

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF)
APPLICATION FOR TRANSFER)
NO. 84211 IN THE NAME OF)
TK LEASING LLC)
_____)**

**ORDER GRANTING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (“Department”) as a petition to reconsider the issuance of a preliminary order approving an application for transfer, the Department finds, concludes and orders as follows:

PROCEDURAL HISTORY

Application for Transfer 84211 (“Application”) in the name of TK Leasing LLC was approved by the Department on September 17, 2020 (“Transfer”).

On September 28, 2020, the Department received a petition for reconsideration of the preliminary order approving the Application (“Petition”). The Petition asserts the legal description of the point of diversion is incorrect. The Petition requests the Department reissue the Transfer with a corrected point of diversion description.

FINDINGS OF FACT

1. The Transfer was issued as a preliminary order of the Department pursuant to Idaho Code § 67-5243 and Rule 730 of the Department’s Rules of Procedure (IDAPA 37.01.01.730).
2. Rule 730.02.a of the Department’s Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

3. The Application proposed to change the legal description for the point of diversion for water right 65-8546 from a spring in the NE¼SE¼ T16N R04E S18 to a spring in the NW¼SE¼ T16N R04E S18.
4. Department policy requires the location of springs to be described to the nearest 10-acre tract.
5. Based on the location of the point of diversion depicted on the map attached to the Application, the legal description of the point of diversion is NE¼NW¼SE¼ T16N R04E S18. This description is consistent with the description asserted in the Petition.

6. The Department issued the Transfer with a legal description of the point of diversion as NW¼NW¼SE¼ T16N R04E S18.

CONCLUSIONS OF LAW

1. The Petition was filed timely.
2. The point of diversion requested on the Application is located in the NE¼NW¼SE¼ Sec 18 Twp 16N Rge 04E of Valley County, B.M.
3. The Petition should be granted.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order approving Application for Transfer No. 84211 is **GRANTED** pursuant to Idaho Code § 67-5243. The September 17, 2020 Preliminary Order Approving Application for Transfer 84211 is **WITHDRAWN**.

IT IS FURTHER HEREBY ORDERED that Application Transfer 84211 is **APPROVED** as shown in the accompanying amended approval document.

Dated this 8th day of October, 2020



Nick Miller
Western Region Manager

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2020 I mailed a true and correct copy, postage prepaid to the person(s) listed below:

Documents Served: *Order Granting Petition for Reconsideration*

TK LEASING LLC
967 E PARKCENTER BLVD STE 120
BOISE ID 83706-6721



Kensie Thorneycroft
Administrative Assistant

AMENDED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

TRANSFER OF WATER RIGHT
TRANSFER NO. 84211

This is to certify that: TK LEASING LLC
967 E PARKCENTER BLVD STE 120
BOISE, ID 83706-6721

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>
65-8546	WR/DECREED	4/1/1930	0.090 cfs	5.4 af	N/A	N/A	SPRING

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>
65-8546	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>
65-8546	65-8546	0.090 cfs	5.4 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.090 cfs	5.4 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 8th day of October, 2020.


 Chief, Water Allocation Bureau

WATER RIGHT NO. 65-8546

As Modified by Transfer No. 84211

In accordance with the approval of Transfer No. 84211, Water Right No. 65-8546 is now described as follows:

Right Holder: TK LEASING LLC
967 E PARKCENTER BLVD STE 120
BOISE, ID 83706-6721

Priority Date: 4/1/1930

Source: SPRING

Tributary: SINKS

BENEFICIAL USE

STOCKWATER

From

1/01

to

To

12/31

Diversion Rate

0.090 cfs

0.090 cfs

Diversion Volume

5.4 af

5.4 af

LOCATION OF POINT(S) OF DIVERSION

SPRING

NENWSE

Sec 18 Twp 16N Rge 04E VALLEY County

PLACE OF USE: STOCKWATER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N	04E	18													x				

CONDITIONS OF APPROVAL

1. The quantity of water under this right shall not exceed 13,000 gallons per day.
2. The quantity of water decreed for this water right is not a determination of historical beneficial use.
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. 84211

SEP 28 2020

WATER RESOURCES
WESTERN REGION
ATTORNEYS AND COUNSELORS

Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
208.344.6000
www.hawleytroxell.com

CHRISTOPHER COOK
EMAIL: CCOOK@HAWLEYTROXELL.COM
DIRECT DIAL: 208.388.4878
DIRECT FAX: 208.954.5235

September 25, 2020

VIA FAX & USPS

IDWR Western Regional Office
2735 W. Airport Way
Boise, ID 83705
Fax: 208-334-2348

Re: *Petition to Reconsider September 17, 2020, Preliminary Order
Transfer Application (Transf. No. 84211)
Water Right No. 65-8546*

Dear Sir/Madam:

This firm represents TK Leasing LLC in connection with that certain Transfer Approval notice and subject preliminary Transfer of Water Right (Transfer No. 84211) dated September 17, 2020 ("**Preliminary Transfer**"). A copy of the Preliminary Transfer documentation is enclosed for your reference. Upon review of the Preliminary Transfer documentation, there appears to be a discrepancy between the point of diversion ("**POD**") location as depicted on the digital map and the meets and bounds description of the same.

In particular, the digital map included with the Preliminary Transfer documentation correctly reflects the POD as lying in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 18. However, page 2 of the modified Transfer of Water Right describes the POD location as lying in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 18. It is respectfully submitted that a correction is necessary to the meets and bounds description to reflect the correct POD location as follows: NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 18 Twp 16N Rge 04E (or more generally as lying in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 18 Twp 16N Rge 04E).

September 25, 2020
Page 2

Please advise if your review of the Preliminary Transfer documentation and underlying Transfer Application yields a different conclusion. Please copy me on any correspondence regarding the processing of the subject Transfer, and do not hesitate to contact me with any questions or concerns. Your prompt attention is appreciated.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP

A handwritten signature in blue ink, appearing to read "C. Cook", with a long horizontal flourish extending to the right.

Christopher Cook
Associate Attorney

Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

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

BRAD LITTLE
Governor

GARY SPACKMAN
Director

October 8, 2020

TK LEASING LLC
967 E PARKCENTER BLVD STE 120
BOISE ID 83706-6721

Application for Transfer No. 84211

Dear Applicant:

Please see the enclosed *Order Granting Petition for Reconsideration* for Transfer No. 84211 in the name of TK Leasing LLC.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kensie Thorneycroft', written over a light blue circular stamp.

Kensie Thorneycroft
Administrative Assistant

Enclosures