

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 82639**

This is to certify that: **FRANK J MCCANN LLC**
153 LIVINGSTON AVE
MISSOULA, MT 59801-8103

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>
65-22289	WR/DECREED	2/14/1950	N/A	60.5 af	N/A	38.0	SKUNK CREEK

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>
65-22289	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>
65-22289	65-22289	N/A	60.5 af	N/A	128.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		N/A	60.5 af	N/A	128.0		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 5th day of April, 2019.



Chief, Water Allocation Bureau

WATER RIGHT NO. 65-22289

As Modified by Transfer No. 82639

In accordance with the approval of Transfer No. 82639, Water Right No. 65-22289 is now described as follows:

Right Holder: FRANK J MCCANN LLC
153 LIVINGSTON AVE
MISSOULA, MT 59801-8103

Priority Date: 2/14/1950

Source: SKUNK CREEK

Tributary: CLEAR CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION FROM STORAGE	04/15	to 10/15		60.5 af
IRRIGATION STORAGE	01/01	to 12/31		60.5 af
				60.5 af

LOCATION OF POINT(S) OF DIVERSION

SKUNK CREEK SENE Sec 16 Twp 12N Rge 04E VALLEY County

PLACE OF USE: IRRIGATION FROM STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12N	04E	4												21.0					21.0
12N	04E	9	30.0	39.0			38.0												107.0

POU Total Acres: 128.0

CONDITIONS OF APPROVAL

1. Rights 65-22289, and 65-23763 when combined shall not exceed a total irrigation of 128 acres.
2. This right when combined with all other rights shall provide no more than 5.0 afa per acre for irrigation storage and irrigation from storage for the place of use.
3. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.
4. Prior to diversion of water under this right, the right holder shall provide a means acceptable to the department to measure the amount of water entering the reservoir and the amount of water released from the reservoir.
5. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65.

Transfer No. 82639

WATER RIGHT NO. 65-22289

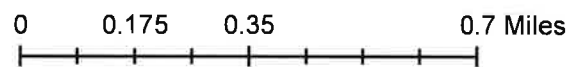
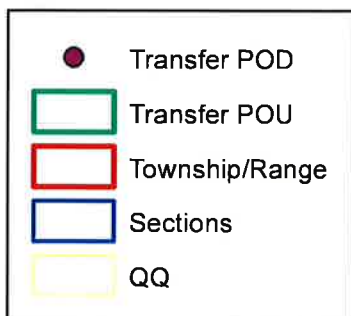
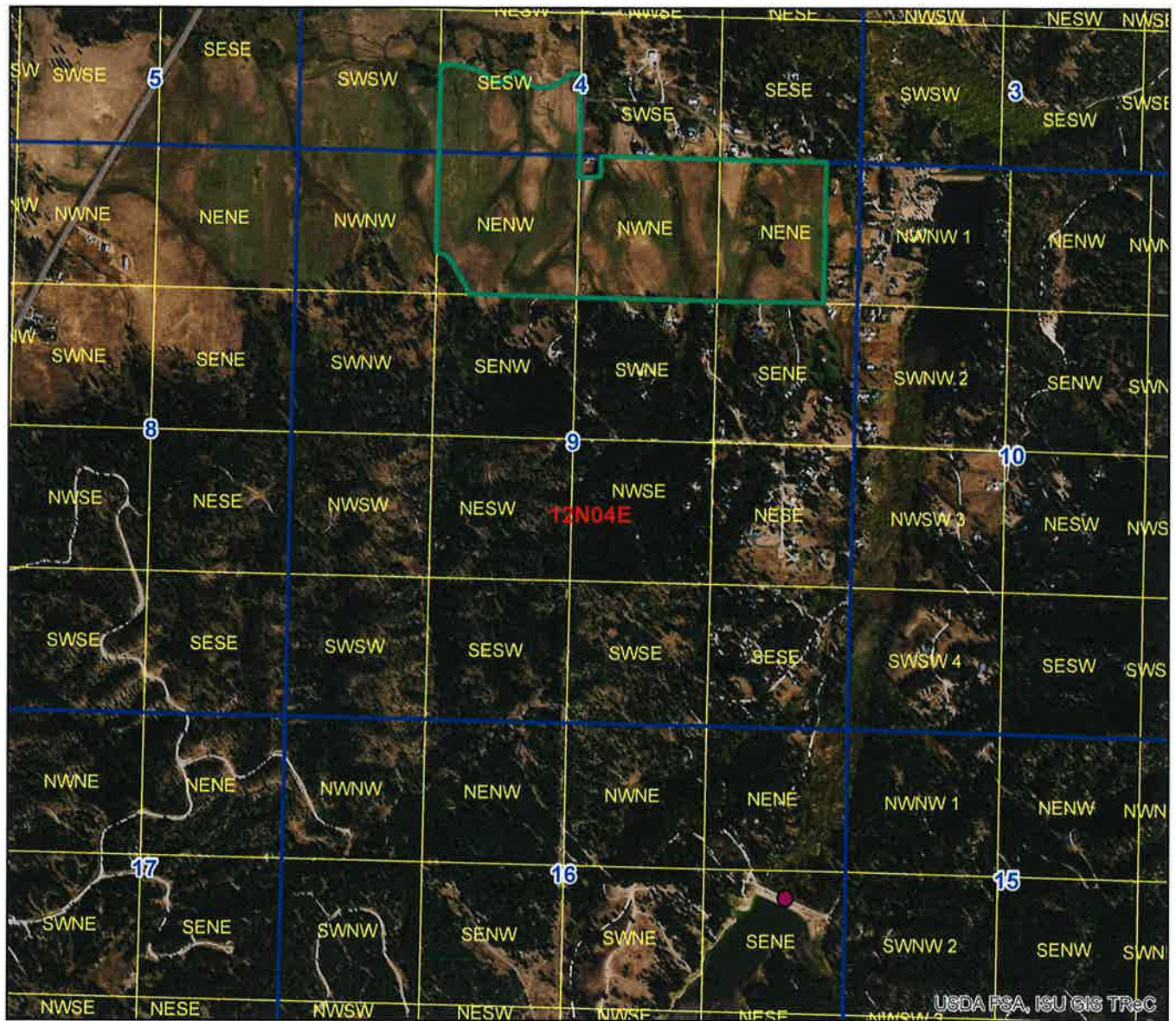
As Modified by Transfer No. 82639

CONDITIONS OF APPROVAL

6. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water. The right holder shall not divert water after June 15 each year unless the watermaster authorizes continued diversion and use of water under this water right. When the watermaster informs the right holder that water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use. The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.
7. This right does not grant any right-of-way or easement across the land of another.
8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. 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
Attachment to Transfer No. 82639
Water Right(s): 65-22289

This map depicts the IRRIGATION FROM STORAGE 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.





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

April 5, 2019

FRANK J MCCANN LLC
153 LIVINGSTON AVE
MISSOULA MT 59801-8103

Re: Transfer No.: 82639
Water Right Nos: 65-22289

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

The Department of Water Resources has issued the enclosed approved Transfer of Water Rights. Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Rights 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,


Anna Kaiser



Nick Miller
Regional Manager

Enclosure

CC:

MICHAEL C CREAMER
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the persons listed below:

Re: Transfer No.: 82639
Water Right No.: 65-22289

FRANK J MCCANN LLC
153 LIVINGSTON AVE
MISSOULA MT 59801-8103

MICHAEL C CREAMER
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720



Anna Kaiser
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. 82639 File

FROM: Justin Shearer

DATE: 3/6/19

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes to retire and relocate 38 acres and 60.5 acre feet of storage water for irrigation purposes (WR 65-22289) to nearby 128 acre place of use near the intersection of Coyote Trail Rd and Clear Creek Rd, Alpha, ID. No proposed changes to point of diversion. Current authorized place of use will not be irrigated. Storage right 65-23763 also is used on the proposed place of use; proposed transfer will increase rate/acre.

Summary of Information Submitted

Authority to File: Frank J. McCann, of Frank J. McCann, signed the application. Michael C. Creamer of Givens Pursley has been the acting representative. Deeds submitted with attached ownership change indicate that applicant acquired sections 4 & 9 property, which was when 65-22289 was split into 65-22289 & 65-23763. Ownership change from Janice McCann LLC to Frank J. McCann, LLC will be processed prior to transfer.

Water Right Validity:

WR 65-22289 in transfer is a decreed right has been used at proposed POU since 2013 in combination with 65-23763. Not subject to forfeiture, right has been in use within the previous, consecutive, five year period.

Overlap Analysis:

POU Overlap: Proposed POU is same as POU for 65-23763. Both rights are Irrigation from Storage rights. Current POU has no other appurtenant water rights and will no longer be irrigated.

POD Overlap: Proposed POD will remain at existing current POD. POD overlap includes WR 65-23763 as well as 4 other storage rights that divert from Herrick Dam.

Injury to Other Water Rights:

None anticipated. The transfer of water to the new POU will not reduce the quantity of water available to other rights. The volume of water under this right will continue to be diverted from Herrick Reservoir as it has been historically, it will just be put onto different ground through an existing system and POD. Comments from Watermaster of WD 65 were sought at advertising and Ron Shurtleff, acting Watermaster, did not oppose the approval of this application. WR 65-22289 has been decreed and no additional quantity in water is being requested, therefore injury is unlikely as a result of this transfer.

Enlargement of Use: None anticipated. The transfer proposed does not increase the amount of water has been historically used by changing the intended POU. There is no increase to diversion volume proposed by this transfer. The nature of use of the water right will not be altered by this transfer. The right is not supplemental and the transfer will not be changing the historic beneficial use. The period of use will remain the same. The water used under this right is not purposed for confined animal feeding

operations, or fish propagations. No changes to the existing POD under this right that would otherwise enhance the user's water supply is proposed under this transfer. Section 42-222(1), *Idaho Code*, provides that a transfer of a water right for the use of stored water for irrigation purposes does not constitute an enlargement in the use of the original water right, even when more acres are irrigated, provided that no other water rights are injured. The volume per acre per year will only be increased from 1.6 AF/acre/yr. to a post-transfer place of use receiving 2.06 AF/acre/yr. No volume limit will be required, but acre limit will be needed. No changes to the quantities of water used under these rights to account for additional conveyance losses are being sought through this transfer.

Local Public Interest:

There are no anticipated impacts to recreation, fish, or wildlife as a result of this transfer. The transfer complies with applicable water and hazardous substance standards designed to protect the public water resource. The proposed transfer would comply with local and state government regulations, zoning ordinances, and policies. This transfer is compatible with the objectives and policies of the State Water Plan. The application was advertised and we did not receive any protests. For these reasons, this transfer should be considered in favor of 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.

Discussion

A non-split change of ownership was included with the transfer. Applicant paid \$25.00 processing fee prior to transfer. Standard storage conditions were not added since the applicant/owner is not the owner of Herrick reservoir, nor the sole water user storing water in the reservoir. Because the two rights being combined in this instance are both irrigation storage rights, no combined use limit condition was added, however, a combined acre limit condition was added.

RECEIVED
DEC 17 2018
WATER RESOURCES
WESTERN REGION

State of Idaho

Department Of Water Resources

WATERMASTER RECOMMENDATION FORM

Water District # Water District No. 65

Application # Transfer No. 82639

Applicant Name: Frank J. McCann, LLC

Watermaster Recommendation:

- a) X I do not oppose approval of this application.
- b) I do not oppose approval of this application if it is conditioned as follows:
- c) I oppose approval of this application for the following reasons:
- d) Additional comments:

Dated this 17th day of December, 2018

Ron Shurtleff
Watermaster Signature

Ron Shurtleff
Printed Name

Publisher's Affidavit of Publication

STATE OF IDAHO

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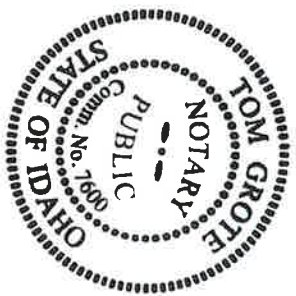
County of Valley

I, Tricia Warren, being duly sworn and say, I am the office manager of The Star-News, a weekly newspaper published at McCall, in the County of Valley, State of Idaho; that said newspaper is in general circulation in the county of afore said and is a legal newspaper; that the PUBLIC NOTICE, a copy of which is enclosed hereto and is a part hereof, was published in said newspaper once a week for a period of two weeks in the regular and entire issue of every number there of during the period of time of publication, and was published in the newspaper proper and not in a supplement; and that publication of such notice began February 7, 2019 and ended February 14, 2019.

Tricia Warren

Subscribed and sworn before me this the 14th day of February, 2019.
STATE OF IDAHO
COUNTY OF VALLEY

On this 14th day of February in the year of 2019, before me, a Notary Public, personally appeared Tricia Warren, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.



Tom Grote
Tom Grote
Notary Public for Idaho
Residing at McCall, Idaho
Commission Expires 1/19/2024

NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 82639

MICHAEL C CREAMER, GIVEN'S PURSLEY LLP PO BOX 2720, BOISE, ID 83701-2720; FRANK J MCCANN LLC, 133 LIVINGSTON AVE, MISSOULA, MT 59801-8103; has filed Application No. 82639 for changes to the following water rights within VALLEY County(s): Right No(s), 65-22289; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/Query/NewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change a portion of the above rights as follows: The transfer proposes to move 38.0 acres and 60.5 acre feet of storage water for irrigation purposes to adjacent 128 acre place of use to the NE near the intersection of Coyote Trail Rd and Clear Creek Rd, Alpha, ID. No proposed changes to point of diversion. Current authorized place of use will not be irrigated.

For additional information concerning the property location, contact Western Region of office at (208) 334-2190; or for a full description of the right(s) or proposed transfer(s), please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-222. Any protest against the proposed change(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705 together with a protest fee of \$25.00 for each application on or before 2/25/2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
2/16/2019

Job 2/28/2019

RECEIVED

FEB 14 2019

WATER RESOURCES
WESTERN REGION