority date was changed due to an error within the program the Department uses to process transfer applications. The change in priority was a clerical error.
4. On May 9, 2022, Russell Fjeldsted filed a Notice of Change in Water Right Ownership, seeking to update the ownership records for a portion of water right 11-72. The Department completed the ownership change, creating water right 11-7929, which also contained the erroneous priority date.

**CONCLUSIONS OF LAW**

Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe water right 11-72 in Transfer Approval 79307. Water right 11-72 should have described a priority date of May 1, 1864.

The Department has the authority to issue Amended Transfer Approval 79307, correcting the errors described above.

## ORDER

IT IS HEREBY ORDERED that Transfer Approval 79307 is CORRECTED as set forth in Amended Transfer Approval 79307 issued in conjunction with this order. Further, the priority date for water right 11-72 and water right 11-7929 shall be changed to reflect the corrected transfer approval.

Dated this 30<sup>th</sup> day of August, 2023.



James Cefalo  
Eastern Regional Manager

## CERTIFICATE OF MAILING

I hereby certify that on the 30<sup>th</sup> day of August, 2023, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL to the person(s) listed below:

**Rich Estate**  
**PO Box 222**  
**Paris, ID 83261**

**Russell Fjeldsted**  
**670 W Shepard Lane, Suite 101**  
**Farmington, UT 84025**



Christina Henman  
Administrative Assistant



IDAHO DEPARTMENT OF  
**WATER RESOURCES**

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: 208-525-7161 • Fax: 208-525-7177 • Email: [easterninfo@idwr.idaho.gov](mailto:easterninfo@idwr.idaho.gov) • Web: [idwr.idaho.gov](http://idwr.idaho.gov)

**Governor Brad Little**

**Director Gary Spackman**

August 30, 2023

RICH ESTATE  
PO BOX 222  
PARIS, ID 83261

Re: Transfer No: 79307  
Water Right No(s): 11-72

**Corrected Transfer Approval Notice**

Dear Water Right Holder:

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

The Corrected 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 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:

RUSSELL FJELDSTED  
670 W SHEPARD LANE, STE 101  
FARMINGTON, UT 84025

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT  
TRANSFER NO. 79307

CORRECTED

This is to certify that: RICH ESTATE  
PO BOX 222  
PARIS, ID 83261

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> |
|--------------------|---------------------|----------------------|-----------------------|-------------------------|-------------------|--------------------|---------------|
| 11-72              | WR/DECREED          | 5/1/1864             | 0.750 cfs             | N/A                     | N/A               | N/A                | PARIS 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> |
|-----------------------|--------------|------------|------------|----------------|----------------------|----------------------|
| 11-72                 | NO           | NO         | NO         | YES            | 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> |
|------------------------|----------------------------------|----------------------|------------------------|-------------------|--------------------|------------------------------------|-----------------------|-------------------------|-----------------------------|------------------------------|
| 11-72                  | 11-72                            | 0.750 cfs            | N/A                    | N/A               | 17.6               | N/A                                | N/A                   | N/A                     | N/A                         | N/A                          |
| <b>COMBINED TOTALS</b> |                                  | <b>0.750 cfs</b>     | <b>N/A</b>             | <b>N/A</b>        | <b>17.6</b>        |                                    | <b>N/A</b>            | <b>N/A</b>              | <b>N/A</b>                  | <b>N/A</b>                   |

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 30<sup>th</sup> day of August, 2023.

  
Regional Manager

Transfer No. 79307

**WATER RIGHT NO. 11-72**  
**As Modified by Transfer No. 79307**

**CORRECTED**

In accordance with the approval of Transfer No. 79307, Water Right No. 11-72 is now described as follows:

**Right Holder:** RICH ESTATE  
 PO BOX 222  
 PARIS, ID 83261

**Priority Date:** 5/1/1864

**Source:** PARIS CREEK

**Tributary:** BEAR LAKE OUTLET

**BENEFICIAL USE**

IRRIGATION

**From**

5/01

to

**To**

9/15

**Diversion Rate**

0.750 cfs

0.750 cfs

**LOCATION OF POINT(S) OF DIVERSION**

|             |      |                        |                  |
|-------------|------|------------------------|------------------|
| PARIS CREEK | SENE | Sec 10 Twp 14S Rge 43E | BEAR LAKE County |
| PARIS CREEK | SWNW | Sec 10 Twp 14S Rge 43E | BEAR LAKE County |
| PARIS CREEK | SWNW | Sec 11 Twp 14S Rge 43E | BEAR LAKE 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 |        |
| 14S | 43E | 11  |    |    |    |    |    |    | 10.4 |    |    |    | 7.2 |    |    |    |    |    | 17.6   |

POU Total Acres: 17.6

**CONDITIONS OF APPROVAL**

1. Use of water under this right will 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. 11E.
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 3.5 afa per acre at the field headgate for irrigation of the place of use.
4. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
5. 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. 79307

## **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.