

Connie Brandau, Watermaster  
Reynolds Creek Dist. 57R  
9902 Wilson Cemetery Lane  
Wilson, ID 83641

RECEIVED

JUN 22 2010

OFFICE OF THE  
ATTORNEY GENERAL

June 21, 2010

State of Idaho  
Office of Attorney General  
Attn: Lawrence Wasden  
P. O. Box 83720  
Boise, ID 83720-0010

Dear Sir;

As the elected Watermaster of Reynolds Creek Dist. 57R I am asked by Idaho Department of Water Resources to make recommendations on water right applications and as such reviewed Transfer No. 75704 for Water Right No. 57-7400.

I am concerned that IDWR did not follow the law in providing legal notice concerning the amendment of that application for transfer as required by Idaho Code 42-211 which states "If amendment is made after publication of notice of the original application, said notice shall be republished following amendment---".

The legal notice in the Owyhee Avalanche 5/19,26/10 did not provide a legal description for the land. Even being extremely familiar with the area I had great difficulty identifying the place of use with the information provided to me by IDWR on the original application. During my review of the original application I discovered errors in identifying the place of use. The aerial photo/map provided by the applicant indicated that the place of use would be in Section 19 (with no indication of the Township or Range in which that section was located) and the written legal description (which indicated in two places on the application) that the use would be in Section 19, T2S, R4W on the written application.

I called IDWR to ask if anyone there reviewed the applications for accuracy before they were published. I was assured that they did and was put in contact with the person who had reviewed this particular application, Angie Grimm. I pointed out the error that I had found which put the place of use in a different place (Section 19, T2S R4W) than indicated by the map (Section 19 T2S, R3W). She determined that the actual place of use was intended to be Section 19, T2S, R3W, B.M, Owyhee County, Idaho.

Ms. Grimm had the applicant come in that same day, Tuesday May 25, 2010, to amend his application. She got the amended copy to me the same day and said that the amended application would be available for the public to view on line the next day, May 26th. I

asked if IDWR would re-publish the legal notice because of the amended application. She said that was not her decision to make but it would be up to her superior, Steve Lester, and that she would have him call me to let me know his decision.

Mr. Lester returned my on May 26, 2010 to let me know that he did not think it was necessary to re-publish the notice "because it was such an insignificant typo". I don't think that an error putting the place of use six miles away in a different Range is insignificant. The patrons of our water district could not, by the original application, know that their water rights in Reynolds Creek (a Tributary to the Snake River) would be affected, because the original application indicated the use would be in the Cottonwood drainage (a tributary to the Owyhee River).

The IDWR decision by Steve Lester to not legally notice the amended application that affects 106 water rights senior to this application denies those water right owners their due process afforded by law.

I have included the following in support of my findings:

Copy original application  
Copy legal notice  
Copy Amended application  
Copy email from Steve Lester, IDWR

Please respond.

Respectfully,



Connie Brandau, Watermaster  
Reynolds Creek Dist. 57R

Cc  
Jerry Hoagland, Sec. - Reynolds Creek Dist 57-R  
Jim Desmond, Director - OCNRC

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COPY

JUN 17 2009

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

Transfer No.

75704

WATER RESOURCES  
WESTERN REGION**MINIMUM REQUIREMENTS CHECKLIST**  
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at <http://www.idwr.idaho.gov/>.

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A

\* Means the item is always required and must be included with the application.

- ☒ \* Completed Application for Transfer of Water Right form, Part 1.
- ☒ \* Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ \* Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application
- ☒ \* Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ \* Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

**Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-9.**

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the transfer applicant as the current water right owner.
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).
- ☐ ☒ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at <http://www.idwr.idaho.gov/water/rights/>.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ \* #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use.
- ☐ ☒ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.)
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☐ #9 Other. Please describe: \_\_\_\_\_

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STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCESTransfer No. 75704JUN 17 2009 APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 1WATER RESOURCES  
WESTERN REGIONName of Applicant(s) Junayo Ranch LTD PartnershipPhone (208)343-8880Mailing address 1087 W River St. Ste. 230 Boise, ID 83702

Email \_\_\_\_\_

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative \_\_\_\_\_

Phone \_\_\_\_\_

Mailing address \_\_\_\_\_

Email \_\_\_\_\_

- ☐ Send all correspondence for this application to the representative and not to the applicant.
- OR
- ☐ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.
- OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.


  
Signature of Applicant or Authorized Representative

General Partner
  
Print Name and Title if applicable

6/12/09
  
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

## A. PURPOSE OF TRANSFER

- ☐ Change point of diversion      ☐ Add diversion point(s)      ☒ Change place of use  
☐ Change nature of use      ☐ Change period of use      ☐ Other \_\_\_\_\_
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**. To correct records error in water right coverage of currently irrigated public land in Section 19 T2S R3W.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT**  
**PART 1 Continued**

**B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.**

1.		Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part						
<input checked="" type="checkbox"/>	<input type="checkbox"/>	57-7400:	4.6 cfs	Div. to Storage	11/15 to 3/15	Reynolds Cr & Snake Rv
<input type="checkbox"/>	<input type="checkbox"/>		150.0 ac-ft	Irrigation Storage	1/1 to 12/31	Reynolds Cr & Snake Rv
<input type="checkbox"/>	<input type="checkbox"/>		150.0 ac-ft	Irr. from Storage	3/15 to 11/15	Reynolds Cr & Snake Rv
<input type="checkbox"/>	<input type="checkbox"/>				to	
<input type="checkbox"/>	<input type="checkbox"/>				to	
<input type="checkbox"/>	<input type="checkbox"/>				to	
<input type="checkbox"/>	<input type="checkbox"/>				to	
<input type="checkbox"/>	<input type="checkbox"/>				to	
<input type="checkbox"/>	<input type="checkbox"/>				to	
<input type="checkbox"/>	<input type="checkbox"/>				to	

Total authorized under rights 4.6 cfs and/or 150.0 ac-ft

2. Total amount of water proposed to be transferred or changed 4.6 cubic feet per second and/or 150.0 acre-feet per annum.

3. Point(s) of Diversion:

- ☒ No changes to point(s) of diversion are proposed-the following chart is therefore not completed. (Proceed to #4.)  
☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA.  
 Label it Attachment #5.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed-the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02S	03W	18									2.0	15.0	2.0						19.0
												L3	L4						
02S	04W	13				9.0													9.0
02S	04W	19					15.0	5.0											20.0
							L1												
02S	04W	24	22.0	4.0	3.0	14.0													43.0

Total Acres (for irrigation use) 91.0

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT**  
**PART 1 Continued**

## 5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future: Gravity ditch, storage dam and reservoir (Tyson Reservoir), ditches; pump & pipeline
- b. Who owns the property at the point(s) of diversion? John & Catherine Romero  
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: Easement to Junayo Ranch LTD Partnership
- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?  
If yes, ☐ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: NOT APPLICABLE
- It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.
- d. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer: Land currently irrigated will continue to be irrigated. Transfer proposes addition of 20 acres currently irrigated with storage water from Tyson Reservoir. I.C. § 42-222 allows for an increase in the number of acres irrigated in no other water rights are injured.
- e. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use: Several other water rights of Junayo Ranch LTD Partnership for the current place of use, point of diversion, and use on file with the Department. No existing water rights for irrigation of the additional 20 acres in Section 49 T2S R4W proposed for addition to the current place of use.

f. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- |                          |                                     |   |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | undergone a period of five or more consecutive years of non-use,                              |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | currently leased to the Water Supply Bank,  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | currently used in a mitigation plan limiting the use of water under the right, or             |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | currently enrolled in a Federal set-aside program limiting the use of water under the rights? |

If yes, describe:

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IDAHO DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 2A

Current Water Right No.: 57-7400

Current Owner: JUNAYO RANCH LTD PARTNERSHIP

Priority Date: 1/13/1984

Origin: Water Right

Status: Active

Basis: License

Source  
REYNOLDS CREEK

Tributary  
SNAKE RIVER

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION FROM STORAGE	03/15	to 11/15		150 AF
DIVERSION TO STORAGE	11/15	to 03/15	4.6 CFS	
IRRIGATION STORAGE	01/01	to 12/31		150 AF
	Total Diversion		4.6 CFS	150 AF

Location of Point(s) of Diversion

REYNOLDS CREEK

OWYHEE County

NE1/4NE1/4

Sec. 25, Twp 02S, Rge 04W B.M.

Place of Use

IRRIGATION FROM STORAGE Within OWYHEE County

T02S R03W S18	NESW	2.00	T02S R03W S18	Lot 3	NWSW	15.00
T02S R03W S18	Lot 4	SWSW	2.00	T02S R04W S13	SENE	9.00
T02S R04W S24	NENE	22.00	T02S R04W S24	NWNE	4.00	
T02S R04W S24	SWNE	3.00	T02S R04W S24	SENE	14.00	

Total Acres: 71

Place of Use: IRRIGATION STORAGE same as IRRIGATION FROM STORAGE

Place of Use: DIVERSION TO STORAGE same as IRRIGATION FROM STORAGE

11/15 to 12/31

3/15 to 11/15

no right to store during irrigation season