

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 88295**

This is to certify that: **ELLIE MULBERRY**
1662 S. THACKER ROAD
HAMMETT, ID 83627-6442
AND
STEVEN N MULBERRY
1662 S THACKER RD
HAMMETT, ID 83627-6442

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>
2-10358	WR/DECREED	9/16/1970	0.040 cfs	12.0 af	N/A	2.5	SNAKE RIVER
2-10360	WR/DECREED	9/16/1970	0.100 cfs	27.0 af	N/A	5.4	SNAKE RIVER

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>
2-10358	NO	YES	NO	NO	NO	NO
2-10360	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>
2-10358	2-10358	0.040 cfs	12.0 af	N/A	2.5	N/A	N/A	N/A	N/A	N/A
2-10360	2-10360	0.100 cfs	27.0 af	N/A	5.4	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.140 cfs	39.0 af	N/A	7.9		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 26th day of January, 2024.

SUPPORT DATA

IN FILE # 2-10358



Scott Storms, Water Rights Supervisor

Transfer No. 88295

WATER RIGHT NO. 2-10358
As Modified by Transfer No. 88295

In accordance with the approval of Transfer No. 88295, Water Right No. 2-10358 is now described as follows:

Right Holder: STEVEN N MULBERRY AND
 ELLIE MULBERRY
 1662 S THACKER RD
 HAMMETT, ID 83627-6442

Priority Date: 9/16/1970

Source: SNAKE RIVER

Tributary: COLUMBIA RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	04/01	to 10/31	0.040 cfs	12.0 af
			0.040 cfs	12.0 af

LOCATION OF POINT(S) OF DIVERSION

SNAKE RIVER SWNE Sec 3 Twp 06S Rge 08E ELMORE 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	
06S	08E	3		2.4	0.1														2.5
				1.2															

POU Total Acres: 2.5

CONDITIONS OF APPROVAL

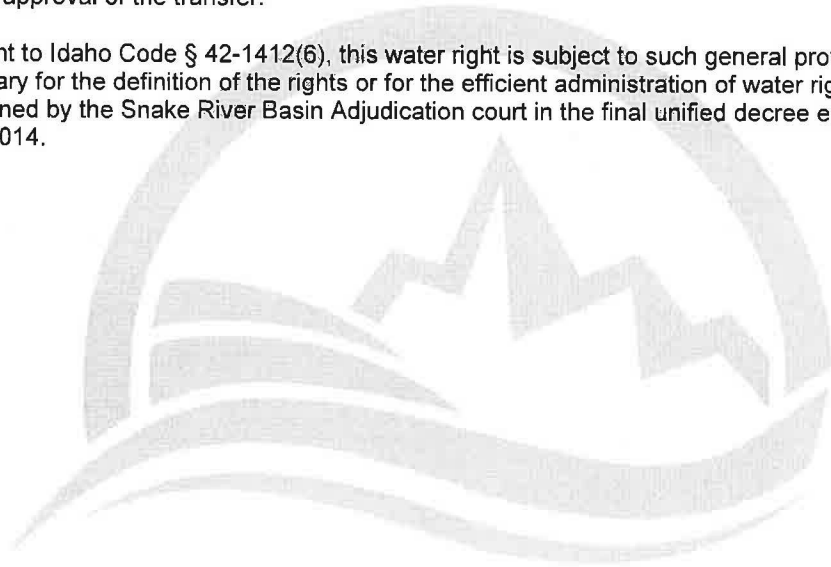
1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
2. The period of use for the irrigation for this right may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 10/31 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 9/16/1970.
3. This right does not grant any right-of-way or easement across the land of another.
4. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
5. 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. 2.

Transfer No. 88295

WATER RIGHT NO. 2-10358
As Modified by Transfer No. 88295

CONDITIONS OF APPROVAL

6. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. 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.



WATER RIGHT NO. 2-10360**As Modified by Transfer No. 88295**

In accordance with the approval of Transfer No. 88295, Water Right No. 2-10360 is now described as follows:

Right Holder: STEVEN N MULBERRY AND
ELLIE MULBERRY
1662 S THACKER RD
HAMMETT, ID 83627-6442

Priority Date: 9/16/1970

Source: SNAKE RIVER

Tributary: COLUMBIA RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	04/01	to 10/31	0.100 cfs	27.0 af
			0.100 cfs	27.0 af

LOCATION OF POINT(S) OF DIVERSION

SNAKE RIVER SWNE Sec 3 Twp 06S Rge 08E ELMORE 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	
06S	08E	3			5.4														5.4
					L 2														

POU Total Acres: 5.4

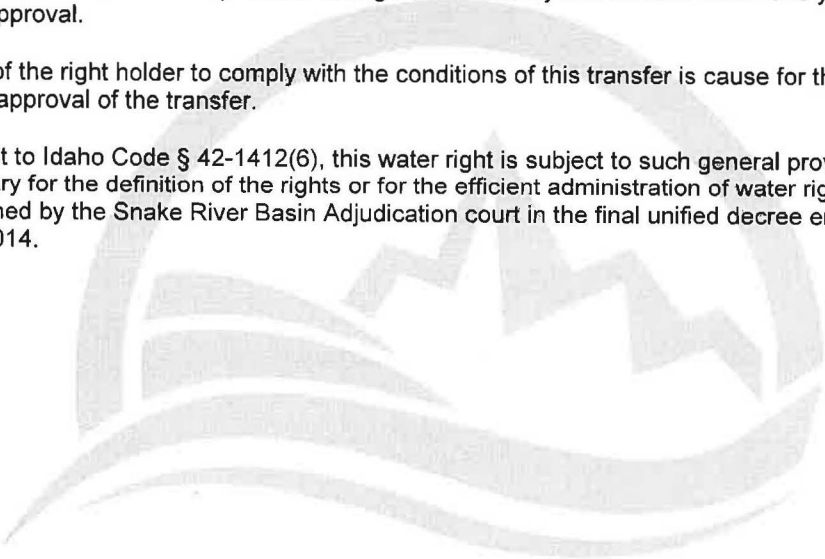
CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
2. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
3. The period of use for the irrigation for this right may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 10/31 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the 9/16/1970.
4. This right does not grant any right-of-way or easement across the land of another.
5. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

Transfer No. 88295

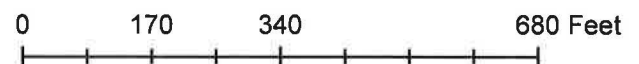
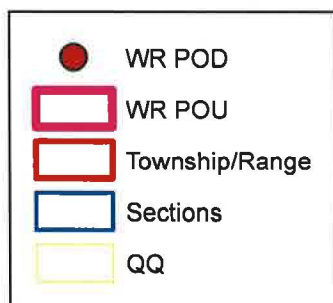
WATER RIGHT NO. 2-10360
As Modified by Transfer No. 88295

CONDITIONS OF APPROVAL

6. 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. 2.
 7. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
 8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
 9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
 10. 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.
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State of Idaho
Department of Water Resources
Attachment to Transfer No. 88295
Water Right(s): 2-10358, 2-10360

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





IDAHO DEPARTMENT OF
WATER RESOURCES

Western Region • 2735 W Airport Way • Boise, ID 83705-5082

Phone: 208-334-2190 • Fax: 208-334-2348 • Email: westerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

January 30, 2024

STEVEN N. MULBERRY
ELLIE MULBERRY
1662 S THACKER RD
HAMMETT ID 83627-6442

Re: Transfer No: 88295
Water Right No(s): 2-10358, 2-10360

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 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 cursive script, appearing to read "Lynne Evans".

Lynne Evans
Administrative Assistant I

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2024 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.: 88295

Water Right No(s): 2-10358, 2-10360

STEVEN N. MULBERRY (Current Owner)
ELLIE MULBERRY (Current Owner)
1662 S THACKER RD
HAMMETT ID 83627-6442

LLOYD KNIGHT AND ORLA KNIGHT (Protestants)
C/O JOHN RICHARDS
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
BOISE ID 83702-7067



Lynne Evans
Administrative Assistant I

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: January 22, 2024
To: Transfer 88295
From: Jared Adamson
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the point of diversion of water rights 2-10358 and 2-10360. The applicant submitted the application to relocate the point of diversion to make it easily accessible from their own property and to no longer share a pump with other water right holders.

Authority to File:

The applicant is the current owner of the water rights per IDWR records. The proposed point of diversion is located adjacent to the applicant's property on the Snake River public waterways area, absent of county parcel data.

Water Right Validity:

The water rights were decreed on 5/12/2009. In review of aerial photography available to the department there is no clear and convincing evidence showing that forfeiture has occurred. Forfeiture is not an issue.

Injury to Other Water Rights:

No issues have been identified.

Enlargement of Use:

The approval of this transfer will not result in an enlargement of a water right.

Local Public interest:

The application was protested by Lloyd and Orla Knight on the basis that the applicant had not addressed continued obligations under the Mesa View Estates CCR's and irrigation agreements for the shared pump or how the proposed point of diversion would impact the existing shared irrigation system. The applicant and the protesting party were successful in arriving at an informal agreement and the Knight's withdrew their protest. No letter agreement or other documents were submitted that would put stipulation on approval conditions or the approval of this transfer.

Beneficial Use/Conservation of Water Resources:

No issues have been identified.

Effect on Economy the Local Area:

No issues have been identified.

Effect on Agricultural Base of the Local Area:

No issues have been 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.