

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 77635

This is to certify that: DERCK INVESTMENT CORP
1444 KNIGHTS DR
BOISE ID 83712
(208)345-2782

has requested a change to the water right listed below. This change in water right 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 Change

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
57-10005	WR/Decreed	06/30/1955	1.08 cfs	N/A	N/A	54.0	RABBIT CREEK

Purpose of Transfer (Changes Proposed)

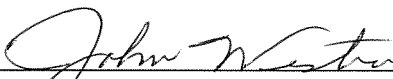
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
57-10005	NO	YES	NO	NO	NO	NO

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>
57-10005	57-10005	1.08 cfs	N/A	N/A	54.0		N/A	N/A	N/A	N/A
COMBINED										
TOTALS		1.08 cfs	N/A	N/A	54.0		N/A	N/A	N/A	N/A

Detailed Water Right Description attached

Dated this 15th day of March, 20 12



John Westra, Western Regional Manager

WATER RIGHT NO. 57-10005
As Modified by Transfer No. 77635

In accordance with the approval of Transfer No. 77635, Water Right No. 57-10005 is now described as follows.

Right Holder: DERCK INVESTMENT CORP
 1444 KNIGHTS DR
 BOISE ID 83712

Priority Date: June 30, 1955

Source: RABBIT CREEK

Tributary: SNAKE RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	03/01	to 11/15	1.08 CFS
			1.08 CFS

LOCATION OF POINT OF DIVERSION:

RABBIT CREEK NENE Sec. 34, Twp 01S, Rge 02W, OWYHEE County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01S 02W 27												6.0					6.0
01S 02W 34		24.0	12.0		12.0							L 6					48.0
		L 2															

Total Acres: 54

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within one 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. Diversion of Snake River water is limited to those times water is available for diversion under this right and priority from Rabbit Creek.

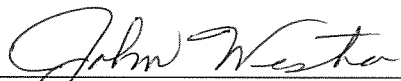
WATER RIGHT NO. 57-10005
As Modified by Transfer No. 77635

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 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.

This water right 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.

Dated this 15th day of March, 20 12



John Westra, Western Regional Manager



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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 1, 2012

DERCK INVESTMENT CORP
1444 KNIGHTS DR
BOISE ID 83712

RE: Transfer No.: 77635
Water Right No(s): 57-10005
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.

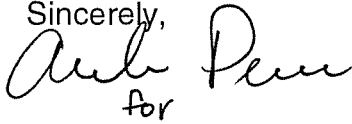
ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and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

for

John Westra

Western Regional Manager

Enclosure(s)

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.

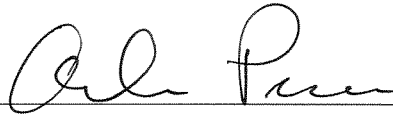
CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2012 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 77635

WATER RIGHTS NOS. 57-10005

**DERCK INVESTMENT CORP
1444 KNIGHTS DR
BOISE ID 83712**

A handwritten signature in black ink, appearing to read "Mandi Pearson", is written over a horizontal line.

**Mandi Pearson
Office Specialist 2**

The Owyhee Avalanche

P.O. Box 97 • HOMEDALE, ID 83628 • 208/337-4681

AFFIDAVIT OF PUBLICATION

10K
81-302012

STATE OF IDAHO)
) ss
COUNTY OF OWYHEE)

RECEIVED

JAN 30 2012

WATER RESOURCES
WESTERN REGION

I, Robert E. Aman, being first duly sworn, depose and say:

1. That I am a citizen of the United States of America, and at all times hereinafter mentioned was and now over the age of twenty-one years, not a party to nor interested in the proceedings hereinafter mentioned.

2. That during the time of publication of the notice hereinafter mentioned, I was and now am the president of The Owyhee Avalanche, a newspaper of general circulation printed and published weekly, on Wednesday of each and every week, in the City of Homedale, County of Owyhee and State of Idaho.

3. That the said The Owyhee Avalanche has been printed and published continuously and uninterruptedly in said County during a period of more than seventy-eight weeks prior to the first publication of the attached notice.

4. That said notice of which a printed copy, taken from said newspaper, is hereto affixed, was published in the regular issue thereof, and not a supplement thereto, in said newspaper, in TWO (2)
(consecutive) calendar weekly issue(s) of said newspaper, in the following date(s):

JANUARY 18, 25, 2012

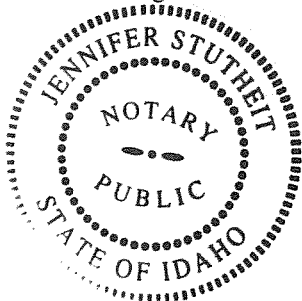
SIGNED: _____

Robert E. Aman

STATE OF IDAHO)
COUNTY OF OWYHEE)

On this 26 day of Jan. in the year of 2012 before me, a

Notary Public, personally appeared ROBERT E. AMAN
known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.



Jennifer Stutheit

Notary Public of Idaho
Residing at HOMEDALE, IDAHO
My commission expires: JANUARY 3, 2015

PROPOSED CHANGE OF WATER RIGHT

DERCK Investment Corporation of 1444 Knights Dr, Boise, Idaho filed Application No. 77635 to transfer one water right with a 1955 priority date from Rabbit Creek totaling 1.08 cfs. The purpose of the transfer is to change the point of diversion from Rabbit Creek to a point of diversion on the Snake River, approximately 0.25 mile upstream of the confluence of Rabbit Creek and the Snake River. There is no change proposed to the source which will continue to be described as Rabbit Creek. Water will be used at the current place of use near about 5.5 miles south of Melba, on the south side of the Snake River.

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 February 6, 2012. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director
1/18,25/12

PROPOSED CHANGE OF WATER RIGHT

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GARY SPACKMAN, Interim Director

Published on <dates>

MEMORANDUM

TO: Transfer No. 77635 File

FROM: Vicky Music

DATE: December 28, 2011

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes to change the point of diversion of water right no. 57-10005. The historic POD is on Rabbit Creek. The applicant wants to retire the Rabbit Creek POD and instead, divert directly from the Snake River.

The site is approximately 5.5 miles south of Melba, Idaho, on the south side of the Snake River.

The applicant is a corporation and the contact person is president of the corporation, Ray Kaufman.

Deviations from Transfer Policy Standards

The "short form" was used because this is a change in POD only. Transfer memo # 24, in section 1, Changes to Points of Diversion, states that if a POD on a tributary is relocated upstream of the confluence of the tributary and the main stream to which it is tributary, then an exchange is to be filed, not a transfer. However, the proposed POD is about 0.25 mile upstream from where Rabbit Creek flows into the Snake River so this deviation should not delay processing.

Summary of Information Submitted

Authority to File:

The applicant is a corporation and is the owner of record of water right no. 57-10005. Mr. Kaufman, the signatory, is the corporation president. The applicant has the authority to file this application.

Water Right Validity:

The SRBA Court issued the partial decree for right no. 57-10005 on 12/15/1997. I confirmed beneficial use confirmed via aerial photographs for 2004, 2006, 2009 and 2011. The place of use was irrigated in all of the aerals and the right is presumed to be valid.

Injury to Other Water Rights:

There is plenty of water in the Snake River and no PODs owned by others between where Rabbit Creek flows into the Snake River, and the proposed POD on the Snake R. No injury to other rights is expected.

Enlargement of Use:

No enlargement in the diversion rate, diversion volume or consumptive use volume is proposed. The proposed new POD is also a POD for the overlapping right, 2-7017B, owned by the applicant. In a response to my request for additional information, the applicant states that there was always enough water to satisfy right no. 57-10005. However, to ensure that no enlargement

of the right occurs, a measuring device condition and a condition stating that the diversion from the Snake River is not authorized for 57-10005 when the water supply in Rabbit Creek is inadequate to supply the right.

Local Public Interest:

There are no apparent public interest issues.

Beneficial Use/Conservation of Water Resources:

The application proposes beneficial use consistent with conservation of water resources in Idaho.

Review of the application finds there is no clear inconsistency with criteria of I. C. § 42-222 preventing processing of the application.

Additional Information/Analysis and Discussion

The application was not clear whether the applicant wanted to replace the Rabbit Creek POD with the Snake River POD and provided no information as to why the transfer was needed. Also, the response to the application item asking for the description of the diversion and delivery works was deficient. So, I sent a request to the applicant for additional information.

The applicant responded with photographs and explained that Rabbit Cr. floods often due to early season high water. Many years, it washes the pump and diversion works out of the creek and prevents the fields from being irrigated. The diversion works have to be replaced with a new pump, etc., when this happens. To illustrate how severe the flooding is, the applicant stated in his response letter that a deputy sheriff was caught in the 2009 flood, was washed down to the Snake river in his truck and perished. The pump is in a steep draw and is difficult to access. This POD change to a POD on the Snake R. where there is a pump and diversion works in place will eliminate the problems the applicant has had for the past 23 years on and off for the past 23 years.

The application will not be parallel processed with the SO and additional analysis by other IDWR programs is not needed.

There are no Snake River or Rabbit Creek water districts from which to solicit Watermaster comments. SRBA status was provided in the previous section of this memo. There are no Mitigation or Water Bank issues.

Data entry affected the correct record. The SRBA partial decree was issued and the results were migrated to wr records.

There are no POU overlaps. The proposed POD is the POD for 2-7017B, owned by the applicant for a different POU.

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.

Condition 046 n/a because a new well is not proposed.

Music, Vicky

From: Music, Vicky
Sent: Wednesday, December 28, 2011 1:29 PM
To: 'Ray Kaufman'
Subject: RE: Water Right #5710005

Mr. Kaufman –

I received the 2 page attachment in response to my request for additional information. Thank you and it is not necessary for IDWR to do a site visit. The short form is the correct form, which is usually adequate for the simple point of diversion changes but in a situation such as this one, where use of a tributary point of diversion will be discontinued, and a replacement on a main stream or river, the Department must request additional information to evaluate the application.

I will contact you if I have more questions and thanks again for your prompt response.

Regards,
Vicky Music
Sr. Water Resource Agent
IDWR/ Western Regional Office

From: Ray Kaufman [<mailto:raykau@msn.com>]
Sent: Wednesday, December 28, 2011 7:27 AM
To: Music, Vicky
Subject: Water Right #5710005
Importance: Low

Good Morning Vicky: Attached is the response you ask for along with pictures of the site. I would also invite you to the site for a visual inspection. Let me know if this comes though clear. Thanks again for you consideration.

Ray G Kaufman

DERCK WATER RIGHTS #5710005

Dear Vicky Music;

This letter is in response to yours of December 20, 2011 seeking additional impute on my request for a transfer of my water right from Rabbit Creek to the Snake River.

#1 I have owned this property for the past 23 years. Rabbit Creek has run steading for all those years and the pump station for the diversion is in a pond so there is more than enough water. This stream runs into the river about 3000 feet down river from that station. In past years our pump and motor have washed away several times during the flash flooding season in the early spring. Rabbit Creek is a very steep draw running through the property. Notice in this picture which was taken the day following



on the last flash flood in 2009. Centrifugal pumps need to be located near the water source for efficiency. When the flash flooding occurs everything is washed down stream. Notice how high up the bank the flooding reached. I can provide certifiable proof of this from residents living in this area. Trees, brush, are washed downstream when this occurs. In fact former sheriff deputy George Reed was killed in this flood which washed his pickup with him inside into the Snake River. I now have a pump station on the Snake River with a water right #AO2-07017B for 7.98 cfs. I have adequate power and the ability to install a new sump and motor and divert from that location without flooding. This was not proposed

without looking at other alternatives because the cost to move this station is about \$20,000.



#2. The flow is controlled by the pump and motor curve installed for the discharge needed to achieve the water right. For this application I ask the pump company for a turbine pump capable of discharging a 57' lift to irrigate 54 acres. The high cost of pumping water alone would not make it reasonable to use more water than necessary. A water flow meter can also be installed on the water manifold if required in the future which would show the GPM of usage.

#3. I will discontinue the use of Rabbit Creek as the diversion point. The pump and motor have been removed for the winter. It is usually reinstalled in April prior to the start of the irrigation season. The flooding in 2009 occurred in June long after the irrigation season began. If the system is washed out during a late flood it forces us to reinstall new equipment and being without water for a period of time in June damages the crop.

I hope I have adequately answered your questions and if not feel free to call me at 841 1213. I was told by your office to use the short form for this request. This form does not allow for a lot of explanation. Thank you for your consideration.

Ray G Kaufman



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

December 20, 2011

Ray G. Kaufman
DERCK Investment Corp.
1444 Knights Dr.
Boise, ID 83712

Re Application for Transfer No. 77635 (Water Right No. 57-10005)

Dear Mr. Kaufman,

The application referenced above has been assigned to me for review and processing. The application proposes to change the point of diversion for water right no. 57-10005. The Department must have the following detailed information in writing before processing can continue.

1. Provide the reason for the proposed point of diversion on the Snake River. Does Rabbit Creek provide enough water to satisfy water right 57-10005? If so, why is the additional point of diversion needed? If not, how will you ensure you will only use the Snake River water when Rabbit Creek water has historically been available and used?
2. Application item 6a states "*Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future.*" The information provided ("pump specifications") is incomplete. Provide a detailed narrative description of the diversion system at the point of diversion and place of use.
3. The application responses are not clear as to whether you are applying to discontinue use of the Rabbit Creek point of diversion and only use the proposed Snake River diversion, or if you intend to use both. Please clarify. Describe how you will use the water from both the original point of diversion on Rabbit Creek and the proposed point of diversion on the Snake River.

If approved, the transfer approval will include a condition that states use of the Snake River water is authorized only when the Rabbit Creek water is available to prevent enlargement of the right. Additional conditions may require a lockable measuring device on the diversion works either now or in the future.

Application for Transfer No. 77635 (Water Right No. 57-10005)

December 20, 2011

Page 2 of 2

Please provide the requested information, or a request to delay processing for up to 6 months, in writing by January 23, 2012. IDWR will void or reject the application without a timely written response. Fees are not refunded for voided or rejected applications. Call me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Vicky Music". The signature is stylized with a large, looped "V" and a cursive "Music".

Vicky Music
Sr. Water Resource Agent