

MEMORANDUM

TO water rights 61-246, 61-247, 61-253, 61-7034, 61-7171, 61-10249

FROM Cody Parker

RE Transfer approval following request for hearing

DATE August 30, 2024

On January 18, 2024, IDWR approved transfer 88216 modifying the place of use for four Canyon Creek water rights and two groundwater rights. The transfer also added a point of diversion to each of the two groundwater rights. The applicant petitioned the department for reconsideration of the transfer approval and later amended their petition to request withdrawal of the transfer approval and reinstatement of the application.

On April 4, 2024, IDWR issued a second preliminary order approving transfer application 88216. Following that approval, the counsel for the applicant submitted a Request for Hearing; Request for Informal Settlement Conference and a Notice of Appearance.

The applicant's issue with both transfer approvals revolves around the Department's treatment of the combined limit language contained in the decree of groundwater right 61-7034. The combined limits, as decreed are illustrated in the table below.

WRNo	Priority	Source	Rate	Volume	Acres	Group 1	Group 2
61-246	03/01/1876	Canyon Creek	1.2	NA	283.3	✓	✓
61-247	06/01/1876	Canyon Creek	1.0	NA	283.3	✓	✓
61-253	04/01/1884	Canyon Creek	1.0	NA	283.3	✓	✓
61-7034	05/13/1968	Groundwater	2.91	742.5	165		✓
61-7171	05/16/1985	Groundwater	1.55	499.5	118		
61-10429	03/31/1885	Canyon Creek	2.47	NA	283.3	✓	✓
Group 1 combined limit					283.3		
Group 2 combined limit					165.0		

Table 1 illustrating the combined limits as decreed in the SRBA. Water right 61-7171 was not included in any combined limits on the decrees.

The **Group 1** limit shown in the table above was included as a condition of the decrees for all four Canyon Creek water rights. The **Group 2** limit was included as a condition of the decree for 61-7034. The **Group 2** condition was not explicitly stated on any of the Canyon Creek water rights.

SUPPORT DATA
IN FILE # 61-246

The first approval of transfer 88216 considered the **Group 2** condition to supersede **Group 1**, meaning the 165-acre limit prevented the Canyon Creek water rights from irrigating more than 165 acres, regardless of any groundwater use.

The second approval interpreted the **Group 2** condition to supersede **Group 1** only if groundwater under 61-7034 was used in the same season.

The condition language can be read different ways. Either the 165-acre limit included on water right 61-7034 supersedes the other Canyon Creek combined acre limit when groundwater is used, or the 165-acre limit is meant to express that water right 61-7034 does not add any additional acres of irrigation beyond what is authorized by the Canyon Creek water rights.

Upon review of these scenarios, it appears the transfer criteria outlined in § 42-222 *Idaho Code* would be satisfied either way. Adding the water rights into a permissible place of use should not cause injury or enlargement, no matter the interpretation of the combined-limit condition. Therefore, the Department should not seek to impose one interpretation over the other through approval of the transfer. The original decreed language limiting irrigated acreage between water rights should be maintained on approval of the transfer. Condition 206 included on water rights 61-7034 and 61-7171 in the second transfer approval should be removed.

Fw: Transfer 88216 request for hearing

From Parker, Cody <Cody.Parker@idwr.idaho.gov>
Date Thu 11/7/2024 10:01 AM
To work.clparker@outlook.com <work.clparker@outlook.com>

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Thursday, November 7, 2024 9:05 AM
To: Parker, Cody <Cody.Parker@idwr.idaho.gov>; Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>
Subject: RE: Transfer 88216 request for hearing

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Good Morning Cody,

Checking in on the status.

Thanks,

Chris

From: Chris Bromley
Sent: Wednesday, October 2, 2024 9:10 AM
To: Parker, Cody <Cody.Parker@idwr.idaho.gov>; Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>
Subject: RE: Transfer 88216 request for hearing

Good Morning Cody,

I spoke with the client and they're good to go with approving the transfer.

Thanks,

Chris

From: Parker, Cody <Cody.Parker@idwr.idaho.gov>
Sent: Tuesday, September 10, 2024 10:02 AM
To: Chris Bromley <cbromley@mchughbromley.com>; Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>
Subject: RE: Transfer 88216 request for hearing

It took me a minute to understand the question, but I think it arises from a miscommunication about what the table is meant to show. Columns labeled Group 1 and Group 2 are not meant to show that a particular combined limit was included on the decree for that water right. Rather, it shows that the water right number was included in a combined limit on some decree (the table does not specify which decree(s)). In other words, the Group 2 column shows the Canyon Creek water rights were included in a combined limit with the groundwater right, but that combined limit was not necessarily included on the Canyon Creek water rights.

SUPPORT DATA
IN FILE # 61-246

The paragraph below the table in the memo is meant to clarify that the Group 2 limit was not included as a condition on the Canyon Creek water rights. I think this answers your question.

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Monday, September 9, 2024 9:40 AM
To: Parker, Cody <Cody.Parker@idwr.idaho.gov>; Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>
Subject: RE: Transfer 88216 request for hearing

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Cody,

I went over the memo and the draft transfer documents with the client and everything looks good, with one question about the memo. In the table, there's a check mark with 61-10429 that makes it part of "Group 2" (see below). As far as I can tell, Group 2 is the ground water right for 61-7034 and the 165 acre limit. When I read the water right descriptions for 61-7034 and the surface water rights, there's no combined limit between ground water and surface water, which is also consistent with the last paragraph of the memo. That was the goal that we all were trying to accomplish and I think we have, with 61-7034 limited to 165 acres, 61-7171 limited to 118 acres, and the surface water rights limited to 283.3 acres. So my question then is the "Group 2" box inadvertently checked when it comes to surface water, as there's no combined limits between ground water and surface water?

Thanks,

Chris

WRNo	Priority	Source	Rate	Volume	Acres	Group 1	Group 2
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Group 1 combined limit					283.3		
Group 2 combined limit					165.0		

Table 1 illustrating the combined limits as decreed in the SRBA. Water right 61-7171 was not included in any combined limits on the decrees.

From: Parker, Cody <Cody.Parker@idwr.idaho.gov>
Sent: Friday, August 30, 2024 2:31 PM
To: Chris Bromley <cbromley@mchughbromley.com>; Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>
Subject: Transfer 88216 request for hearing

Garrick and Chris,

Attached is an updated memo related to transfer approval 88216. Please let me know if the new memo and the draft transfer approval sent previously are sufficient to resolve this matter.

Thank you



Cody Parker
Water Rights Supervisor
Idaho Dept of Water Resources

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