

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 78854

This is to certify that: JOHN MALCOLM AND
KIM MALCOLM
811 E 3800 N
BUHL, ID 83316

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>
51-13003	WR/DECREED	7/29/1955	2.480 cfs	N/A	219.0	464.0	GROUND WATER
51-13004	WR/DECREED	12/21/1959	2.180 cfs	N/A	245.4	464.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

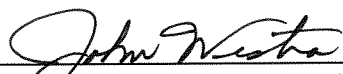
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
51-13003	NO	NO	NO	YES	NO	NO
51-13004	NO	NO	NO	YES	NO	NO

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>
51-13003	51-13003	2.480 cfs	876.0 af	219.0	464.0	N/A	N/A	N/A	N/A	N/A
51-13004	51-13004	2.180 cfs	982.0 af	245.4	464.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		4.660 cfs	1856.0 af	N/A	464.0		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 30th day of October, 2013.


JOHN WESTRA, Western Regional Manager

SUPPORT DATA
IN FILE # 51-13003 **SCANNED**

Transfer No. 78854

NOV 24 2013

WATER RIGHT NO. 51-13003
As Modified by Transfer No. 78854

In accordance with the approval of Transfer No. 78854, Water Right No. 51-13003 is now described as follows:

Right Holder: JOHN MALCOLM And
 KIM MALCOLM
 811 E 3800 N
 BUHL, ID 83316

Priority Date: 7/29/1955

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	03/15	to 11/15	2.480 cfs	876.0 af
			2.480 cfs	876.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SESW	Sec 12 Twp 10S Rge 12E	TWIN FALLS County
GROUND WATER	SESW	Sec 12 Twp 10S Rge 12E	TWIN FALLS County
GROUND WATER	NWSW	Sec 12 Twp 10S Rge 12E	TWIN FALLS 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	
10S	12E	12								17.0	38.0	4.0	32.0	35.0		14.0	33.0		173.0
10S	12E	13		39.0	40.0	18.0	36.0	38.0		40.0	24.0				22.0	34.0			291.0

Right Acre Limit: 219.0

POU Total Acres: 464.0

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. 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.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

Transfer No. 78854

WATER RIGHT NO. 51-13003
As Modified by Transfer No. 78854

CONDITIONS OF APPROVAL

5. 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 use power records to determine the amount of water diverted and shall annually report the information to the Department.
6. This right is limited to the irrigation of 219 acres within the authorized place of use in a single irrigation season.
7. Rights 51-13003 and 51-13004 when combined shall not exceed a total annual maximum diversion volume of 1856 af at the field headgate, and the irrigation of 464 acres in a single irrigation season.
8. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
9. The following rights are diverted through points of diversion described above: 51-13003 and 51-13004.

WATER RIGHT NO. 51-13004**As Modified by Transfer No. 78854**

In accordance with the approval of Transfer No. 78854, Water Right No. 51-13004 is now described as follows:

Right Holder: JOHN MALCOLM AND
KIM MALCOLM
811 E 3800 N
BUHL, ID 83316

Priority Date: 12/21/1959

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	03/15	to 11/15	2.180 cfs	982.0 af
			2.180 cfs	982.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SWSESW	Sec 12 Twp 10S Rge 12E	TWIN FALLS County
GROUND WATER	SWSESW	Sec 12 Twp 10S Rge 12E	TWIN FALLS County
GROUND WATER	NWSW	Sec 12 Twp 10S Rge 12E	TWIN FALLS 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	
10S	12E	12								17.0	38.0	4.0	32.0	35.0		14.0	33.0		173.0
10S	12E	13		39.0	40.0	18.0	36.0	38.0		40.0	24.0				22.0	34.0			291.0

Right Acre Limit: 245.4

POU Total Acres: 464.0

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. 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.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

Transfer No. 78854

WATER RIGHT NO. 51-13004
As Modified by Transfer No. 78854

CONDITIONS OF APPROVAL

5. 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 use power records to determine the amount of water diverted and shall annually report the information to the Department.
6. This right is limited to the irrigation of 245.4 acres within the authorized place of use in a single irrigation season.
7. Rights 51-13003 and 51-13004 when combined shall not exceed a total annual maximum diversion volume of 1856 af at the field headgate, and the irrigation of 464 acres in a single irrigation season.
8. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
9. The following rights are diverted through points of diversion described above: 51-13003 and 51-13004.



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

October 30, 2013

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

JOHN MALCOLM
KIM MALCOLM
811 E 3800 N
BUHL ID 83316

Re: Transfer No. 78854
Water Right No's: 51-13003, 51-13004

Transfer Approval Notice

Dear Water Right Holders:

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 cursive script that reads "Rachel Sommer". The letters are fluid and connected, with a prominent capital 'R' at the beginning.

Rachel Sommer
Administrative Assistant

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the persons listed below:

Re: Transfer No. 78854
Water Right No's: 51-13003, 51-13004

JOHN MALCOLM
811 E 3800 N
BUHL ID 83316

KIM MALCOLM
811 E 3800 N
BUHL ID 83316



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 42-1701 A(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. 78854
FROM: Sharla Curtis
DATE: October 16, 2013
RE: Evaluation of Application

The transfer proposes to add a third point of diversion to ground water rights 51-13003 and 51-13004.

Deviations from Transfer Policy Standards

This transfer application will not be advertised. Proposal only requests use of a third well. There are no ground water wells in the close proximity to the location of the proposed well. Most of the land surrounding the place of use is owned by BLM. There were no prior protests or SRBA objections; therefore, it was determined that the transfer could be processed without advertising.

Summary of Information Submitted

Authority to File: Applicant is owner of record and is therefore authorized to file the transfer application.

Water Right Validity: Rights presumed to be valid; decrees were issued in 2007. Aerial photography confirms the use of water in 2011 and 2012. 200+ acres are irrigated by pivot; the remaining acres appear on aerial photography to be pasture grasses with evidence of receiving water in various years since 2006.

Injury to Other Water Rights: No injury should occur provided the drilling and use of the wells does not interfere with nearby existing wells. As ground water rights, the proposed P/Ds' use is subject to reasonable pumping level provisions of Idaho Code 42-226. The proposed P/D is approximately 0.5 miles in distance from any other wells (including the applicants own wells). All three P/Ds are within the Blue Gulch CGWA. It is unlikely the changes proposed will significantly impact the ground water supply for other water rights in this area as no enlargement of the rights is proposed.

Enlargement of Use: No enlargement should occur. The rates of diversion, volume, and number of acres irrigated will remain unchanged.

Local Public Interest: Irrigation of crops has always been considered to be in the local public interest for the State of Idaho.

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.

Data entry affected the correct records.

Summary

Condition 046 will be applied for the new well.