

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 77576 IN THE NAME OF) PRELIMINARY ORDER
ARLIN D. OR CORALLE M. KNIGHT) CORRECTING TRANSFER APPROVAL

FINDINGS OF FACT

6. During a recent review of water rights in the area, the Department discovered that the combined limit conditions listed in Transfer Approval 77576 were calculated incorrectly. The

combined limits were not calculated based on the proportionate acres under each of the water rights. Attachment A to this Order lists the water rights and the combined limits as they existed before the transfer and the correct way the water rights should have been listed after the transfer.

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 the water rights included in Transfer Approval 77576. The combined limit conditions for the rights should have been calculated based on the proportionate acres under each of the water rights as shown in Attachment A.

2. The Department should issue an Amended Transfer Approval 77576, correcting the errors in the water right conditions.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 77576 is CORRECTED as set forth in the Amended Transfer Approval 77576 issued in conjunction with this Order.

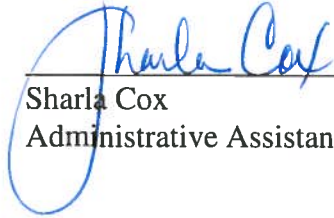
Dated this 20th day of June, 2013.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of June 2013, 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 (77576)

**Arlin or Coralle Knight
2379 East 2050 North
Hamer, ID 83425-5143**

**Circle B Farms Ltd Partnership
PO Box 69
Lewisville, ID 83431**

Preliminary Order Correcting Transfer Approval 77576 Attachment A

Water Rights Prior to Transfer 77576

Knight

<u>Right No.</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
31-7277	11/22/1977	1.87	417	139
31-11449	2/25/1949	0.99	220.5	63
31-10534	2/2/1942	1.4	280	80
31-11452	2/25/1949	1.96	114.6	80

Circle B Farms

<u>Right No.</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
31-2291A	2/25/1949	1.96	53.3	10
31-11424	2/2/1942	1.4	53.3	10

Combined Limits Prior to Transfer 77576

31-2291A / 31-11424: 53.3 af, 10 acres, 8.4 af in 14 days
31-10534 / 31-11452: 280 af, 80 acres, 66.6 af in 14 days

31-7277 / 31-11449: 2.78 cfs, 486.5 af, 139 acres
31-2291A / 31-11449 / 31-11452: 1.96 cfs

31-2291A / 31-11424 / 31-11449 / 31-10534 / 31-11452: 4.20 cfs

Water Rights After Transfer 77576

Knight

<u>Right No.</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
31-7277	11/22/1977	1.87	417	139
31-11449	2/25/1949	0.99	220.5	63
31-12308	2/2/1942	1.05	210	60
31-12306	2/25/1949	1.47	86	60

Circle B Farms

<u>Right No.</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
31-2291A	2/25/1949	1.96	53.3	10
31-11424	2/2/1942	1.4	53.3	10
31-12307	2/2/1942	0.35	70	20
31-12305	2/25/1949	0.49	28.6	20

Combined Limits After Transfer 77576

31-2291A / 31-11424: 53.3 af, 10 acres, 8.4 af in 14 days
31-12305 / 31-12307: 70 af, 20 acres, 16.6 af in 14 days

31-12306 / 31-12308: 210 af, 60 acres, 50 af in 14 days
31-7277 / 31-11449: 2.78 cfs, 486.5 af, 139 acres

31-2291A / 31-12305: 0.38 cfs
31-11449 / 31-12306: 1.58 cfs

31-2291A / 31-11424 / 31-12305 / 31-12307: 0.82 cfs
31-11449 / 31-12306 / 31-12308: 3.38 cfs

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.