

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 78691

This is to certify that: OBENDORF MALHEUR FARMS LLC
26496 DEB LN
PARMA, ID 83660

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
63-33475	WR/LICENSE	3/6/1992	1.560 cfs	N/A	78.0	108.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

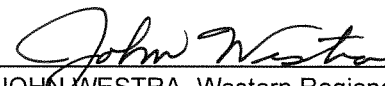
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
63-33475	YES	NO	NO	YES	NO	NO

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>
63-33475	63-33801	0.520 cfs	N/A	26.0	36.0	63-33475	1.040 cfs	N/A	52.0	72.0
COMBINED TOTALS		1.560 cfs	N/A	78.0	108.0		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 6th day of September, 2013.


JOHN WESTRA, Western Regional Manager

Transfer No. 78691

WATER RIGHT NO. 63-33475
As Modified by Transfer No. 78691

In accordance with the approval of Transfer No. 78691, Water Right No. 63-33475 is now described as follows:

Right Holder: NORMAN A BATT AND/OR
 FREDERICK C BATT
 1621 IDAHO
 CALDWELL, ID 83605

Priority Date: 3/6/1992

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	03/01	to 11/15	1.040 cfs
			1.040 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SWSESE Sec 9 Twp 04N Rge 05W CANYON 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	
04N	05W	9													34.0			38.0	72.0

Right Acre Limit: 52.0

POU Total Acres: 72.0

CONDITIONS OF APPROVAL

1. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
2. This right is limited to the irrigation of 52 acres within the place of use described above in a single irrigation season.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 234.0 af at the field headgate for the place of use.
4. The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under this right and shall only divert groundwater under this right when water from the appurtenant surface water rights cannot be delivered to the right holder.

Transfer No. 78691

WATER RIGHT NO. 63-33475
As Modified by Transfer No. 78691

CONDITIONS OF APPROVAL

5. If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
6. This right when combined with all other rights shall provide no more than 4.5 afa per acre for irrigation of the lands above.

WATER RIGHT NO. 63-33801
As Modified by Transfer No. 78691

In accordance with the approval of Transfer No. 78691, Water Right No. 63-33801 is now described as follows:

Right Holder: OBENDORF MALHEUR FARMS LLC
 26496 DEB LN
 PARMA, ID 83660

Priority Date: 3/6/1992

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	03/01	to 11/15	0.520 cfs 0.520 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SENW Sec 10 Twp 04N Rge 05W CANYON 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	
04N	05W	10								36.0									36.0

Right Acre Limit: 26.0

POU Total Acres: 36.0

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
2. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
3. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
4. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
5. This right is limited to the irrigation of 26 acres within the place of use described above in a single irrigation season.

Transfer No. 78691

WATER RIGHT NO. 63-33801
As Modified by Transfer No. 78691

CONDITIONS OF APPROVAL

6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 117.0 af at the field headgate for the place of use.
7. The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under this right and shall only divert groundwater under this right when water from the appurtenant surface water rights cannot be delivered to the right holder.
8. If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
9. This right when combined with all other rights shall provide no more than 4.5 afa per acre for irrigation of the lands above.



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

September 9, 2013

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

OBENDORF MALHEUR FARMS LLC
26496 DEB LN
PARMA ID 83660

Re: Transfer No. 78691
Water Right No. 63-33475

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 Sommer
for:

John Westra
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

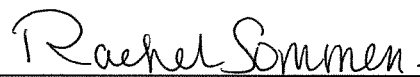
I hereby certify that on September 9, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the persons listed below:

**Re: Transfer No. 78691
Water Right No. 63-33475**

**OBENDORF MALHEUR FARMS LLC
26496 DEB LN
PARMA ID 83660**

**DANA L HOFSTETTER
HOFSTETTER LAW OFFICE LLC
608 W FRANKLIN ST
BOISE ID 83702**

**NORMAN A BATT
FREDERICK C BATT
1621 IDAHO
CALDWELL ID 83605**

A handwritten signature in cursive script that reads "Rachel Sommer." The signature is written in black ink and is positioned above a horizontal line.

**Rachel Sommer
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. 78691
FROM: Steve Lester 
DATE: August 28, 2013
RE: Evaluation of Application

The transfer proposes to split a right and add a separate well for the applicant. The site is near Batt Corner Road and west of Hwy 95, just northwest of Wilder.

Contact person for the applicant is attorney Dana Hofstetter.

Summary of Information Submitted

Authority to File: Applicant can file the application based on application attachment 2a, a warranty deed for the entire SENW Section 10. The \$100 ownership split fee was paid.

Water Right Validity: This 1992 "M Well" right originated as 63-11700. It was licensed in 2001 and remains beyond the SRBA scope. Evidence of use within the recent 5 year period is not necessary for a supplemental right by definition. The SENW tract appeared fully irrigated in the 2009 aerial photo, confirming the land has not been recently fallow for any prolonged period. The right is presumed to be valid.

Injury to Other Water Rights: Injury does not appear to be a factor here - no protests etc.

Enlargement of Use: Enlargement will not occur if the split portions do not exceed authorized limits (see discussion below).

Local Public Interest: Lacking protests or other concerns, the transfer supports local interests by maintaining a viable irrigation use.

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

Data entry affected the correct record. Water Bank issues do not apply.

The applicant's attorney thinks parent right 63-11700 was incorrectly licensed. She indicated the applicant might/will address that later, but for now just wants to get the new well in place for supplemental use.

The prorated split defined by the draft transfer approval will exacerbate that “incorrect license” concern. This is due to the right having “more land than water right.” Right 63-33475 authorizes 78 acre within 108 acre. The applicant bought all of SENW Section 10. That tract allows 36 acre within the 108 acre. The warranty deed has standard “together with all water rights” ... language without specifying a different split of the right. The appropriate split follows.

Before

1.56 cfs	78 acre limit	108 acre total POU
1.56 cfs/78 acre = 0.02 cfs/acre		Applicant has 36 acre of total POU

After

Batt: $108 - 36 = 72$ acre total POU

$72 \times (78/108) = 52$ acre limit $\times 0.02$ cfs/acre = 1.04 cfs

Applicant: 36 acre of total POU

$36 \times (78/108) = 26$ acre limit $\times 0.02$ cfs/acre = 0.52 cfs

<u>Summary</u>	<i>Batt</i>	1.04 cfs	52 acre limit	72 acre total POU
	<i>Applicant</i>	<u>0.52 cfs</u>	<u>26 acre limit</u>	<u>36 acre total POU</u>
		1.56 cfs	78 acre limit	108 acre total POU

Before and after values match – the split is correct based on the current license. The transfer should be approved as shown in the draft approval.

RECEIVED

JUL 29 2013

WATER RESOURCES
WESTERN REGION

29512 927040

1 IDAHO DEPT. OF WATER RESOURCES

WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)

County of Canyon)

SS.

Leann Nobella
of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 times(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.

That said notice was published the following:

07/18/2013 07/25/2013

Leann Nobella

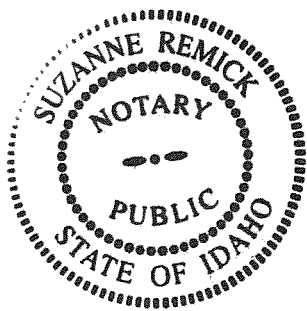
STATE OF IDAHO)

County of Canyon)

On this 25th day of July in the year of
2013 before me a Notary Public, personally appeared.
Leann Nobella, 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.

Suzanne Remick

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



10053
10053
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RECEIVED

JUL 29 2013

WATER RESOURCES
WESTERN REGION

LEGAL NOTICE
PROPOSED CHANGE OF
WATER RIGHT

Obendorf Malheur Farms
LLC of 26496 Deb Ln., Parma
ID 83660 filed Application No.
78691 to transfer one water
right with a 1992 priority date
from ground water totaling
1.56 cfs for supplemental irri-
gation for 78 acres in a 108
acre permissible place of use.
The transfer proposes to split
the right and add a new well
for the applicant's portion of
the land. The split will allow
0.52 cfs for 26 acres irrigation
in applicant's 36 acres. Original
well is about 1 mile west of
Hwy 95 and just north of Red
Top Road. Applicant's new
well (use instead of original
well) will be about 0.5 mile
northeast of original well and
near Batt Corner Road. Applicant
thinks a department error in the
original right implies applicant's
use from proposed well should be
0.72 cfs for 36 acres irrigation.

OK
8-6-13
RS

For additional information
concerning the property loca-
tion, contact Western Region
office at (208) 334-2190; or see
www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp for a full
description of the right(s) and
the proposed transfer. Protests
may be submitted based on the
criteria of Idaho Code § 42-222.
Any protest against the proposed
change 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
8/5/2013. The protestant must
also send a copy of the protest
to the applicant.

GARY SPACYMAN,
Director

July 18, 25, 2013

927040

