

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

IN THE MATTER OF TRANSFER NOS.	)	ORDER GRANTING PETITION
73775 & 73776 IN THE NAME OF TED	)	FOR RECONSIDERATION AND
AND/OR SANDY CANTRELL	)	ISSUANCE OF AMENDED
_____	)	PRELIMINARY ORDER

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of two transfers, 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 know 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 issued preliminary orders approving 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, 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.

ANALYSIS

Right No. 2-10201 is a portion of original Water Right License No. 2-7154. As licensed, Right 2-7154 was authorized to divert 9.6 cfs for irrigation purposes on 486 acres. Of the 486 acres authorized, 42.5 acres were licensed in the NW¼ of Section 31, T05S, R04E, B.M. On October 21, 1993, Transfer No. 4195 was approved, changing the authorized place of use for Right 2-7154. The place of use change **did not** change the acreage amount located in the NW¼ of Section 31. On July 24, 2001, David C. Unruh filed an ownership change with the Department that resulted in the split of Right 2-7154. Right 2-7154 was divided into parts 2-10197 in the name of Triangle Dairy Inc., and 2-10198 in the name of Unruh. **When specifically reviewing only the NW¼ of Section 31**, 30.5 acres was conveyed to Unruh, 12 acres was retained by Triangle Dairy. It is clear from the deed submitted with the ownership change that Unruh was granted "That portion of Lots 2 and 3 and that portion of the SE¼NW¼ and that portion of the NE¼SW¼ lying South of the Grand View Mutual Canal." In summary, Unruh was conveyed the acres south of the canal, Triangle Dairy retained the acreage north of the canal, in regards to the NW¼ of Section 31.

On August 31, 2001 the Department received a second change of ownership that resulted in a division of Right 2-10197. Of the 102 acres remaining of Right 2-10197, 60 acres were conveyed to the J.R. Self-Declaration of Revocable Trust thru Right 2-10202. The 12 acres appurtenant to the NW¼ of Section 31, as discussed above, were a part of the 42 acres retained by Triangle Dairy thru right 2-10201. Right 2-10201 was then recommended by the Department to the Snake River Basin Adjudication (SRBA) and was subsequently decreed June 15, 2009.

All evidence points to the conclusion that 12 acres of the 42 acres appurtenant to Right 2-10201, as decreed, are located north of the Shoofly Canal. Therefore, a portion of Right 2-10201 should be under the ownership of the current owner of the land those specific 12 acres are appurtenant to. Attached to this order are two maps to help illustrate the points brought forth in this analysis. The intent of approval condition no. 3 on both transfer approvals is to correctly address the overlap between Right 2-10201 and Rights 2-202A and 57-7100. Further review of that condition resulting from the petition has shown that a rewording of the condition may be warranted.

The intent of approval condition no. 4 on both transfer approvals is to place an appropriate combined use limit between the rights involved in either transfer and Right 57-7051A, should the lease of 57-7051A to the water supply bank be terminated and use of 57-7051A is resumed on its currently authorized place of use. The intent of approval condition no. 4 is not to deem Right 57-7051A as supplemental to Rights 2-202A and 57-7100. A thorough reanalysis of the wording of approval condition no. 4 should be conducted to ensure proper understanding of the Department's intent in applying that condition.

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. The intent of condition no. 3 on both transfer approvals is to correctly describe the partial overlap between Rights 2-202A, 57-7100, and 2-10201. Approval condition no. 3 should be modified to more accurately describe the partial overlap.

3. The intent of condition no. 4 on both transfer approvals is to properly describe the existing relationship between Rights 2-202A, 57-7100, and 57-7051A. Approval condition no. 4 should be modified to more clearly describe the Department's intent in applying this condition.

ORDER

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

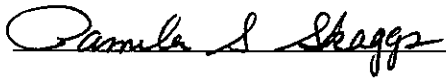
IT IS FURTHER HEREBY ORDERED that approval condition no. 3 of both Transfer Approval Nos. 73775 and 73776 is **MODIFIED** as follows:

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.

IT IS FURTHER HEREBY ORDERED that approval condition no. 4 of both Transfer Approval Nos. 73775 and 73776 is **MODIFIED** as follows:

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.

Dated this 21st day of October, 2009.


for JEFF PEPPERSACK
Chief, Water Allocation Bureau

Right 2-10201 relation to Transfers 73775 & 73776 132.5-acre PPU



Legend

-  132.5_ppu
 Right_2_10201
 Township/Rang
 Sections
 QQ

2009NAIP imagery

Purple shading displays Right 2-10201's authorized place of use as decreed. As clearly shown, a portion of Right 2-10201 resides north of Shoofly Canal.

Prepared by:
Nick Van Dyke
October 22, 2009

Idaho Department of Water Resources

