BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 71132 AND APPLICATION TO AMEND PERMIT NOS. 41-7076 AND 41-7081 IN THE NAME OF TIMOTHY P. DEEG	)	**PRELIMINARY ORDER**

On November 8, 2002, Timothy P. Deeg ("Deeg") filed application for transfer no. 71132 with the Idaho Department of Water Resources ("IDWR"). Application for transfer no. 71132 sought to change the point of diversion and place of use for water right nos. 41-7030, 41-7034, and 41-7071. Notice of the application for transfer was published. The application for transfer was protested by Warm Creek Irrigation Company and by William Isaak.

On March 31, 2005, IDWR conducted a hearing for the protested application for transfer in American Falls, Idaho. On June 17, 2005, the hearing officer issued a preliminary order approving application for transfer no. 71132 with conditions. The hearing officer determined that development and beneficial use of water authorized by permit nos. 41-7076 and 41-7081 were inextricably linked to earlier transfers and use of water under water right nos. 41-7030 and 41-7034. Because of the similar issues of fact and law, and because IDWR staff had previously examined the beneficial use for water right licensing of permit nos. 41-7076 and 41-7081, the hearing officer decided elements of permit nos. 41-7076 and 41-7081 that were linked to issues of whether water right nos. 41-7030 and 41-7034 might be limited in a transfer approval. The hearing officer granted 15 days for the filing of a request for hearing for any portion of the preliminary order related to permit nos. 41-7076 and 41-7081. In addition, other procedural remedies after a hearing of a contested case were available to the parties.

On June 28, 2005 (by facsimile) and on June 30, 2005 (by U.S. Mail), Deeg filed a petition for reconsideration. In addition, Deeg requested a hearing before IDWR regarding elements of permit nos. 41-7076 and 41-7081 decided by the Preliminary Order. On July 18, 2005, the hearing officer granted the petition for rehearing, granted the request for hearing, and withdrew the June 17, 2005 Preliminary Order. The hearing officer ordered that the record of the contested case hearing for application for transfer no. 71132 be augmented with additional evidence. The hearing officer also granted Deeg thirty (30) days to optionally file applications to amend permit nos. 41-7076 and 41-7081.

On August 15, 2005, Deeg filed an application to amend permit nos. 41-7076 and 41-7081. The application sought recognition of the two irrigation wells described by application for transfer no. 71132 as points of diversion and a permissible place of use of 1,011 acres identical

to the permissible place of use sought by application for transfer no. 71132. Notice of the application for amendment was published. Warm Creek Irrigation Company protested the application for amendment.

A hearing was conducted on December 14, 2005 in American Falls, Idaho to augment the record for contested application for transfer no. 71132 and for the protest against application to amend permit nos. 41-7076 and 41-7081. At the conclusion of the hearing, the parties agreed that Charles E. Brockway (Brockway) would provide additional information to the hearing officer. On February 13, 2006, Brockway submitted the information to Dan Nelson, an IDWR employee. Dan Nelson evaluated the information and submitted an analysis to the hearing officer. The information was subsequently distributed to the parties.

After considering the evidence, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application for transfer no. 71132 proposes changes in the place of use and the points of diversion for water right nos. 41-7030, 41-7034, and 41-7071. The water rights are presently described in IDWR's records as follows:

a. Water Right No. 41-7030:

Source:	Ground water
Priority Date:	01/02/1978
Nature of Use:	Irrigation
Flow Rate:	1.40 cfs
Annual Volume:	441.0 acre-feet
Season of Use:	4/01 through 10/31
Point of Diversion:	T9S, R31E, Sec. 6, SWSWSE[1]
Place(s) of Use:	

Description:		Acres
T9S, R30E, Sec. 1	NENE	25
	NWNE	29
	SWNE	36
	SENE	36
	Total	126 acres

[1] In this decision, the public land survey numeric descriptor "1/4" is assumed to follow each two alpha character public land survey locator when the numeric descriptor is missing. For instance, in this example, the full description would be the NE1/4NE1/4, Section 1, Township 9 South, Range 30 East, Boise Meridian.

b. Water Right No. 41-7034:

Source:	Ground water
Priority Date:	04/07/1978
Nature of Use:	Irrigation
Flow Rate:	1.82 cfs
Annual Volume:	364 acre-feet
Season of Use:	4/01 through 10/31
Point of Diversion:	T9S, R31E, Sec. 6, SWSWSE
Place(s) of Use:	

Description:		Acres
T9S, R30E, Sec. 12	NESW	22.8
	SESW	22.7
	NWSE	22.8
	SWSE	22.7
	Total	91.0 acres

c. Water Right No. 41-7071 (Two beneficial uses)

Source:	Ground water
Priority Date:	07/13/1983
First Nature of Use:	Irrigation
Flow Rate:	0.12 cfs
Annual Volume:	44 acre-feet
Season of Use:	4/01 through 10/31
Point of Diversion:	T9S, R31E, Sec. 6, SWSE
Place of Use	

Description:		Acres
T9S, R31E, Sec. 6	SWSE	11.0 acres

Second Nature of Use:	Domestic
Flow Rate:	0.04 cfs
Annual Volume:	1.2 acre-feet
Season of Use:	1/1 through 12/31
Place of Use:	T9S, R31E, Sec. 6, SWSE

2. Application for transfer no. 71132 proposes to: (a) Add a new well as a point of diversion for water right nos. 41-7030, 41-7034, and 41-7071; (b) Add the domestic well described by water right no. 41-7071 as a point of diversion for water right nos. 41-7030 and 41-7034; (c) Add the irrigation well described by water right nos. 41-7030 and 41-7034 as a point of diversion for water right no. 41-7071; and (d) Change the place of use for all of the water rights to a 1,011 acre permissible place of use. The following is a description of the points of diversion and place of use proposed by the application for transfer:

Point(s) of Diversion: T9S, R31E, Sec. 6, SWSE (All three wells)

Place(s) of Use:

Description:		Acres
T9S, R30E, Sec. 1	NE	160
	E1/2 SW	80
	N1/2 SE	80
	SWSE	40
	SESE	31
Sec. 12	W1/2 NE	80
	E1/2 NW	80
	E1/2 SW	80
	W1/2 SE	80
T9S, R31E, Sec. 6	NWNW	21
	SWNW	22
	NESW	36
	NWSW	22
	SWSW	18
	SESW	30
	NESE	40
	NWSE	38
	SWSE	33
	SESE	40
	Total	1,011

Note: The domestic place of use described by water right no. 41-7071 will remain unchanged.

3. A portion of the larger place of use sought by the application for transfer is also described as a place of use by permit to appropriate water nos. 41-7076 and 41-7081. The existing elements of the permits are described as follows:

a. Permit No. 41-7076

Source:	Ground water
Proposed Priority Date:	9/11/1985
Nature of Use:	Irrigation
Flow Rate:	4.80
Season of Use:	5/1 through 10/31
Point of Diversion	T9S, R31E, Sec. 6, SWSE

a. Permit No. 41-7076 (cont.)

Place(s) of Use:

Description		Acres
T9S, R30E, Sec. 12	NWNE	33
	SWNE	33
	NENW	33
	SENW	33
T9S, R31E, Sec. 6	NESE	27
	NWSE	27
	SWSE	27
	SESE	27
	Total	240

Note: Deeg filed proof of beneficial use for permit no. 41-7076 on January 13, 1997.

b. Permit No. 41-7081:

Source:	Ground water
Proposed Priority Date:	2/28/1990
Nature of Use:	Irrigation
Flow Rate:	6.95 cfs
Season of Use:	4/1 to 11/1
Point of Diversion:	T9S, R31E, Sec. 6, SWSE

Place(s) of Use:

Description		Acres
T9S, R30E, Sec 1	E1/2 SW	80
	N1/2 SE	80
	SWSE	40
	SESE	39
T9S, R30 E, Sec. 6	NESW	36
	Lot 6 (NWSW)	21
	Lot 7 (SWSW)	22
	SESW	30
	Total	348

Note: Deeg filed proof of beneficial use for permit no. 41-7081 on June 9, 1994.

4. On August 15, 2005, Deeg filed an application to amend permit nos. 41-7076 and 41-7081. The application for amendment seeks authorization to divert water from the two larger irrigation wells described by application for transfer no. 71132 and to irrigate lands within the permissible place of use sought by application for transfer no. 71132. Specifically, the application seeks a change in the permits as follows:

Point(s) of Diversion: T9S, R31E, Sec. 6, SWSE (Two irrigation wells)
Place(s) of Use:

Description:		Acres
T9S, R30E, Sec. 1	NE	160
	E1/2 SW	80
	N1/2 SE	80
	SWSE	40
	SESE	31
Sec. 12	W1/2 NE	80
	E1/2 NW	80
	E1/2 SW	80
	W1/2 SE	80
T9S, R31E, Sec 6	NWNW	21
	SWNW	22
	NESW	36
	NWSW	22
	SWSW	18
	SESW	30
	NESE	40
	NWSE	38
	SWSE	33
	SESE	40
	Total	1,011

5. IDWR issued water right license no. 41-7030 to Farold J. Nelson on December 13, 1991. Water right license no. 41-7030 authorized diversion of 1.40 cfs from ground water for irrigation of 126 acres near Rockland, Idaho.

6. In November 1993, Deeg leased water right no. 41-7030 for five years from the Estate of Farold J. Nelson and his wife, Lela. The lease document was accompanied by an "assignment of permit" of "Permit No. 41-7030."

7. On December 3, 1993, Deeg filed application for transfer no. 4268 proposing to move the point of diversion and place of use for water right no. 41-7030 to a well on Deeg's property described by permit no. 41-7081 and also to land owned by Deeg in the vicinity of the well. The application for transfer was protested. On May 17 and May 24, 1994, IDWR held a hearing. Warm Creek Irrigation Co., Steve W. Isaak, and Roland Mayer and Sons participated in the hearing as protestants.

8. Evidence presented at the 1994 hearing described the beneficial use of water from the well authorized by permit no. 41-7081. On March 21, 1995, the Director of IDWR issued an Amended Final Order approving transfer no. 4268. The order authorized the beneficial use currently described by water right no. 41-7030. A portion of finding of fact no. 10 of the amended final order states:

The applicant drilled the irrigation well authorized by Permit No. 41-07081 (Deeg well) during the summer of 1992 and diverted and used water on 348 acres during the 1993 irrigation season. The land is sprinkler irrigated with two (2) pivots, four (4) wheel lines and handpipe.

9. The 1995 amended final order found that water had been and was being beneficially used under permit no. 41-7081 at the time the application for transfer of water right no. 41-7030 was being considered by IDWR.

10. Deeg filed proof of beneficial use for permit no. 41-7081 on June 9, 1994, approximately one month after the hearing for the application to transfer water right no. 41-7030. Because the beneficial use examination required by Idaho Code § 42-217 for permit no. 41-7081 had not been conducted before the hearing, and because permit no. 41-7081 was not a water right that Deeg was seeking to transfer, the statement of the number of acres irrigated (348) in the amended final order was not a final determination of the acres irrigated under permit no. 41-7081. IDWR was required to determine the acres irrigated during IDWR's subsequent beneficial use field examination.

11. On October 4, 1995 (following issuance of the Amended Final Order approving transfer no. 4268), IDWR received an application to amend permit to appropriate water no. 41-7076. The original permit holder, Lanny Permann, filed the application for amendment. The application sought to change the point of diversion to the well described by permit no. 41-7081 and water right no. 41-7030 and to change the place of use for permit no. 41-7076 to lands farmed by Timothy Deeg. The amendment was approved on December 8, 1995.

12. In addition, the IDWR file for water right no. 41-7076 contains a contract for sale of water right no. 41-7076 by Permann to Deeg dated September 19, 1995. An assignment of permit no. 41-7076 was filed with IDWR confirming the change in ownership of the permit to Deeg.

13. Permit no. 41-7076 originally authorized irrigation of 240 acres in Section 5, T9S, R30E. In January 1995, Permann submitted information that he had expended significant resources for development of the permit in drilling a well but the well was unproductive. Permann stated that "because of the drought on the dry farm we have not been able to do any more construction." A well drillers report contained in the file for permit no. 41-7076 states that the Permann well was deepened in February and March of 1995. The file contains no further information about development.

14. When the amendment changing the point of diversion and place of use for permit no. 41-7076 was approved, permit no. 41-7081 and license no. 41-7030 already described the Deeg well as a point of diversion.

15. Proof of beneficial use was due for permit no. 41-7076 on or before January 2, 1997. On January 13, 1997, Deeg filed proof of beneficial use for permit no. 41-7076.

16. On April 16, 1997, Deeg leased water right no. 41-7034 from the Estate of Farold Nelson.

17. On May 29, 1997, Deeg filed application for transfer no. 5120 proposing to move the point of diversion for water right no. 41-7034 to the well described by permit nos. 41-7081 and 41-7076, and water right no. 41-7030, and to change the place of use for water right no. 41-7034 to Deeg's property in the vicinity of the well. Application for transfer no. 5120 was protested.

18. On August 27, 1997, and prior to the hearing for protested application for transfer no. 5120, Dan Nelson (Nelson) of IDWR conducted a beneficial use field examination for permit nos. 41-7076 and 41-7081. During the field examination, Nelson measured a flow of 6.68 cubic feet per second (cfs) from the irrigation well described by permit nos. 41-7076 and 41-7081. Nelson also found 227.5 acres irrigated within the place of use described by permit no. 41-7076 and 338 acres irrigated as authorized by permit no. 41-7081.

19. The 227.5 acres irrigated within the place of use described by permit no. 41-7076 were two circular fields irrigated by a single, portable circular pivot sprinkler system. Deeg irrigated one circular field one time at the beginning of the irrigation season with the portable pivot sprinkler system. After one irrigation, Deeg moved the circular pivot system to the other circular field for the remainder of the irrigation season until a crop was grown and harvested on the second circular field. After harvest, Deeg moved the portable circular pivot system back to the first circular field and irrigated the first circular field in the fall.

20. Nelson measured a flow rate of 2.02 cfs for the portable pivot sprinkler system. Nelson recommended a flow rate of 2.02 cfs for the 227.5 acres under permit no. 41-7076 because the entire 227.5 acres could not be irrigated simultaneously.

21. On February 3, 1998, IDWR conducted a hearing for application for transfer no. 5120 for protests filed by Warm Springs Irrigation Company, Harold Isaak, and Steve Isaak. On May 15, 1998, the Director of IDWR issued a Final Order approving the transfer. The transfer approved the beneficial use currently authorized by water right no. 41-7034.

22. Finding of fact no. 11 of the May 15, 1998 final order summarized a portion of Tim Deeg's testimony at the hearing:

> The applicant stated that it is not his intent to increase the total diversion capacity from the Deeg well if transfer No. 5120 is approved.

23. As a result of Deeg's testimony and the beneficial use examination by Dan Nelson of IDWR establishing the capacity of the pumping system, the final decision for application for transfer no. 5120 contained the following condition:

> The maximum rate of diversion of water under this right when combined with water right Nos. 41-07030, 41-7071, 41-7076, and 41-7081 shall not exceed a total combined rate of 6.68 cfs nor more than 4.0 acre feet per acre at the well.

24. At the most recent hearing conducted on December 14, 2005, Deeg argued that the places of use recommended by the field exam conducted by Dan Nelson for permit nos. 41-7076 and 41-7081 did not recognize all the acreage irrigated at the time of the examination. The parties agreed that Brockway would find and provide 1997 aerial imagery and suggest the

number of acres irrigated. Dan Nelson agreed to review Brockway's suggested place of use and to collaboratively determine the number of acres irrigated.

25. In February 2006, Brockway submitted information to Dan Nelson. Dan Nelson reviewed the information, drew independent irrigated acreage boundaries, and determined place of use acreages that were similar to Brockway's. On March 15, 2006, Dan Nelson wrote a memorandum revising his filed examination recommendations for permit nos. 41-7076 and 41-7081. On March 24, 2006, the hearing officer distributed the recommendations to the parties and asked for comments.

26. Nelson found the following acres irrigated in 1997 as places of use for permit nos. 41-7076 and 41-7081:

Permit No. 41-7076

Place(s) of Use:

Description		Permitted Acres	Amended Field Exam Acres
T9S, R30E, Sec. 12	NWNE	33	33
	SWNE	33	36
	NENW	33	32
	SENW	33	34
T9S, R31E, Sec. 6	NESE	27	36
	NWSE	27	24
	SWSE	27	17
	SESE	27	27
	Total	240	239

Permit No. 41-7081:

Place(s) of Use:

Description		Permitted Acres	Amended Field Exam Acres
T9S, R30E, Sec. 1	SWNE		1.7
	SENE		2.6
	NESW	40	37
	SESW	40	38
	NESE	40	39
	NWSE	40	39
	SWSE	40	39
	SESE	39	34
T9S, R30 E, Sec. 6	SWNW		13
	NESW	36	36
	Lot 6 (NWSW)	21	21
	Lot 7 (SWSW)	22	18
	SESW	30	29
	Total	348	347.3

27. The following is a chronological summary of the water rights diverted from the Deeg well at the time of Nelson's examination as amended by his March 2006 review. The annual volumes were determined by multiplying the number of acres times 4.0 acre-feet per acre.

Water Right	Flow Rate	Acres	Volume
Permit no. 41-7081	6.68 cfs	347.3	1,389 acre feet
License 41-7030	1.40 cfs	126	441 acre feet
Permit 41-7076	2.02 cfs	227.5	(not calculated because of other restriction on annual volume)
Total flow rate =	6.68 cfs		

28. If water is diverted at the maximum rate of 2.02 cfs authorized by permit no. 41-7076 over the entire irrigation season of 214 days, the total volume that the flow rate could accumulate annually is 857 acre feet.

29. The combination of application for transfer no. 71132 and the application to amend permit nos. 41-7076 and 41-7081 propose a total diversion rate of 10.02 cfs. This flow rate is the combination of 6.68 cfs authorized under permit nos. 41-7076 and 41-7081, plus a total of 3.34 cfs authorized by water right nos. 41-7030, 41-7034, and 41-7071.

30. The hearing officer must consider the chronology of both the development of and the water right filings for the ground water applied to the Deeg property to determine possible limitations on water rights appurtenant to the Deeg property.

31. Dan Nelson's field examination confirmed that the full capacity of the ground water development of 6.68 cfs should be credited to permit no. 41-7081.

32. The transfer of water right nos. 41-7030 and 41-7034 authorized diversion of water under water right nos. 41-7030 and 41-7034 from the point of diversion described by permit no. 41-7081. No additional rate of flow of water was diverted from the well after the transfers were approved, however, than the original flow of 6.68 cfs diverted under permit no. 41-7081.

33. Proof of beneficial use for water right no. 41-7076 was filed on January 13, 1997. Because the filing of proof of beneficial for permit no. 41-7076 preceded the beneficial use field exam conducted on August 27, 1997, no additional water capacity had been developed, and the capacity of the Deeg well was no more than 6.68 cfs and 2,835 acre-feet.

34. The well drilled by Deeg in 1992 was completed to a depth of 940 feet. The static water level is approximately 460 feet below ground surface.

35. The subsurface below or near the Deeg place of use contains three cold water aquifers: a shallow alluvial aquifer, an intermediate aquifer to a depth of about 400 feet comprised of conglomerates and some limestone, and a deeper aquifer from approximately 450 feet and deeper residing in the limestone formations. Tim Deeg's well is completed primarily within the deeper limestone formation.

36. The nearest well to the Deeg irrigation well is a domestic well owned by Deeg. The domestic well is completed in the intermediate aquifer. Water levels in the Deeg domestic well have not been affected by pumping from the Deeg irrigation well.

37. In addition, wells previously owned by Roland Mayer and Sons, now owned by William Isaak, are completed in the intermediate zone.

38. Springs at the headwaters of Cold Creek and Little Creek express themselves from the zone in between the shallow and intermediate aquifers. The deeper limestone aquifer does not contribute water directly to the surface water sources.

39. Warm Creek derives its flows from hot springs emitting from the ground surface. The hot springs flow from a low temperature geothermal aquifer residing at a deeper depth than the three cold water aquifers previously described. The temperature in the Deeg well is warmer than water in the intermediate or shallow aquifers suggesting some connection to the deeper, warmer aquifer. Nevertheless, the water in the Deeg well is cold water, and any relationship between water in the Deeg well and a low temperature geothermal aquifer is remote.

40. Pumping from the Deeg well does not affect water levels in wells completed in the intermediate aquifer.

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. Idaho Code § 42-211 states, in pertinent part:

> Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment . . . and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application . . . .

3. In *Hardy v. Higginson*, 123 Idaho 485, 849 P 2d 946 (1993), the Idaho Supreme Court held that an application to amend a permit is subject to a determination that the application is in the local public interest.

4. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-211 and Idaho Code § 42-222.

5. This decision will determine the beneficial use development of permit nos. 41-7076 and 41-7081 because development and beneficial use of water under permit nos. 41-7076 and 41-7081 is inextricably linked in time to the earlier transfer of water rights 41-7030 and 41-7034 to the Deeg property and well.

6. Beneficial use authorized by permit no. 41-7081 was completed prior to IDWR's consideration of the application for transfer (no. 4268) moving water right no. 41-7030 in 1994. As a result the full 6.68 cfs and 347.3 acres of beneficial use found by the examiner during the beneficial use field examination, as amended during the February 2006 review, should be credited to permit no. 41-7081.

7. Approval of transfer nos. 4268 and 5120 moving the points of diversion and places of use for water right nos. 41-7030 and 41-7034 did not result in any additional water flow rate being diverted. Additional lands were irrigated after the transfer, however.

8. After IDWR's approval of transfer nos. 4268 and 5120, water right nos. 41-7030 and 41-7034 were not fully exercised for a period of time exceeding five years. This partial use of water raises an issue of whether the water rights were partially forfeited as a result of nonuse.

9. During the period of partial use, the adjudication claims for water right nos. 41-7030 and 41-7034 were pending before the SRBA and will remain unresolved until determination of this contested application for transfer. The running of the five (5) year forfeiture period is tolled while adjudication claims are pending before the SRBA Court.

10. Despite only partial use of water right nos. 41-7030 and 41-7034 following transfer of the water rights to the Deeg property and well, water right nos. 41-7030 and 41-7034 are valid water rights and may again be transferred by Deeg.

11. Deeg's testimony at the hearing for the previous transfer no. 5120 of water right no. 41-7034 stating that he would not divert more than the existing capacity of the Deeg well

does not prevent Deeg from seeking to divert more water in a subsequent application for transfer of water right nos. 41-7030 and 41-7034.

12. Idaho Code § 42-217 states, in pertinent part:

> On or before the date set for the beneficial use of waters appropriated under provisions of this chapter, the permit holder shall submit a statement that he has used such water for the beneficial purpose allowed by the permit.

13. Idaho Code § 42-217 states, in pertinent part:

> A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent for the department to the applicant at the address of record by regular mail provided:
>
> 1. That within sixty days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof; . . . .

14. Proof of beneficial use for permit no. 41-7076 was filed 12 days after proof of beneficial use was due. The original proposed priority date for permit no. 41-7076 was September 11, 1985. The priority date for license no. 41-7076 will be advanced to September 23, 1985.

15. No additional flow rate was developed under permit no. 41-7076. The total combined diversion rate authorized by permit nos. 41-7076 and 41-7081 must be limited to 6.68 cfs.

16. The flow rate licensed for permit no. 41-7076 must be limited to 2.02 cfs. The annual volume licensed for permit no. 41-7076 must be limited to 857 acre-feet.

17. The total annual volume of water licensed for permit no. 41-7081 must be limited to 1,389 acre-feet.

18. The total flow rate authorized by water right nos. 41-7030, 41-7034, 41-7071, 41-7076, and 41-7081 is 10.02 cfs.

19. The total number of acres authorized for irrigation by water right nos. 41-7030, 41-7034, 41-7071, 41-7076, and 41-7081 is 814.3 acres.

20. Approval of transfer no. 71132 and amendment of permit nos. 41-7076 and 41-7081 will not injure other water rights.

21. Approval of transfer no. 71132 and amendment of permit nos. 41-7076 and 41-7081 will not enlarge the water rights sought to be transferred.

22. Approval of transfer no. 71132 and amendment of permit nos. 41-7076 and 41-7081 is in the public interest.

23. Approval of transfer no. 71132 is consistent with principles conservation of the water resources of the state of Idaho.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 71132 and application to amend permit nos. 41-7076 and 41-7081 are **APPROVED** as follows:

Permit nos. 41-7076 and 41-7081 shall be licensed as shown on the attached draft water right licenses.

The priority date licensed for permit no. 41-7076 is advanced to September 23, 1985.

The flow rate licensed for permit no. 41-7076 shall be limited to 2.02 cfs. The annual volume licensed for permit no. 41-7076 shall be limited to 857 acre-feet.

The flow rate licensed for permit no. 41-7081 shall be limited to 6.68 cfs. The total annual volume of water licensed for permit no. 41-7081 is 1,389 acre-feet.

IT IS FURTHER ORDERED that the various water rights transferred and permits that will be licensed will be subject to the following conditions:

Right 41-7030 is limited to the irrigation of 126.0 acres within the place of use described above in a single irrigation season.

Right 41-7034 is limited to the irrigation of 91.0 acres within the place of use described above in a single irrigation season.

Right 41-7071 is limited to the irrigation of 11.0 acres within the place of use described above in a single irrigation season.

Rights 41-7076 and 41-7081 when combined shall not exceed a total diversion rate of 6.68 cfs.

Rights 41-7030, 41-7034, 41-7071, 41-7076 and 41-7081 when combined for irrigation, shall not exceed a total diversion rate of 10.02 cfs, and the irrigation of 814.3 acres.

The use of water under water right nos. 41-7071, 41-7076 and 41-7081 shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.

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.

After specific notification by the Department, the right holder shall record the quantity of water diverted or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code, and applicable Well Construction Rules of the Department.

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.

The right holder shall accomplish the change authorized by this transfer within one 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.

DATED this 23rd day of May, 2006.

GARY SPACKMAN
Hearing Officer

DRAFT

State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 41-07076

Priority: September 23, 1985

Maximum Diversion Rate: 2.02 CFS
Maximum Diversion Volume: 857 0 AF

It is hereby certified that TIMOTHY P DEEG
2597 DEEG RD
AMERICAN FALLS ID 83211 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated September 11, 1985; and has submitted Proof of Beneficial Use on January 13, 1997 An examination indicates that the works have a diversion capacity of 6 68 cfs of water from:

SOURCE
GROUND WATER

and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL DIVERSION VOLUME
IRRIGATION	04/01 to 10/31	2 02 CFS	857 0 AF

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	SW¼SE¼	Sec. 6, Twp 09S, Rge 31E, B.M , POWER County
GROUND WATER	SW¼SE¼	Sec. 6, Twp 09S, Rge 31E, B.M , POWER County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S 30E 12		33 0	36 0		32 0			34.0									135 0
09S 31E 6													36 0	24.0	17 0	27 0	104 0

Total Acres: 239

DRAFT

CONDITIONS OF APPROVAL

1. Rights 41-7076 and 41-7081 when combined shall not exceed a total diversion rate of 6 68 cfs.
2. Rights 41-7030, 41-7034, 41-7071, 41-7076 and 41-7081 when combined for irrigation shall not exceed a total diversion rate of 10 02 cfs, and the irrigation of 814 3 acres.
3. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. 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

DRAFT

State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 41-07076

6. Rights 41-7030, 41-7034, 41-7071 and 41-7081 are also diverted through the points of diversion described above.

7. This right does not grant any right-of-way or easement across the land of another

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this ____ day of _____, 2006.

DRAFT

DRAFT

KARL J. DREHER
Director

DRAFT

State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 41-07081

Priority: February 28, 1990

Maximum Diversion Rate: 6.68 CFS
Maximum Diversion Volume: 1,389.0 AF

It is hereby certified that TIMOTHY P DEEG
2597 DEEG RD
AMERICAN FALLS ID 83211 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 28, 1990; and has submitted Proof of Beneficial Use on June 09, 1994. An examination indicates that the works have a diversion capacity of 6.68 cfs of water from:

SOURCE
GROUND WATER

and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL DIVERSION VOLUME
IRRIGATION	04/01 to 10/31	6.68 CFS	1,389.0 AF

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	SW¼SE¼	Sec 6, Twp 09S, Rge 31E, B.M., POWER County
GROUND WATER	SW¼SE¼	Sec 6, Twp 09S, Rge 31E, B.M., POWER County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S 30E 1			1.7	2.6					37.0			38.0	39.0	39.0	39.0	34.0	230.3
09S 31E 6							13.0 L5		36.0	21.0 L6	18.0 L7	29.0					117.0

Total Acres: 347.3

DRAFT

CONDITIONS OF APPROVAL

1. Rights 41-7076 and 41-7081 when combined shall not exceed a total diversion rate of 6.68 cfs.
2. Rights 41-7030, 41-7034, 41-7071, 41-7076 and 41-7081 when combined for irrigation, shall not exceed a total diversion rate of 10.02 cfs, and the irrigation of 814.3 acres.
3. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. 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.

DRAFT

State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 41-07081

6. Rights 41-7030, 41-7034, 41-7071 and 41-7076 are also diverted through the points of diversion described above.

7. This right does not grant any right-of-way or easement across the land of another.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this DRAFT day of DRAFT, 2006

DRAFT

KARL J. DREHER
Director