

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 81376**

This is to certify that: **DE RUYTER DAIRY LLC**
PO BOX 580
MARSING, ID 83639-0580

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>
57-2292	WR/DECREED	4/14/1966	0.890 cfs	269.5 af	N/A	N/A	GROUND WATER
57-7047	WR/DECREED	3/1/1971	0.560 cfs	280.1 af	N/A	301.0	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>
57-2292	NO	NO	NO	YES	NO	NO
57-7047	NO	NO	NO	YES	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>
57-2292	57-2292	0.890 cfs	269.5 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
57-7047	57-7047	0.560 cfs	280.1 af	N/A	301.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		1.450 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 22nd day of September, 2017.



Chief, Water Allocation Bureau

SUPPORT DATA

IN FILE #

57-2292

Transfer No. 81376

WATER RIGHT NO. 57-2292**As Modified by Transfer No. 81376**

In accordance with the approval of Transfer No. 81376, Water Right No. 57-2292 is now described as follows:

Right Holder: DE RUYTER DAIRY LLC
NICOLAAS J DE RUYTER
SUZANNE M DE RUYTER
PO BOX 580
MARSING, ID 83639-0580

Priority Date: 4/14/1966

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	0.890 cfs	151.9 af
STOCKWATER	01/01	to 12/31	0.890 cfs	117.6 af
			0.890 cfs	269.5 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SWSE	Sec 19 Twp 03N Rge 04W OWYHEE County
GROUND WATER	NENE	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	NENE	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	SWNE	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	NENW	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	NWSE	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	SESE	Sec 30 Twp 03N Rge 04W OWYHEE 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	
03N	04W	30	X	X			X			X									

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	
03N	04W	30	X	X			X			X									

CONDITIONS OF APPROVAL

1. Transfer no. 81376 authorizes two additional points of diversion, one in the NENE and the other in the SESE of Sec 30, Twp 03N, Rge 04W, for the stockwater and commercial uses only.
2. Rights 57-2292, 57-2335, and 57-7047 when combined shall not exceed a total diversion rate of 5.32 cfs and a total annual maximum diversion volume of 1632.0 af.

Transfer No. 81376

WATER RIGHT NO. 57-2292
As Modified by Transfer No. 81376

CONDITIONS OF APPROVAL

3. 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.
4. Prior to the diversion and use of water under Transfer approval 81376, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
5. After specific notification by the Department, the right holder shall record the quantity of water diverted 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.
6. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. 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. 57-7047**As Modified by Transfer No. 81376**

In accordance with the approval of Transfer No. 81376, Water Right No. 57-7047 is now described as follows:

Right Holder: DE RUYTER DAIRY LLC AND
NICOLAAS J DE RUYTER AND
SUZANNE M DE RUYTER
PO BOX 580
MARSING, ID 83639-0580

Priority Date: 3/1/1971

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Diversion Volume
IRRIGATION	03/15	to 11/15	0.560 cfs	272.1 af
STOCKWATER	01/01	to 12/31	0.140 cfs	8.0 af
			0.560 cfs	280.1 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SWSE	Sec 19 Twp 03N Rge 04W OWYHEE County
GROUND WATER	NENE	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	NENE	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	SWNE	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	NENW	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	NWSE	Sec 30 Twp 03N Rge 04W OWYHEE County
GROUND WATER	SESE	Sec 30 Twp 03N Rge 04W OWYHEE 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	
03N	04W	19											15.0	26.0			27.0	16.0	84.0
03N	04W	30			40.0	39.0	19.0	13.0	7.0	23.0					39.0	37.0			217.0

POU Total Acres: 301.0

PLACE OF USE: STOCKWATER

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	04W	30	X	X			X			X									

CONDITIONS OF APPROVAL

- The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

Transfer No. 81376

WATER RIGHT NO. 57-7047

As Modified by Transfer No. 81376

CONDITIONS OF APPROVAL

2. Rights 57-2292, 57-2335, and 57-7047 when combined shall not exceed a total diversion rate of 5.32 cfs and a total annual maximum diversion volume of 1632.0 af.
3. Rights 57-2335 and 57-7047 when combined shall not exceed a total diversion rate of 4.43 cfs, a total annual maximum diversion volume of 1362.5 af, and the irrigation of 301 acres.
4. Transfer no. 81376 authorizes two additional points of diversion, one in the NENE and the other in the SESE of Sec 30, Twp 03N, Rge 04W, for the stockwater and commercial uses only.
5. Approval of transfer no. 81376 does not confirm the validity of the irrigation portion of this water right.
6. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/01 and an ending date of 11/30 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 or late irrigation use and a priority date earlier than 1/24/2003.
7. 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.
8. Prior to the diversion and use of water under Transfer approval 81376, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
9. After specific notification by the Department, the right holder shall record the quantity of water diverted 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. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
11. Use of this right is combined with water from Gem Irrigation District.
12. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
13. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
14. 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. 81376

Water Right(s): 57-2292 & 57-7047

This map depicts the STOCKWATER and COMMERCIAL place of use boundary for the water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



- Existing POD
- New/Proposed POD
- Place of Use Boundary
- Township/Range
- Sections
- QQ

0 0.325 0.65 Miles





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

September 22, 2017

DE RUYTER DAIRY LLC
PO BOX 580
MARSING ID 83639-0580

Re: Transfer No: 81376
Water Right No(s): 57-2292, 57-7047

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

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

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

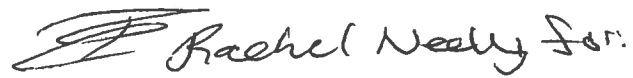
ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 334-2190.

Sincerely,

A handwritten signature in black ink that reads "Rachel Neely for". The signature is written in a cursive, flowing style.

Nick Miller
Regional Manager

Enclosure

CC:

ERO RESOURCES CORP
C/O DAVID SHAW
4001 E MAIN ST
EMMETT ID 83617

SUZANNE M DE RUYTER
NICOLAAS J DE RUYTER
PO BOX 580
MARSING ID 83639-0580

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2017 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.: 81376
Water Right No(s): 57-2292, 57-7047

DE RUYTER DAIRY LLC
PO BOX 580
MARSING ID 83639-0580

ERO RESOURCES CORP
C/O DAVID SHAW
4001 E MAIN ST
EMMETT ID 83617

SUZANNE M DE RUYTER
NICOLAAS J DE RUYTER
PO BOX 580
MARSING ID 83639-0580



Rachel Neely
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. 81376 File
FROM: Cody Parker
DATE: September 11, 2017
RE: Evaluation of Sufficiency of Information

The purpose of this transfer is to add two new wells as points of diversion to water right no.'s 57-2292 and 57-7047. The new wells will be connected into the existing distribution system for the Deuyter Dairy. The water will be used in the current place of use, north of East Thompson Rd. between Buntrock and Hogg roads, generally located approximately 5 miles southeast of Homedale, Idaho.

Summary of Information Submitted

Authority to File:

This transfer includes water rights 57-2292 and 57-7047. Both are decreed rights in the names of DeRuyter Dairy LLC, Nicholas J DeRuyter, and Suzanne M DeRuyter. The application for transfer was filed in the name of DeRuyter Dairy LLC, and Suzanne DeRuyter signed as the applicant. Suzanne is listed as an owner on both rights and has the authority to apply for the transfer. The two wells proposed to be added as PODs are located on property owned by DeRuyter Properties LP. Nicholas DeRuyter is the registered agent for this entity and the DeRuyter Dairy LLC is the name of the general partner listed. His signature was added to the application upon Department request, confirming the authority to file on behalf of the dairy and the DeRuyter Properties LP.

Water Right Validity:

Right no. 57-2292 authorizes the diversion of water for stockwater and commercial use. Both of these uses are apparent in historical aerial imagery dating back to 2011 within the place of use description. At this time, right no. 57-2292 appears to be a valid water right.

Right no. 57-7047 is authorized for stockwater and irrigation use. In my evaluation of the validity of this right, I determined that the stockwater component of the right was valid, while part of the irrigation component was subject to forfeiture. The aerial imagery shows that, of the 301 acres of irrigation authorized by the right, only 239 acres have been irrigated during the forfeiture review period. However, the application seems to indicate that the proposed wells will be used to supply water to the dairy and will not be used for irrigation purposes. As part of the evaluation, I sent the applicant a letter requesting either 1) proof that they have irrigated the full acreage or 2) an explanation of any defenses or exceptions to forfeiture as outlined in Section 42-223, *Idaho Code*. I suggested that they could remove right no. 57-7047 from the transfer to avoid partial forfeiture.

Another option I provided was for the applicant to agree to a condition on an approval of the transfer that would prohibit them from using either of the 2 proposed wells for irrigation use.

Transfer Processing Memo No. 24 outlines the requirement of the Department to evaluate the validity of any rights, *or parts thereof*, proposed to be changed through a transfer. Item 5b(3) of the memo states that “unchanged parts of rights in the transfer are generally not subject to a finding of forfeiture as part of the transfer action by the department.” By conditioning the transfer approval to exclude the irrigation component of the right from use of the proposed wells, it would seem that the irrigation remains unchanged through the transfer and is thus “not subject to a finding of forfeiture.” This option allows the applicants to develop their proposed wells while preventing partial forfeiture of the irrigation component of the right, and seems to be in accordance with Department policy which, as outlined in Multiple Programs Memo No. 2, states that “[i]n general, forfeiture is not favored...” Dave Shaw of ERO Resources confirmed that the applicants wish to pursue this final option, and will agree to the condition on an approval of this transfer.

Injury to Other Water Rights:

Though there are several water-quality issues associated with this dairy’s operations outlined in the backfiles for these rights, it does not seem that adding the two points of diversion will add to this problem in any way. Condition 046 will be added through the transfer to remind the owners that they are to develop the new well in accordance with the well permit, statutes, and Well Construction Rules. Proper construction of the well will help to prevent contamination between multiple aquifer zones and is particularly important in this area which lies within the DEQ Marsing Nitrate Priority Area.

The three wells currently used to supply water for the dairy appear to divert water from the same gravel formation between 26 and 92 ft below the surface. There are relatively few wells neighboring the DeRuyter properties. Of the wells that *are* nearby, some are monitoring wells, and all appear to divert water from the same shallow zone as the DeRuyter wells. I was not given the dimensions for the proposed wells. However, the intention is to construct a well that will provide cleaner water, so it is reasonable to assume that any new well will be drilled into a deeper aquifer zone, putting less stress on the shallow neighboring wells.

Enlargement of Use:

None anticipated. Right no. 57-2292 retains conditions limiting its overall diversion rate to 0.89 cfs and annual diversion volume to 269.5 af. Right no. 57-7047 will be limited by an overall diversion rate of 0.56 cfs and an annual volume of 280.1 af upon approval of the transfer. The irrigation component of right no. 57-7047 remains unchanged through the transfer, so there is no change to the irrigated acreage, or to combined use limits with right no. 57-2335.

Local Public Interest:

The application will be advertised to confirm the local public interest. The public interest was evaluated in depth as part of a previous transfer review, when the dairy initially proposed to expand its operations. Several issues were identified relating to water quality, but public interest in the dairy expansion was confirmed through approval of the transfer. The issues identified previously do not apply to the changes proposed in this application. The new wells should be constructed properly to avoid contamination of water resources. Condition 106 will be added

through this transfer to ensure that compliance with IDEQ standards is met prior to the diversion of water.

Furthermore, Tom Dobbin of the Citizens of Owyhee County Organized Association called the Western Region office for two purposes. The first was to let the Department know that we have the wrong address for the organization (a comment letter was sent them at advertising). However, they did not submit anything in writing to justify an update of their contact in the database. Therefore, nothing has been changed at the time of this memo. I have sent them a letter at their new address to let them know that they should submit a change in address form for the file.

The second reason for the call was to express the organization's concern that the Dairy may be using more water than they are authorized to divert. There is a general concern that the dairies in the area are impacting local ground water levels. The organization did not protest the advertisement. However, their call seems sufficient to establish a concern with the local public interest regarding the quantity of water being diverted. Therefore, I believe it is appropriate to recommend conditions 214 and 01Q to require the applicant to install a measuring device prior to diversion and to give the Department the option to require annual reporting of the diversion. These conditions will also help to ensure that the wells authorized for use under this transfer are not being used for irrigation.

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

Overlap Analysis:

For the irrigation component of right no. 57-7047, there is a 133-acre overlap with right no. 57-2335. According to combined use limits listed on the right, the two rights combine for 301 acres of irrigation, while each lists 217-acres individually. Combined use limits for these rights will be retained through this transfer. No changes are to be made to the irrigation component of no. 57-7047.

The stockwater component of right no. 57-7047 overlaps with rights 57-10669 and 57-2292, which are both owned by DeRuyter. There are no combined use limits, for these rights specifically, but no changes are made regarding diversion rates or annual volumes through this transfer.

There is no overlap for the commercial use listed for right 57-2292. Right 57-7045 lists commercial use in the NWNE QQ of Sec 30, but the owner (Nerend Dairy) does not appear to have access to the land, which is owned by DeRuyter Properties LP. I could not find any information in the backfile to indicate that there is any overlapping use between these two rights. Right nos. 57-7047, 57-2292, and 57-2335 currently list the same 5 PODs. A condition of approval on both rights included in this transfer states:

“The total instantaneous diversion of water from all points of diversion under Transfer 5007 shall not exceed 5.32 cfs, nor total combined annual volume of 1632.0 af.”

This condition should be updated to reflect the current transfer number to limit the existing 5 wells, *and* the 2 new wells, to the same diversion rate and annual volume.

It is possible that the POD for right no. 57-10669, in the NWSE QQ of Section 30, is the same as that listed on the two rights involved in this transfer. However, it is described to the nearest 10-acre tract for 57-10669. There are no records for any wells listed in that QQ and existing combined use limits do not address any POD overlap. Therefore, I will assume that no such overlap exists.

Conditions:

- Add condition 046 => new well construction
- Draft condition to exclude the irrigation component of right no. 57-7407 from the transfer
- Remark: “Approval of this transfer does not confirm the validity of the remaining, unchanged part of right no. 57-7047” (Admin TP Memo 24)
- Remove 600 range cattle and replace with condition 106. 106 requires the right holder to comply with requirements from IDEQ and the Department of Agriculture. The requirements from these other entities likely already addresses the size of the dairy operations. For IDWR’s part, we are only concerned with the amount of water used and not necessarily the number of cattle so the previous condition should not be included. The new condition also addresses water quality concerns from the local public.
- Add 214 and 01Q (see discussion below)

The Owyhee Avalanche

P.O. Box 97 • HOMEDALE, ID 83628 • 208/337-4681

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss
COUNTY OF OWYHEE)

I, Robert E. Aman, being first duly sworn, depose and say:

1. That I am a citizen of the United States of America, and at all times hereinafter mentioned was and now over the age of twenty-one years, not a party to nor interested in the proceedings hereinafter mentioned.

2. That during the time of publication of the notice hereinafter mentioned, I was and now am the president of The Owyhee Avalanche, a newspaper of general circulation printed and published weekly, on Wednesday of each and every week, in the City of Homedale, County of Owyhee and State of Idaho.

3. That the said The Owyhee Avalanche has been printed and published continuously and uninterruptedly in said County during a period of more than seventy-eight weeks prior to the first publication of the attached notice.

4. That said notice of which a printed copy, taken from said newspaper, is hereto affixed, was published in the regular issue thereof, and not a supplement thereto, in said newspaper, in TWO (2)
(consecutive) calendar weekly issue(s) of said newspaper, in the following date(s):

MAY 17, 24, 2017

SIGNED: _____

STATE OF IDAHO)
COUNTY OF OWYHEE)

On this 26 day of May in the year of 2017 before me, a

Notary Public, personally appeared ROBERT E. AMAN
known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.



Jennifer Stutheit
Notary Public of Idaho
Residing at HOMEDALE, IDAHO
My commission expires: JANUARY 3, 2021

THE FOLLOWING APPLICATIONS HAVE BEEN FILED TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO:
57-11899, DELBERT PHIFER, 1780 NIELSEN LN, HOMEDALE, ID 83628
Point of Diversion SWSE S25 T03N R06W OWYHEE County Source SAGE CREEK Tributary SUCCOR CREEK
Use: IRRIGATION 03/01 to 11/15 0.16 CFS
Total Diversion: 0.16 CFS
Date Filed: 2/14/2017
Place of Use: IRRIGATION

T03N R06W S25 SWSE
NOTICE OF PROPOSED CHANGE OF WATER RIGHT,

TRANSFER NO. 81376
DE RUYTER DAIRY LLC, PO BOX 580, MARSING, ID 83639-0580; has filed Application No. 81376 for changes to the following water rights within OWYHEE County(s): Right No(s). 57-2292, 57-7047. The purpose of this transfer is to add two new points of diversion to two existing rights. The new wells will be connected to the existing distribution system to supply water for the DeRuyter Dairy. The water will be used in the current place of use, north of East Thompson Rd. between Buntrock and Hogg roads, generally located approximately 5 miles southeast of Homedale, Idaho.

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

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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 6/5/2017. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
5/17,24/2017