

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 80361

This is to certify that: **MONTOUR FARMERS DITCH CO**
9747 E GATFIELD RD
MONTOUR, ID 83617

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>
65-22678	WR/DECREED	6/23/1884	0.040 cfs	N/A	N/A	N/A	PAYETTE RIVER
65-58	WR/DECREED	6/23/1884	21.630 cfs	N/A	823.0	823.0	PAYETTE RIVER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
65-22678	NO	NO	YES	NO	NO	NO
65-58	NO	NO	YES	NO	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
65-22678	65-22678	0.040 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
65-58	65-58	21.630 cfs	N/A	823.0	823.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		21.630 cfs	N/A	823.0	823.0		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 19 day of AUGUST, 2016.


for Chief, Water Allocation Bureau

SUPPORT DATA

IN FILE # 65-58

Transfer No. 80361

WATER RIGHT NO. 65-58

As Modified by Transfer No. 80361

In accordance with the approval of Transfer No. 80361, Water Right No. 65-58 is now described as follows:

Right Holder: MONTOUR FARMERS DITCH CO
9747 E GATFIELD RD
MONTOUR, ID 83617

Priority Date: 6/23/1884

Source: PAYETTE RIVER

Tributary: SNAKE RIVER

BENEFICIAL USE

IRRIGATION

From

04/01

To

to 11/01

Diversion Rate

21.630 cfs

21.630 cfs

LOCATION OF POINT(S) OF DIVERSION

PAYETTE RIVER

SWSE

Sec 24 Twp 07N Rge 01E GEM County

PAYETTE RIVER

SWNE

Sec 25 Twp 07N Rge 01E GEM County

CONDITIONS OF APPROVAL

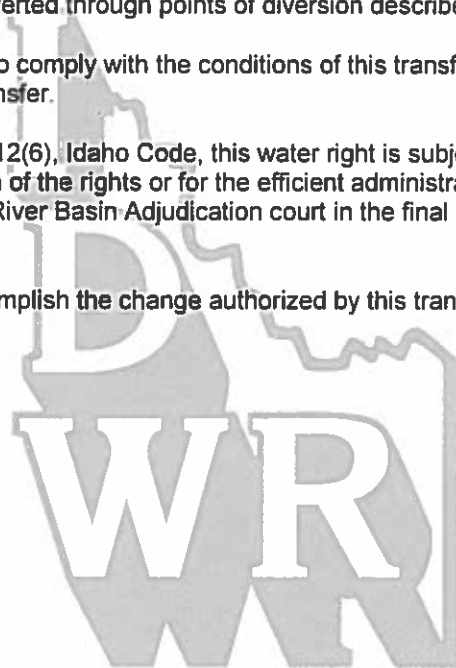
1. The boundary encompassing the place of use for this water right is described with a digital boundary as authorized by Idaho law. The data comprising the digital boundary are stored in the electronic document management system of the Department and are incorporated into this approval by this reference. A map depicting the place of use is attached to this approval document to illustrate the place of use described by the digital boundary.
2. Place of use is within the area served by Montour Farmers Ditch Company.
3. This right is limited to the irrigation of 823 acres within the authorized place of use in a single irrigation season.
4. Rights 65-58 and 65-22678 when combined shall not exceed a total diversion rate of 21.63 cfs.
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 place of use.
6. The point of diversion in the SWSE of Section 24 is limited to a diversion rate of 4.0 cfs.
7. 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.
8. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

WATER RIGHT NO. 65-58

As Modified by Transfer No. 80361

CONDITIONS OF APPROVAL

9. 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 7/3/2002.
10. The following rights are diverted through points of diversion described above: 65-58 and 65-22678 .
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
12. 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.
13. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.



WATER RIGHT NO. 65-22678**As Modified by Transfer No. 80361**

In accordance with the approval of Transfer No. 80361, Water Right No. 65-22678 is now described as follows:

Right Holder: MONTOUR FARMERS DITCH CO
9747 E GATFIELD RD
MONTAUR, ID 83617

Priority Date: 6/23/1884

Source: PAYETTE RIVER

Tributary: SNAKE RIVER

BENEFICIAL USE

STOCKWATER

From

01/01

To

to 12/31

Diversion Rate

0.040 cfs

0.040 cfs

LOCATION OF POINT(S) OF DIVERSION

PAYETTE RIVER
PAYETTE RIVER

SWSE
SWNE

Sec 24 Twp 07N Rge 01E GEM County
Sec 25 Twp 07N Rge 01E GEM County

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	
07N	01E	22	X	X	X	X	X			X	X			X	X	X	X	X	
				L 2			L 3												
07N	01E	22	X																
			L 1																
07N	01E	23			X			X	X	X	X	X	X	X					
					L 5		L 3		L 4										
07N	01E	26		X	X		X	X	X	X		X	X						
07N	01E	27	X	X	X	X	X		X	X	X	X			X	X		X	

CONDITIONS OF APPROVAL

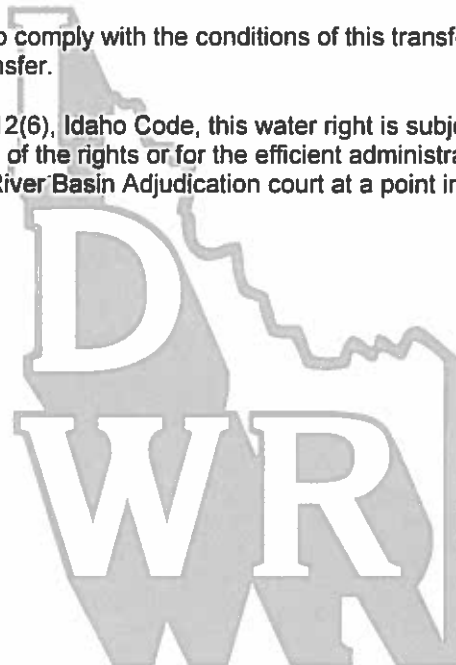
1. The quantity of water under this right shall not exceed 13,000 gallons per day.
2. Rights 65-58 and 65-22678 when combined shall not exceed a total diversion rate of 21.63 cfs.
3. The point of diversion in the SWSE of Section 24 is limited to a diversion rate of 4.0 cfs.
4. Use of water under this 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.
5. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.

Transfer No. 80361

WATER RIGHT NO. 65-22678
As Modified by Transfer No. 80361

CONDITIONS OF APPROVAL

6. The quantity of water decreed for this water right is not a determination of historical beneficial use.
7. The following rights are diverted through points of diversion described above: 65-58 and 65-22678 .
8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. 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 may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

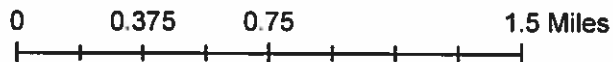
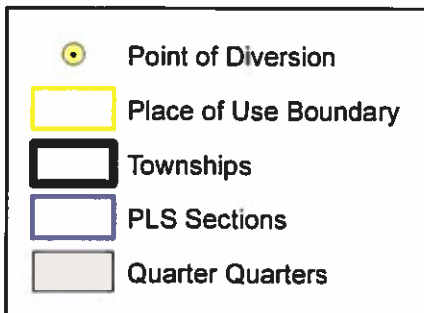
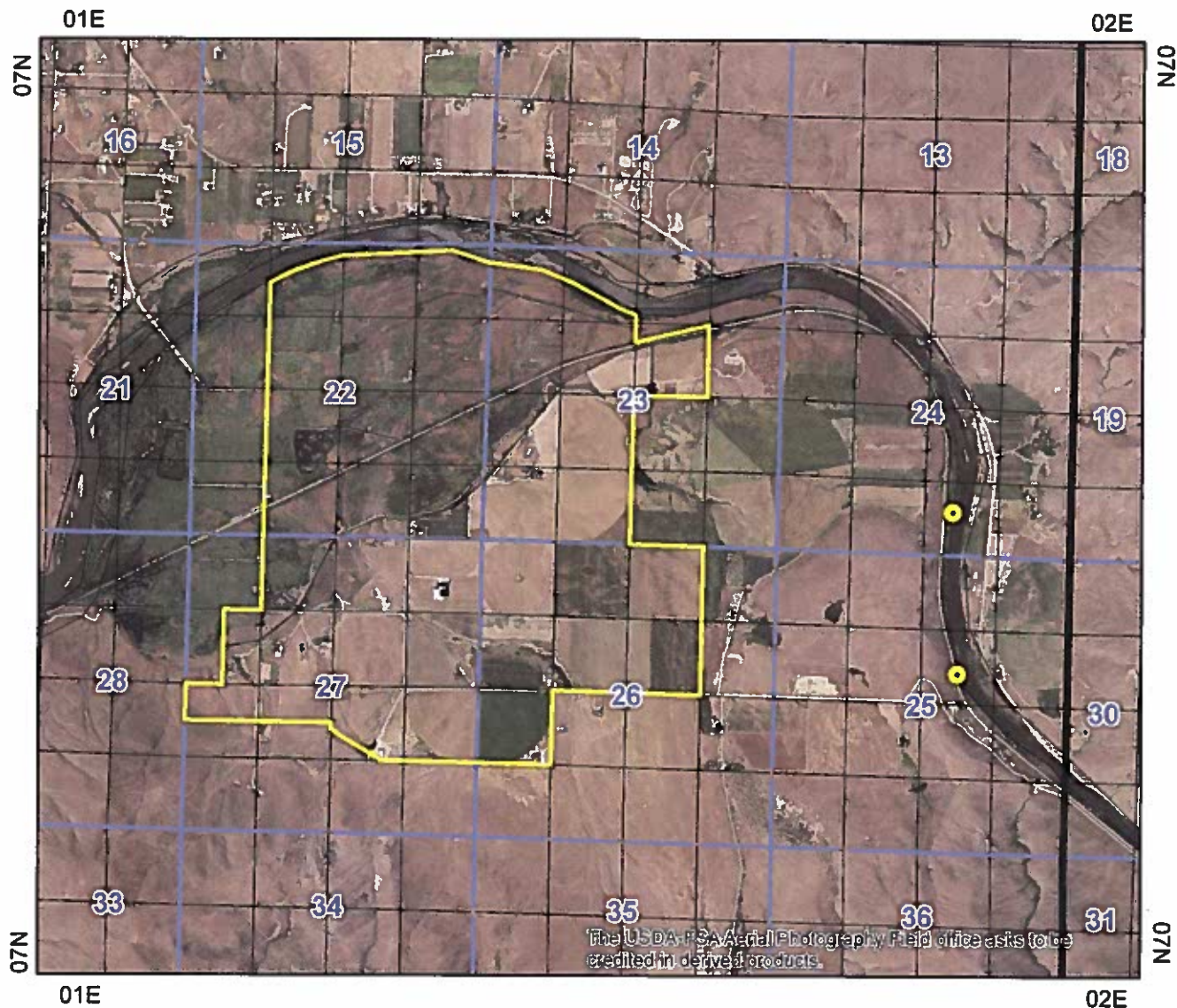


State of Idaho
Department of Water Resources

Attachment to Application for Transfer No. 80361

65-58 and 63-22678

This map depicts the IRRIGATION and 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

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

August 19, 2016

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

MONTOUR FARMERS DITCH CO
9747 E GATFIELD RD
MONTOUR ID 83617

Re: Transfer No: 80361
Water Right No(s): 65-58, 65-22678

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,

 Rachel Neely for:

Nick Miller

Western Regional Manager

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2016 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

Re: Transfer No.: 80361
Water Right No(s): 65-58, 65-22678

MONTOUR FARMERS DITCH CO
9747 E GATFIELD RD
MONTOUR ID 83617

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. 80361
FROM: D. Merriman
DATE: 5/18/16
RE: Evaluation of Application

The transfer proposes to change the place of use (service area) to encompass two additional quarter quarters in water rights 65-58 and 65-22678.

The site of the POU is the 1412.9 acres of the service area of the ditch company in Gem County, and includes the Montour Valley immediately south of the Payette River

Contact person for the applicant is Deon Budell, President of the Montour Farmers Ditch Co., 9747 E Gatfield Road, Montour, ID 83617.

Summary of Information Submitted

Authority to File: The Application for Transfer of Water Right was submitted by Montour Farmers Ditch Company and signed by Deon L Budell, the president of the organization. Montour Farmers Ditch Co is the owner of the two rights to be transferred.

Water Right Validity: Water right 65-58 was decreed on 7/3/02 and water right 65-22678 was decreed on 7/20/04. 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, irrigation had certainly occurred in 2006, before the deadline, as well as in 2011 and 2015.

Injury to Other Water Rights: The transfer proposes to expand the boundaries of the large POU to encompass additional acres. The PODs will stay the same. Changes to the water supply will not occur and injury to other water rights is not apparent.

Enlargement of Use: Transfer proposes to expand the irrigation boundary but maintain a total of 21.63 cfs and 823 acres of irrigation and stockwater for water rights 65-58 and 65-22678. 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.

Discussion

Contact information will be updated through Transfer Approval. Lon MC Connel will be removed from the address line, though the street address will remain the same. The phone number was also updated to the listed number on the application (208-859-0623.)

A smaller fee was paid, per pro-rated transfer fee standards. (2 new QQ/39 original QQ) x 21.63 cfs = 1.11 cfs to be changed. The fee associated with 1.11 cfs is \$580.00, which was paid by the applicant.

Although not advertised, watermaster comments were solicited from the Payette River Water District 65 watermaster. No timely response was received, so it is assumed that there is no objection to the proposal.

The NWSW and NESW quarters of T07N R01E Sec 27 are to be added to both the irrigation and stockwater right. This includes the twenty northern acres of both the NWSW corner and the ~~NE~~SW corner as well as the eastern half and southwest corner of the SENW, for a total of 73 acres added to the overall shape.

Summary

Assuming other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

Neely, Rachel

From: Neely, Rachel
Sent: Tuesday, April 19, 2016 4:08 PM
To: 'wd65@srvinet.com'
Subject: Application for Transfer No. 80361
Attachments: Watermaster Recommendation Form.docx; Application for Transfer.pdf

April 19, 2016

RON SHURTLEFF
WATER DISTRICT #65
102 N MAIN
PAYETTE, ID 83661

RE: Application for Transfer No. 80361

Dear Watermaster:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right application. A copy of the application is enclosed with this email for your reference. Please review the application, complete a recommendation form, and submit your reply, if any, to this office by May 19, 2016

IDWR will assume you do not object to this application if a timely response is not received. Please contact me if you have any questions in this matter. Thank you for your help.

Sincerely,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov