

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 78369

This is to certify that: GARRY MARCUS
3319 S KIMBALL
CALDWELL, ID 83605

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>
67-14692	WR/DECREED	5/10/1918	0.220 cfs	N/A	N/A	30.0	RUSH CREEK
67-287	WR/DECREED	5/1/1895	0.380 cfs	N/A	N/A	30.0	RUSH CREEK

Purpose of Transfer (Changes Proposed)

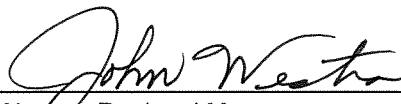
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
67-14692	YES	NO	YES	NO	NO	NO
67-287	YES	NO	YES	NO	NO	NO

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>
67-14692	67-15086	0.170 cfs	N/A	22.5	80.0	67-14692	0.050 cfs	N/A	N/A	7.5
67-287	67-15085	0.280 cfs	N/A	22.5	80.0	67-287	0.100 cfs	N/A	N/A	7.5
COMBINED TOTALS		0.450 cfs	N/A	22.5	80.0		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 July, 2013.


Western Regional Manager

SUPPORT DATA
IN FILE # 67-287

Transfer No. 78369

WATER RIGHT NO. 67-287

As Modified by Transfer No. 78369

In accordance with the approval of Transfer No. 78369, Water Right No. 67-287 is now described as follows:

Right Holder: BRETT NEWBOLD
3488 WARD RD
CAMBRIDGE, ID 83610

Priority Date: 5/1/1895

Source: RUSH CREEK

Tributary: WEISER RIVER

BENEFICIAL USE
IRRIGATION

From 03/15 **To** 10/31

Diversion Rate
0.100 cfs
0.100 cfs

LOCATION OF POINT(S) OF DIVERSION

RUSH CREEK NWSWNE Sec 3 Twp 15N Rge 03W WASHINGTON 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	
15N	03W	10	7.5																7.5
15N	03W	10																	

POU Total Acres: 7.5

CONDITIONS OF APPROVAL

1. 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.
2. Rights 67-287 and 67-14692 when combined shall not exceed the irrigation of 7.5 acres in a single irrigation season.

Transfer No. 78369

WATER RIGHT NO. 67-15085

As Modified by Transfer No. 78369

In accordance with the approval of Transfer No. 78369, Water Right No. 67-15085 is now described as follows:

Right Holder: GARRY MARCUS AND
CHARLES MARCUS
3319 S KIMBALL
CALDWELL, ID 83605

Priority Date: 5/1/1895

Source: RUSH CREEK

Tributary: WEISER RIVER

BENEFICIAL USE
IRRIGATION

From
03/15

To
to 10/31

Diversion Rate
0.280 cfs
0.280 cfs

LOCATION OF POINT(S) OF DIVERSION

RUSH CREEK NWSWNE Sec 3 Twp 15N Rge 03W WASHINGTON 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	
15N	03W	3														20.0	40.0	20.0	80.0

Right Acre Limit: 22.5
POU Total Acres: 80.0

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within five years 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. This right is limited to the irrigation of 22.5 acres within the authorized place of use in a single irrigation season.
5. Rights 67-287 and 67-14692 when combined shall not exceed the irrigation of 22.5 acres in a single irrigation season.

Transfer No. 78369

WATER RIGHT NO. 67-15085
As Modified by Transfer No. 78369

CONDITIONS OF APPROVAL

6. 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.
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. 67.
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).
9. This right does not grant any right-of-way or easement across the land of another.

WATER RIGHT NO. 67-14692

As Modified by Transfer No. 78369

In accordance with the approval of Transfer No. 78369, Water Right No. 67-14692 is now described as follows:

Right Holder: BRETT NEWBOLD
3488 WARD RD
CAMBRIDGE, ID 83610

Priority Date: 5/10/1918

Source: RUSH CREEK

Tributary: WEISER RIVER

BENEFICIAL USE

IRRIGATION

From

03/15

To

to 10/31

Diversion Rate

0.050 cfs

0.050 cfs

LOCATION OF POINT(S) OF DIVERSION

RUSH CREEK

NWSWNE

Sec 3 Twp 15N Rge 03W WASHINGTON 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	
15N	03W	10	7.5																7.5

POU Total Acres: 7.5

CONDITIONS OF APPROVAL

1. 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.
2. Rights 67-287 and 67-14692 when combined shall not exceed the irrigation of 7.5 acres in a single irrigation season.

Transfer No. 78369

WATER RIGHT NO. 67-15086
As Modified by Transfer No. 78369

In accordance with the approval of Transfer No. 78369, Water Right No. 67-15086 is now described as follows:

Right Holder: GARRY MARCUS AND
CHARLES MARCUS
3319 S KIMBALL
CALDWELL, ID 83605

Priority Date: 5/10/1918

Source: RUSH CREEK

Tributary: WEISER RIVER

BENEFICIAL USE
IRRIGATION

From 03/15 **To** 10/31

Diversion Rate
0.170 cfs
0.170 cfs

LOCATION OF POINT(S) OF DIVERSION

RUSH CREEK NWSWNE Sec 3 Twp 15N Rge 03W WASHINGTON 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	
15N	03W	3														20.0	40.0	20.0	80.0

Right Acre Limit: 22.5

POU Total Acres: 80.0

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within five years 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. This right is limited to the irrigation of 22.5 acres within the authorized place of use in a single irrigation season.
5. Rights 67-287 and 67-14692 when combined shall not exceed the irrigation of 22.5 acres in a single irrigation season.

Transfer No. 78369

WATER RIGHT NO. 67-15086
As Modified by Transfer No. 78369

CONDITIONS OF APPROVAL

6. 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.
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. 67.
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).
9. This right does not grant any right-of-way or easement across the land of another.



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

July 31, 2013

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

GARRY MARCUS
3319 S KIMBALL
CALDWELL ID 83605

Re: Transfer No. 78369
Water Right No's: 67-287, 67-14692

Transfer Approval Notice

Dear Water Right Holder:

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.

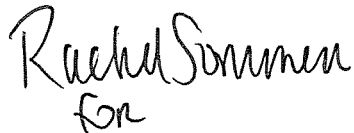
ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and 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,

Handwritten signature of Rachel Sommer in cursive script.

John Westra
Western Regional Manager

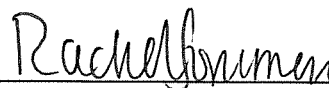
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person listed below:

Re: Transfer No.: 78369
Water Right No's: 67-287, 67-14692

GARRY MARCUS
3319 S KIMBALL
CALDWELL ID 83605

A handwritten signature in cursive script, reading "Rachel Sommer", is written over 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. 78369

FROM: Angela Grimm

DATE: May 28, 2013 Revised July 10, 2013

RE: Evaluation of Application

The transfer proposes to split water rights 67-287 and 67-14692 by ownership, create a PPU for the applicant's portion, and move 6.5 acres worth of water rights from current POU into applicant's PPU.

The site is located on the east side of Ward Rd 0.5 miles north of Rush Creek Rd, approximately 6.5 miles north of Cambridge.

Application originally filed by Hal Anderson, Idaho Water Engineering Co., but applicant removed representative from original application and requested he receive all contact regarding this application.

Summary of Information Submitted

Authority to File: Warranty and quitclaim deeds submitted with the application and change of ownership form document Garry Marcus (applicant) and Charles Morris Marcus own the portions of water rights 67-287 and 67-14692 proposed for transfer and the proposed PPU property. Charles Morris Marcus' acknowledgement letter received May 23, 2013 (attached to amended application) authorizes Garry Marcus to file transfer. The PD property is not owned by the applicant, but no changes to the PD are proposed. The applicant has authority to change portions of the rights he owns.

Water Right Validity: Rights presumed to be valid because the partial decrees were issued on 10/20/2008, within the past five year period.

Injury to Other Water Rights: Change to current POU minor, moving portion of water rights to adjacent land. No changes to the POD proposed. Applicant will use historic pipe diversion from Rush Creek POD for delivery of the water to risers on the property. So long as there is no enlargement, the proposed changes in POU should not affect other water rights. This diversion is actively regulated within Water District 67 to prevent injury.

Enlargement of Use: No increase in diversion rate, diversion volume, consumptive volume, or number of acres irrigated proposed to the primary irrigation rights proposed for transfer. Applicant will be limited to irrigation of 22.5 acres total within proposed PPU. 6.5 acres historically irrigated in the current POU (NENE Sec 10 T15N R3W) will be dried up by the original owner to allow for the proposed change in POU to the applicant's property. Rights 67-287 and 67-14692, including applicant's portions, will remain staked rights (retain combined use limitations).

Local Public Interest: Authorizing the applicant to irrigate within a PPU allows for flexibility in land use of the applicant's property, which serves 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

Data entry affected the correct records. Rights 67-287 and 67-14692 were decreed in the SRBA, the results of which were migrated to water right records prior to transfer processing.

The following rights use the same POD (known as the Wiggins Newbold Diversion) and delivery system as the rights proposed for transfer; 67-285, 67-286, 67-4490, 67-4542, 67-14585, 67-14586, 67-14587, 67-14588, 67-14591, and 67-14592. There are no combined rate limitations on the diversion/rights. No changes in POD proposed by this transfer. Therefore, none of the POD overlapping rights need to be included in this filing. There are no overlapping rights at the existing &/ proposed POU.

Watermaster comments will be sought during advertising of this transfer application.

Applicant requested up to five years to accomplish transfer. Draft approval conditioned accordingly.

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.

Affidavit of Publication

STATE OF IDAHO } ss
County of Washington

Norman Dopf, being duly sworn deposes and says he is the publisher of the Upper Country News-Reporter, a weekly newspaper published at Cambridge, in the County of Washington, State of Idaho; that said newspaper is in general circulation in the county of aforesaid and is a legal newspaper; that the annexed, a printed copy of which is attached hereto and made a part hereof, was published in said newspaper once a week for two consecutive weeks in the regular and entire issue of every number thereof during the period of time of publication, and was published in the newspaper proper and not in a supplement; and that publication of such notice began June 6, 2013 and ended June 13, 2013.

Bonnie Evans
for Norman Dopf

Subscribed and sworn to before me this

18 day of
June, 2013.

Debbie S Maxwell

Notary Public in and for the State
of Idaho, residing at

RECEIVED

JUN 19 2013

WATER RESOURCES
WESTERN REGION

LEGAL NOTICE

PROPOSED CHANGE OF WATER RIGHT(S)

Garry Marcus of 3319 S. Kimball Ave. Caldwell, ID 83605 filed Application No. 78369 to transfer two water rights with an 1895 and 1918 priority dates from Rush Creek totaling 0.45 cfs. The transfer proposes to split the rights, create a permissible place of use on applicant's property, move 0.13 cfs of irrigation from current location to applicant's property on the west side of Ward Rd 0.5 miles north of Rush Creek Rd approximately 6.5 miles north of Cambridge. The unchanged portion of the rights will remain on land adjacent to the applicant's property.

For additional information concerning the property location, 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 6/24/2013. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 6/6/2013 and 6/13/2013

OK
7-1-13
RS

