

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 81290**

This is to certify that: **DRY LAKE DAIRY LLC**
12492 BIG FOOT RD
NAMPA, ID 83686

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>
63-3142	WR/DECREED	1/7/1959	2.630 cfs	390.8 af	63.2	262.0	GROUND WATER
63-7083	WR/DECREED	4/11/1968	2.400 cfs	172.5 af	120.0	262.0	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>
63-3142	NO	YES	NO	NO	NO	NO
63-7083	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>
63-3142	63-3142	2.630 cfs	390.8 af	63.2	150.0	N/A	N/A	N/A	N/A	N/A
63-7083	63-7083	1.740 cfs	125.0 af	87.0	150.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		2.760 cfs	388.0 af	150.0	150.0		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 31st day of December, 2018.



Chief, Water Allocation Bureau

SUPPORT DATA

IN FILE # 63-3142

Transfer No. 81290

WATER RIGHT NO. 63-3142**As Modified by Transfer No. 81290**

In accordance with the approval of Transfer No. 81290, Water Right No. 63-3142 is now described as follows:

Right Holder: DRY LAKE DAIRY LLC
12492 BIG FOOT RD
NAMPA, ID 83686

Priority Date: 1/7/1959

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
COMMERCIAL	01/01	to 12/31	1.940 cfs	247.0 af
IRRIGATION	03/01	to 11/15	0.690 cfs	143.8 af
STOCKWATER	01/01	to 12/31	1.940 cfs	247.0 af
			2.630 cfs	390.8 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NENE	Sec 13 Twp 01N Rge 03W CANYON County
GROUND WATER	NENE	Sec 13 Twp 01N Rge 03W CANYON County
GROUND WATER	NWNE	Sec 13 Twp 01N Rge 03W CANYON County

PLACE OF USE: COMMERCIAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	03W	12									X	X	X	X	X	X	X	X	
01N	03W	13	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	

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	
01N	03W	13									1.0			30.0	40.0		40.0	39.0	150.0

Right Acre Limit: 63.2

POU Total Acres: 150.0

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	
01N	03W	13	X	X	X	X													

Transfer No. 81290

WATER RIGHT NO. 63-3142
As Modified by Transfer No. 81290

CONDITIONS OF APPROVAL

1. Right 63-3142 is limited to the supplemental irrigation of 63.2 acres within the place of use described above in a single irrigation season.
2. Rights 63-3142 and 63-7083 when combined shall not exceed a total diversion rate of 2.26 cfs and a total annual maximum diversion volume of 141 af at the field headgate for the supplemental irrigation of 150 acres.
3. Rights 2-2172, 63-3142 and 63-7083 when combined shall not exceed the irrigation of 219 acres.
4. Rights 63-3142 and 63-7083 are limited to a total combined diversion rate of 2.76 cfs and to a total combined annual diversion volume of 388 af for all uses.
5. 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 lands above.
6. 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 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 Section 42-222, Idaho Code, or other Department approval.
7. 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.
8. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality monitoring and/or permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
9. The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. Water diverted under this approval shall not be used for irrigation unless the water is first used in the dairy as authorized by this right.
10. Commercial use is for a dairy.
11. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

WATER RIGHT NO. 63-3142
As Modified by Transfer No. 81290

CONDITIONS OF APPROVAL

12. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.
13. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
14. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
15. Pursuant to Section 42-1412(6), Idaho Code, 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.

WATER RIGHT NO. 63-7083
As Modified by Transfer No. 81290

In accordance with the approval of Transfer No. 81290, Water Right No. 63-7083 is now described as follows:

Right Holder: DRY LAKE DAIRY LLC
12492 BIG FOOT RD
NAMPA, ID 83686

Priority Date: 4/11/1968

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	03/15	to 11/15	1.740 cfs	125.0 af
			1.740 cfs	125.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NENE	Sec 13 Twp 01N Rge 03W CANYON County
GROUND WATER	NENE	Sec 13 Twp 01N Rge 03W CANYON County
GROUND WATER	NWNE	Sec 13 Twp 01N Rge 03W CANYON County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	03W	13									1.0			30.0	40.0		40.0	39.0	150.0

Right Acre Limit: 87.0
POU Total Acres: 150.0

CONDITIONS OF APPROVAL

1. Right 63-7083 is limited to the supplemental irrigation of 87 acres within the place of use described above in a single irrigation season.
2. Rights 63-3142 and 63-7083 when combined shall not exceed a total diversion rate of 2.26 cfs and a total annual maximum diversion volume of 141 af at the field headgate for the supplemental irrigation of 150 acres.
3. Right 63-3142 and 63-7083 are limited to a total combined diversion rate of 2.76 cfs and to a total combined annual diversion volume of 388 af for all uses.
4. Rights 2-2172, 63-3142 and 63-7083 when combined shall not exceed the irrigation of 219 acres.
5. 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 lands above.

Transfer No. 81290

WATER RIGHT NO. 63-7083

As Modified by Transfer No. 81290

CONDITIONS OF APPROVAL

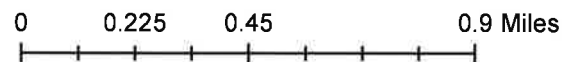
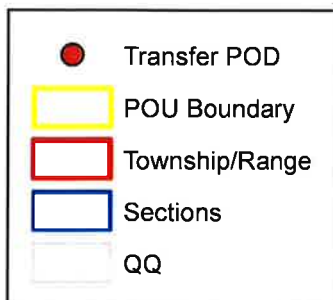
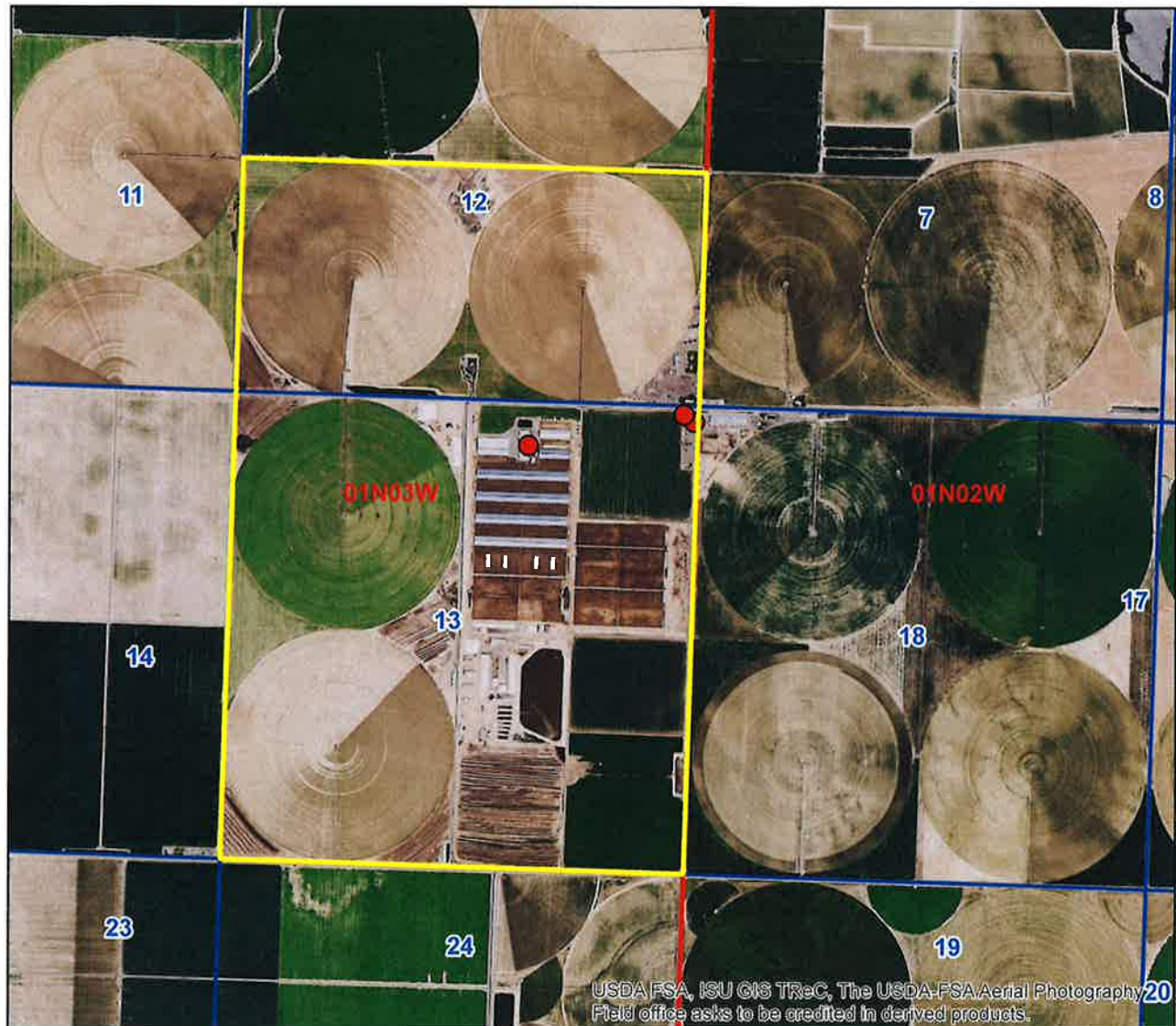
6. The portion of Right 63-7083 in the amount of 0.66 cfs, 47.5 af and 33.2 acres shall be considered forfeited through approval of Transfer 81290.
7. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
8. 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 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 Section 42-222, Idaho Code, or other Department approval.
9. 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.
10. The period of use for the irrigation described in this approval may be extended to a beginning date of 03/01 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 03/15 is subordinate to all water rights having no subordinated early irrigation use and a priority date earlier than 02/06/2009.
11. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
12. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.
13. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
14. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
15. Pursuant to Section 42-1412(6), Idaho Code, 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. 81290

Water Right(s): 63-3142

This map depicts the COMMERCIAL 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.

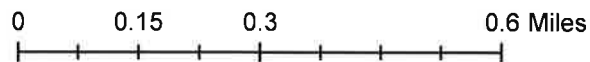
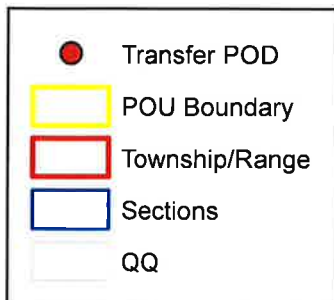
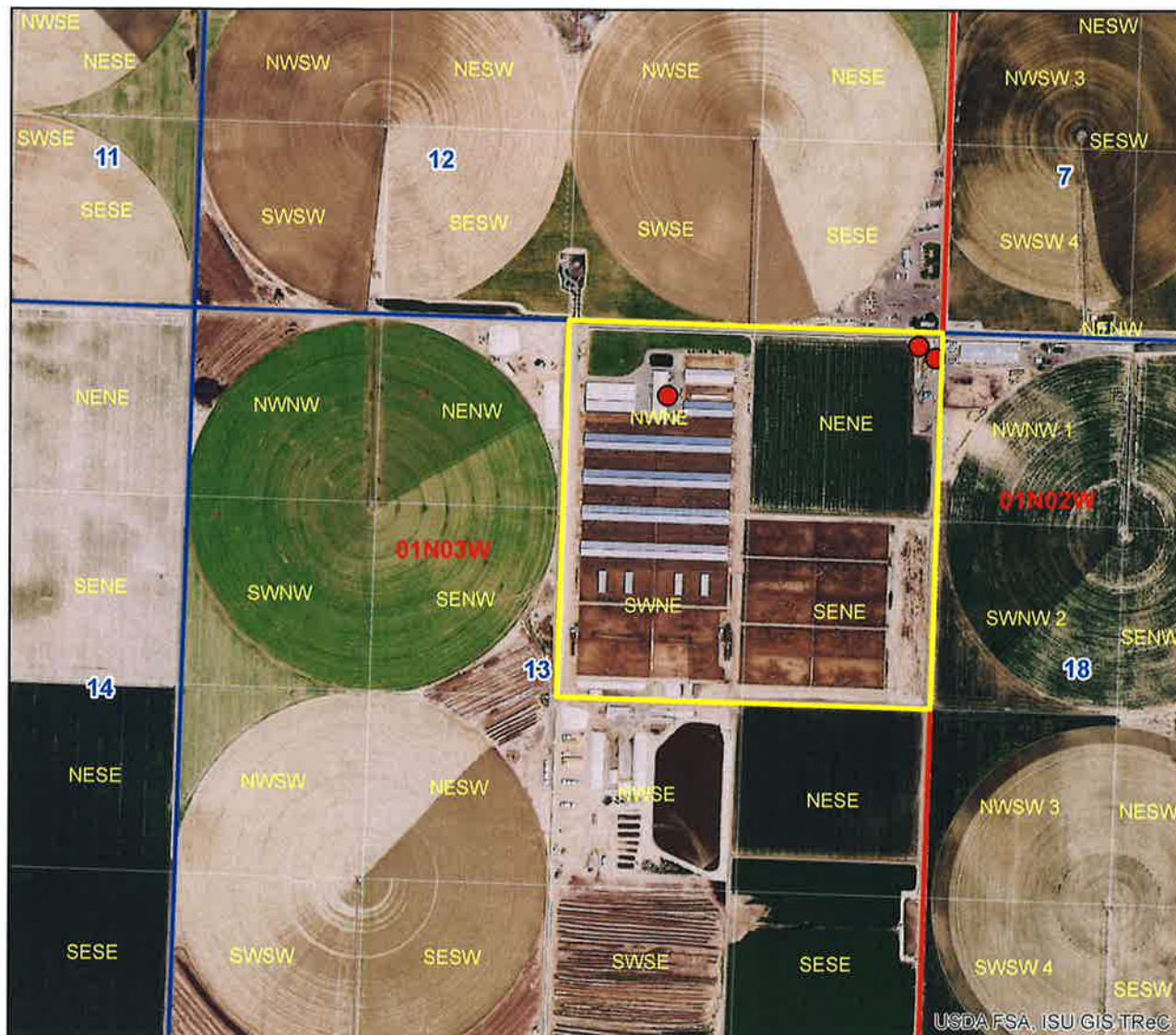


State of Idaho
Department of Water Resources

Attachment to Transfer No. 81290

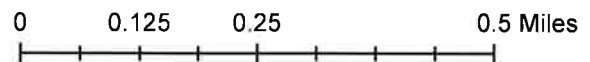
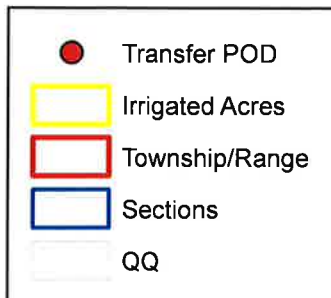
Water Right(s): 63-3142

This map depicts the STOCKWATER 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
Attachment to Transfer No. 81290
Water Right(s): 63-3142 and 63-7083

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.





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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 31, 2018

DRY LAKE DAIRY LLC
12492 BIG FOOT RD
NAMPA ID 83686

Re: Transfer No.: 81290
Water Right Nos: 63-3142, 63-7083

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.

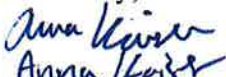
ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and 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 Miller

For
Nick Miller
Regional Manager

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2018 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.: 81290
Water Right No(s): 63-3142, 63-7083

DRY LAKE DAIRY LLC
12492 BIG FOOT RD
NAMPA ID 83686

A handwritten signature in blue ink, reading "Anna Kaiser", is written over a horizontal line.

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. 81290

FROM: Phill Hummer

DATE: 09/25/2018

RE: Evaluation of Application

The applicant proposes to change the location of one of the three points of diversion authorized on each of these water rights. The proposed point of diversion is an existing well that was constructed in a different location. The project site is about 18 kilometers south of Nampa Idaho near the intersection of State Highway 45 and Big Foot Rd.

The purpose of this application for transfer is to change the location of one of the points authorized rights no. 63-3142 and 63-7083. Additionally, a "new" well will be added to the rights. Even though the water rights authorize 3 POD's only 2 wells had been constructed. A third well was completed in 2017 in the NENE of section 13. This is the well marked as "new" on the application, its "new" because it is new to the water rights but it is an existing well.

Summary of Information Submitted

Authority to File:

The applicant of this transfer is Dry Creek Dairy LLC and it is signed by Larry Vander Stelt. The Idaho Secretary of State website has their 2017 annual report on file that shows Lawrence Vander Stelt is a signing member of the company. Therefore he is authorized to sign and submit this application.

Water Right Validity:

I used ArcMap to review the number of authorized acres within the place of uses of both rights. Imagery showed a number of acres may not have been irrigated within the last five years. I sent the applicant a letter on 04/03/2017 stating that the irrigation occurring under water rights no. 63-3142 and 63-7083 were at risk of forfeiture and might be reduced during the transfer approval process. This letter stated that the applicant could submit information demonstrating protection from forfeiture. As a result of the letter I met with the applicant to explain the forfeiture concerns in detail and discuss their options. Since that meeting I tried to contact the applicant but never did receive any response with regard to the forfeiture issue. At one point they indicated that they would be hiring someone from Givens Pursley LLP to represent them. I spoke with Michael Lawrence at Givens Pursley LLP. He said that Dry Lake Dairy LLC had hired the firm to assist them with water rights issues. I sent an email to Mr. Lawrence on 05/01/2017 that outlined the possibility of forfeiture and provided a copy of the application. I did not receive a response. I followed up with another email on 10/19/2017 but there was no response to that email either. I have not been able to contact the applicant. Since the Department did not receive any defenses to forfeiture within the deadline or any requests for additional time and there was no definitive evidence that the applicant had hired a representative, application processing was continued by advertising the application.

Review of the backfiles for these rights shows that transfer no. 67018 (also references as no. 5598) changed a portion of the irrigation authorized under water right 63-2143 to commercial and stockwater. The amount changed was based on a project annual volume requirement for the proposed dairy, estimated at 247 afa. This volume worked out to be equivalent to 98 acres. 98 acres was also removed from the primary surface right 2-2172 by way of reducing the amounts claimed in adjudication. The project designs submitted in support of the transfer shows the plan was to utilize the entirety of section 13 for the dairy. Maps show the animals were to be in the NE quarter while the NW, SW and SE quarters were to be used for wastewater disposal. It's clear from aerial imagery that the farming operation developed is slightly different than what was proposed.

Transfer no. 67018 reduced the number of authorized acres, the rate, and volume authorized for irrigation under right no. 63-3142. But the PPU following approval still included property that was not going to be irrigated due to construction of the dairy. Satellite imagery shows no irrigation activities taking place in the NWNE, SWNE, and NWSE of the PPU as far back as 2004. Non-irrigation activities expanded in 2006 to include the SENE QQ. Additionally, the irrigation occurring in the SW quarter of section 13 has clearly been through the use of a pivot system which leaves a portion of the corner of the SESW QQ unirrigated. The portions of the property that have not been visibly irrigated is supported by Landsat imagery. The attached Landsat image from 09/08/2015 is a good representation of the irrigation practices within the place of use. For these reasons the PPU of both water rights should be reduced from 262 acres to 150 acres. The acres that should be removed from the PPU of both rights no. 63-3142 and 63-7083 include the 31 from both the SWNE and SENE as well as the 40 acres from the NWSE. Also 10 acres should be removed from the SESW to reflect the lack of irrigation occurring in the corner due to the pivot. The number of acres and the amount of water reduced due to forfeiture should be removed the more junior right because in practice supplemental use of ground water would first be diverted under the more senior right until that right is satisfied. Any addition diversions of ground water would then occur under the junior water right. Any water not diverted for irrigation should be considered an incomplete use of the most junior right.

The evidence supports the irrigation of 150 acres within the combined PPU of the two rights. Water right no. 63-3142 authorizes 63.2 acres of the combined limit and has a priority date of 01/07/1959. It is the more senior ground water right. Since the total number of acres actually irrigated is greater than the number authorized by right no. 63-3142 than it should not be reduced. The reduction due to forfeiture should be done to the junior right 63-7083 based on the following calculations:

63-7083:

Current: 120 acres, 2.40 cfs, 172.5 af

After Forfeiture:

$183.2 - 150 = 33.2$ acres forfeit

$120 - 33.2 = 86.8$ acres remaining

$2.40/120 = 0.02$ cfs per acre * $86.8 = 1.736$ cfs -> 1.74 cfs

$172.5/120 = 1.4375$ af per acre * $86.8 = 124.775$ -> 125 af

Both of rights no. 63-3142 and no. 63-7083 provide supplemental ground water to Snake River right nos. 2-2172, 2-2177, and 2-7010. Although the Department doesn't normally find forfeiture in supplemental rights, I think that in this case the reduction to the supplemental irrigation authorized is justified. Supplemental groundwater has not been used in place of primary surface water because no irrigation has occurred at all. The acres forfeited have not been irrigated with any source because it's a dairy.

Enlargement and Injury:

The purpose of this application for transfer is to change the water rights to reflect the current location of the wells. The main well and backup well are both in the NENE and the dairy well is in the NWNE. The dairy well is incorrectly located and is being correctly located through this transfer. A new well was recently completed (9/22/2017) in the NENE. This new well is very close to the older well and completed to a shallower depth, diversion of water at this site should not affect existing water rights holder differently than the historic use of these rights.

Following approval of transfer no. 67018 and adjudication when a portion of water right no. 63-3142 was converted to commercial and dairy use the two rights were conditioned with an additional combined limit (WB4) related to the rate and volume limits of the diversion system. If the total volume on these conditions isn't reduced then additional volume could be used in the dairy up to the old limit of 419.5 af, this would constitute an enlargement of use. These two conditions should be updated to X35 and the total volume should be reduced to reflect the volume reduction due to forfeiture. The rate can remain the same since the combined rate is still greater than the system capacity.

Current System Limit: 2.76 cfs, 419.5 af (247 af for the dairy)

After Forfeiture: $141 + 247 = 388$ af

Local Public Interest:

It is important to the Department and is within the public interest to have water rights that correctly reflect the use of water occurring and the location that water is appropriated. The purpose of the application is the change the POD locations on the rights to the location on the ground. This change is within 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**Comment Letters**

Watermaster comments were not requested. Both water rights authorize the diversion of groundwater.

Lee Halper filed a notice of protest of transfer no. 67018 (rights no. 63-3142, 63-7083, 63-147C & D) on 12/06/99 because he was concerned the changes were not within the public interest. His main concern was the construction of the settling lagoons and the timing of the land application of wastewater. Since transfer no. 81290 involves changing the location of a well I didn't think it was necessary to send Mr. Halper a direct notice when this application was advertised.

Overlap

Groundwater irrigation rights no. 63-3142 and 63-7083 are supplemental to surface water right no. 2-2172. The place of use for the two groundwater rights currently overlaps right no. 2-2172 in the SWNE, SESE, and the SE quarter of section 13, township 01N, range 03W. Right no. 2-2172 does not authorize irrigation in the SW quarter of that section. Right no. 2-2172 is not involved in the transfer application and it is not referenced in the combined limit conditions of the groundwater rights. For this reason changes to the conditions are not required and it was not added to the transfer as an associated right.

Right no. 2-2172 was claimed for 98 acres less to reflect the amount converted to a dairy. This lowered the acre limit to 219 acres. Since rights no. 63-3142 and 2-2172 are both fully supplemental the combined limit condition on the groundwater rights that includes right no. 2-2172 should be reduced to 219 acres.

Surface water rights no. 2-7010 and 2-2177 also overlap the two groundwater rights but only in the SESW QQ of section 13, township 01N, range 03W. The limiting conditions of these rights do not include the 2 groundwater rights. The limiting conditions of the 2 groundwater rights do not include this right. Conditions on the groundwater rights limiting them to supplemental use and 0.02 cfs and 4.5 afa per acre should be used to address any overlap issues.

Conditions

If approved the following changes should be made to the conditions of the water rights in addition to the changes discussed above:

- 046, 020, and 106 on 63-3142 need to be updated to the current language.
- 01Q and T17 should be removed and replaced with 01M, measurement is not required for this diversion
- Add Condition T07.
- Replace C18 with T19.
- Replace 100 and 105 on 63-3142 and 065 and 104 on 63-7083 with condition 943.
- Replace WB4 and X35 with a new X35 as discussed above.
- Modify X35 to reflect to forfeited acres as follows:

Current combined limits: 2.76 cfs, 172.5 af, and 183.2 acres

$$2.76/183.2 = 0.015\text{cfs/acre} * 150 = 2.2598 \rightarrow 2.26 \text{ cfs}$$

$$172.5/183.2 = .94 \text{ af/acre} * 150 = 141.239 \rightarrow 141 \text{ acres}$$

New combined limits: 2.26 cfs, 141 af, 150 acres

- Add X54 to right no. 63-7083 to describe the portion no longer valid:

$$63-7083: 120 - 86.8 = 33.2 \text{ ac}$$

$$2.40 - 1.74 = 0.66 \text{ cfs}$$

$$172.5 - 125 = 47.5 \text{ af}$$

- Add 205 to right no. 63-7083 since there is a finding of forfeiture.

A drilling fee upgrade from domestic to non-domestic use is not needed for any of the wells involved with this transfer. Both existing POD's are wells constructed under an irrigation drilling permit. The "new" well is an existing irrigation well completed in 2001(ID 20133).The well with the tag id D0018585 for domestic use was located by GPS in the SESW of section 12, 01N, 03W and is not used under either water rights no. 63-7083 or 63-3142.

No protests were filed against this application. The application can be approved as reflected by the draft approval.

29512 1769297

1 IDWR - WESTERN REGION

2735 AIRPORT WAY
BOISE ID 83705

RECEIVED

JUN 19 2018

WATER RESOURCES
WESTERN REGION

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)

County of Canyon)

)SS.

Sharon Jessen
of Nampa, Canyon County, Idaho, being
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 City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County 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 time(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:
06/07/2018 06/14/2018

Sharon Jessen

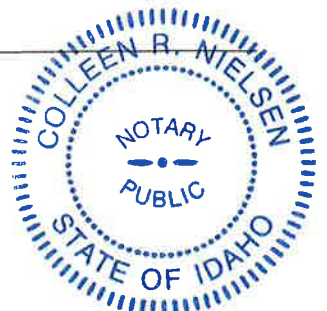
STATE OF IDAHO)

County of Canyon)

On this 14th day of June in the year of
2018 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 for Idaho
Residing at Canyon County
My Commission expires 06/28/2023



LEGAL NOTICE

The following applications have been filed to appropriate the public waters of the State of Idaho:

63-34503

DAVID TAYLOR
21212 TUCKER RD
GREENLEAF, ID 83626
Point of Diversion NENE S24 T05N R04W CANYON
County Source GROUND WATER
Use: DOMESTIC 01/01 to 12/31 0.04 CFS
Use: IRRIGATION 03/01 to 11/15 0.04 CFS
Use: STOCKWATER 01/01 to 12/31 0.02 CFS
Total Diversion: 0.1 CFS
Date Filed: 2/23/2018
Places of Use: DOMESTIC, STOCKWATER, IRRIGATION
T05N R04W S24 NENE
Total Acres: 2
Water bearing zone to be appropriated is from 258 to 303 feet.

✓ OK RN 6/29/18

63-34519

DIAMOND S FARMS LLC
23460 STAFFORD RD
CALDWELL, ID 83607
(2) Points of Diversion L1(NESE) S2 T04N R04W CANYON
County Source UNNAMED STREAM Tributary BOISE RIVER
(2) Points of Diversion L3(NWSW) S1 T04N R04W
CANYON County Source UNNAMED STREAM Tributary
BOISE RIVER
Use: DIVERSION TO STORAGE 11/16 to 02/28 7.2 CFS
Use: IRRIGATION 03/01 to 11/15 0.96 CFS
Use: WILDLIFE 11/16 to 02/28 7.2 CFS
Use: WILDLIFE STORAGE 11/16 to 02/28 1032 AF
Total Diversion: 7.2 CFS
Date Filed: 3/2/2018
Places of Use: WILDLIFE STORAGE, IRRIGATION,
WILDLIFE
T04N R04W S1 L3(NWSW)
T04N R04W S2 L1(NESE)
Total Acres: 48

✓ OK RN 6/29/18

63-34536

BETTE J BARRETT
25857 LANSING LN
MIDDLETON, ID 83644
Point of Diversion NENE S28 T05N R02W CANYON
County Source GROUND WATER
Use: DOMESTIC 01/01 to 12/31 0.04 CFS
Use: IRRIGATION 03/01 to 11/15 0.09 CFS
Use: STOCKWATER 01/01 to 12/31 0.02 CFS
Total Diversion: 0.15 CFS
Date Filed: 4/16/2018
Places of Use: IRRIGATION, STOCKWATER, DOMESTIC
T05N R02W S28 NENE
Total Acres: 3
Water bearing zone to be appropriated is from 30 to 179 ft.

✓ OK RN 6/29/18

63-34537

E4 PARTNERS LLLP
6152 W HALF MOON LN
EAGLE, ID 83616
Points of Diversion SWNE SENW L3(NESW) S13 T04N
R02W CANYON County Source GROUND WATER
Tributary BOISE RIVER
Use: AESTHETIC STORAGE 01/01 to 12/31 1020 AF
Use: IRRIGATION FROM STORAGE 03/01 to 11/15 275
AF
Use: IRRIGATION STORAGE 01/01 to 12/31 275 AF
Total Diversion: 1300 AF
Date Filed: 4/6/2018
Places of Use: IRRIGATION STORAGE, AESTHETIC
STORAGE
T04N R02W S13 SWNE SENW L3(NESW) L2(NWSE)
Place of Use: IRRIGATION FROM STORAGE
T04N R02W S13 NE(ALL) NENW SENW L3(NESW) L2
(NWSE)
Total Acres: 86.9
Water bearing zone to be appropriated is from 0 to 30 ft.
This application proposes a 61 acre limit within an 87 acre
permissible place of use.

✓ OK RN 6/29/18

NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 81290

✓ OK RN 6/29/18

DRY LAKE DAIRY LLC, 12492 BIGFOOT RD, NAMPA, ID 83686; has filed Application No. 81290 for changes to the following water rights within CANYON County(s): Right No(s). 63-3142, 63-7083. The applicant proposes to change the location of one of the three points of diversion authorized on each of these water rights. The proposed point of diversion is an existing well that was constructed in a different location. The project site is about 11 miles south of Nampa Idaho near the intersection of State Highway 45 and Big Foot Rd.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region 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 §§ 42-203A and 42-222. Any protest against the approval of the application(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 6/25/2018. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

June 7, 14, 2018

1769297