

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.

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.