

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 83755 IN THE)
NAME OF GARY G. KING)
_____)**

**PRELIMINARY ORDER
REJECTING APPLICATION
FOR TRANSFER**

This matter having come before the Department of Water Resources (Department) as a result of an application to transfer water rights, the Department finds, concludes, and orders as follows:

SUPPORT DATA

FINDINGS OF FACT

IN FILE # 57-123

1. On November 12, 2019, Gary G. King applied to the Department for authorization to add a point of diversion for 0.78 cubic feet per second of water diverted from Castle Creek for irrigation purposes in Owyhee County in accordance with decreed Water Rights 57-123 and 57-220B. The application for transfer, designated no. 83755 by the Department, proposes the new point of diversion in the SE¼NW¼, Section 35, Township 04 South, Range 01 East, B.M.
2. On November 18, 2019, the Department mailed Gary G. King a letter asking him to provide additional information and/or to modify the application for transfer to address concerns over validity/forfeiture of the water rights involved in the proposed transfer.
3. On December 11, 2019, the Department received a response from Gary G. King outlining his defense to the Department's forfeiture concerns. Mr. King noted the land, "had been neglected for several years", and that "most of the historically irrigated acreage had reverted back to native greasewood." Further, Mr. King clarified he needs the new point of diversion, "to fully resume use of the two water rights listed on the transfer application."
4. On April 14, 2020, the Department mailed Gary G. King a letter asking him to provide additional information to support his defense to forfeiture and protect against enlargement. In the letter, the Department informed Gary G. King that if he did not respond to the request within 30 days, the Department would reject his application for transfer.
5. The Department has not received a response from Gary G. King to the request for additional information and/or modification of Application for Transfer No. 83755.

APPLICABLE STATUTES

1. Idaho Code § 42-222(1) states that a person "entitled to the use of water" may apply to the Department to change certain elements of the authorized water use.
2. Idaho Code § 42-222(1) also sets forth the criteria for evaluating an application for transfer of water rights:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.

3. Idaho Code§ 42-222(2) states:

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

CONCLUSIONS OF LAW

When evaluating a transfer application, the Department first determines whether the applicant is "entitled to the use of water" as required by Idaho Code Idaho Code§ 42-222(1). The Department interprets this requirement to mean that the water right(s) proposed to be changed must be valid. To determine water right validity, the Department requires evidence of a license, claim, or decree. The Department then applies the forfeiture provisions of Idaho Code§ 42-222(2). If the water rights proposed to be changed are not valid, the proposed change cannot be approved, and any further analysis is moot. If the water rights proposed to be changed are valid, the Department applies the transfer evaluation criteria in Idaho Code § 42-222(1).

1. Without the additional information requested from Gary G. King, the Department cannot verify that the water rights proposed to be changed are valid, or that that the proposed change would not constitute an enlargement in use of the original water right.
2. The Department should reject Application for Transfer No. 83755.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 83755 in the name of Gary G. King is REJECTED without prejudice.

Dated this 23rd day of June, 2020.



Nick Miller
Manager, IDWR Western Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOV 12 2019

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

WATER RESOURCES
WESTERN REGION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the Application for Transfer Instructions for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

- ☐ Change diversion point(s) ☒ Add diversion point(s) ☐ Ownership change ☐ Ownership split
☐ Transfer is for changes pursuant to Idaho Code § 42-221.O.8. Attach an explanation and any supporting documentation.

1. APPLICANT(S) GARY G. King Phone 541-620-0888
 2. MAILING ADDRESS 30103 Hwy 78 City Oreana 208-337-1510
 State Id Zip 83650 Email GARY.KING1313@GMAIL.COM

- ☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.
☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.
☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the fee schedule.

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

- ☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. LIST WATER RIGHT NUMBER(S) 57-123 57-220B 0.78 cfs

- ☒ Attach a copy of the water right(s) as recorded, available at idwr.idaho.gov, Water Right Transfers, Step 1, or by contacting any Department office.

4. TOTAL AMOUNT OF WATER transferred is .78 cubic feet per second and/or _____ acre-feet per annum.
 (diversion rate) (storage volume)

5. POINT OF DIVERSION – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

- ☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at idwr.idaho.gov, Water Rights, Water Right Transfers, Modeling Resources.

New?	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Source	Local name or tag #
NO										
Yes			SE	NW	35	45	1E	Owyhee	Castle Cr	
No			NW	SW	35	45	1E			

83755

6. 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:

Ditch away from Gr.

Existing DAM

- b. Who owns the property at the point(s) of diversion? Heart K Trust

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

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

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right(s), or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

- d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☒ No

- ☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.
(Disregard if these items are on file and ownership has not changed.)

7. MAP – ☐ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ of section information. You may create a map at idwr.idaho.gov, Water Rights, Water Right Transfers, File a Transfer Application, Step 2C.

8. SIGNATURE – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Gary G King

Signature of applicant or authorized agent

Print name and title if applicable

Nov 12-2019
Date

Signature of applicant or authorized agent

Print name and title if applicable

Date

9. FEE – ☐ The application filing fee provided in Idaho Code § 42-221.O, must be submitted with the application for transfer. Applications for changes pursuant to Idaho Code § 42-221.O.8. require a filing fee of \$50 per water right. All other application fees are based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The Fee Schedule is available at www.idwr.idaho.gov, Water Right Transfers, Step 4 and in the Application for Transfer Instructions.

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments.

Received by KT

Date 11/12/2019

Fee paid \$500⁰⁰

Date 11/12/2019

Received by KT

Receipt # W047874

Preliminary review by _____

Date _____

Active in the Water Supply Bank? Yes ☐ No ☐

W-9 received? Yes ☐ No ☐

Name on W-9 _____

W-9 forwarded to fiscal? Yes ☐ No ☐

(Do NOT scan the W-9 – confidential information is held by fiscal only)

IDAHO Department of Water Resources



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WATER RIGHT REPORT

11/12/2019

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 57-220B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	GARY G KING 30103 HIGHWAY 78 OREANA, ID 83650-5045 2083371510
Directors Report Owner	LARRY B BACHMAN
Directors Report Owner	MARY ANNE BACHMAN PO BOX 336 GRAND VIEW, ID 83624 2088342684
Directors Report Owner	BLAINE COLLETT
Directors Report Owner	DENISE COLLETT 25804 COLLETT RD OREANA, ID 83650 2088342804
Original Owner	GERALDINE COX
Original Owner	GLADYS J COX
Original Owner	JAMES HENDERSON
Original Owner	JOHN HENDERSON 10725 MORRISON ENCINO, CA 91436

Priority Date: 07/18/1910

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>	<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
CASTLE CREEK	SNAKE RIVER					

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IRRIGATION | 4/01 | 10/15 | 0.64 CFS |

Total Diversion | | | 0.64 CFS |

Location of Point(s) of Diversion:

CASTLE CREEK | SWNWSW | Sec. 35 | Township 04S | Range 01E | OWYHEE County

IRRIGATION Use:

Acre Limit: 32

Place(s) of use:

Place of Use Legal Description: IRRIGATION OWYHEE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04S	01E	25		SWNW	1									
				NWSW	26		SWSW	30						
		26		SESE	14									

Total Acres: 71

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
2. THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 1 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 15 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
3. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 32 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
4. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
5. RIGHT NOS. 57-00220A AND 57-00123 ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

Dates:

Licensed Date:

Decreed Date: 10/25/2002

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number: 57C

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

83755

IDAHO Department of Water Resources



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WATER RIGHT REPORT

11/12/2019

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 57-123

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	GARY G KING 30103 HIGHWAY 78 OREANA, ID 83650-5045 2083371510
Directors Report Owner	BLAINE COLLETT
Directors Report Owner	DENISE COLLETT 25804 COLLETT RD OREANA, ID 83650 2088342804
Original Owner	GERALDINE COX
Original Owner	GLADYS J COX
Original Owner	MARTHA HENDERSON 10725 MORRISON ENCINO, CA 91436

Priority Date: 04/01/1897

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>			
CASTLE CREEK	SNAKE RIVER			
<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	10/15	0.14 CFS	
Total Diversion			0.14 CFS	

Location of Point(s) of Diversion:

CASTLE CREEK|SWNWSW|Sec. 35|Township 04S|Range 01E|OWYHEE County

IRRIGATION Use:

Acre Limit: 7

83755

Place(s) of use:

Place of Use Legal Description: IRRIGATION OWYHEE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04S	01E	25		SWNW	1									
				NWSW	26		SWSW	30						
		26		SESE	14									

Total Acres: 71

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
2. THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 1 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 15 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
3. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 7 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
4. RIGHT NOS. 57-00220A AND 57-00220B ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.
5. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

Dates:

Licensed Date:

Decreed Date: 10/25/2002

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND/OR

Water District Number: 57C

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

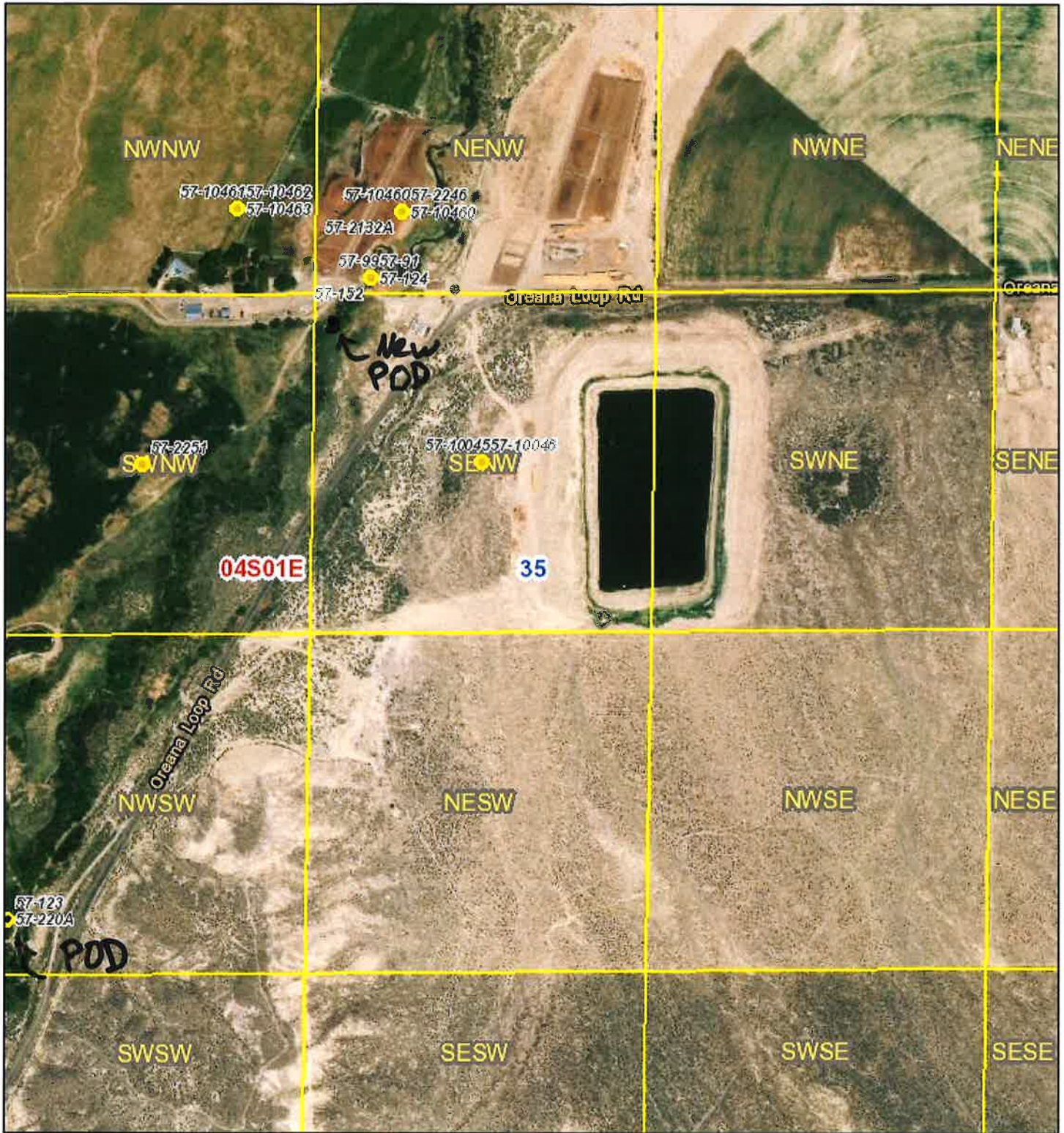
Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

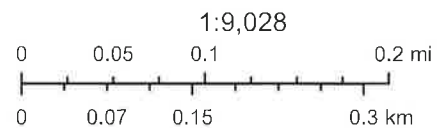
Mitigation Plan: False

ArcGIS Web Map



11/12/2019 2:50:44 PM

- POD - Water Rights
- Quarter Quarter
- Section
- Township/Range



83755

Esri, HERE, Garmin, (c) OpenStreetMap contributors, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Idaho Department of



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

June 23, 2020

GARY G KING
30103 HIGHWAY 78
OREANA, ID 83650-5045

Re: Application for Transfer No: 83755

Dear Applicant(s):

Enclosed is a Preliminary Order Rejecting Application for Transfer No. 83755 in the name of Gary G King.

If you have questions regarding the enclosed documents, would like additional information, or need to further discuss the process, please feel free to contact the Western Regional Office at 208-334-2190.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kensie Thorneycroft'.

Kensie Thorneycroft
Administrative Assistant

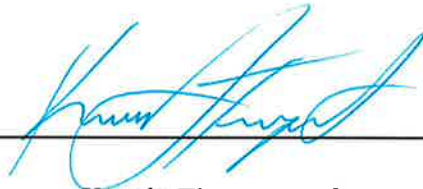
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of June 2020, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, Certified mail with return receipt, postage prepaid and properly addressed to the following:

Documents Served: Preliminary Order Rejecting Application For Transfer
Preliminary Order Insert

GARY G KING
30103 HIGHWAY 78
OREANA, ID 83650-5045



Kensie Thorneycroft
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.



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

May 15, 2020

GARY G KING
30103 HWY 78
OREANA, ID 83650

Re: Notice of Intent to Void Application For Transfer 83755

Dear Applicant(s),

On November 12, 2019 the Department of Water Resources (IDWR) received your Application for Transfer to appropriate water. The Department requested additional information via a letter dated April 14, 2020. The letter stated that a written reply must be made within thirty (30) days or the Department will void the application. As of May 14, 2020, no written correspondence was received by the Department. If it is your intent to further pursue your application, please provide written response to the original letter or request additional time to respond. It is the intent of the Department to void your application within the next fourteen (14) days if no response is received.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Sincerely,

Lynne Evans

cc Tyler Smith

Water Resource Agent
Idaho Department of Water Resources
Phone: (208) 334-2190
Email: tyler.smith@idwr.idaho.gov



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

April 14, 2020

GARY G KING
30103 HWY 78
OREANA, ID 83650

COPY

Re: Application for Transfer No. 83755

Dear Applicant:

The Idaho Department of Water Resources (IDWR) is currently reviewing the above referenced application for transfer to change a water right(s). After initial review of the application, IDWR sent you a letter on November 18, 2019 regarding concerns over validity of the right. On December 11, 2019 you submitted a defense to forfeiture stating that the land has been neglected for several years and that access to a new point of diversion is needed to fully resume use. I am contacting you today to notify you that the transfer application would likely be denied if processed as filed due to forfeiture concerns.

Forfeiture is a concern because using remote sensing technologies, the Department has concluded that beneficial use of the rights being transferred have not occurred for a period of 5 or more consecutive years. If the rights cannot be put to beneficial use from their original Point of Diversions (POD's), changing the point of diversion to a more available source poses a risk of enlargement of the right. Enlargement will occur if the total diversion rate, volume, or extent of beneficial use exceeds the amounts or beneficial use authorized under the water rights prior to the proposed transfer. This action includes changing a point of diversion to a new location where the water available is greater or more reliable.

You may wish to withdraw your application and resume the use at the original POD in order to avoid potential forfeiture of the right. IDWR will hold further processing of your application to allow a withdrawal or any other information you may wish to submit in support of your existing proposal.

Please submit the withdrawal form or additional information towards defense for application processing to continue. You may seek additional time to provide the information. Your written must be received within the next thirty (30) days.

Without a timely reply, IDWR will issue a preliminary order to deny the application. The application fee will not be refunded for a denied application. A denied application cannot generally be re-filed for substantially the same proposal.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Sincerely,

Tyler Smith
Water Resource Agent
Western Region

Enclosure: Withdrawal form

December 11, 2019

ATTN TYLER SMITH
IDAHO DEPT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE IDAHO 83705

RE: Application for transfer no 83755

I bought the property with the water rights in 2017. The property had been neglected for several years up until that point. Most of the historically irrigated acreage had reverted back to native greasewood. Since I have taken over the property, I have reclaimed most of the acres from natural vegetation. However, 2018 was not a good enough water year to fully irrigate the property. I need approval of the new point of diversion to fully resume use of the two water rights listed on the transfer application. Even though the climate engine NDVI data does not show full irrigation of the property you can still make out my attempts to irrigate using a new pivot system and gate pipe (see attached map).


Gary King

Make Map

Make Graph



MENU

Map



GET MAP LAYER

Variable ?

Type:

Remote Sensing

Dataset: ?

Sentinel 2 Top Of Atmosphere

Variable: ?

NDVI (Vegetation Index)

Computation Resolution (Scale): ?

10 m

Processing ?

Statistic (over day range): ?

Maximum

Calculation: ?

Values

Time Period ?

Period of Record: 2015-06-23 to 2019-12-09

Season:

Custom Date Range

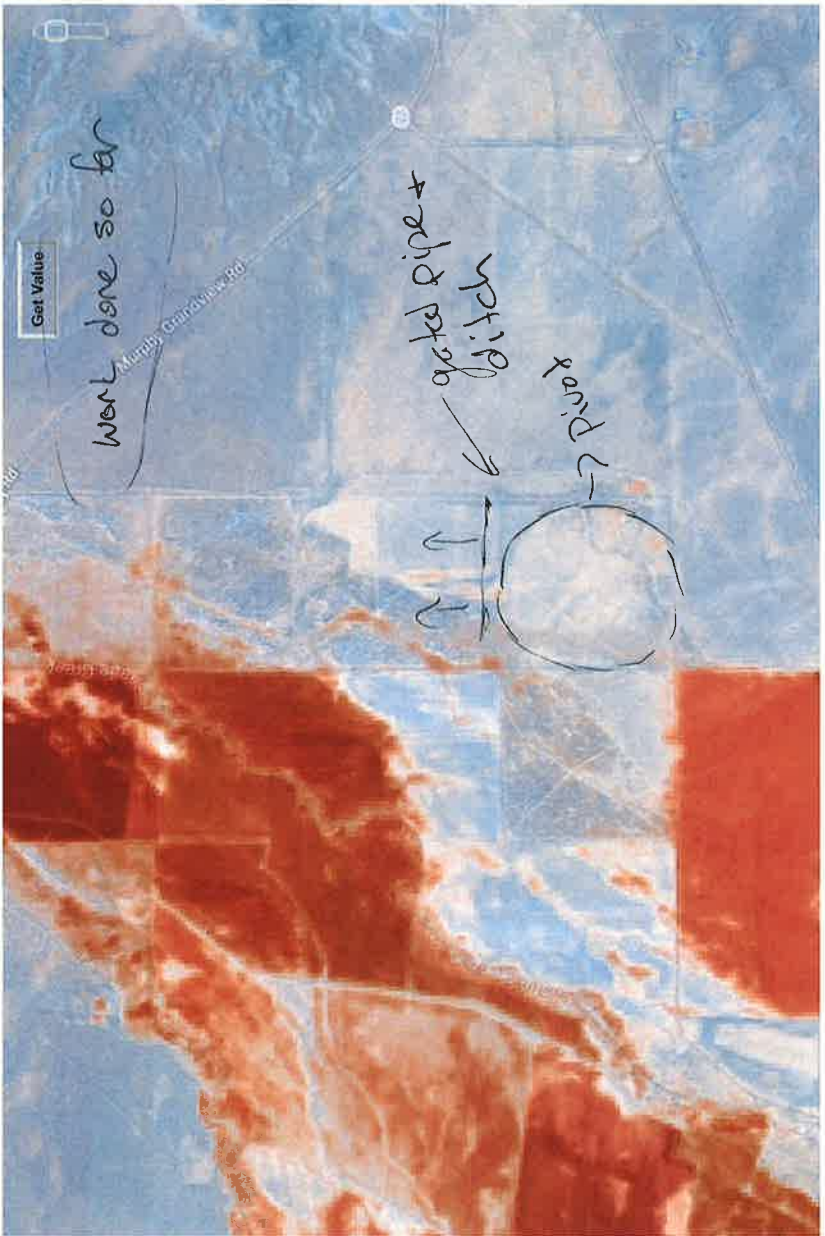
Start Date:

2019-01-01

End Date:

2019-12-09

GET MAP LAYER



30103 state highway 78, muri

Center Map



Make Map

Make Graph

INFO

GET MAP LAYER

Variable ?

Type: Remote Sensing

Dataset: ?

Sentinel 2 Top Of Atmosphere

Variable: ?

NDVI (Vegetation Index)

Computation Resolution (Scale): ?
10 m

Processing ?

Statistic (over day range): ?

Maximum

Calculation: ?

Values

Time Period ?

Period of Record: 2015-06-23 to 2019-12-09

Season:

Custom Date Range

Start Date:

2019-01-01

End Date:

2019-12-09

GET MAP LAYER



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

November 18, 2019

GARY G. KING
30103 HIGHWAY 78
OREANA ID 83650

RE: Additional Information Request for Transfer 83755

Dear Applicant:

On November 12, 2019, you filed a transfer application #83755 to add a diversion point for water rights 57-123 & 57-220B. Part of the transfer process is review for rights subject to forfeiture. Idaho Statute 42-222 states in part:

... (2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

I am now trying to verify the water use on your land. The rights described above authorize a total irrigation of 41 acres. Using aerial imagery and digital tools to measure irrigated lands found a surface area of 22.6 acres. Remote sensing tools from satellites in 2014 to 2018 were used to show the areas described as fallow within your application may be subject to forfeiture. **Evidence of irrigation use in these areas is needed to complete processing of the transfer application.**

Please submit the requested information for the application to be processed. You may seek additional time to provide the information by making a written request to interrupt processing for up to six months. The application may be approved with partial forfeiture or rejected without a timely written reply within the next thirty (30) days. Refunds are not issued for rejected applications. You may also withdraw the application with the form enclosed in order to receive a refund for the filing. Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Respectfully,

Tyler Smith
Water Resource Agent
208.334.2190 phone
tyler.smith@idwr.idaho.gov

Enclosure(s): National Agriculture Imagery Program (NAIP) imagery map 2017
Idaho Statute §42-223
Withdrawal form