

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 85950**

This is to certify that: MONTE HENDERSON
PO BOX 32
SWANLAKE, ID 83281

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>
13-871	WR/DECREED	6/1/1888	1.300 cfs	N/A	N/A	N/A	DIVIDE 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>
13-871	NO	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>
13-871	13-871	1.300 cfs	N/A	N/A	72.4	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		1.300 cfs	N/A	N/A	72.4		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 17th day of March, 2023.



Regional Manager

Transfer No. 85950

SCANNED
MAR 16 2023

WATER RIGHT NO. 13-871
As Modified by Transfer No. 85950

In accordance with the approval of Transfer No. 85950, Water Right No. 13-871 is now described as follows:

Right Holder: MONTE HENDERSON
 PO BOX 32
 SWANLAKE, ID 83281

Priority Date: 6/1/1888

Source: DIVIDE CREEK

Tributary: SHINGLE CREEK

BENEFICIAL USE
 IRRIGATION

From 4/20 **to** 9/30 **Diversion Rate**
 1.300 cfs
 1.300 cfs

LOCATION OF POINT(S) OF DIVERSION

DIVIDE CREEK L1 (NWNW) Sec 7 Twp 12S Rge 39E BANNOCK 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	
12S	39E	5											22						22
12S	39E	6															4.1	25	29.1
12S	39E	7	4.1																4.1
12S	39E	8					4.2	13											17.2

POU Total Acres: 72.4

CONDITIONS OF APPROVAL

1. 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 place of use.
2. Use of water under this right may 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. 13M.
3. 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).
4. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
5. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Bear River Basin Adjudication.

Transfer No. 85950

SCANNED
 MAR 16 2023

WATER RIGHT NO. 13-871
As Modified by Transfer No. 85950

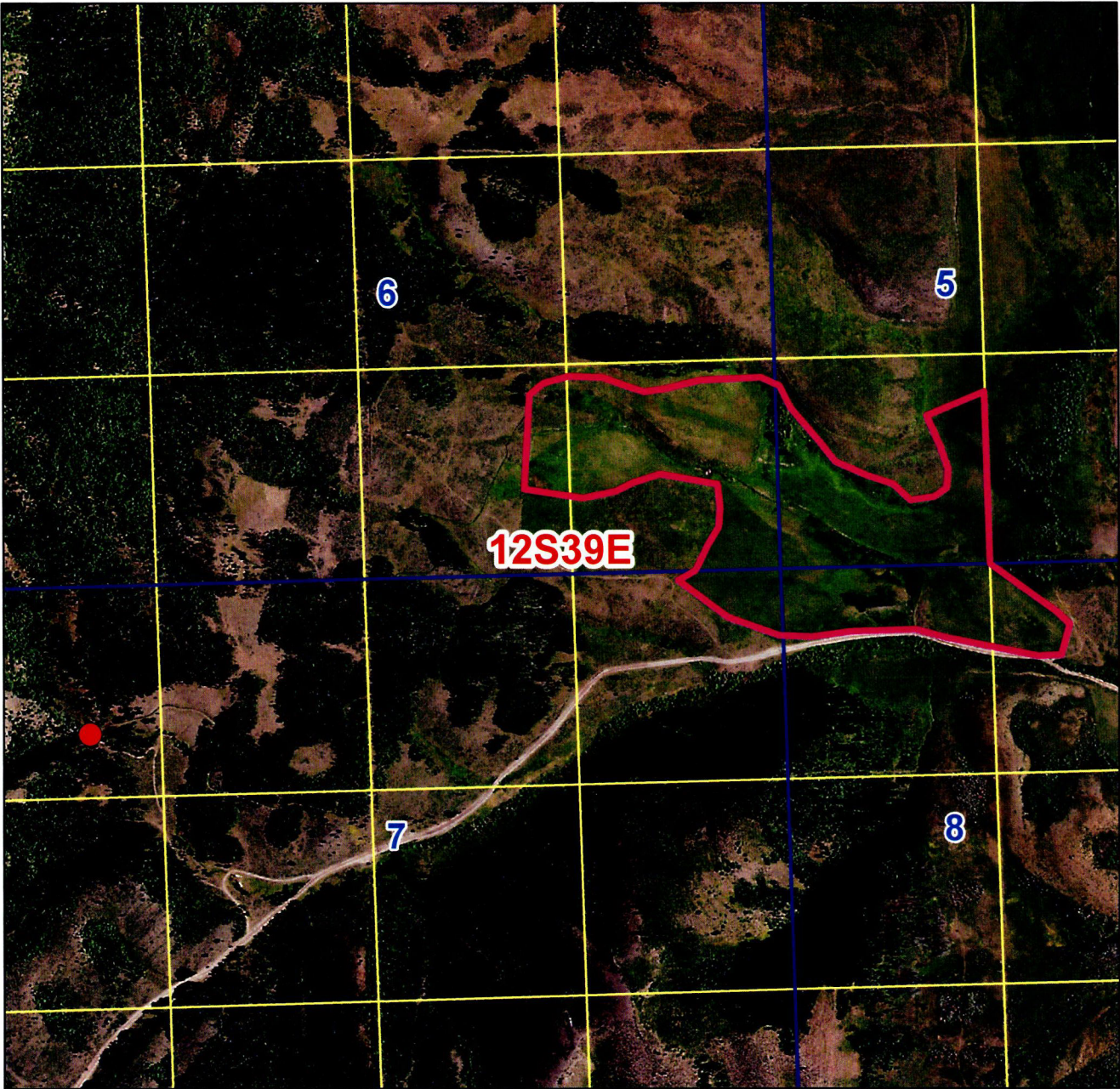
CONDITIONS OF APPROVAL

6. This right does not grant any right-of-way or easement across the land of another.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.



Attachment to Transfer Approval 85950

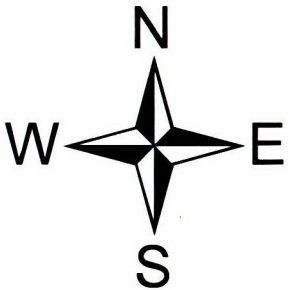
This map depicts the place of use boundary at the time of this transfer approval and is attached to the approval document solely for illustrative purposes.



Legend

- WR POD
- WR POU
- Township/Range
- Sections
- QQ

0 500 1,000 2,000 Feet



SCANNED

Date: 3/17/2023

MAR 16 2023



IDAHO DEPARTMENT OF
WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: 208-525-7161 • Fax: 208-525-7177 • Email: easterninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

March 17, 2023

MONTE HENDERSON
PO BOX 32
SWANLAKE ID 83281

Re: Transfer No: 85950
Water Right No(s): 13-871

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.

SCANNED
MAR 16 2023

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) 525-7161.

Sincerely,

A handwritten signature in blue ink, appearing to be 'CH' or 'CHenman', written over the word 'Sincerely,'.

Christina Henman
Administrative Assistant

Enclosure
CC:

SCANNED
MAR 16 2023

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2023 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

Re: Transfer No.: 85950

Water Right No(s): 13-871

MONTE HENDERSON

PO BOX 32

SWANLAKE ID 83281



Christina Henman
Administrative Assistant

SCANNED
MAR 16 2023

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

Date: March 14, 2023
To: Transfer 85950
From: Michael Holliday
Re: Review & Evaluation of Sufficiency of Information

Right 13-871 was decreed to Thomas Waddoups in the 1920 Dietrich Decree. It is the only right in our database from Divide Creek. There are some ambiguities in the decree. It says the right is "for the irrigation of 320 acres" but only 7 QQs are listed. The applicant said it was not possible to irrigate most of the lands described in the decree from Divide Creek. That appears to be the case, as much of the decreed place of use is either on a hillside or on the east side of Shingle Creek. The decree also says that Divide Creek is diverted "from points... where the said stream crosses the said lands." However, Divide Creek does not cross any of the decreed place of use. This transfer will clarify the historic location of the point of diversion and will change the place of use to the 72.4 acres actually irrigated.

Authority to File:

The applicant provided deeds demonstrating ownership of the right and the proposed place of use (most of which was owned by Waddoups). IDWR sent direct notice of the transfer to the owners of the decreed place of use, and the applicant provided IDWR with copies of the letters he sent to the decreed place of use landowners regarding the transfer. No action was taken by either landowner to contest the transfer and ownership change. It should be noted that these landowners previously updated the ownership of rights 13-865, 13-866, 13-867, 13-868, 13-869, and 13-870B (rights that partially overlap 13-871) but did not seek to update 13-871. The point of diversion is located on land belonging to the State of Idaho. The applicant provided a letter from Pat Brown of IDL. In the letter Brown explained that the point of diversion was "grandfathered in and there is no basis for IDL to contest that."

Water Right Validity:

Right 13-871 was decreed in the 1920 Dietrich Decree. As mentioned above, most of the decreed place of use could not have been watered from Divide Creek. This is due to the inability to convey water from the source to those locations, and the decreed 1.30 cfs diversion rate. The 72.4 acres identified by the applicant is far more reasonable for flood irrigation at the decreed rate. Aerial photos show consistent evidence of irrigation on those acres. The number of acres authorized for use under right 13-871 will be reduced to 72.4 acres in the transfer to reflect historical use.

Injury to Other Water Rights:

Other water rights will not be impacted by the transfer. The right is simply being updated to reflect historical use and clear up ambiguities in the decree. The application was advertised, and no protests were filed. The Water District 13M Watermaster was notified of the transfer but did not provide comment.

Enlargement of Use:

The quantity authorized to be diverted under the right will not increase, and the number of acres authorized to be irrigated will be reduced to 72.4 acres. On paper, right 13-871 is stacked with six other water rights, but in actual practice it is highly unlikely that right 13-871 has ever been used in the QQs where the rights appear to overlap. Also, the applicant owns 80 acres of the current place of use that is not stacked with any other rights. Enlargement is not an issue.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

SCANNED
MAR 16 2023

1-12-23

RECEIVED

JAN 17 2023

Department of Water Resources
Eastern Region

Hello Michael,

Here are the letters I mail to

Scott Blaisdell (their Secretary also)

and Paul Davis.

Any thing further please let me know,

Thank you for your help in this matter.

Mont Hansen

"Marked"

1-12-23

IO Depart of WATER Resources

900 No. Skyline Drive - Suite A

IDAHO FALLS, Idaho 83402-1718

SCANNED

MAR 16 2023

Hi Scott,

Merry Christmas !

Here are the WATER papers that
The WATER Resource office told me
to send to my neighbors in C.W.

Thanks for your help.

Monte

Scott Blaisdell
3680 W 1000 N
Malad ID 83252

208-541-5328

SCANNED
MAR 16 2023

12-22-22

Hi Paul,

Here are the Copies that the Idaho
WATER Resource office told me I need
to send you. New Idaho Law Requires it.

1- Application

2- News paper Ad.

Thank you.

Monte Henderson

PO Box 32

Swan Lake Id. 83281

208-317-1679

Paul Davis

7518 N Hwy 91

Smithfield UT 84335

#435-757-9869

SCANNED
MAR 16 2023

EASTERN SUPERVISORY AREA

Idaho Falls Office

3563 E. Ririe Highway
Idaho Falls, ID 83401
Phone (208) 525-7167
Fax (208) 525-7011
pbrown@idl.idaho.gov



STATE BOARD OF LAND COMMISSIONERS

Brad Little, Governor
Lawrence E. Denney, Secretary of State
Lawrence G. Wasden, Attorney General
Brandon D Woolf, State Controller
Sherri Ybarra, Sup't of Public Instruction

April 19, 2022

RECEIVED

DEC 27 2022

Monte Henderson
P. O. Box 32
Swan Lake, ID 83281

Department of Water Resources
Eastern Region

Dear Monte,

This letter is to document our discussion today regarding your point of diversion and ditch on endowment land in Section 7, Township 12 South, Range 39 East.

The 320 acres of endowment land in Section 7 were granted to the Public School endowment as a lieu land selection (Clear List #32) which was recorded in Bannock County on August 4, 1922. Lieu land selections were granted to the endowments " . . . subject to any valid interfering rights existing at the date of selection . . . ". What this means is that, if the point of diversion and ditch were in place prior to 8/4/1922, that use is grandfathered in. Given that the priority date for the water right in question is in 1888 on the IDWR website, it certainly appears that your point of diversion and ditch are grandfathered in and there is no basis for IDL to contest that.

Thank you for your inquiry. Please don't hesitate to contact me with any further questions.

Sincerely,

Patrick A. Brown
Eastern Area Manager

12-22-22

RECEIVED

DEC 27 2022

ATT: Michael Holliday

Department of Water Resources
Eastern Region

Hi, Sorry It took so long for me to finish this.

As we discussed on 4-18-22

I contacted state of ID for Record of Diversion.

"Letter from STATE of ID enclosed"

Also - Copies of the New paper Ad, AND Application
was mail to Scott Blaisdell, MALAD IDAHO
and Paul Davis, Smithfield, VT.

I hope this will complete this Application.

Please notify me if I need to come
into the office or anything else.

I Appreciate your help

Monte Henderson

Box 32

Swanlake ID 83281

208 - 317 - 1679

SCANNED

MAR 16 2023