

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 84539**

This is to certify that: **TOLL SOUTHWEST LLC**
3103 W SHERYL DR STE 100
MERIDIAN, ID 83642-5674

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>
63-11715	WR/LICENSE	3/13/1992	2.920 cfs	N/A	N/A	146.0	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>
63-11715	NO	NO	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>
63-11715	63-11715	2.920 cfs	N/A	146.0	170.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		2.920 cfs	N/A	146.0	170.0		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 18th day of February, 2021.

for, *Patricia Miller*
Chief, Water Allocation Bureau

WATER RIGHT NO. 63-11715

As Modified by Transfer No. 84539

In accordance with the approval of Transfer No. 84539, Water Right No. 63-11715 is now described as follows:

Right Holder: TOLL SOUTHWEST LLC
3103 W SHERYL DR STE 100
MERIDIAN, ID 83642-5674

Priority Date: 3/13/1992

Source: GROUND WATER

BENEFICIAL USE

IRRIGATION

From

03/01

To

to 11/15

Diversion Rate

2.920 cfs

2.920 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER

SWSE

Sec 4 Twp 04N Rge 01W ADA 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	
04N	01W	4												23.0			23.0		46.0
04N	01W	9		39.0	16.0		39.0			30.0									124.0

Right Acre Limit: 146.0

POU Total Acres: 170.0

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of 146 acres within the authorized place of use in a single irrigation season.
2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 657 af at the field headgate for the lands above.
3. This right when combined with all other rights shall provide no more than 4.5 afa per acre at the field headgate for irrigation of the lands above.

WATER RIGHT NO. 63-11715

As Modified by Transfer No. 84539

CONDITIONS OF APPROVAL

4. The right holder shall make full beneficial use of all surface water available to the right holder for irrigation of lands within the authorized place of use for this right. The right holder may divert ground water under this right to irrigate land with appurtenant surface water rights when the surface water supply is not reasonably sufficient to irrigate the place of use for this water right or is not available due to drought, curtailment by priority, or the seasonal startup and shutoff or maintenance schedule for canal company or irrigation district deliveries. The right holder shall not divert ground water for irrigation purposes under this right if use of the surface water supply is intentionally discontinued or reduced (for example abandoned, forfeited, sold, disallowed by court decree, or leased to the Water Supply Bank), or is not deliverable due to non-payment of annual assessments, without an approved transfer pursuant to Idaho Code § 42-222 or other Department approval.
5. 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 determine the amount of water diverted from power records and shall annually report the information to the Department.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

State of Idaho
Department of Water Resources

01W



-
- A horizontal number line representing distance in miles. It starts at 0 on the left and ends at 0.4 on the right. Major tick marks are labeled at 0, 0.1, 0.2, and 0.4. There are 8 equal intervals between 0 and 0.4, with minor tick marks at 0.05, 0.15, 0.25, and 0.35 miles.





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 W AIRPORT WAY • BOISE, ID 83705-5082

Phone: (208)334-2190 • Fax: (208)334-2348 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

February 18, 2021

TOLL SOUTHWEST LLC
3103 W SHERYL DR STE 100
MERIDIAN ID 83642-5674

RE: Transfer No: 84539
Water Right No(s): 63-11715

Transfer Approval Notice

Dear Water Right Holder(s) 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) 334-2190.

Sincerely,


DENISE LAUERMAN
for Nick Miller
Western Regional Manager

Enclosure(s)

CC:

SPF WATER ENGINEERING LLC
C/O STEVE HANNULA
300 E MALLARD DR STE 350
BOISE ID 83706-6660

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 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.: 84539
Water Right No(s): 63-11715

TOLL SOUTHWEST LLC
3103 W SHERYL DR STE 100
MERIDIAN ID 83642-5674

SPF WATER ENGINEERING LLC
C/O STEVE HANNULA
300 E MALLARD DR STE 350
BOISE ID 83706-6660



Denise Lauerman
Administrative Assistant 1

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. 84539
FROM: Shilynn Novak
DATE: February 5, 2021
RE: Evaluation of Application

Toll Southwest LLC (Toll) filed a transfer for water right 63-11715 to propose a 170 acre permissible place of use to allow flexible irrigation for a future residential development project. The PPU will cover the property owned by Toll and the right will still be limited to 146 irrigated acres. The residential development will use water from Middleton Irrigation Association as its main source of irrigation and municipal water for potable purposes.

The site is located approx. 1.4 miles NE of Star, ID and near the Floating Feather Rd & N Pollard Ln crossroads.

SPF Water Engineering is the representative for Toll Southwest LLC and can be reached at 208-383-4140.

Summary of Information Submitted

Authority to File:

Susan Stanley submitted the application for transfer and signed on behalf of Toll Southwest LLC. An Officer's Certificate was submitted with the ownership change that accompanied the transfer included who had authority to sign on behalf of Toll. Stanley is listed on the Officer's Certificate.

Water Right Validity:

Validity is not a concern. Using aerial imagery and Google Earth photos, 146 acres have been irrigated. WR 65-11715 is conditioned to be supplemental which will carry through this transfer.

Water Right Overlap

No overlap in water rights and no additional water rights should be considered for transfer.

Water Supply Bank

Rights are not in water supply bank.

Injury to Other Water Rights:

None anticipated. The water will be used to irrigate within a larger POU, but the same amount of water will be used. This right is also supplemental to surface water provided by the irrigation association. An opportunity to claim injury will be presented to water users during public advertisement of this transfer.

Enlargement of Use:

Irrigation for this water right is supplemental and will remain a supplemental use. This water right will be limited to a rate of 2.92 cfs for a 170 acre PPU.

The original water rights were set as 2.92 cfs for 146 acres which meets Department standard of 0.02 cfs/acre for irrigation: $\frac{2.92 \text{ cfs}}{146 \text{ ac}} = 0.02 \text{ cfs/ac}$ Even with the new rate of $\frac{2.92 \text{ cfs}}{170 \text{ ac}} = 0.017 = 0.02 \text{ cfs/ac}$ the rate will still meet department standards. Enlargement is not a concern.

Local Public Interest:

No information has been made available to suggest a conflict with 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

Assuming other information not yet discovered does not contradict the above analysis, the application can be approved as reflected by the draft approval.

04N01W4

04N01W9[illegible]

Idaho Statesman

Keeping you connected | IdahoStatesman.com

AFFIDAVIT OF PUBLICATION

Account #	Ad Number	Identification	PO	Amount	Cols	Depth
263978	0004830096	NOTICE OF PROPOSED CHANGE OF WATER	No. 63-11715	\$94.10	1	5.00 In

Attention: Denise Lauerman

IDAHO DEPT OF WATER RESOURCES / WEST
2735 AIRPORT WAY
BOISE, ID 837055082

NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 84539

TOLL SOUTHWEST LLC, 3103
W SHERYL DR STE 100,
MERIDIAN, ID 83642-5674
has filed Application No. 84539
for changes to the following wa-
ter rights within ADA County(s):
Right No(s). 63-11715; to see a
full description of these rights
and the proposed transfer,
please see <https://research.idwr.idaho.gov/apps/waterrights/que-rynewtransfers>. The purpose of
the transfer is to change a por-
tion of the above rights as fol-
lows: The purpose of the trans-
fer is to set a permissible place
of use to allow flexible irrigation
for a future residential develop-
ment project. The site is located
approx 1.4 miles NE of Star, ID
and near the Floating Feather Rd
& N Pollard Ln crossroads.

For additional information con-
cerning 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 De-
partment of Water Resources,
Western Region, 2735 W AIR-
PORT WAY, BOISE ID 83705-
5082 together with a protest fee
of \$25.00 for each application
on or before 1/4/2021. The
protestant must also send a
copy of the protest to the appli-
cant.

GARY SPACKMAN, Director
Published on 12/17/2020 and
12/24/2020

0004830096-01

RECEIVED

JAN 11 2021

WATER RESOURCES
WESTERN REGION

✓ OK
DL
01.13.2021

VICTORIA RODELA, being duly sworn,
deposes and says: That she is the
Principal Clerk of The Idaho
Statesman, a daily newspaper printed
and published at Boise, Ada County,
State of Idaho, and having a
general circulation therein, and which
said newspaper has been
continuously and uninterruptedly
published in said County during a
period of twelve consecutive months
prior to the first publication of the
notice, a copy of which is attached
hereto: that said notice was published
in The Idaho Statesman, in conformity
with Section 60-108, Idaho Code, as
amended, for:

2 Insertions

Beginning issue of: 12/17/2020

Ending issue of: 12/24/2020

V Rodela

(Legals Clerk)

On this 24th day of December in the
year of 2020 before me, a Notary
Public, personally appeared before
me Victoria Rodela known or
identified to me to be the person
whose name subscribed to the within
instrument, and being by first duly
sworn, declared that the statements
therein are true, and acknowledged to
me that she executed the same.

[Signature]

Notary Public in and for the state of
Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.
Legal document please do not destroy!