

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 80061 IN THE NAME OF)
TERRELL AND SANDRA YANCEY) PRELIMINARY ORDER
CORRECTING TRANSFER APPROVAL

This matter having come before the Idaho Department of Water Resources ("Department") as the result of clerical errors discovered in a transfer approval, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On April 20, 2015, Terrell and Sandra Yancey filed Application for Transfer No. 80061, proposing to change the point of diversion and place of use for a split portion of five separate water rights (35-7355A, 35-13754, 35-8074A, 35-2774A and 35-7644A). Application 80061 proposed to move 5.3 acres of water right 35-7355A to the new place of use.

2. Prior to Transfer 80061, water right 35-7355A shared a common place of use with five other water rights and included the following condition: "Rights 35-2333, 35-7355A, 35-7355B, 35-13753 and 35-13553 when combined shall not exceed a total diversion rate of 9.96 cfs, a total annual maximum diversion volume of 1,972 af at the field headgate, and the irrigation of 493 acres." The 493-acre combined place of use was located in Section 4, T05S, R31E.

3. Because Transfer 80061 proposed moving a 5.3-acre portion of water right 35-7355A to a new place of use and a separate irrigation system, water rights 35-2333, 35-7355B, 35-13553 and 35-13753 were added to Transfer 80061 to update the combined limit condition and reduce the 493-acre combined place of use of the water rights.

4. The reduced combined place of use for water rights 35-2333, 35-7355A, 35-7355B, 35-13553 and 35-13753 was 487.7 acres, still located in Section 4, T05S, R31E. Application 80061 did not propose any changes to the remaining 487.7-acre combined place of use. Transfer Approval 80061 mistakenly described the combined place of use for water rights 35-2333, 35-7355A, 35-7355B, 35-13553 and 35-13753 in the neighboring Section (Section 33, T04S, R31E). The error was discovered during the processing of a subsequent transfer application.

5. The evidence available to the Department at this time, indicates Transfer Approval 80061 included a clerical error in the place of use descriptions for water rights 35-2333, 35-7355A, 35-7355B, 35-13553 and 35-13753. The 487.7-acre combined place of use for these water right should have been located in Section 4, T05S, R31E, instead of Section 33, T04S, R31E. The Department should correct the transfer approval.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe water rights 35-2333, 35-7355A, 35-7355B, 35-13553 and 35-13753 in Transfer Approval 80061. The 487.7-acre combined place of use for these five water rights should have been described in Section 4, T05S, R31E.

2. The Department has the authority to issue Amended Transfer Approval 80061, correcting the error in the place of use legal descriptions.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 80061 is CORRECTED as set forth in Amended Transfer Approval 80061 issued in conjunction with this order.

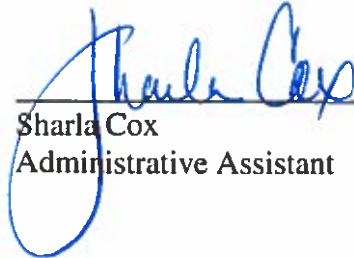
Dated this 15th day of May, 2017.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of May 2017, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL (80061)

**Terrell and Sandra Yancey
1226 S 2700 W
Aberdeen, ID 83210**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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.