

BEFORE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT TRANSFER)
NOS. 5044, 5045, 5046, 69624 AND 69626 IN)
THE NAME OF PICABO LIVESTOCK CO.)

**PRELIMINARY ORDER
CORRECTING TRANSFER
APPROVALS**

This matter having come before the Department of Water Resources (Department or IDWR) as a result of the filing of a petition to correct clerical error on transfers, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

Transfer 5044

1. On February 28, 1997, the Department received application for Transfer 5044 in the name of Picabo Livestock Co. A correction to the application was received by the Department on March 14, 1997. The purpose of the application was to add point(s) of diversion and change the place of use for irrigation of 340 acres authorized under ground water Licenses 37-2617 and 37-2620 to a location within a 2711.3 acre permissible place of use (PPU).
2. Application for Transfer 5044 was approved on March 20, 1998 and issued as a preliminary order of the Department pursuant to Section 67-5245, *Idaho Code*. The transfer approval authorized a diversion rate of 6.18 cfs for irrigation of 340 acres within a 2711.3 acre PPU. The transfer approval included a condition of approval identified as condition no. 5 for each license as follows:

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 lands above.

Transfer 5045

3. On February 28, 1997, the Department received application for Transfer 5045 in the name of Picabo Livestock Co. A correction to the application was received by the Department on March 14, 1997. The purpose of the application was to change the point of diversion and place of use for 62.7 acres of ground water License 36-2627 and to add point(s) of diversion and change the place of use for the remaining 2496.3 acres under the license to a location within the same PPU authorized under Transfer 5044.
4. Application for Transfer 5045 was approved on March 20, 1998 and issued as a preliminary order of the Department pursuant to Section 67-5245, *Idaho Code*. The Department designated the

portion of License 37-2627 associated with the 62.7 acres as License 37-2627B and the remaining portion as License 37-2627A. The transfer approval authorized a diversion rate of 10.65 cfs for irrigation of 2496.3 acres within a 2711.3 acre PPU for License 37-2627A. The transfer approval included a condition of approval identified as condition no. 5 for each licensed part as follows:

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 lands above.

Transfer 5046

5. On February 28, 1997, the Department received application for Transfer 5046 in the name of Picabo Livestock Co. A correction to the application was received by the Department on March 14, 1997. The purpose of the application was to add point(s) of diversion and change the place of use for irrigation under numerous surface water rights to a location within the same PPU authorized under Transfers 5044 and 5045. The surface water rights included in the application were Decrees 37-21, 37-22, 37-186 A & B, 37-187, 37-188, 37-189, 37-213 A & B, 37-214, 37-215 E & F, 37-216, 37-217, 37-218, 37-219, 37-333, 37-351A, 37-352A, 37-376 B, D & E, 37-377, 37-378, 37-379, 37-380, 37-381, 37-428, 37-694 A & B, 37-695 and 37-942 and License 37-2405.

6. Application for Transfer 5046 was approved on March 20, 1998 and issued as a preliminary order of the Department pursuant to Section 67-5245, *Idaho Code*. The transfer approval authorized a diversion rate of 72.78 cfs for irrigation of 2711.3 acres. The transfer approval included conditions of approval identified as condition nos. 2, 8 and 9 respectively for each water right as follows:

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 lands above.

The total instantaneous diversion of water from all points of diversion under Transfer 5046 shall not exceed 72.78 cfs, nor a total combined annual volume of 9505.2 af.

Rights 37-00021, 37-00022, 37-00186 A & B, 37-00187, 37-00188, 37-00189, 37-00213 A & B, 37-00214, 37-00215 E & F, 37-00216, 37-00217, 37-00218, 37-00219, 37-00333, 37-00351A, 37-00352A, 37-00376 B, D & E, 37-00377, 37-00378, 37-00379, 37-00380, 37-00381, 37-00428, 37-00694 A & B, 37-00695, 37-00942 and 37-02405 when combined shall not exceed an annual diversion volume of 9489.6 af at the field headgate for the irrigation of 2711.3 acres, nor a diversion rate of 0.17 cfs and an annual diversion volume 15.6 af for stockwater purposes.

7. On April 6, 1998, the applicant's representative contacted the Department about an inconsistency between the diversion rate authorized by the transfer and the condition limiting the diversion rate and volume per acre (condition no. 2). The Department elected to remove the condition by amending the transfer approval.

8. Application for Transfer 5046 was amended on April 22, 1998 and issued as a preliminary order of the Department pursuant to Section 67-5245, *Idaho Code*. The transfer approval included conditions of approval identified as condition nos. 7 and 8 respectively for each water right as follows:

The total instantaneous diversion of water from all points of diversion under Transfer 5046 shall not exceed 72.78 cfs nor a total combined annual volume of 9505.2 af.

Rights 37-00021, 37-00022, 37-00186 A & B, 37-00187, 37-00188, 37-00189, 37-00213 A & B, 37-00214, 37-00215 E & F, 37-00216, 37-00217, 37-00218, 37-00219, 37-00333, 37-00351A, 37-00352A, 37-00376 B, D & E, 37-00377, 37-00378, 37-00379, 37-00380, 37-00381, 37-00428, 37-00694 A & B, 37-00695, 37-00942 and 37-2405 when combined shall not exceed an annual diversion volume of 9489.6 af at the field headgate for the irrigation of 2711.3 acres, nor a diversion rate of 0.17 cfs and an annual diversion volume 15.6 af for stockwater purposes.

9. The annual diversion volume at the field headgate of 9489.6 af over 2711.3 acres is 3.5 afa per acre. The diversion rate of 72.78 cfs over 2711.3 acres is approximately 0.027 cfs per acre.
10. The Department did not amend Transfers 5044 and 5045 to remove the condition limiting all the rights when used in combination for the PPU authorized under the transfers to 0.02 cfs per acre and 3.5 afa per acre.

Subsequent Transfers

11. On December 22, 2000, the Department received application for Transfers 69624 and 69626 in the name of Picabo Livestock Co. Inc. The purpose of the transfers was to update and increase the PPU for the rights associated with Transfers 5044, 5045 and 5046. The applications were approved by the Department on May 7, 2004 as preliminary orders of the Department pursuant to Section 67-5245, *Idaho Code*. The transfer approval for Transfer 69624 included rights 37-2627A, 37-11911 (combination of 37-2617 and 37-2620) and 37-11914 (enlargement of right 37-11911 pursuant to Section 42-1426, *Idaho code*). The transfer approval for Transfer 69626 included rights 37-21, 37-22, 37-186 (combination of 37-186 A & B), 37-187, 37-189, 37-213 (combination of 37-213 A & B and 37-216), 37-215D (combination of 37-215 E & F), 37-333, 37-351A, 37-352A, 37-377, 37-378, 37-695, 37-942, 37-2405, 37-11892 (combination of 37-214, 37-217, and 37-694 A & B), 37-11898 (combination of 37-218 and 37-428), 37-11900 (combination of 37-379, 37-380 and 37-381), 37-11903 (combination of 37-188 and 37-219), 37-20609 (combination of 37-376 B, D & E). The transfer approvals included conditions limiting the rights involved in the transfers to irrigation of 2711.3 acres within a 3037.4 acre PPU.
12. The transfer approval for Transfer 69624 included a condition of approval identified as condition no. 4 for right 37-2627A, as condition no. 6 for right 37-11911, and as condition no. 7 for right 37-11914 as follows:

The total instantaneous diversion of water from all points of diversion for all ground water rights identified under this transfer No. 69624 and the surface water rights identified under transfer 69626 shall not exceed 72.78 cfs, nor a total combined annual volume measured at the field headgate of 9489.6 af for irrigation of 2711.3 acres in any one season.

13. The transfer approval for Transfer 69626 included two conditions of approval for each right as follows:

Rights 37-00021, 37-00022, 37-00186, 37-00187, 37-00189, 37-00213, 37-00215D, 37-00333, 37-00351A, 37-00352A, 37-00377, 37-00378, 37-00695, 37-00942, 37-2405, 37-11892, 37-11898, 37-11900, 37-11903 and 37-20609 when combined shall not exceed a total diversion rate of 72.78 cfs, nor a total combined annual volume measured at the field headgate of 9505.2 af. These rights shall not exceed an annual diversion volume of 9489.6 af at the field headgate for irrigation of 2711.3 acres within the place of use described above, nor a diversion rate of 0.17 cfs and an annual diversion volume 15.6 af for stockwater purposes.

The total instantaneous diversion of water from all points of diversion for all surface rights identified under this transfer No. 69626 and the ground water rights identified under transfer 69624 shall not exceed 72.78 cfs, nor a total combined annual volume measured at the field headgate of 9489.6 af for irrigation of 2711.3 acres in any one season.

Petition to Correct Clerical Error on Transfers

14. On July 20, 2009, the Department received a Petition to Correct Clerical Error on Transfers (petition) from Gary D. Slette, attorney, on behalf of Picabo Livestock Co (petitioner). The petition seeks to correct Transfers 5044, 5045, 5046, 69624 and 69626 to remove or modify certain conditions limiting the rights in the PPU to 0.02 cfs and 3.5 afa per acre when used in combination.
15. Use of water for irrigation using historic irrigation practices at diversion rates greater than 0.02 cfs per acre typically requires an annual volume of water higher than the Department's standards for the area of 3.5 afa per acre at the field headgate. Additional water may be necessary for conveyance losses from the point(s) of diversion to the field headgates.
16. The petition referenced an analysis of diversion records from Water District 37 that was previously submitted to the Department. The analysis, received by the Department on June 11, 2009 supports a maximum historic diversion volume for all the rights in the PPU of 6.3 afa per acre measured at the authorized points of diversion for the rights involved in transfers 5044, 5045, 5046, 69624 and 69626.

CONCLUSIONS OF LAW

1. The transfers approvals should accurately describe each established water right as changed by the transfer pursuant to Section 42-222, *Idaho Code*.

2. The Department erred by leaving in place certain combined rate and volume limits of 0.02 cfs per acre and 3.5 afa per acre for the rights when used in combination for the PPU associated with Transfers 5044, 5045 and 5046. In addition, the Department erred by carrying the same 3.5 afa per acre volume limits from transfers 5044, 5045 and 5046 forward to Transfers 69624 and 69626.
3. For Transfers 69624 and 69626, it is appropriate to limit the volume for all rights combined to the maximum historic use to ensure enlargement of the rights will not occur as a result of the increase in the PPU for the rights as authorized under the transfers.
4. The Department should delete the 0.02 cfs and 3.5 afa per acre limits for the rights when used in combination for the PPU associated with Transfers 5044, 5045 and 5046. The Department should change the transfer approvals for Transfers 69624 and 69626 to correct the conditions limiting the rights when used in combination in the PPU from 3.5 afa per acre to 6.3 afa per acre.

ORDER

IT IS HEREBY ORDERED that the transfer approvals issued on March 20, 1998 for Transfer 5044 and 5045 and the amended transfer approval issued April 22, 1998 for Transfer 5046 are **CORRECTED** as follows:

Transfer 5044

Condition no. 5 is removed.

Transfer 5045

Condition no. 5 is removed.

Transfer 5046

Condition nos. 7 and 8 are modified respectively as follows:

The total instantaneous diversion of water from all points of diversion under Transfer 5046 shall not exceed 72.78 cfs.

Rights 37-00021, 37-00022, 37-00186 A & B, 37-00187, 37-00188, 37-00189, 37-00213 A & B, 37-00214, 37-00215 E & F, 37-00216, 37-00217, 37-00218, 37-00219, 37-00333, 37-00351A, 37-00352A, 37-00376 B, D & E, 37-00377, 37-00378, 37-00379, 37-00380, 37-00381, 37-00428, 37-00694 A & B, 37-00695, 37-00942 and 37-2405 when combined shall not exceed the irrigation of 2,711.3 acres, nor a diversion rate of 0.17 cfs and an annual diversion volume 15.6 af for stockwater purposes.

IT IS FURTHER ORDERED that the transfer approval issued on May 7, 2004 for Transfer 69624 is **CORRECTED** as follows:

Condition no. 4 for right 37-2627A, condition no. 6 for right 37-11911 and condition no. 7 for right 37-11914 are modified as follows:

The total instantaneous diversion of water from all points of diversion for all ground water rights identified under this transfer No. 69624 and the surface water rights identified under transfer 69626 shall not exceed 72.78 cfs, nor a total combined annual volume measured at the points of diversion of 17,081 af for irrigation of 2,711.3 acres in any one season.

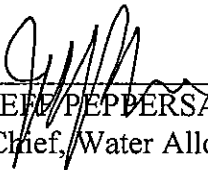
IT IS FURTHER ORDERED that the transfer approval issued on May 7, 2004 for Transfer 69626 is **CORRECTED** as follows:

Condition nos. 2 and 3 for rights 37-21, 37-22, 37-187, 37-189, 37-333, 37-351A, 37-352A, 37-377, 37-378, 37-695, 37-942 and 37-2405 and condition nos. 3 and 4 for rights 37-186, 37-213, 37-215D, 37-11892, 37-11898, 37-11900, 37-11903, and 37-20609 are modified respectively as follows:

Rights 37-00021, 37-00022, 37-00186, 37-00187, 37-00189, 37-00213, 37-00215D, 37-00333, 37-00351A, 37-00352A, 37-00377, 37-00378, 37-00695, 37-00942, 37-2405, 37-11892, 37-11898, 37-11900, 37-11903 and 37-20609 when combined shall not exceed a total diversion rate of 72.78 cfs, nor a total combined annual volume measured at the points of diversion of 17,096.6 af. These rights shall not exceed an annual diversion volume of 17,081 af at the points of diversion for irrigation of 2,711.3 acres within the place of use described above, nor a diversion rate of 0.17 cfs and an annual diversion volume 15.6 af for stockwater purposes.

The total instantaneous diversion of water from all points of diversion for all surface rights identified under this transfer No. 69626 and the ground water rights identified under transfer 69624 shall not exceed 72.78 cfs, nor a total combined annual volume measured at the points of diversion of 17,081 af for irrigation of 2,711.3 acres in any one season.

Dated this 12th day of August, 2009.


JEFF PEPPERSACK
Chief, Water Allocation Bureau