

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 79831

This is to certify that: CRYSTAL J COOK AND/OR
JANA COOK AND/OR
JOHN D COOK
11980 N HWY 52
HORSESHOE BEND, ID 83629

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>
65-22972	WR/LICENSE	6/30/1983	0.170 cfs	29.8 af	N/A	8.5	PAYETTE RIVER
65-22974	WR/DECREED	12/13/1973	0.190 cfs	33.3 af	N/A	9.5	PAYETTE RIVER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>PQU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
65-22972	NO	NO	YES	NO	NO	NO
65-22974	YES	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>
65-22972	65-22972	0.170 cfs	29.8 af	N/A	8.5	N/A	N/A	N/A	N/A	N/A
65-22974	65-23643	0.130 cfs	22.8 af	N/A	6.5	65-22974	0.060 cfs	10.5 af	N/A	3.0
COMBINED TOTALS		0.300 cfs	52.6 af	N/A	15.0		0.060 cfs	10.5 af	N/A	3.0

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 30th day of January, 2017.


Chief, Water Allocation Bureau

SUPPORT DATA

IN FILE # 65-22972

Transfer No. 79831

WATER RIGHT NO. 65-22972**As Modified by Transfer No. 79831**

In accordance with the approval of Transfer No. 79831, Water Right No. 65-22972 is now described as follows:

Right Holder: JOHN D COOK AND/OR
JANA COOK AND/OR
CRYSTAL J COOK
11980 N HWY 52
HORSESHOE BEND, ID 83629

Priority Date: 6/30/1983

Source: PAYETTE RIVER

Tributary: SNAKE RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	04/01	to 11/01	0.170 cfs	29.8 af
			0.170 cfs	29.8 af

LOCATION OF POINT(S) OF DIVERSION

PAYETTE RIVER L2 (NWSE) Sec 24 Twp 07N Rge 01E GEM 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	
07N	01E	24			3.0	3.1									1.4	1.0			8.5
					L3										L2	L2			

POU Total Acres: 8.5

CONDITIONS OF APPROVAL

1. 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 place of use.
2. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
3. Use of water under this right will 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.
4. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/1 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 11/1 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 11/27/1991.

Transfer No. 79831

WATER RIGHT NO. 65-22972
As Modified by Transfer No. 79831

CONDITIONS OF APPROVAL

5. This right does not grant any right-of-way or easement across the land of another.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. 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. 65-22974
As Modified by Transfer No. 79831

In accordance with the approval of Transfer No. 79831, Water Right No. 65-22974 is now described as follows:

Right Holder: WILLIAM E SHOBEL AND/OR
 MERILYN R SHOBEL
 11710 N HWY 52
 HORSESHOE BEND, ID 83629

Priority Date: 12/13/1973

Source: PAYETTE RIVER

Tributary: SNAKE RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	04/01	to 11/01	0.060 cfs	10.5 af
			0.060 cfs	10.5 af

LOCATION OF POINT(S) OF DIVERSION

PAYETTE RIVER SENWSE Sec 24 Twp 07N Rge 01E GEM 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	
07N	01E	24													3.0				3.0
															1.2				

POU Total Acres: 3.0

CONDITIONS OF APPROVAL

1. 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 place of use.
2. 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.

Transfer No. 79831

WATER RIGHT NO. 65-23643
As Modified by Transfer No. 79831

In accordance with the approval of Transfer No. 79831, Water Right No. 65-23643 is now described as follows:

Right Holder: JOHN D COOK AND/OR
 CRYSTAL J COOK AND/OR
 JANA COOK
 11980 N HWY 52
 HORSESHOE BEND, ID 83629

Priority Date: 12/13/1973

Source: PAYETTE RIVER

Tributary: SNAKE RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	04/01	to 11/01	0.130 cfs	22.8 af
			0.130 cfs	22.8 af

LOCATION OF POINT(S) OF DIVERSION

PAYETTE RIVER L2 (NWSE) Sec 24 Twp 07N Rge 01E GEM County

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	
07N	01E	24			2.5	2.0									1.5	0.5			6.5
					L3										L2	L2			

POU Total Acres: 6.5

CONDITIONS OF APPROVAL

1. 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 place of use.
2. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
3. Use of water under this right will 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.
4. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/1 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 11/1 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 7/26/2002.

Transfer No. 79831

WATER RIGHT NO. 65-23643
As Modified by Transfer No. 79831

CONDITIONS OF APPROVAL

5. This right does not grant any right-of-way or easement across the land of another.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. 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 of Water Right 79831

65-22972, 65-22974 & 65-23643

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.



-  Points of Diversion
-  65-22972 Place of Use
-  65-22974 Place of Use
-  65-23643 Place of Use
-  Townships
-  PLS Sections

0 0.0425 0.085 0.17 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 • Web Site: www.idwr.idaho.gov

January 30, 2017

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

JOHN D COOK
CRYSTAL J COOK
JANA COOK
11980 N HWY 52
HORSESHOE BEND ID 83629

Re: Transfer No: 79831
Water Right No(s): 65-22972, 65-22974

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,

 *Nick Miller* Neely for:

Nick Miller

Western Regional Manager

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2017 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

**Re: Transfer No.: 79831
Water Right No(s): 65-22972, 65-22974**

**JOHN D COOK
CRYSTAL J COOK
JANA COOK
11980 N HWY 52
HORSESHOE BEND ID 83629**

**RON SHURTLEFF
WATERMASTER OF DISTRICT 65
102 N MAIN
PAYETTE ID 83661**



**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. 79831
FROM: Patrick Kelly
DATE: 11/1/2016
RE: Evaluation of Application

Summary of Information Submitted

Narrative: Transfer No, 79831 proposes to move water rights 65-22972 & 65-22974 to a pivot on the north end of the applicants' property. The whole 8.5 acres of 65-22972 right would be redefined to the new POU. 65-22974 will be split dividing the right into a 6.5 ac portion to the Cook pivot (65-23643), and the remaining 3 acres of the right to cover land pertinent to the Shrobel property, immediately SE of Cook pivot.

The transfer application proposes to move 0.26 cfs, 45.6 af and describes an 18 acre POU. The approval shows 0.30 cfs, 52.6 af and 15 acres being transferred to Mr. Cook's pivot and was drafted to match department standards and maintain the inch per acre rate relative to property ownership. The two water rights being transferred still move to Mr. Cook's pivot as intended by the transfer, and the full remainder describes water staying on Mr. Shobel's property.

The proposed POD is located to the west of State Highway 52, approximately 6 miles west of Horseshoe Bend. The POU is approximately a tenth of a mile northwest of the POD.

Acres being transferred from Cook's southern field in Govt. Lot 2 is leaving the field with no water rights. This means that Mr. Cook must either intend to file an application for permit to continue irrigating, or dry up the acres being transferred.

Authority to File: The Application for Transfer of Water Right was submitted and signed by John D Cook, who is the owner of land at the POU. A Notice of Change of Water Right Ownership was submitted at the same time as the transfer and will be completed via the transfer process. This will put 65-22972 and 65-23643 in the name of the applicant. The proposed POD is on land owned by Kimberly Welsh, with whom the applicants have an easement associated with WR 63-22972.

Water Right Validity: WR 65-22974 was decreed on 7/26/02. WR 65-22972 was licensed on 11/27/91. Department standards on determining forfeiture state that forfeiture will not be found if use is resumed by the end of the sixth year following the decree. Based on aerial photography and infrared imagery, the use was certainly resumed in 2016, before the deadline. No period of non-use was found per review of IDWR imagery from past ten years.

Overlap Analysis: Overlap review finds no overlapping water rights exist on 65-22972 and 65-22974 pre-transfer. There are no overlapping rights at proposed POU. Water rights 65-11272A, 65-22553, 65-22972, 65-22973, 65-22974, 65-22975, 65-23622, 65-23623, and 65-2364 are all diverted from the same POD in the Payette River. However, they irrigate different pieces of land.

Injury to Other Water Rights: Transfer proposes to change the place of use to another location within a half mile of the original description. POD will not change. Changes to water supply will not occur and injury to other water rights is not apparent. Comment letters are being solicited to the Basin 65 Watermaster as well as notices to interested parties during the announcement period.

Enlargement of Use: Transfer proposes to move a total of 0.26 cfs, 45.6 af and 13 acres from water rights 65-22972 and 65-22974 (the split portion number 65-23643.) These rates, volumes and areas are consistent with pre-transfer limits. No enlargement is anticipated as a result of the proposed changes.

Local Public Interest: Review staff has no information to suggest this application is inconsistent with 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.

Additional Information/Analysis/ Discussion

An amended version of the application for transfer was submitted on 4/13/16. Upon review of the original transfer, it was determined that the transfer of the water right POD 65-12423 from an unnamed to the same POD as 65-22972 on the Payette River was not realistic. This unnamed stream does not flow every year and approving a transfer to the larger source would either be consider enlargement or would be confined to the flow of the unnamed stream, which is nearly non-existent and difficult to administer. A new application for permit from the Payette River was deemed impractical because of conflict in the area with neighbors and the likelihood of protests. The new transfer proposes moving acres from water right 65-22974 with Payette River water. The department solicited comment letters from the watermaster and interested parties; however no response or protest was received. Since the amended transfer application does not propose a change to POD's, watermaster comments from Water District 65 are not required and processing of the application may continue.

Prior to the transfer, water right 65-22972 had water right condition R30, which states, *"This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for irrigation of the lands above."* This condition has since been labeled as "inactive" and should be updated to R65.

Prior to the transfer, water right 65-22974 had an unnumbered water right condition that states, *"Use of this right with rights listed below is limited to a total combined diversion rate of .03 cfs and a total combined annual diversion volume of 3.5 AF per acre at field headgate. Combined rights nos.: 65-11272A, 65-23622 and 65-12423."* It is probable that this condition was decreed in error and should read *".03 cfs per acre."* This is a department standard headgate requirement condition that is applied regionally. The combined rights portion of the condition should be ignored.

Summary

Assuming protests are not filed and/or other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

29512 1513154

1 IDAHO DEPT OF WATER RESOURCES

WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705

LEGAL NOTICE

The following application has been filed to appropriate the public waters of the State of Idaho:

**NOTICE OF PROPOSED
CHANGE OF WATER
RIGHT
TRANSFER NO. 79831**

JOHN D COOK and CRYSTAL J COOK and JANA COOK, 11980 N HWY 52, HORSESHOE BEND, ID 83629; has filed Application No. 79831 for changes to the following water rights within GEM County(s): Right No(s). 65-22972, 65-22974; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change the 13 acres of the Place Of Use for irrigation rights 65-22972 and 65-22974 from the southern part of applicant's property to a northern pivot line, approximately 0.15 miles away. Transfer will also split right 65-22974 based on ownership. The proposed POU is located to the east of State Highway 52, approximately 6 miles west of Horseshoe Bend.

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/WaterManagement/WaterRights. 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 9/26/2016. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN,
Director

September 7, 14, 2016
1513154

*VOX RD
9/27/16*

**AFFIDAVIT OF PUBLICATION
STATE OF IDAHO**

County of Canyon

Sharon Jessen
of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

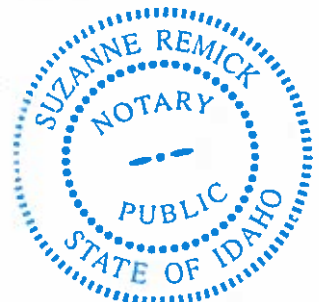
1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Emmett Messenger-Index, a weekly newspaper published in the City of Emmett, in the County of Gem, State of Idaho; that the said newspaper is in general circulation in the said County of Gem, and in the vicinity of Emmett, 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 times(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.
4. That said notice was published the following:

09/07/2016 09/14/2016

Sharon Jessen
STATE OF IDAHO
County of Canyon

On this 14th day of September in the year of 2016 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.

Gabe Beech
Notary Public for Idaho
Residing at Canyon County
My Commission expires 07/25/2018



RECEIVED

SEP 19 2016

WATER RESOURCES
WESTERN REGION