

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 84978

This is to certify that: DANIEL MCCOY
LENA MCCOY
119 S VALLEY DR STE A
NAMPA, ID 83686-2985

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>
63-32400	WR/DECREED	2/7/1969	0.130 cfs	36.0 af	N/A	8.0	GROUND WATER

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>
63-32400	NO	YES	YES	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>
63-32400	63-32400	0.130 cfs	36.0 af	N/A	8.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.130 cfs	36.0 af	N/A	8.0		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 27th day of December, 2021.



Chief, Water Allocation Bureau

WATER RIGHT NO. 63-32400 **As Modified by Transfer No. 84978**

In accordance with the approval of Transfer No. 84978, Water Right No. 63-32400 is now described as follows:

Right Holder: DANIEL MCCOY AND
 LENA MCCOY
 119 S VALLEY DR STE A
 NAMPA, ID 83686-2985

Priority Date: 2/8/1969

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	04/01	to 11/01	0.130 cfs	36.0 af
			0.130 cfs	36.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SWSW Sec 23 Twp 02N Rge 02W CANYON 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	
02N	02W	23											8.0						8.0

POU Total Acres: 8.0

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 4.5 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 described in this approval may be extended to a beginning date of 3/1 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 11/1 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 2/7/1969.
4. Point of diversion is located within Lot 4, Blk. 1, Via Toscana Subdivision.
5. Place of use is located within Lots 1, 4, 5, 8, and 9 Blk. 1; Via Toscana Subdivision.

Transfer No. 84978

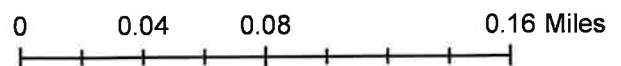
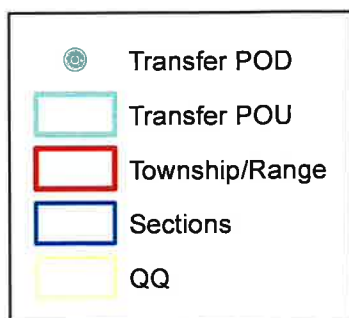
WATER RIGHT NO. 63-32400
As Modified by Transfer No. 84978

CONDITIONS OF APPROVAL

6. This right is a split from former right 63-32093.
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.

State of Idaho
Department of Water Resources
Attachment to Transfer No. 84978
Water Right(s): 63-32400

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 Gary Spackman

December 27, 2021

DANIEL MCCOY
LENA MCCOY
119 S VALLEY DR STE A
NAMPA ID 83686-2985

Re: Transfer No: 84978
Water Right No(s): 63-32400

Transfer Approval Notice

Dear Water Right Holders:

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,


DENISE LAUERMAN

 Nick Miller
Western Regional Manager

Enclosures

CC:

LOGAN STOCKWELL
119 S VALLEY DRIVE STE A
NAMPA ID 83686

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2021 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.: 84978
Water Right No.: 63-32400

DANIEL MCCOY
LENA MCCOY
119 S VALLEY DR STE A
NAMPA ID 83686-2985

LOGAN STOCKWELL
119 S VALLEY DRIVE STE A
NAMPA ID 83686



Denise Lauerman
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

TO: Transfer No. 84978
FROM: Aaron Olson
DATE: 11/29/2021
RE: Evaluation of Application

The transfer proposes to move Water Rights # 63-32400 to 8212 Loma Linda Ridge Road, and change ownership from Sean and Delmy Lynn to Dan and Lena McCoy pursuant to their real estate contract from 2014, and a signed quitclaim deed from 2020.

The site is approximately 6 miles south of Nampa, west of the intersection of Kuna Road and Southside Boulevard.

Contact person for the applicant is Logan Stockwell of Xmark Holdings at lstockwell@huevee.com or 208-629-6492.

Deviations from Transfer Policy Standards

During initial review of this application concerns of forfeiture were evident due to the water right having been sold separate from the land when purchased by the applicants and the current POU appearing to have been irrigated by a separate overlapping water right and system that was developed during the nine-year period of time 63-32400 was leased to the Water Supply Bank. After reaching out to the representative of the applicants he informed the department that the right had been put to use at the proposed POU following the purchase, although without authorization or approval of a transfer to do so. It was determined that if this transfer is to be completed during the calendar year of 2021 a finding of forfeiture would be prevented since beneficial use had resumed prior to the end of the sixth calendar year from when the period of non use had began in 2015.

The application was amended after several phone conversations and email correspondence regarding the proposed POU and POD outlined in the map originally submitted with the application. In the original submitted map the proposed POU covered the hazelnut orchard and consisted of approximately 5.2 acres, while the current acres of irrigation for the right is 8.0. To avoid a reduction in the number of acres for the right an amended map was submitted to reflect 8.0 acres to be transferred. Clarification of the proposed POD was also requested since the application had an existing well with tag number D0046884 listed but the map did not reflect the location of the department shapefile record. During correspondence it was determined that the location of the proposed POD should be consistent with the department shapefile.

A portion of the proposed POU is on lands not owned by the applicants. During correspondence the representative of the applicants provided signed statements from the current owners of those lands authorizing the change.

Summary of Information Submitted

Authority to File:

The application was filed in the names of Dan and Lena McCoy. IDWR records show the applicants as the current owners of the right and the application was signed by both owners.

Signed statements authorizing the portion of the proposed POU to be moved to lands not owned by the applicants have been provided by the current owners Steven Jensen and the Loma Linda Ridge HOA.

Water Right Validity

Water right 63-32400 was leased to the Water Supply Bank in 2006 and was released at the end of 2015, while irrigation has occurred since then at the current place of use it is evident that the irrigation of these acres had been under water right 63-33142 which was permitted for use at that location in 2010 during the time 63-32400 was in the Water Supply Bank. However, unauthorized use of the right occurred at the proposed POU for irrigation of the hazelnut orchard which began at the time the applicants acquired the right and it was released from the Water Supply Bank. Since this transfer was filed before the end of the sixth calendar year following the beginning of the non-use period, it could be considered that a finding of forfeiture would be prevented since beneficial use had occurred and thus use was resumed.

Injury to Other Water Rights:

Other water rights should not be impacted by the proposed transfer. The quantity of water used for this right will not change as a result. The proposed transfer was advertised and no protests were received. There are several domestic and irrigation wells within a half mile radius of the proposed POD but a diversion rate of 0.13 is unlikely to impact them seeing as the hazelnut orchard had been irrigated from this well for several years and no complaints have been made.

Enlargement of Use:

Enlargement does not appear to be an issue. The proposed changes will not result in an increase of diversion rate or acres irrigated.

Local Public Interest:

No issues identified, this application proposes a change consistent with the 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.

Summary

Water Right Overlap

New POD for the water right after this transfer will be a previously drilled domestic well. POU has overlap only with the service areas for Boise Project Board of Control, Boise Kuna Irrigation District, and Bureau of Reclamation.

Discussion

If approved the following changes should be made to the conditions of water right no. 63-32400

- Update condition C18 to T19.
- Update condition S39 to X61
- Add standard transfer conditions T07 and T08
- Add condition 01M since > 5 acres of irrigation
- Add conditions X59 and X60 for subdivision info
- Add condition R65

Drilling fee upgrade from domestic to non-domestic is required. The upgrade was requested via letter on 08/12/2021.

Assuming protests are not filed and/or other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

**AFF. AVIT OF PUBLICATION
STATE OF IDAHO**

County of Canyon and Ada

23100 135283

1 IDWR - WESTERN REGION

2735 AIRPORT WAY
BOISE, ID 83705

RECEIVED

AUG 30 2021

**WATER RESOURCES
WESTERN REGION**

LEGAL NOTICE

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
TRANSFER NO. 84978**

Has filed Application No. 84978 for changes to the following water rights within CANYON County(s): Right No(s). 63-32400; to see a full description of these rights and the proposed transfer, please see

<https://research.idwr.idaho.gov/apps/waterrights/query/newtransfers>

The purpose of the transfer is to change a portion of the above rights as follows:

The transfer proposes to change the point of diversion and place of use for the 8.0 acres irrigated from ground water of water right 63-32400 to fields located in SWSW Section 23, T02N, R02W, west of the intersection of Kuna Road and Southside Boulevard, approximately 6 miles south of Nampa.

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 9/6/2021. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

August 19, 26, 2021

135283

SHARON JESSEN

of the State of Idaho, being of first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the Counties of Canyon and Ada, State of Idaho; that the said newspaper is in general circulation in the said counties of Canyon and Ada, and in the vicinity of Nampa, Caldwell, and Boise, and has been uninterruptedly published in said Counties during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 times(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement

That said notice was published the following: 08/19/2021, 08/26/2021

Sharon Jessen

**SHARON JESSEN
STATE OF IDAHO**

County of Canyon and Ada

On this 27th day of August, in the year of 2021 before me a Notary Public, personally appeared. SHARON JESSEN, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.

Colleen R. Nielsen

Notary Public of Idaho
My commission expires *4/28/23*

