

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 77365

This is to certify that: THE 45 LLC
C/O CHARLES CONN
PO BOX 9080
KETCHUM ID 83340
(208) 726-1914

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>
55-4067	WR/Decreed	07/01/1890	1.28 cfs	224 af	N/A	64.0	SOUTH FORK OWYHEE RIVER

Purpose of Transfer (Changes Proposed)

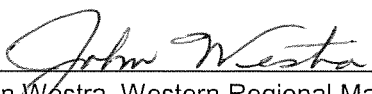
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
55-4067	NO	NO	NO	YES	NO	NO

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>
55-4067	55-4067	1.28 cfs	224 af	N/A	64.0		N/A	N/A	N/A	N/A
COMBINED										
TOTALS		1.28 cfs	224 af	N/A	64.0		N/A	N/A	N/A	N/A

Detailed Water Right Description attached

Dated this 27th day of October, 20 11



John Westra, Western Regional Manager

WATER RIGHT NO. 55-4067
As Modified by Transfer No. 77365

In accordance with the approval of Transfer No. 77365, Water Right No. 55-4067 is now described as follows.

Right Holder: THE 45 LLC
 C/O CHARLES CONN
 PO BOX 9080
 KETCHUM ID 83340

Priority Date: July 01, 1890

Source: SOUTH FORK OWYHEE RIVER

Tributary: OWYHEE RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 10/31	1.28 CFS	224.0 AF
			1.28 CFS	224.0 AF

LOCATION OF POINTS OF DIVERSION:

SOUTH FORK OWYHEE RIVER	SESE	Sec. 25 Twp 14S	Rge 05W OWYHEE County
SOUTH FORK OWYHEE RIVER	NENW	Sec. 36 Twp 14S	Rge 05W 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	
14S	05W	25								9.0	35.0			18.0					62.0
14S	05W	36					2.0												2.0

Total Acres: 64

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within one (1) 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. 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.

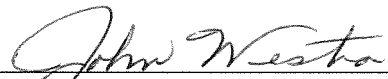
WATER RIGHT NO. 55-4067
As Modified by Transfer No. 77365

CONDITIONS OF APPROVAL

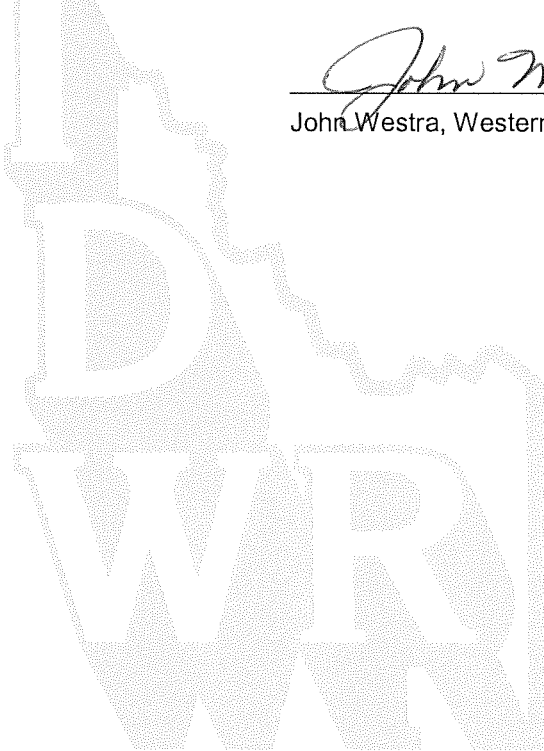
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
6. All water rights within Basin 55 are from connected sources of water in the Snake River Basin and shall be administered conjunctively.

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 27th day of October, 20 11



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

October 27, 2011

THE 45 LLC
C/O CHARLES CONN
PO BOX 9080
KETCHUM ID 83340

RE: Transfer No.: 77365
Water Right No(s): 55-4067

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,


for John Westra
Western Regional Manager

Enclosure(s)

cc: SPF WATER ENGINEERING LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2011 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 77365

WATER RIGHTS NOS. 55-4067

**SPF WATER ENGINEERING LLC
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706**

**THE 45 LLC
C/O CHARLES CONN
PO BOX 9080
KETCHUM ID 83340**

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

**Jean Hersley
Office Specialist II**

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.

10x88 10/13/2011

The Owyhee Avalanche

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

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss
COUNTY OF OWYHEE)

RECEIVED

OCT 03 2011

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):

SEPTEMBER 7, 14, 2011

SIGNED: *Robert E. Aman*

STATE OF IDAHO)
)
COUNTY OF OWYHEE)

On this 29 day of Sept. in the year of 2011 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

The following application(s) have been filed to appropriate the public waters of the State of Idaho: 55-13896

THE 45 LLC, C/O CHARLES CONN, PO BOX 9080, KETCHUM, ID 83340

Point of Diversion SESE S25 T14S R05W OWYHEE County Source SOUTH FORK OWYHEE RIVER Tributary OWYHEE RIVER

Point of Diversion NENW S36 T14S R05W OWYHEE County Source SOUTH FORK OWYHEE RIVER Tributary OWYHEE RIVER

Use: STOCKWATER 01/01 to 12/31 0.07 CFS

Use: WILDLIFE 01/01 to 12/31 1.28 CFS

Total Diversion: 1.28 CFS

Date Filed: 6/10/2011

Place Of Use: STOCKWATER AND WILDLIFE

T14S R05W S25 SENW NESW SESW

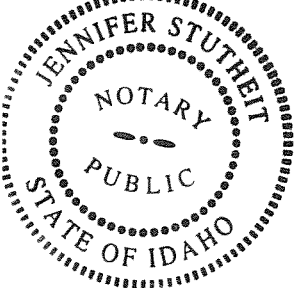
T14S R05W S36 NENW PROPOSED CHANGE OF WATER RIGHT

The 45 LLC, in care of Charles Conn, PO Box 9080, Ketchum, ID, 83340, filed Application No. 77365 to transfer one water right with a 1890 priority date from the South Fork of the Owyhee River totaling 1.28 cfs. The purpose of the transfer is to add a point of diversion. Water will be used at the current place of use near the confluence of the Little Owyhee and South Fork Owyhee Rivers.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the rights &/or proposed transfer, please see www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp. Protests may be submitted based on the criteria of Sec 42-222 and 42-203A, Idaho Code. Any protest against the approval of this application(s) 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 September 26, 2011. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

9/7,14/11



MEMORANDUM

TO: Transfer No. 77365
FROM: Kay Walker
DATE: August 22, 2011
RE: Evaluation of Application

This transfer proposes to add a point of diversion to an existing right. The proposed point of diversion is located on Bureau of Land Management (BLM) land and was the historic point of diversion for this right. A transfer was filed and approved in August of 2002 removing this diversion point from the right.

The site is located at the confluence of the Little Owyhee and South Fork Owyhee Rivers.

Contact person for the applicant is Lori Graves, Water Rights Specialist for SPF Water Engineering, 300 E. Mallard Dr., Suite 350, Boise, ID, 83706, phone 383-4140.

Summary of Information Submitted

Authority to File:

The applicant is the right holder of record pursuant to an ownership change dated August 9, 2006.

Water Right Validity:

The water right has been kept in good standing. Irrigation of the place of use is evidenced by aerial photography dated 2004, 2006 and 2009.

Injury to Other Water Rights:

There would be no injury to any other water rights. There are no other rights in this area. The property is surrounded by land administered by the BLM.

Enlargement of Use:

No enlargement can occur. The entire place that could be irrigated is under the irrigation parameter of this water right. The property is surrounded by hills and the river.

Local Public Interest:

It is within the local public interest to allow the applicant to divert water to irrigate his property. The applicant purchased the property from the Nature Conservancy and has their approval for this proposal. The Nature Conservancy

SCANNED

OCT 27 2011

holds a conservation easement on this ranch and has assisted in designing the restoration and conservation plan for the property.

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 which is based on the partial decree issued on March 5, 1999. A subsequent transfer was filed and approved in August of 2002.

Overlapping rights at existing &/or proposed POD &/or POU are an application for permit that is also being processed. The application (55-13896) proposes a year round use for stockwater and wildlife as part of an ecological restoration project with the goal of improving the condition of the upland and riparian zones within the place of use. There is also a licensed right (55-2012) that is appurtenant to the land under this right. This license was not claimed in the SRBA and was superseded by Rt. 55-4067. There are several instream stockwater rights in the name of the BLM on lands surrounding this property.

Other important comments include consent of the BLM who owns the property where the proposed point of diversion is located. They have submitted a letter, dated 8/18/2011, providing the necessary consent to facilitate the transfer since the applicant obtained a right of way with the BLM that was granted on 9/19/2008.

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.