BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 71254 IN THE NAME OF MICKELSEN PROPERTIES, LLC	))))	**PRELIMINARY ORDER**

Mickelsen Properties, LLC filed application for transfer no. 71254 with the Idaho Department of Water Resources (IDWR), seeking to change the place of use and point of diversion for several surface water and ground water rights describing points of diversion located in the Big Lost River Basin. Notice of the application was published, and the application was protested by the Big Lost River Irrigation District and the Big Lost River Water Users Association.

On July 19, 2005, IDWR conducted a hearing for the protests. Kent Foster, attorney at law, appeared on behalf of Mickelsen Properties, LLC (Mickelsen). Kent Fletcher, attorney at law, appeared on behalf of the Big Lost River Irrigation District, and Lawrence Babcock appeared as a representative of the Big Lost River Water Users Association.

On October 7, 2005, Mickelsen petitioned the hearing officer to augment the record in this contested case with a document titled "Water Pumping and Transport Agreement." The agreement purportedly affects water rights sought to be transferred by Mickelsen, and water rights that were the subject of protests against the application for transfer.

The Big Lost River Irrigation District apparently reviewed these documents. Based on this apparent review, on October 4, 2005, the Big Lost River Irrigation District withdrew its protest to the Mickelsen application for transfer.

The mailing certificate attached to Mickelsen's petition to augment the record did not include the Big Lost River Water Users Association. On October 31, 2005, the hearing officer forwarded a copy of the petition to Lawrence Babcock with a cover letter requesting that Babcock file any objection within seven (7) days of receiving the letter. Big Lost River Water Users Association did not file an objection. The hearing officer granted the petition to augment the record.

Following presentation of evidence, and a review of the record, the hearing officer finds, concludes and orders as follows:

FINDINGS OF FACT

1. Application for Transfer No. 71254 proposes a change in the point of diversion and a change in the place of use for three irrigation surface water rights and ten irrigation ground water rights. The general purpose of the application for transfer is to add all the points of diversion to each water right, and to list all of the acres irrigated by all of the water rights as a place of use for each water right.

2. The following is a summary of the current description of the surface water rights sought to be transferred:

RIGHT NUMBER	PRIORITY	SOURCE	FLOW (CFS)	POU (ACRES)	NATURE OF USE	PERIOD OF USE
34-13659	6/1/1889	Surface water	0.97	43	Irrigation	05/01 – 10/15
34-13661	6/1/1896	Surface water	1.00	43	Irrigation	05/01 – 10/15
34-618	9/1/1884	Surface water	3.20	139	Irrigation	05/01 – 10/15

The 43 acres described by water right nos. 34-13659 and 34-13661 as a place of use are identical acres. The 139 acres described as a place of use by water right no 34-618 are a portion of the 2,214 acres described as a place of use by water right no. 34-7179.

3. The following is a summary of the current description of the ground water rights sought to be transferred:

RIGHT NUMBER	PRIORITY	SOURCE	FLOW (CFS)	POU (ACRES)	NATURE OF USE	PERIOD OF USE
34-2330B	6/1/1977	Ground water	1.75	2025	Irrigation	04/15 – 10/15
34-7077	9/5/1974	Ground water	8.00[1]	2025	Irrigation	04/15 – 10/15
34-7080B	9/23/1974	Ground water	5.33	2025	Irrigation	04/15 – 10/15
34-7092	1/14/1975	Ground water	12.00	635	Irrigation	04/15 – 10/15
34-7120	12/17/1975	Ground water	1.20[2]	2025	Irrigation	04/15 – 10/15
34-7121A	1/9/1976	Ground water	0.46	286	Irrigation	04/15 – 10/15
34-7121B	1/9/1976	Ground water	3.74	2025	Irrigation	04/15 – 10/15
34-7179	4/6/1982	Ground water	2.78	2214	Irrigation	04/15 – 10/15
34-12376	6/1/1977	Ground water	1.25	2025	Irrigation	04/15 – 10/15
34-13663	4/6/1982	Ground water	1 93 (1.26)	2138	Irrigation	04/15 – 10/15

4. The total flow rate sought to be transferred is equal to 37 77 cfs. The total flow rate will be adjusted later in this decision because the combined flow rate for water right nos. 34-7077 and 34-7120 is limited to 9 26 cfs instead of 10.0 cfs.

[1] The combined flow rate for water right nos. 34-7077 and 34-7120 is limited to 9.26 cfs

[2] Water right no 34-7120 authorizes diversion of 2.0 cfs. The combined flow rate for water right nos 34-7077 and 34-7120 is limited to 9.26 cfs

5. The ground water rights sought to be transferred describe all or a portion of the same 2,025 acres identified above. The 2,214 acres described as a place of use for water right no. 34-7179 include 139 acres described as a place of use by water right no. 34-618.

6. The partial decrees for the water rights describing 2,025 acres as a place of use (34-2330B, 34-7077, 34-7080B, 34-7120, 34-7121B, and 34-12376) and the partial decree for water right no. 34-13663 (2,138 acres) each limit the irrigation under the individual right to a fixed number of acres. The partial decree for water right no. 34-7179 does not limit use to a smaller number of acres, but identifies 2,214 acres as the place of use.

7. At the hearing, the protestants stipulated that water right nos. 34-2330B, 34-7077, 34-7080B, 34-7092, 34-7120, 34-7121A, 34-7121B, and 34-12376 have been decreed by the Snake River Basin Adjudication (SRBA) Court. The Big Lost River Irrigation District has executed delivery agreements with Mickelsen's predecessors for these decreed water rights, and the protestants do not object to the transfer of these water rights as proposed.

8. The Big Lost River Irrigation District admitted that it had executed a carrying agreement for the delivery of water right no. 34-618 and that it did not object to transfer of the water right as proposed by the application for transfer. The Big Lost River Water Users Association continued to object to the proposed transfer of water right no. 34-618.

9. The remaining water rights proposed for transfer and opposed by the Big Lost River Water Users Association are:

Water Right No. 34-618:
Source: Big Lost River
Priority Date: 09/01/1884
Nature of Use: Irrigation
Flow Rate: 3.2 cfs
Season of Use: 5/1 to 10/15
Point of Diversion: NESESE, Section 4, T5N, R26E

Place(s) of Use		Description	Acres
T04N, R26E	Section 4	Lot 1 (NENE)	35.0
		Lot 2 (NWNE)	36.0
		SWNE	36.0
		SENE	32.0
		Total =	**139.0**

Water Right No. 34-13659:

Source:		Big Lost River	
Priority Date:		6/1/1889	
Nature of Use:		Irrigation	
Flow Rate:		0 97 cfs	
Season of Use:		5/1 to 10/15	
Point of Diversion:		NWSESE, Section 4, T5N, R26E	
Place(s) of Use		Description	Acres
T5N, R26E	Section 28	SWSW	7 0
		SESW	36.0
		Total =	**43.0**

Water Right No. 34-13661:

Source:		Big Lost River	
Priority Date:		6/1/1896	
Nature of Use:		Irrigation	
Flow Rate:		1.0 cfs	
Season of Use:		5/1 to 10/15	
Point of Diversion:		NWSESE, Section 4, T5N, R26E	
Place(s) of Use		Description	Acres
T5N, R26E	Section 28	SWSW	7.0
		SESW	36.0
		Total =	**43.0**

Water Right No. 34-7179:

Source:	Ground Water
Priority Date:	4/6/1982
Nature of Use:	Irrigation
Flow Rate:	2.78 cfs
Season of Use:	4/1 to 11/1
Point of Diversion:	Lot 2 (NENWNE), Section 4, T4N, R26E
Place(s) of Use:	2,214 acres

Water Right No. 34-13663:

Source:	Ground Water
Priority Date:	4/6/1982
Nature of Use:	Irrigation
Flow Rate:	1.93 cfs
Season of Use:	4/1 to 10/31
Point of Diversion:	NESWSW, Section 28, T5N, R26E
Place of Use:	2,138 acres (limited to 109 acres in a season)

10. At the hearing, Mickelsen stipulated that it only owns a portion of water right no. 34-13663. Mark Mickelsen testified that Mickelsen purchased 1.26 cfs of water right no. 34-13663. The portion it owns has been renumbered as water right no. 34-13840. At the hearing, Mickelsen's ownership of the water right was challenged by Wade Waddoups. The ownership of portions of water right no. 34-13663 will be discussed later in this decision.

11. Transfer no. 71254 proposes the irrigation of 1,985 acres west of Arco on the "Erra Flat" irrigated with water delivered in the Timberdome Canal diverted under water right nos. 34-2330B, 34-7077, 34-7080B, 34-7092, 34-7120, 34-7121A, 34-7121B, 34-12376, 34-13659, 34-13661, 34-13663 and a portion of 34-7179. The 1,985 acres are identified as follows:

Description				Acres
Township 3 North	Range 25 East	Section 12	NENE	39
			NWNE	40
			SWNE	40
			SENE	39
			NENW	40
			NWNW	40
			SWNW	40
			SENW	40
			NESW	31
			NWSW	32
			SWSW	31
			SESW	32
			NESE	39
			NWSE	40
			SWSE	36
			SESE	36
Township 3 North	Range 26 East	Section 17	NENE	11
			NWNE	25
			NENW	37
			NWNW	39
			SWNW	13
			SENW	5
		Section 18	NENE	35
			NWNE	39
			SWNE	36
			SENE	25
			NENW	38
			NWNW	26
			SWNW	37
			SENW	40
			NESW	17
			NWSW	10
			NWSE	2

Description				Acres
Township 4 North	Range 25 East	Section 35	NENE	40
			NWNE	40
			SWNE	40
			SENE	40
			NESE	40
			NWSE	40
			SWSE	40
			SESE	40
Township 4 North	Range 25 East	Section 36	NENE	38
			NWNE	40
			SWNE	40
			SENE	39
			NENW	40
			NWNW	40
			SWNW	40
			SENW	40
			NESW	40
			NWSW	40
			SWSW	40
			SESW	40
			NESE	39
			NWSE	40
			SWSE	40
			SESE	39
			Total Acres	**1,985**

12. Application for transfer no. 71254 also seeks continued irrigation of 139 acres of land known as "Dad's Place" with water right 34-618 and a portion of 34-7179. The Dad's Place acreage is described as follows:

Description				Acres
Township 4 North	Range 26E	Section 4	NENE	35
			NWNE	36
			SWNE	36
			SENE	32
			Total Acres	**139**

13. Water right nos. 34-13659 and 34-13661 authorize the diversion of surface water from the Big Lost River. Historically the water diverted under the water rights was delivered into the Moore Canal and subsequently into the west branch of the West Side Canal. The application for transfer proposes diversion of water authorized by water right nos. 34-13659 and

34-13661 into the Moore Canal and ultimate delivery in the Timber Dome Canal. The water would no longer be diverted into the West Side Canal.

14. Percolation losses in the West Side Canal are approximately fifty to sixty percent of the water delivered at the head of the West Side Canal. These seepage losses are assessed against the surface water users whose water rights are diverted into the West Side Canal. Seepage reduces the amount of water that each individual user receives at the field headgate.

15. Removal of a water right from a ditch that loses a significant amount of water to percolation will increase the amount of percolation losses borne by the remaining water users in the ditch. As a result, removal of the surface water from the ditch will decrease each individual water user's available water for use at the field headgate.

16. Because a range of loss percentages was established instead of a specific loss for deliveries of water right nos. 34-13659 and 34-13661 in the West Side Canal, an average loss of fifty-five percent will be assessed against water right nos. 34-13659 and 34-13661. Water right no. 34-13659 authorizes the diversion of 0.97 cfs. Fifty-five percent of 0.97 cfs is 0.53 cfs. Water right no. 34-13661 authorizes the diversion of 1.00 cfs. Fifty-five percent of 1.00 cfs is 0.55 cfs.

17. Water right no. 34-618 is a surface water right appurtenant to 139 acres of land located in Section 4, T4N, R26E, known as "Dad's Place." Water right no. 34-7179 is a ground water right also appurtenant to Dad's Place. In addition to being appurtenant to Dad's Place, ground water right no. 34-7179 is also appurtenant to another 2,075 acres. Many of these acres are located west of Arco in the Erra Flat. The application for transfer proposes that water right no. 34-618 remain only appurtenant to Dad's Place. As a result, water right no. 34-618 cannot be appurtenant to the larger place of use listed by the other water rights.

18. Water right no. 34-7179 can presently only be physically delivered from the well described in the water right to Dad's Place. Water right no. 34-7179 has not been deliverable to irrigate any land other than the 139 acres in Dad's Place.

19. The Snake River Basin Adjudication (SRBA) Court decreed water right no. 34-7179 on November 24, 2000. Despite the fact that water right no. 34-7179 has not been physically deliverable to lands other than the 139 acres at Dad's Place, the decree authorized irrigation of 2,214 acres. Mickelsen filed application for transfer no. 71254 (this application) on May 13, 2004.

20. Water right no. 34-618 has been delivered to the Erra Flat through a carrying agreement with the Big Lost River Irrigation District. IDWR has not previously approved delivery of water right no. 34-618 to the Erra Flat.

21. Water right nos. 34-618 and 34-7179 are appurtenant to the same place of use. In being appurtenant to the same place of use, water right nos. 34-618 and 34-7179 became inextricably linked together.

22. Water right no. 34-13663 is derived from a water right license originally numbered 34-2426. Water right license no. 34-2426 authorized the diversion of 5.0 cfs for irrigation.

23. A claim was filed in the SRBA, numbered 34-2426C. Claim no. 34-2426C asserted the right to divert 7.507 cfs. IDWR staff prepared an SRBA recommendation proposing recognition of 2.5 cfs for claim no. 34-2426C.

24. The SRBA Court ultimately decreed two parts of 34-2426C and assigned new water right numbers to the two parts. The first part was assigned decreed water right no. 34-13663. Decreed water right 34-13663 was issued to Everett T. Acor, Jr. on November 8, 2001. Decreed water right 34-13663 authorized diversion of 1.93 cfs and the irrigation of 2,138 acres. The second part was assigned decreed water right no. 34-13664, authorizing diversion of 0.57 cfs. This application for transfer does not seek to transfer water right no. 34-13664.

25. On September 24, 1999, Everett T. Acor, Jr, Eyleen P. Acor, Kurt Acor, Coralee Acor, Daryn Acor, Shanna Acor ("Acors") and Cannon – Shelley Properties Limited Partnership (Cannon – Shelley) executed a document titled Agreement for Division of Water Rights and Related Property Rights. The agreement was attached to the application for transfer. The agreement documents the sale of various properties and water rights, many of which are the subject of this application for transfer.

26. On May 23, 2003, Cannon – Shelley executed a warranty deed to Mickelsen Properties LLC. The warranty deed conveyed land owned by Cannon – Shelley along with appurtenances, but did not expressly mention water rights. The legal description of the real property conveyed by the deed matches much of the place of use identified in decreed water right no. 34-13663.

27. The document titled Agreement for Division of Water Rights and Related Property Rights expressly sold 1.258 cfs of (claim to) water right no. 34-2426C to Cannon – Shelley. The agreement will be interpreted to have conveyed 1.26 cfs of the 1.93 cfs recognized by decree no. 34-13663 to Cannon – Shelley.

28. At the hearing, Wade Waddoups alleged that he acquired a portion of water right no. 34-13663 by purchasing land from Everett T. Acor in 2002. Wade Waddoups testified that he owns some of the 1.26 cfs of 34-13663 sought to be transferred.

29. Acors sold 1.26 cfs of water right no. 34-13663 to Cannon – Shelley in 1999. The deed conveying real property from Cannon – Shelley to Mickelsen did not expressly include water rights. Nonetheless, even if Cannon – Shelley retained any portion of the 1.26 cfs in the conveyance to Mickelsen, Wade Waddoups would not be entitled to the portion retained because Wade Waddoups purchased from Everett T. Acor not Cannon – Shelley.

30. Because only a portion of water right no. 34-13663 was acquired by Mickelsen, IDWR assigned new water right no. 34-13840 to the portion of water right no. 34-13663 acquired by Mickelsen.

31. In the agreement titled Agreement for Division of Water Rights and Related Property Rights executed by Acors and Cannon – Shelley, Acors sold to Cannon – Shelley all of water right no. 34-7120 (2.0 cfs). Acors also sold all of water right no. 34-7077 (8.0 cfs) to Cannon – Shelley. The combined flow rate for water right nos. 34-7077 and 34-7120 is limited to 9.26 cfs.

32. Application for transfer no. 71254 proposes to transfer 1.2 cfs of water right no. 34-7120. The application for transfer states that the remaining 0.8 cfs of water right no. 34-7120 was "purchased by Mitchell D. Sorensen who agreed with Kurt Acor that the only water right which would be appurtenant to the 40 acres purchased by Sorensen was 0.8 cfs of water right number 34-7120."

33. Water right nos. 34-7077 and 34-7120, combined together, did not authorize the diversion of 10.0 cfs. Because both Mickelsen and Mitchell D. Sorensen own portions of water right no. 34-7120, Mickelsen's portion will be assigned water right no. 34-13842 and Sorensen's portion will be assigned water right no. 34-13841.

34. This application for transfer seeks to increase the number of acres described as a place of use by ground water rights 34-7092 and 34-7121A.

35. The flow rate per acre currently authorized by water right no. 34-7092 is 0.0189 cfs per acre. (12.00 cfs/635 acres). The flow rate per acre sought by combining water rights to allow irrigation of 1985 acres is 0.019 cfs/acre (37.77 cfs/1985 acres). The proposed end flow rate per acre after combining the water rights will be almost identical to the current flow rate per acre for water right no. 34-7092. The proposed end flow rate per acre will be adjusted in the conclusions of law because of limits on the total flow rate diverted by water right nos. 74-7077 and 34-7120, but the adjustment will not significantly affect the proposed end flow rate per acre.

36. The flow rate per acre currently authorized by water right no. 34-7121A is 0.0016 cfs/acre (0.46 cfs/286 acres). The proposed end flow rate per acre will exceed the flow rate per acre for water right 34-7121A.

37. The proposed increase in the place of use acreage for water right nos. 34-7092 or 34-7121A will not increase the flow of water diverted under the rights.

38. Approval of this application for transfer will recognize the ability to divert the cumulative flow rates of all the water rights from a point or points of diversion listed in each water right before the transfer. Construction of new wells at the location of existing points of diversion could increase the flow rate diverted at locations of existing points of diversion. Increases in ground water diversion rates could negatively impact other existing wells in the area of the new construction.

39. Surface water use could increase as a result of this transfer, but appropriate conditions will insure against an increase.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 states, in pertinent part:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area.

2. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-222.

3. Idaho Code § 42-108 states:

> The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use . . . provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district. . . Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code

Injury to Other Water Rights

4. Removal of surface water delivered historically in a canal will increase the delivery loss borne by the water right holders whose water rights continue to be delivered through the losing canal. Removal of the entire flow rate authorized by the applicant's water rights from the canal would injure other water users.

5. The flow rates authorized for diversion under water right nos. 34-13659 and 34-13661 and delivery to the Timberdome Canal must be reduced by fifty-five percent. As a result, whenever water right no. 34-13659 is deliverable, fifty-five percent of the flow deliverable (up to 0.53 cfs) must continue to be delivered into the West Side Canal, and only forty-five percent of the flow deliverable (up to 0.44 cfs) can be delivered past the head of the West Side Canal to the Timberdome Canal under water right 34-13659. Similarly, whenever water right no. 34-13661 is deliverable, fifty-five percent of the flow deliverable (up to 0.55 cfs) must continue to be delivered into the West Side Canal, and only forty-five percent of the flow deliverable (up to 0.45 cfs) can be delivered past the head of the West Side Canal to the Timberdome Canal under this water right no. 34-13661.

6. Construction of new wells at the locations of any of the existing points of diversion should not be authorized unless the water right holder obtains approval through an application for transfer, and the Department determines, by considering the application for transfer, whether the construction of and pumping from new wells will injure other water rights.

7. With the limitations described above, other water rights will not be injured.

Enlargement of Use

8. The enlargement standard described by Idaho Code § 42-222 is an enlargement of use of the water right, not an enlargement of the water right.

9. The volume of surface water diverted under water right no. 34-618 must be limited to 486.5 acre feet.

10. The total volume of surface water diverted under water right nos. 34-13659 and 34-13661 shall be limited to 150.5 acre-feet. The combined place of use for water right nos. 34-13659 and 34-13661, standing alone, is limited to 43 acres.

11. If all or a portion of water right nos. 34-7077 and 34-7120 are split apart, the combined flow limitation of 9.26 cfs must be carried with the split. Because 34-7120 is the latest priority water right, and it is being split between Mickelsen and Mitchell D. Sorensen, the flow rate for water right no. 34-7120 must be limited to 1.26 cfs. Mickelsen acknowledged Mitchell D. Sorensen's ownership of 0.8 cfs of water right 34-7120. Mickelsen's portion of water right no. 34-7120 (renumbered as 34-13842) must be limited to 0.46 cfs.

12. Because Mickelsen's portion of water right no. 34-7120 (renumbered as 34-13842) is reduced to 0.46 cfs, the total end flow rate authorized for diversion under the ground water rights is reduced to 37.03 cfs. The combined end flow rate per acre for the ground water rights is equal to 0.0187 cfs per acre. This reduced rate per acre from the rate found in finding of fact no. 35 does not result in an enlargement of use.

13. In addition, the number of acres that can be irrigated solely by Mickelsen's portion of water right no. 34-7120 (renumbered as 34-13842) is limited to 140 acres.

14. IDWR assigned new water right no. 34-13840 to the portion of water right no. 34-13663 acquired by Mickelsen. The number of acres that can solely be irrigated by water right no. 34-13840 must be equal to the proportion of the flow rate acquired by Mickelsen to the total flow rate decreed for water right no. 34-13663 multiplied by the 109 acres described as a place of use by water right no. 34-13663. The proportion is 1.26/1.93 = 0.6528. Multiplying 109 acres by 0.6528 results in a product of 71 acres. Irrigation solely under water right no. 34-13840 is limited to 71 acres.

15. Should any of the water rights that are the subject of this transfer ever be curtailed as a result of a delivery call, the irrigated place of use for all the water rights must be reduced by the number of irrigated acres authorized to be irrigated by the individual water right.

16. With the limitations described above, the proposed transfer will not result in an enlargement of use.

Local Public Interest

17. Granting flexibility in how water is diverted from the various wells and commingled with surface water for irrigation of Mickelsen's property is in the local public interest.

Conservation of Water

18. The proposed delivery systems are as efficient as the delivery systems in operation prior to the transfer. Requiring that water continue to be delivered for losses in ditches from which water is being removed as set forth in conclusion of law no. 5 will insure that water resources previously relied on by other users will be conserved. Approval of the application for transfer, with appropriate conditions, will result in conservation of the waters of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 71254 is **Approved** with the following limitations:

Mickelsen's portion of water right no. 34-7120 (renumbered 34-13842) shall be limited to 0.46 cfs.

IT IS FURTHER ORDERED that the water rights transferred by no. 71254 are subject to the following conditions:

All Water Rights

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 34.

Rights 34-618, 34-02330B, 34-07077, 34-07080B, 34-07121A, 34-07121B, 34-07092, 34-7179, 34-12376, 34-13659, 34-13661, 34-13840 and 34-13842 when combined shall not exceed the irrigation of 2,124 acres.

The right holder shall maintain a measuring device, or other suitable method of measurement, and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

All Surface Water Rights

The period of use for irrigation described above may be extended in seasons of unusual characteristics to a beginning date of 04/20 and an ending date of 10/31 at the discretion of the Director of the Idaho Department of Water Resources.

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right prior to or in conjunction with beneficial use of associated ground water rights.

Water Right no. 34-618

Rights 34-618 and that portion of ground water right no. 34-07179 associated with water right no. 34-618, when combined, shall not exceed a total diversion rate of 0.02 cfs per acre, and shall not exceed a total annual maximum diversion volume of 486.5 af at the field headgate

Water delivered through the Moore Diversion.

Water Right no. 34-13659

Whenever water right no. 34-13659 is deliverable, fifty-five percent of the flow deliverable (up to 0.53 cfs) shall continue to be delivered into the West Side Canal, and forty-five percent of the flow deliverable (up to 0.44 cfs) can be delivered past the head of the West Side Canal under water right no. 34-13659.

The total volume of surface water diverted under water right nos. 34-13659 and 34-13661 shall be limited to 150.5 acre-feet.

Rights 34-13659 and 34-13661 when combined shall not exceed the irrigation of 43 acres.

Water delivered through the Moore Diversion, Westside Canal and Timberdome Canal.

Water Right no. 34-13661

Whenever water right no. 34-13661 is deliverable, fifty-five percent of the flow deliverable (up to 0.55 cfs) shall continue to be delivered into the West Side Canal, and forty-five percent of the flow deliverable (up to 0.45 cfs) can be delivered past the head of the West Side Ditch under water right no. 34-13661.

The total volume of surface water diverted under water right nos. 34-13659 and 34-13661 shall be limited to 150.5 acre-feet.

Rights 34-13659 and 34-13661 when combined shall not exceed the irrigation of 43 acres.

Water delivered through the Moore Diversion, Westside Canal and Timberdome Canal.

All Water Rights Except 34-618

Should all or any portion of water right nos. 34-2330B, 34-7077, 34-7080B, 34-7092, 34-7121A, 34-7121B, 34-12376, 34-7179, 34-13659, 34-13661, 34-13840, and 34-13842 ever be curtailed as a result of a delivery call, the irrigated place of use for water right nos. 34-2330B, 34-7077, 34-7080B, 34-7092, 34-7121A, 34-7121B, 34-12376, 34-13659, 34-13661, 34-13840, 34-13842 (all describing a place of use of 1985 acres) and water right no. 34-7179 (2124 acres)

shall be reduced by the number of irrigated acres authorized to be irrigated by the individual water right that is curtailed.

Ground Water Rights

Construction of new wells at the location of existing points of diversion is not authorized unless the water right holder obtains approval through an application for transfer, and the Department determines, by considering the transfer, whether the construction of and pumping from new wells will injure other water rights.

Rights 34-2330B, 34-07077, 34-07080B, 34-07092, 34-07121A, 34-07121B, 34-12376, 34-13840, 34-13842, and that portion of ground water right no. 34-07179 not associated with water right no. 34-618, when combined, shall not exceed a total diversion rate of 37.03 cfs, and shall not exceed a total annual maximum diversion volume of 6,947.5 af at the field headgate.

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

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.

Water delivered through the Moore Diversion and Timberdome canal.

Water Right no. 34-2330B

This right is limited to the irrigation of 122.5 acres within the place of use described above in a single irrigation season.

Water Right no. 34-7080B

This right is limited to the irrigation of 286 acres within the place of use described above in a single irrigation season.

Water Right no. 34-7077

This right is limited to the irrigation of 200 acres within the place of use described above in a single irrigation season.

Water Right no. 34-7092

This right is limited to the irrigation of 635 acres within the place of use described above in a single irrigation season.

The period of use for the irrigation described in this approval may be extended to a beginning date of 4/1 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/15 and after 10/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 7/15/2002.

The well previously used under Right 34-7092, which will no longer be used, shall be abandoned in a manner, which complies with Department well abandonment rules.

Water Right no. 34-7121A

This right is limited to the irrigation of 286 acres within the place of use described above in a single irrigation season.

The period of use for the irrigation described in this approval may be extended to a beginning date of 4/1 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded The use of water before 4/15 and after 10/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 7/15/2002.

Water Right no. 34-7121B

This right is limited to the irrigation of 316 acres within the place of use described above in a single irrigation season.

Water Right no. 34-12376

This right is limited to the irrigation of 87.5 acres within the place of use described above in a single irrigation season.

Water Right no. 34-13839 (Unchanged Split)

This right is limited to the irrigation of 38 acres within the place of use described above in a single irrigation season

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication Court at a point in time no later than the entry of the final unified decree.

Water Right no. 34-13840

This right is limited to the irrigation of 71 acres within the place of use described above in a single irrigation season.

Water Right no. 34-13841 (Unchanged Split)

Water delivered through the Timberdome canal.

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication Court at a point in time no later than the entry of the final unified decree.

Water Right no. 34-13842

This right is limited to the irrigation of 140 acres within the place of use described above in a single irrigation season.

DATED this 31st day of May, 2006.

GARY SPACKMAN
Hearing Officer