

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 78753**

This is to certify that: **BLACK BUTTE HILLS LLC**
C/O GREGORY VIK
PO BOX 1607
BELLEVUE, WA 98009

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>
37-11989	WR/DECREED	4/15/1957	1.700 cfs	N/A	N/A	787.0	SPRING

Purpose of Transfer (Changes Proposed)

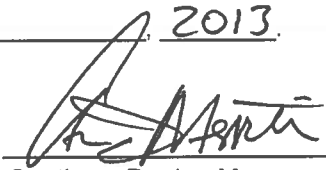
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
37-11989	NO	NO	YES	NO	NO	NO

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>
37-11989	37-11989	1.700 cfs	N/A	N/A	770.8	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		1.700 cfs	N/A	N/A	770.8		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 4th day of November, 2013.


Southern Region Manager

Transfer No. 78753

WATER RIGHT NO. 37-11989

As Modified by Transfer No. 78753

In accordance with the approval of Transfer No. 78753, Water Right No. 37-11989 is now described as follows:

Right Holder: BLACK BUTTE HILLS LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE, WA 98009

Priority Date: 4/15/1957

Source: SPRING

Tributary: SINKS

BENEFICIAL USE

	<u>From</u>		<u>To</u>	<u>Diversion Rate</u>
DIVERSION TO STORAGE	01/01	to	12/31	1.700 cfs
IRRIGATION FROM STORAGE	04/15	to	10/31	
IRRIGATION STORAGE	01/01	to	12/31	1.700 cfs

LOCATION OF POINT(S) OF DIVERSION

SPRING	NWSESE	Sec 11 Twp 02S Rge 17E	CAMAS County
SPRING	NWNWSE	Sec 11 Twp 02S Rge 17E	CAMAS County

PLACE OF USE: IRRIGATION FROM STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02S	17E	1							9.0				30.0	39.0					78
02S	17E	2				0.4							1.5	29.3	33.0	1.6	34.0	39.0	138.8
02S	17E	11	40.0	34.0	28.0	33.0	34.0			15.0					20.0	12.0	19.0	27.0	262.0
02S	17E	12			20.0		15.0	40.0	40.0	36.0	38.0	40.0	28.0	11.0		24.0			292

POU Total Acres: 770.8

PLACE OF USE: IRRIGATION STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02S	17E	11														X		X	
02S	17E	11																	

CONDITIONS OF APPROVAL

- The two ponds established by the storage of water under this right shall not exceed a total capacity of 20.5 acre-feet or a total surface area of 5.35 acre(s). The two ponds may be refilled multiple times in a single year.
- Rights 37-2211 and 37-11989 when combined shall not exceed a total diversion rate of 1.70 cfs.

Transfer No. 78753

WATER RIGHT NO. 37-11989
As Modified by Transfer No. 78753

CONDITIONS OF APPROVAL

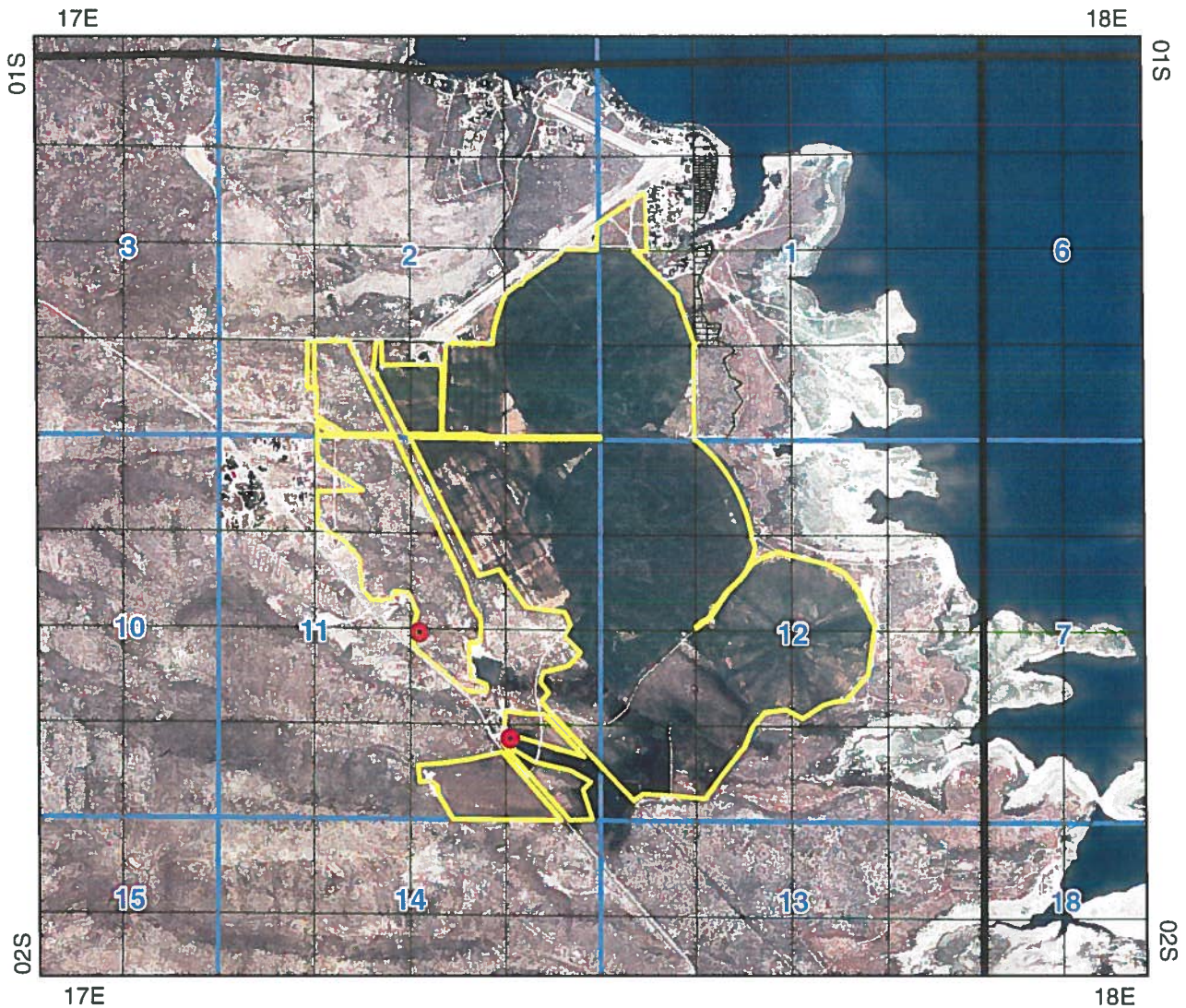
3. Rights 37-2211, 37-11989, and 37-22771 when combined shall not exceed the irrigation of 770.8 acres.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
5. The ponds established by the storage of water under rights 37-11989, 37-12000, 37-21301, and 37-22771 shall not exceed a total capacity of 93.6 acre-feet or a total surface area of 24.34 acres.
6. 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. 37.
7. 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).
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 Transfer No. 78753

37-11989

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



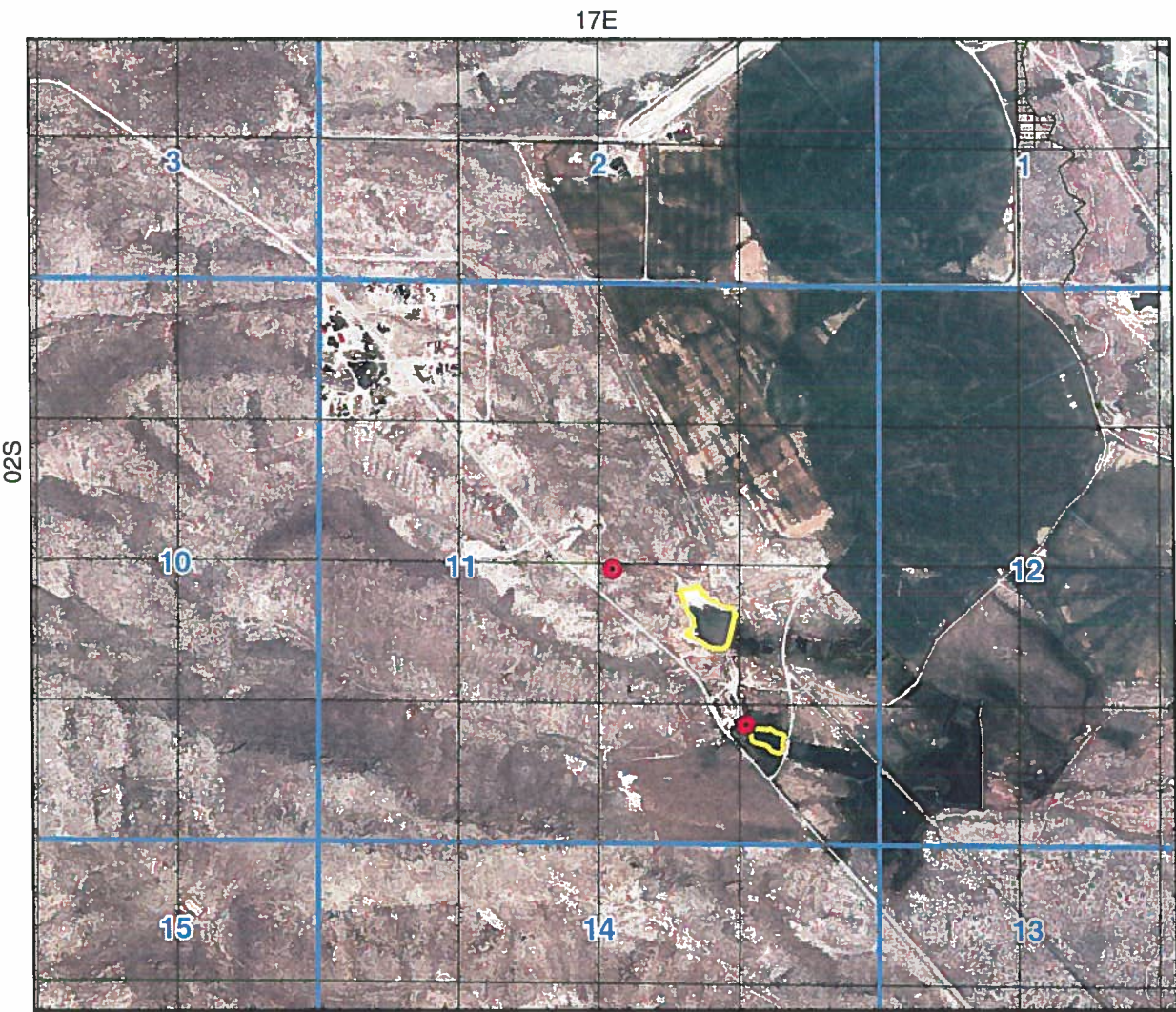
-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.3 0.6 1.2 Miles



State of Idaho
Department of Water Resources
Attachment To Transfer No. 78753
37-11989

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



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.2 0.4 0.8 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 14, 2013

KEVIN LAKEY WATERMASTER
WATER DISTRICT # 37
107 W 1ST ST
SHOSHONE, ID 83352

Re: **APPROVED Transfer No. 78752, 78753, 78304 (Black Butte Hills LLC)**

Re: **APPROVED Permit No. 37-21301 (Black Butte Hills LLC)**

Dear Mr. Lakey:

For your information and records, we have enclosed a copy of an APPROVED Application for Transfer and APPROVED Permit within your District.

If you have any questions, please contact this office, or the applicant.

Sincerely,

A handwritten signature in black ink that reads "Denise Maline". The signature is fluid and cursive, with the first name "Denise" and last name "Maline" clearly distinguishable.

Denise Maline
Administrative Assistant

Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 13, 2013

BLACK BUTTE HILLS LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE WA 98009

Re: Transfer No: 78752
Water Right No(s): 37-12000

Re: Transfer No: 78754
Water Right No(s): 37-12044

Re: Transfer No: 78753
Water Right No(s): 37-11989

Re: Transfer No: 78304
Water Right No(s): 37-2211, 37-22771

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) 736-3033.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Merritt", with a stylized flourish at the end.

Allen Merritt
Southern Region Manager

Enclosure

cc:

BROCKWAY ENGINEERING PLLC
C/O GREG SULLIVAN
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

**Re: Transfer No.: 78752
Water Right No(s): 37-12000**

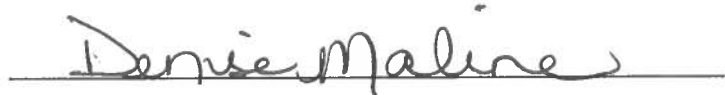
**Re: Transfer No.: 78753
Water Right No(s): 37-11989**

**Re: Transfer No.: 78754
Water Right No(s): 37-12044**

**Re: Transfer No.: 78304
Water Right No(s): 37-2211, 37-22771**

**BLACK BUTTE HILLS LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE WA 98009**

**BROCKWAY ENGINEERING PLLC
C/O GREG SULLIVAN
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301**

A handwritten signature in cursive script, reading "Denise Maline", is written over a horizontal line.

**Denise Maline
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.