BEFORE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 69906 IN THE NAME OF LOY AND BYRON PEHRSON	)))	**PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL**

This matter having come before the Department of Water Resources ("Department") as a result of an application for transfer of water rights, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On October 9, 2002, transfer no. 69905 was approved as a preliminary order in the name of Loy Pehrson and Byron Pehrson. The transfer split water right 34-479 into water rights 34-13745 and 34-13746. Water right 34-13746 became the only water right appurtenant to a specified 40 acre parcel while the place of use for water right 34-13745 overlapped with water rights 34-119C, 34-130, 34-131A, 34-195A, 34-196A, 34-360A, 34-605A, 34-132A, 34-197A, 34-776, and 34-777 to irrigate a combined place of use with 864 acres. Each of these water rights is delivered from the Big Lost River through five points of diversion described as the Beck-McGowan, 3 In 1, Harris-Vaught, Burnett and Lower Burnett ditches. Also included in transfer no. 69905 are water rights 34-2433, 34-4010, 34-7056 and 34-10579. These water rights are diverted from ground water and provide supplemental irrigation water to specific acres within the 864 acre combined place of use mentioned above. In combination the ground water rights are appurtenant to 602 acres.

2. In the conditions of approval for transfer no. 69905, condition no. 5 for the surface water rights and condition no. 1 for the ground water rights ("combined limits condition v1") states: Rights 34-119C, 34-130, 34-131A, 34-132A, 34-195A, 34-196A, 34-197A, 34-360A, 34-605A, 34-776, 34-777, 34-2433, 34-4010, 34-7056, 34-10579 and 34-13745 when combined shall not exceed a total diversion rate of 22.24 cubic feet per second ("cfs") and the irrigation of 864 acres.

3. In the Snake River Basin Adjudication a mathematical formula was developed for water administration in the Big Lost River that calculated a total diversion rate for multiple water rights where some water rights diverted from surface water and others water rights diverted from ground water. The concept of the formula is to provide 0.02 cfs per acre at the field head gate when supplemental ground water and surface water are used in combination to irrigate the place of use. The formula takes into account seepage and transmission losses in the delivery of surface water resulting in 70% of the surface water diverted at the point of diversion reaching the field head gate.

4. For the surface water rights, listed in combined limits condition v1, in transfer no. 69905, the combined diversion rate was 15.73 cfs and the combined diversion rate for the ground

SUPPORT DATA
IN FILE # 34-119C

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water rights was 10.72 cfs. The total diversion rate for combined limits condition v1 would be calculated as follows:

(864 acres) (0.02 cfs/acre) = 17.28 cfs [field head gate requirement]

(15.73 cfs) (.70% delivery) = 11.01 cfs [surface water reaching field head gate]

17.28 cfs – 11.01 cfs = 6.27 cfs [difference between head gate requirement and quantity reaching field head gate to be diverted from ground water]

15.73 cfs + 6.27 cfs = 22.0 cfs [total diversion rate]

5. For transfer no. 69905, the total diversion rate of 22.24 cfs listed in the combined limits condition v1 is in error. The correct total diversion rate is 22.0 cfs.

6. On October 21, 2002, transfer no. 69906 was approved as a preliminary order in the name of Loy Pehrson and Byron Pehrson. The transfer separated surface water right 34-777, and supplemental ground water rights 34-2433 and 34-10579 from the 864 acre combined place of use authorized by transfer no. 69905 making them appurtenant to a specific 194 acre place of use and reducing the combined place of use for water rights 34-119C, 34-130, 34-131A, 34-195A, 34-196A, 34-360A, 34-605A, 34-132A, 34-197A, 34-776, and 34-13745 to 670 acres. The place of use for ground water rights 34-4010 and 34-7056 was not changed, leaving them appurtenant to 408 acres within the 670 acre combined place of use. Transfer 69906 approved delivery of water right 34-777 through the Harris-Vaught and Burnett ditches.

7. In the conditions of approval for transfer no. 69906, condition no. 5 for the surface water rights, except 34-777, and condition no. 1 for the ground water rights ("combined limits condition v2") states: Rights 34-119C, 34-130, 34-131A, 34-132A, 34-195A, 34-196A, 34-197A, 34-360A, 34-605A, 34-776, 34-2433, 34-4010, 34-7056, 34-10579 and 34-13745 when combined shall not exceed a total diversion rate of 20.64 cfs and the irrigation of 670 acres.

8. For the surface water rights, listed in combined limits condition v2, the combined diversion rate is 14.13 cfs and the combined diversion rate for the ground water rights 34-4010 and 34-7056 is 7.60 cfs. The total diversion rate for combined limits condition v2 is calculated as follows:

(670 acres) (0.02 cfs/acre) = 13.4 cfs [field headgate requirement]

(14.13 cfs) (.70% delivery) = 9.89 cfs [surface water reaching field headgate]

13.4 cfs – 9.89 cfs = 3.51 cfs [difference between headgate requirement and quantity reaching field headgate to be diverted from ground water]

14.13 cfs + 3.51 cfs = 17.64 cfs [total diversion rate]

9. For surface water right 34-777 the diversion rate is 1.6 cfs and the combined diversion rate for the ground water rights 34-2433 and 34-10579 is 3.12 cfs. The total diversion rate for a combined limits condition applicable to these three water rights is calculated as follows:

(194 acres) (0.02 cfs/acre) = 3.88 cfs [field headgate requirement]

(1.6 cfs) (.70% delivery) = 1.12 cfs [surface water reaching field headgate]

3.88 cfs – 1.12 cfs = 2.76 cfs [difference between headgate requirement and quantity reaching field headgate to be diverted from ground water]

1.6 cfs + 2.76 cfs = 4.36 cfs [total diversion rate]

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10. In the conditions of approval for transfer no. 69906, condition no. 2 for the ground water right 34-2433, 34-4010, 34-7056 and 34-10579 states: Rights 34-2433, 34-4010, 34-7056 and 34-10579 when combined shall not exceed a total annual diversion volume of 2107.0 acre feet ("af"). The af was calculated by multiplying 602 acres covered by the ground water rights by 3.5 af/acre, which is the Departments standard diversion volume per acre for irrigation from ground water in the Big Lost River drainage.

11. Approved transfer 69906 separated ground water rights 34-2433 and 34-10579 from the other two ground water rights and designated their combined place of use as 194 acres. With a combined diversion rate of 3.12 cfs these two rights can provide a total annual diversion volume of 679 af, calculated by multiplying 194 acres by 3.5 af/acre.

12. Approved transfer 69906 lists separate places of use for ground water rights 34-4010 and 34-7056. Water right 34-4010 has a diversion rate of 3.64 cfs for the irrigation of 183 acres and can provide an annual diversion volume of 640.5 af, calculated by multiplying 183 acres by 3.5 af/acre. Water right 34-7056 has a diversion rate of 3.96 cfs and is limited to the irrigation of 225 acres. This water right and can provide an annual diversion volume of 787.5 af, calculated by multiplying 225 acres by 3.5 af/acre.

CONCLUSION OF LAW

1. Combined limits condition v2, on approved transfer no. 69906, for water rights 34-119C, 34-130, 34-131A, 34-132A, 34-195A, 34-196A, 34-197A, 34-360A, 34-605A, 34-776, 34-2433, 34-4010, 34-7056, 34-10579 and 34-13745 contains clerical errors regarding the applicable water rights and the total diversion rate. Water rights 34-2433 and 34-10579 should not be included in this condition and the correct total diversion rate is 17.64 cfs. Water rights 34-777, 34-2433 and 34-10579 need the same new combined limits condition limiting the total diversion rate to 4.36 cfs for irrigation of 194 acres.

2. On approved transfer 69906, condition of approval no. 2, for the ground water rights 34-2433, 34-4010, 34-7056 and 34-10579 contains clerical errors regarding the applicable water rights and total annual diversion volume. Water rights 34-4010 and 34-7056 should be deleted from the condition and the correct total annual diversion volume for water rights 34-2433 and 34-10579 is 679 af. Water rights 34-4010 and 34-7056 should have an annual diversion volume on each right of 640.5 af and 787.5 af, respectively.

3. Approved transfer no. 69906 should accurately describe each established water right as changed by the transfer pursuant to Section 42-222, Idaho Code.

4. The Department should issue an amended transfer approval for transfer no. 69906: deleting combined limits condition v2 from water rights 34-2433 and 34-10579; correcting combined limits condition v2 for water rights 34-119C, 34-130, 34-131A, 34-132A, 34-195A, 34-196A, 34-197A, 34-360A, 34-605A, 34-776, 34-4010, 34-7056, and 34-13745 to show a total diversion rate of 17.64 cfs; adding the same new combined limits condition to water rights 34-777, 34-2433 and 34-10579 limiting the total diversion rate to 4.36 cfs for irrigation of 194 acres; correcting approval condition no. 2 by deleting water right nos. 34-4010 and 34-7056

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and changing the total annual diversion volume to 679 af for water rights 34-2433 and 34-10579; deleting approval condition 2 from 34-4010 and 34-7056 and adding a diversion volume of 640.5 to water right 34-4010 and a diversion volume of 787.5 af to water right 34-7056.

ORDER

IT IS HEREBY ORDERED that approved transfer 69906 is amended as follows:

1. For water right nos. 34-119C, 34-130, 34-131A, 34-132A, 34-195A, 34-196A, 34-197A, 34-360A, 34-605A, 34-776, 34-4010, 34-7056, and 34-13745 combined limits condition v2 is **CORRECTED** as follows;

> Rights 34-119C, 34-130, 34-131A, 34-132A, 34-195A, 34-196A, 34-197A, 34-360A, 34-605A, 34-776, 34-4010, 34-7056 and 34-13745 when combined shall not exceed a total diversion rate of 17.64 cfs and the irrigation of 670 acres.

2. Combined limits condition v2 is **DELETED** from 34-2344 and 34-10579.

3. For water right nos. 34-777, 34-2344 and 34-10579 a new combined limits condition is **ADDED** as follows:

> Rights 34-777, 34-2433 and 34-10579 when combined shall not exceed a total diversion rate of 4.36 cfs and the irrigation of 194 acres.

4. For water rights 34-2433 and 34-10579 condition of approval no. 2 is **CORRECTED** as follows:

> Rights 34-2433 and 34-10579 when combined shall not exceed a total annual diversion volume of 679 af.

5. Approval condition no. 2 is **DELETED** from 34-4010 and 34-7056.

6. Individual diversion volumes of 640.5 af and 787.5 af are **ADDED** to 34-4010 and 34-7056, respectively.

IT IS FURTHER HEREBY ORDERED that the Department's order approving transfer no. 69906 dated October 21, 2002 is **SUPERSEDED** by the amended transfer approval issued in conjunction with this order.

Dated this 17 day of February, 2009.

Ernest Carlsen

ERNEST CARLSEN
Water Resource Program Manager

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of February, 2009, a true and correct copy of the foregoing documents described below was served on the following as noted:

Document(s) Served: Preliminary Order and Explanatory Sheet for "Responding to Preliminary Orders…."

Loy G Pehrson and
Byron Pehrson
3340 W 2800 N
Moore ID 83255

Mallnee Pehrson Wrede
2112 Wahlquist Dr
Idaho Falls ID 83401

Blue Spruce Ranch LP
1570 Linda Vista Dr
San Marcos CA 92078-3508

Water District 34
PO Box 53
Mackay ID 83251

Sharla Cox

Sharla Cox
Administrative Assistant

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