

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 89820**

This is to certify that: **BENSON RANCH TRUST**
1590 CALICO CIR
POCATELLO, ID 83201-7121

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>
41-7029A	WR/DECREED	10/3/1978	25.400 cfs	18295.0 af	N/A	N/A	FALL 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>
41-7029A	NO	NO	NO	NO	NO	YES

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>
41-7029A	41-7029A	25.400 cfs	18295.0 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		25.400 cfs	18295.0 af	N/A	N/A		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 23rd day of August, 2025.



Southern Region Manager

WATER RIGHT NO. 41-7029A
As Modified by Transfer No. 89820

In accordance with the approval of Transfer No. 89820, Water Right No. 41-7029A is now described as follows:

Right Holder: BENSON RANCH TRUST
 1590 CALICO CIR
 POCATELLO, ID 83201-7121

Priority Date: 10/3/1978

Source: FALL CREEK

Tributary: SNAKE RIVER

BENEFICIAL USE	From	To	Diversion Rate	Diversion Volume
AESTHETIC	01/01	to 12/31	25.400 cfs	18295.0 af
WILDLIFE	01/01	to 12/31	25.400 cfs	18295.0 af
			25.400 cfs	18295.0 af

LOCATION OF POINT(S) OF DIVERSION

FALL CREEK SENE Sec 29 Twp 09S Rge 29E POWER County

PLACE OF USE: AESTHETIC

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	29E	29	X																

PLACE OF USE: WILDLIFE

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	29E	29	X																

CONDITIONS OF APPROVAL

1. The facility volume for the wildlife and aesthetic use described by this right shall not exceed 324,000 cubic feet, as identified on Snake River Basin Adjudication decree 41-7029A issued July 28, 2000.
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 right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
4. 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. 89820

WATER RIGHT NO. 41-7029A
As Modified by Transfer No. 89820

CONDITIONS OF APPROVAL

5. 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.



State of Idaho
Department of Water Resources
Attachment to Transfer # 89820
41-7029A

This map depicts the AESTHETIC & WILDLIFE 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.



0 0.0475 0.095 0.19 Miles

-  Place Of Use Boundary
-  Point of Diversion
-  Townships
-  PLS Sections
-  Quarter Quarters





IDAHO DEPARTMENT OF
WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, ID 83301-5858

Phone: 208-736-3033 • Fax: 208-736-3037 • Email: southerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

August 27, 2025

BENSON RANCH TRUST
TERRI BENSON TRUSTEE
1590 CALICO CIR
POCATELLO ID 83201-7121

Re: Transfer No: 89820
Water Right No(s): 41-7029A

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

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) 736-3033.

Sincerely,



Corey Skinner
Southern Regional Manager

Enclosure

c:

BROCKWAY ENGINEERING PLLC
C/O ERICK POWELL
2016 WASHINGTON ST N STE 4
TWIN FALLS ID 83301-3082

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2025 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.: 89820
Water Right No(s): 41-7029A

BENSON RANCH TRUST
TERRI BENSON TRUSTEE
1590 CALICO CIR
POCATELLO ID 83201-7121

BROCKWAY ENGINEERING PLLC
C/O ERICK POWELL
2016 WASHINGTON ST N STE 4
TWIN FALLS ID 83301-3082



Denise Maline
Administrative Assistant

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, 2025
To: Transfer 89820
From: Bill Mills
Re: Evaluation of Sufficiency Memorandum

Application proposes changing the nature of use on a 25.40 cfs Fall Creek water right from fish propagation to wildlife and aesthetic use. Place of use and point of diversion are located approximately 11.0 miles south and 10.6 miles west of the American Falls Dam.

- **Authority to File:** Applicant is listed as the current owner of the water right and the owner of the associated properties.
- **Water Right Validity:** Water right 41-7029A was decreed in the SRBA on 7/28/2000. Fish runways are visible in aerial imagery.
- **Injury to Other Water Rights:**
None anticipated.
- **Enlargement of Use:**
None anticipated. Current beneficial use, fish propagation and proposed beneficial uses, wildlife and aesthetic, are all considered non-consumptive uses.
- **Local Public Interest:**
No issues anticipated. Idaho Fish & Game provided the following comments regarding this transfer application:

“Wildlife” should be removed from the application as a beneficial use. IDFG believes that inclusion of “Wildlife” as a proposed beneficial use for water right/transfer applications is justified when lack of water availability is a limiting factor for priority wildlife populations that IDFG seeks to increase. In such situations, the applicant should describe the species that are currently limited by water availability, and how the water use will perpetuate or grow their populations in their specific environment. This does not appear to be an element of the existing application and IDFG is not aware of how this water right is essential for priority wildlife populations.”

While the date eludes me, I have visited this facility in the past. While there were a few trout present, it was clear that the local deer population benefits from the presence of this facility as there was a herd of mule deer present and some were drinking from the water in the fish runs. Additionally, there were bird species present that thrive in marshy locations, such as black birds, utilizing cattails and bulrush that grow along the edges of the fish runs. The presence of non-aquatic species that benefit from the facility clearly justifies designating wildlife as a beneficial use.

- **Beneficial Use/Conservation of Water Resources:**
Proposed use is recognized as a beneficial use of water.
- **Effect on the Economy of the Local Area:**
None Anticipated.
- **Effect on Agricultural Base of the Local Economy:**
None Anticipated.

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.