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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF TRANSFER)
NO. 4312 IN THE NAME OF)
PAUL ROBERTSON)
_____)

**PRELIMINARY ORDER
CORRECTING TRANSFER
APPROVAL**

FINDINGS OF FACT

1. On January 26, 1994, the Idaho Department of Water Resources (Department) received application for transfer no. 4312 (transfer) in the name of Paul Robertson (applicant). The purpose of the transfer was to change points of diversion and place of use for several water rights including nos. 36-4058A and 36-7690A.
2. Water right no. 36-4058 was claimed in the Snake River Basin Adjudication (SRBA) for 5.34 cfs from a ground water source for irrigation of 267 acres. The claim was later split into parts A and B. Part A was claimed by the applicant in the amount of 1.24 cfs.
3. Water right no. 36-7690 was licensed by the Department on August 28, 1991 for 2.92 cfs from a ground water source for irrigation of 146.4 acres. The water right was claimed in the SRBA and later split into parts A and B. Part A was claimed by the applicant in the amount of 2.24 cfs.
4. In 1997, the SRBA Court issued partial decrees for the rights and on February 23, 1998, granted a motion to set aside judgments for water right nos. 36-4058A and 36-7690A to address quantity issues related to the rights. The motion was supported by affidavit of David Tuthill (dated February 12, 1998), Adjudication Bureau Chief for the Department. Mr. Tuthill's affidavit supported an increase in the quantity for water right no. 36-4058A to 1.24 cfs, as claimed. The affidavit also supported removal of the combined diversion rate limitation of 9.82 cfs associated with water right 36-7690A and others.
5. On November 13, 1998, the Department approved transfer no. 4312 with conditions. The transfer was approved for a total diversion rate of 19.10 cfs and listed water right no. 36-4058A with a diversion rate of 0.70 cfs and water right no. 36-7690A with a diversion rate of 1.83 cfs. The listed quantities were based on the partial decrees issued for the rights by the SRBA Court in 1997. The affidavit of David Tuthill was not considered in the approval of the transfer.

6. The conditions listed on the transfer approval included the following:

Condition No. 7. The total instantaneous diversion of water from all points of diversion under Transfer 4312 shall not exceed 19.10 cfs, nor a total combined annual volume of 4560.0 af.

Condition No. 14. Rights 36-04058A, 36-07056, 36-07690A, 36-11124 and 36-15363 when combined shall not exceed a total diversion rate of 19.10 cfs, a total annual diversion volume of 4560.0 af at the field headgate and the irrigation of 1140.0 acres.

Condition No. 16. The portion of Right 36-07690A in the amount of 0.41 cfs shall be considered abandoned through approval of Transfer 4312.

7. On June 17, 2002, the Department received a letter from Dana Hofstetter, attorney for the applicant, requesting correction of the transfer approval to reflect the changes sought through the SRBA proceedings.

CONCLUSIONS OF LAW

1. The transfer approval should accurately describe each established water right as changed by the transfer pursuant to Section 42-222, Idaho Code.
2. The transfer approval incorrectly describes the diversion rates for water right nos. 36-4058A and 36-7690A and the total diversion rate associated with the transfer, including certain conditions.
3. The Department should correct the transfer approval to show a diversion rate of 1.24 cfs for water right no. 36-4058A and a diversion rate of 2.24 cfs for water right no. 36-7690A. The total diversion rate should be corrected to show 20.05 cfs.
4. The Department should correct Condition Nos. 7, 14 and 16 of the transfer approval to correctly describe the authorized diversion rates.

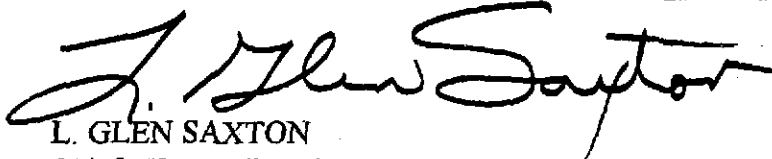
ORDER

IT IS HEREBY ORDERED that the order approving Transfer No. 4312 issued by the Department on November 13, 1998 is CORRECTED as described below.

1. The diversion rate for water right no. 36-4058A is 1.24 cfs.
2. The diversion rate for water right no. 36-7690A is 2.24 cfs.
3. The total diversion rate authorized under the transfer approval is 20.05 cfs.

4. Condition No. 7 is changed to the following: The total instantaneous diversion of water from all points of diversion under Transfer 4312 shall not exceed 20.05 cfs, nor a total combined annual volume of 4560.0 af.
5. Condition No. 14 is changed to the following: Rights 36-04058A, 36-07056, 36-07690A, 36-11124 and 36-15363 when combined shall not exceed a total diversion rate of 20.05 cfs, a total annual diversion volume of 4560.0 af at the field headgate and the irrigation of 1140.0 acres.
6. Condition No. 16 is removed.

Dated this 18th day of June, 2002.


L. GLEN SAXTON
Chief, Water Allocation Bureau

CERTIFICATE OF MAILING

I CERTIFY that a true and correct copy of the **ORDER GRANTING MOTION TO SET ASIDE JUDGMENTS** was mailed on February 24, 1998, with sufficient first-class postage to the following:

IDWR Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Nick Spencer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706

Dana L. Hofstetter
Beeman & Hofstetter, P.C.
P. O. Box 1427
Boise, ID 83701-1427

Anni Alberdi

Deputy Clerk

D:\2090\1993

MICROFILMED

JUL 10 2002

SD-0611-2 Basin: 36 Starting Water Right: 07690

S E L	Water Right No.	Name Last, First	O W N	Priority Date	STG/ STS	Source	Use Desc	S Y S
	36-07690	WINDY ACRES INC.	C	04/06/1978	L/	GROUNDWATER	IRR	WR
	T36-07690B	GILLETTE, LARRY R	C	05/05/1977	L/	GROUNDWATER	IRR	WR
						SPLIT RIGHT		
	X36-07690A	ROBERTSON, PAUL	C	04/06/1978	L/	GROUNDWATER	IRR	WR
	36-07690	SPLIT RIGHT	C	05/05/1977	/Z	GROUNDWATER	IRR	AJ
						SPLIT RIGHT	DOMEST	
	36-07690A	ROBERTSON, PAUL	C	04/06/1978	D/	GROUNDWATER	P DECR	AJ
	36-07690B	GILLETTE, LARRY R	C	04/06/1978	D/	GROUNDWATER	P DECR	AJ
	A36-07690	SPLIT RIGHT	C	05/05/1977	/Z	GROUNDWATER	IRR	AJ
						SPLIT RIGHT	DOMEST	
	A36-07690A	ROBERTSON, PAUL	C	05/05/1977	P/	GROUNDWATER	IRR	AJ
	A36-07690B	GILETTE, RANDY	C	05/05/1977	P/	GROUNDWATER	IRR	AJ
		3G'S	C					
		GILETTE, JERRY	C					

* Decreed copied to Water Right Database (GOLD7=This Query)
 (Enter=Continue) (GOLD6=Print Profile Rpt) (GOLD8=Cancel) (Menu _____)

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NOV 25 1998

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4312
WATER RIGHT NO(S). 36-04058A/36-07690A/36-07056
36-11124/36-15363

This is to certify that: PAUL ROBERTSON
RT 1 BOX 1589
PAUL ID 83347

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 36-07056 :			
IRRIGATION	04/01 to 10/31	6.40 CFS	1740.0 AF
Priority: 05/07/1969			
Right No. 36-11124 :			
IRRIGATION	04/01 to 10/31	0.52 CFS	219.7 AF
Priority: 05/01/1972			
Right No. 36-15363 :			
IRRIGATION	04/01 to 10/31	10.17 CFS	2072.0 AF
Priority: 04/17/1960			
	SUBTOTAL:	* 16.57 CFS	* 3916.0 AF
Right No. 36-04058A :			
IRRIGATION	04/01 to 10/31	0.70 CFS	248.0 AF
Priority: 06/01/1962			
Right No. 36-07690A :			
IRRIGATION	04/01 to 10/31	** 1.83 CFS	448.0 AF
Priority: 04/06/1978			
	TOTAL:	*** 19.10 CFS	*** 4560.0 AF

SOURCE
GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION:

SWNW , Sec. 29, Township 06S, Range 21E
SESW , Sec. 29, Township 06S, Range 21E
Lot 11(SWSW), Sec. 30, Township 06S, Range 21E
LINCOLN County

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NOV 25 1998

TRANSFER NO. 4312
WATER RIGHT NO(S). 36-04058A/36-07690A/36-07056
36-11124/36-15363

PLACE OF USE: IRRIGATION

TWN	RGE	SEC	ACRES	ACRES	ACRES	TOTAL
06S	21E	19	SWSE 40	SESE 40		80
		29	NWNW 40	SWNW 40	NWSW 40	
			SWSW 40	SESW 40		200
		30	NENE 40	NWNE 40	SWNE 40	
			SENE 40	Lot 1(NENW) 40	Lot 5(SWNW) 35	
			Lot 6(SENW) 40	Lot 7(NESW) 40	Lot 8(NWSW) 40	
			Lot 9(NWSW) 12	Lot 10(SWSW) 16	Lot 11(SWSW) 34	
			Lot 12(ESW) 40	NWSE 40	SWSE 40	
			SESE 40			577
		31	NENE 40	NWNE 40	Lot 1(NENW) 40	
			Lot 2(NWNW) 40	Lot 3(NWNW) 16	Lot 4(SWNW) 16	
			Lot 5(SWNW) 40	Lot 6(SENW) 11		243
		32	NWNW 40			40
Total number of acres irrigated: ****						1140

CONDITIONS OF APPROVAL AND REMARKS

1. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
6. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
7. The total instantaneous diversion of water from all points of diversion under Transfer 4312 shall not exceed 19.10 cfs, nor a total combined annual volume of 4560.0 af.
- **** 8. Right 36-04058A is limited to the irrigation of 62.0 acres in the place of use described above in a single irrigation season.
- **** 9. Right 36-07690A is limited to the irrigation of 112.0 acres in the place of use described above in a single irrigation season.
- **** 10. Right 36-07056 is limited to the irrigation of 435.0 acres in the place of use described above in a single irrigation season.

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NOV 25 1998

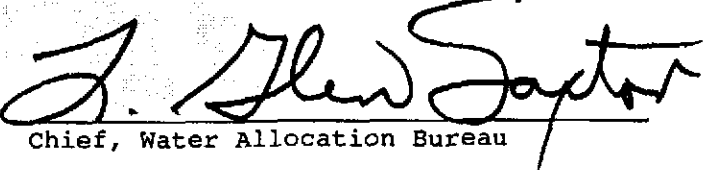
TRANSFER NO. 4312
WATER RIGHT NO(S). 36-04058A/36-07690A/36-07056
36-11124/36-15363

CONDITIONS OF APPROVAL AND REMARKS

- **** 11. Right 36-11124 is limited to the irrigation of 979.0 acres in the place of use described above in a single irrigation season.
- **** 12. Right 36-15363 is limited to the irrigation of 518.0 acres in the place of use described above in a single irrigation season.
- * 13. Rights 36-07056, 36-11124 and 36-15363 when combined shall not exceed a total diversion rate of 16.57 cfs, a total annual diversion volume of 3916.0 af at the field headgate and the irrigation of 979.0 acres.
- ****
- *** 14. Rights 36-04058A, 36-07056, 36-07690A, 36-11124 and 36-15363 when combined shall not exceed a total diversion rate of 19.10 cfs, a total annual diversion volume of 4560.0 af at the field headgate and the irrigation of 1140.0 acres.
- ****
- **** 15. The right holder shall cease irrigation of 13.0 acres previously authorized under these rights, and consolidate use of water on the remaining 1140.0 acres.
- ** 16. The portion of Right 36-07690A in the amount of 0.41 cfs shall be considered abandoned through approval of Transfer 4312.
17. Right 36-11124 is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.
18. Right 36-11124 is based upon an enlargement of Rights 36-07056 and 36-15363 pursuant to Section 42-1426, Idaho Code.

Dated this 13th day of

November, 1998


Chief, Water Allocation Bureau

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NOV 25 1998

RECEIVED

JAN 15 1997

Department of Water Resources

207 JAN 10 PM 10:40

DISTRICT COURT
TWIN FALLS
FILED _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

) ORDER OF PARTIAL DECREE

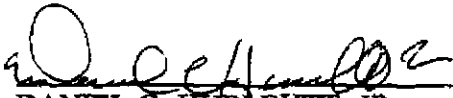
) For Water Right 36-07690A

On November 7, 1996, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 14a, this court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-07690A be decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED January 10, 1997.


DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

ORDER OF PARTIAL DECREE
1/9/97

MICROFILMED
JUN 25 2002

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-07690A

1997 JUN 10 PM 12:00
DISTRICT COURT
TWIN FALLS, IDAHO
FILED

NAME & ADDRESS: PAUL ROBERTSON
RT 1 BOX 1589
PAUL ID 83347

SOURCE: GROUNDWATER

QUANTITY: 2.24 CFS
448.0 AFY

USE OF THIS RIGHT WITH THE RIGHTS 36-07690B, 36-15379, AND
LICENSE 36-07446 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF
9.82 CFS.

PRIORITY DATE: 04/06/1978

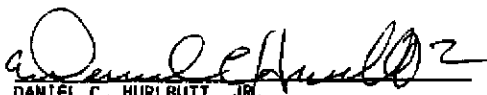
POINT OF DIVERSION: T06S R21E S31 SESWSE Within LINCOLN County
T07S R21E S04 LOT 3 (NENW)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	2.24 CFS 448.0 AFY

PLACE OF USE: IRRIGATION Within LINCOLN County
T06S R21E S31 Lot 2 (NNW) 40.0 Lot 3 (NNW) 16.0 Lot 4 (SWNW) 16.0 Lot 5 (SWNW) 40.0
112.0 ACRES TOTAL

CONSUMPTIVE USE: 336.0 AFY

DATED: JAN 10 1997


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED: JAN 10 1997


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-07690A

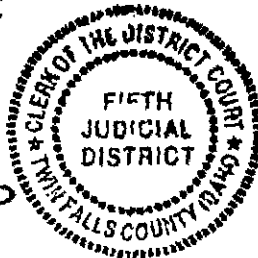
PAGE 1
DEC-23-1996

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JUN 05 2002

Sheriff of Idaho
County of Twin Falls as.
I hereby certify the foregoing to be a
full, true and correct copy of the
original on file in the above entitled
action.

ROBERT S. FORT
CLERK OF THE DISTRICT COURT
By [Signature]
DEPUTY CLERK



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JUN 9 5 2002

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

Water Right 36-07690A

Case No. 39576)

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on January 10, 1997. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 04-01 10-31

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.ccc

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated August 27, 2001

Roger Burdick
ROGER BURDICK
Presiding Judge

MICROFILMED Snake River Basin Adjudication

JUN 05 2002

District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303-2707

Important Information About Your Water Right

August 27, 2001

PAUL ROBERTSON
RT 1 BOX 1589
PAUL, ID 83347

Dear Water Right Claimant(s):

The reverse side of this letter contains a copy of an *Order Amending Irrigation Period of Use Element in Partial Decree and Incorporating into Partial Decree An Express Statment Regarding General Provisions, Nunc Pro Tunc* (hereinafter "*Order*") for water right number 36-07690A. According to Idaho Department of Water Resources (IDWR) records, you are the current owner of this water right. If you are not the current owner, please contact IDWR immediately at:

Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706
800-451-4129

The Purpose of the *Order* is to set forth beginning and ending dates for the irrigation period of use for this water right. As stated in the face of the *Order*, this action was necessary following the decision of the Idaho Supreme Court in *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998). This *Order* also incorporates into the *Partial Decree* an express statement that the *Partial Decree* is subject to such general provisions necessary for the definition or for the efficient administration of the water right. This express statement is necessary to comply with the requirements of Idaho Code section 42-1412(6). This *Order* in combination with the *Partial Decree* that was issued for this water right on January 10, 1997, sets forth all of the elements of your water right. The Snake River Basin Adjudication (SRBA) Court suggests that you keep this document in a safe location together with a copy of the *Partial Decree* to show evidence of the water right. The original of this *Order* and the original of the *Partial Decree* for this water right are on file with SRBA Court. If you do not have a copy of the original *Partial Decree*, one can be obtained by contacting the SRBA Court at (208) 736-3011. Please note that the *Order* is entered *Nunc Pro Tunc*, meaning that the *Order* will be treated as if it were issued the same date that the *Partial Decree* was originally issued.

Sincerely,



Diana Delaney
Case Administrator

MICROFILMED

JUN 05 2002

MEMORANDUM

TO: FILE 36-7690A

FROM: PAM SKAGGS

RE: TRANSFER # 4812

DATE: 6/23/97

Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
file # 36-2406.

36-64058A

MICROFILMED
NOV 25 1998

MEMORANDUM

TO: FILES 36-04058A, 36-07056, 36-07690A, 36-11124 &
36-15363 (Combined Rts.36-02406/2407 & Part 2423)

FROM: PAM SKAGGS/STATE OFFICE

SUBJECT: TRANSFER 4312

DATE: January 29, 1998

Transfer 4312 adds points of diversion and combines/changes the place of use under Rights 36-04058A, 36-07056, 36-07690A, 36-11124 & 36-15363 (Combined Rts.36-02406/2407 & Part 2423). The applicant is combining these rights into a single permissible place of use system using three existing points of diversion.

The transfer approval was processed on the rights as currently recommended by SRBA reformatted records, while the application identified the original water rights records and numbers, resulting in different right numbers appearing on the transfer approval.

These five (5) rights include an unencumbered water right (36-04058A), three (3) combined rights (36-07056/11124/15363), and a right (36-07690A) with a point of diversion overlap with rights under a separate owner and system. In order to separate Right 36-7690A from the p/d overlap rights, a reduction of 0.41 cfs was made. The effect on the entire system is negligible with the rate per acre remaining at 0.016 cfs per acre within a piped sprinkler system.

	Combined		Capacity	Transfer
36-07690A	Rights	Percent	Limit	Portion
2.24 cfs	/ 11.99 cfs	= 0.18682	x 9.82 cfs	= 1.83 cfs

2.24 cfs - 1.83 cfs = 0.41 cfs abandoned thru transfer.

The p/d overlap condition on the non-transferred rights (36-07446/7690B/15379) should be modified to reflect the transfer, reducing the combined total to 7.99 cfs. (9.82 cfs - 1.83 cfs = 7.99 cfs)

Recommended conditions include measuring & annual reporting, irrigation overlap, multiple points of diversion/measuring devices, permissible place of use, combined limits, consolidate use on reduced acres, abandoned portion, expansion right conditions and standard transfer conditions.

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NOV 25 1998