

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|                                                                                             |                       |                                                                                                          |
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| IN THE MATTER OF TRANSFER NOS.<br>73775 & 73776 IN THE NAME OF TED<br>AND/OR SANDY CANTRELL | )<br>)<br>)<br>)<br>) | <b>ORDER GRANTING PETITION<br/>FOR RECONSIDERATION AND<br/>ISSUANCE OF AMENDED<br/>PRELIMINARY ORDER</b> |
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This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a preliminary order amending two transfer approvals, the Department finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. On August 31, 2005, the Department received Application for Transfer No. 73775 of Right No. 2-202A. Additionally on August 31, 2005, the Department received Application for Transfer No. 73776 of Right No. 57-7100. The purpose of both transfer applications was to place both above mentioned rights into a 132.5 acre permissible place of use (PPU) to reflect current use. The PPU is located in the NW¼ of Section 31, T05S, R04E, B.M. north of the Shoofly Canal, also known as the Grand View Mutual Canal and in the SW¼SW¼ of Section 30, T05S, R04E, B.M. south of the Grand View Irrigation District Canal.

2. On September 16, 2009, the Department approved Transfer Nos. 73775 and 73776 (transfer approvals).

3. Approval condition nos. 3 and 4 of Transfer No. 73775 are, respectively:

a. "Rights 2-202A and 2-10201 when combined shall not exceed a total diversion rate of 1.8 cfs and the irrigation of 90 acres."

b. "Approval of Transfer 73775 creates an overlap with Right 57-7051A that has been accepted in the water supply bank and currently not used on these lands. Upon renewed use of Right 57-7051A on its current place of use within the NWNW and SENW, Sec. 31, T05S, R04E, BM.; Rights 2-202A and 57-7051A when combined shall not exceed a total diversion rate of 1.7 cfs and the irrigation of 85 acres."

4. Approval condition nos. 3 and 4 of Transfer No. 73776 are, respectively:

a. "Rights 57-7100 and 2-10201 when combined shall not exceed a total diversion rate of 1.66 cfs and the irrigation of 83 acres."

b. "Approval of Transfer 73776 creates an overlap with Right 57-7051A that has been accepted in the water supply bank and currently not used on these lands. Upon renewed use of Right 57-7051A on its current place of use within the NWNW and SENW, Sec. 31,

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T05S, R04E, BM.; Rights 57-7100 and 57-7051A when combined shall not exceed a total diversion rate of 1.56 cfs and the irrigation of 78 acres."

5. On September 30, 2009, the Department received a Petition for Reconsideration of both transfer approvals (petition) from Dana L. Hoffstetter (petitioner), attorney for Ted and Sandy Cantrell. The petition requested that approval condition nos. 3 and 4 be deleted from both transfer approvals.

6. On October 21, 2009, the Department granted the petition and issued an Amended Preliminary Order (preliminary order) modifying approval condition nos. 3 and 4 of both transfer approvals. Approval condition nos. 3 and 4 of both transfer approvals after issuance of the preliminary order are, respectively:

a. "Rights 2-202A, 57-7100, and 2-10201 when combined shall not exceed a total diversion rate of 2.82 cfs and the irrigation of 141 acres."

b. "Right 57-7051A is currently appurtenant to a part of the place of use described above. However, Right 57-7051A is currently leased to the Water Supply Bank and is not being used at its authorized place of use. If the use of Right 57-7051A resumes on its currently described place of use, it shall not exceed 3.22 cfs and the irrigation of 161 acres when used in combination with Rights 2-202A and 57-7100. If the purpose of use or place of use for Right 57-7051A is changed through a transfer approved by the Department before its currently authorized use is resumed, the combined use limits will be evaluated in the transfer process and may not apply."

7. On November 6, 2009, the Department received a petition for reconsideration (second petition) of the preliminary order dated October 21, 2009. The second petition requested condition no. 3, as amended by the preliminary order, be deleted. The second petition states approval condition no. 4 of both transfer approvals, as modified by the preliminary order, is acceptable to the water right owners.

### ANALYSIS

The second petition is supported by a contemporaneously filed Affidavit of Dana L. Hofstetter (affidavit). In part two (2) of the affidavit, it is stated that Permit Application for Water Right No. 2-7154 (parent right to 2-10201), attached to the affidavit as Exhibit A, establishes that Right 2-7154 was intended for irrigation of acreage south of the Grand View Mutual Canal in Section 31, T05S, R04E, B.M. Review of Water Right File No. 2-7154 does not support the conclusion that, as applied for, Right 27-7154 was intended for acreage south of the Grand View Mutual Canal in Section 31. Nowhere on the application for permit does it explicitly state that lands to be irrigated are those south of the Grand View Mutual Canal in Section 31. The application for permit lists a total of 42.5 acres in the NW¼ of Section 31 to be irrigated. It is clear from aerial imagery that no more than a total of 25 to 26 acres lie south of the Grand View Mutual Canal in the NW¼ of Section 31. Therefore it cannot be concluded the intent of the application for permit for Right 2-7154 was to irrigate only lands south of the Grand View Mutual Canal in the NW¼ of Section 31, T05S, R04E, B.M.

Part three (3) of the affidavit references Exhibit B, a Department staff memorandum dated March 11, 1983, that discusses several water right licenses, including the license for Right 2-7154. More specifically, on page three of the memorandum, Don Shaff of the Department concludes that in some cases, more acres were licensed for Right 2-7154 than were actually owned by the license holder. It is suggested an amended license be issued according to recommended acres listed in an attached land list to the memorandum. An amended license was never issued. As detailed in the preliminary order dated October 21, 2009, Transfer No. 4195 was approved in 1993 which modified the place of use for Right 2-7154, however the acres appurtenant to the NW¼ of Section 31 were not redefined and remained at 42.5 acres in the NW¼. Two ownership changes were filed in 2001 that split Right 2-7154 subsequently into three parts, Rights 2-10198, 2-10201, and 2-10202. These three splits were recommended to the Snake River Basin Adjudication (SRBA) and ultimately decreed as recommended.

Several times after the 1983 memorandum, Right 2-7154 and its resulting splits underwent several administrative reviews resulting from Transfer No. 4195 and two ownership changes. At no time was it determined Right 2-7154, or Right 2-10201, was appurtenant to only land south of the Grand View Mutual Canal in the NW¼ of Section 31. In summary, the Department finds and concludes the same as found in the preliminary order dated October 21, 2009. Twelve (12) acres of decreed Right 2-10201 are appurtenant to lands north of the Grand View Mutual Canal in the NW¼ of Section 31, T05S, R04E, B.M. The twelve acres listed under Right 2-10201 north of the Grand View Mutual Canal are also appurtenant to a 132.5 acre place of use for Rights 2-202A and 57-7100, as described by the transfer approvals.

The intent of approval condition no. 3 on both transfer approvals, as modified by the October 21, 2009, preliminary order, was to correctly address overlap between Right 2-10201 and Rights 2-202A and 57-7100 resulting from the transfer approvals. The overlap was thought to have been created by the new 132.5 acre PPU for Rights 2-202A and 57-7100, which extends onto a portion of Right 2-10201's place of use. However, approval condition no. 3 is not applicable because the individual acre limit for each of the three rights does not add up to the total acres authorized by the PPU. Therefore, it is conceivable all three rights can be irrigating their full individual authorized acre amounts and not overlap.

### **CONCLUSIONS OF LAW**

1. A 12-acre portion of Right 2-10201 is appurtenant to lands authorized under the place of use of Rights 2-202A and 57-7100 as authorized under the transfer approvals.
2. Approval condition no. 3 should be removed because the sum of the individual authorized acre amounts for Rights 2-202A, 57-7100, and 2-10201 does not equal the total acres authorized under the permissible place of use by the transfer approvals.

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**ORDER**

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order amending Transfer Nos. 73775 and 73776 is **GRANTED** pursuant to Idaho Code § 67-5243(3).

IT IS FURTHER HEREBY ORDERED that approval condition no. 3 of both Transfer Approval Nos. 73775 and 73776 is **DELETED**.

Dated this 25<sup>th</sup> day of November, 2009.



for JEFF PEPPERSACK  
Chief, Water Allocation Bureau

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