BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PROTESTED APPLICATION FOR TRANSFER NO. 71529, FILED IN THE NAME OF MONTPELIER IRRIGATION COMPANY	)	**PRELIMINARY ORDER**

On January 14, 2004, Montpelier Irrigation Company ("Applicant" or "MIC") submitted Application for Transfer No. 71529 with the Idaho Department of Water Resources (Department). This application seeks to consolidate points of diversion and to change the place of use of water right nos 11-1012, 11-1013, 11-1014, 11-1015, 11-1016, 11-1017, 11-1018, 11-1019, 11-1020, 11-1021, 11-1022, 11-1023, 11-1024, 11-1025, 11-1026, 11-1027, 11-1028, 11-1029, 11-1030, 11-1031, 11-1032, 11-1033, 11-1034, 11-1035, 11-1036, 11-1037, 11-1038, 11-1039, 11-1040, 11-1041, and 11-2159. The purpose given for seeking these changes was to "amend and accurately reflect the place of use by deleting 237 acres not irrigated and adding the correct description of the 237 acres actually irrigated."

Notice of the application for transfer was published in the News-Examiner on January 26 and February 2, 2005 and was subsequently protested by John D. Ipsen and Daryl Sparks of Montpelier, Idaho. A prehearing conference was held on April 8, 2005, and the protestants explained their concerns to Department representatives. While both the applicant and the protestants did not agree to conditions that would resolve the issues in dispute in this matter, the parties requested that the Department prepare a preliminary order based upon the information in the files, the records of the Department, and the information presented during the informal conference. The Department relied on the following information:

- Application for Transfer no. 71529, received on January 14, 2004
- Approved Transfer no. 2118, initiated May 13, 1977
- Memo to File from Roger Warner, dated Jan. 15, 2004
- Transfer no. 71529 Analysis Sheet
- Letter of Clifford Peterson, dated May 5, 2004
- Amendment Letter from Randy Budge, received Nov. 3, 2004
- Protest letter from Daryl Sparks, received Feb. 9, 2005
- Protest letter from John D. Ipsen, received Feb 14, 2005
- April 8, 2005 meeting minutes submitted by MIC secretary Lyona Burdick, dated June 6, 2005
- Notice of pre-hearing conference, dated March 18, 2005
- Conference notes of Ronald Carlson and Roger Warner

The Department, having reviewed the available information finds, concludes, and orders as follows.

FINDINGS OF FACT

1. The following water rights are recorded with the Idaho Department of Water Resources in the name of the Montpelier Irrigation Company:

Basin	Sequence	Basis	Status	Right ID	Priority Date	Rate/ Volume (cfs)	Acres
11	1012	Decreed	Active	9236	1869-06-01	0.64	5614
11	1013	Decreed	Active	9237	1885-06-01	1.2	5614
11	1014	Decreed	Active	9238	1864-06-01	28.4	5614
11	1015	Decreed	Active	9239	1868-06-01	1.82	5614
11	1016	Decreed	Active	9240	1869-06-01	6.36	5614
11	1017	Decreed	Active	9241	1871-06-01	16.36	5614
11	1018	Decreed	Active	9242	1873-06-01	6.0	5614
11	1019	Decreed	Active	9243	1879-06-01	1.2	5614
11	1020	Decreed	Active	9244	1882-06-01	3.2	5614
11	1021	Decreed	Active	9245	1883-06-01	0.8	5614
11	1022	Decreed	Active	9246	1891-06-01	1.0	5614
11	1023	Decreed	Active	9247	1892-06-01	0.24	5614
11	1024	Decreed	Active	9249	1885-06-01	0.50	5614
11	1025	Decreed	Active	9250	1887-06-01	0.42	5614
11	1026	Decreed	Active	9251	1890-06-01	3.46	5614
11	1027	Decreed	Active	9252	1864-06-	1.8	5614
11	1028	Decreed	Active	9253	1871-06-01	0.6	5614
11	1029	Decreed	Active	9254	1869-06-01	2.0	5614
11	1030	Decreed	Active	9255	1869-06-01	1.4	5614
11	1031	Decreed	Active	9256	1869-06-01	0.7	5614
11	1032	Decreed	Active	9257	1869-06-0	0.5	5614
11	1033	Decreed	Active	9259	1885-06-01	6.4	5614
11	1034	Decreed	Active	9260	1897-06-01	0.6	5614
11	1035	Decreed	Active	9261	1885-06-01	2.7	5614
11	1036	Decreed	Active	9262	1895-06-01	0.24	5614
11	1037	Decreed	Active	9263	1873-06-01	2.4	5614
11	1038	Decreed	Active	9264	1884-06-01	1.04	5614
11	1039	Decreed	Active	9265	1895-06-01	0.4	5614
11	1040	Decreed	Active	9266	1896-06-01	3.0	5614
11	1041	Decreed	Active	9269	1890-06-01	1.1	5614
11	2159	Licensed	Active	58327	1963-03-20	3840 AF	3750

2. A previous transfer of the MIC water rights, numbered in the Department files as transfer 2118, included the following condition:

> TRANS. 2118 COMBINES RT. 11-1012 THRU 11-1041 AND ALLOWS PUMPING A PORTION OF RIGHTS FROM BEAR RIVER FOR 1.58 CFS. FROM P/D SESE SEC. 18 T12S R44E. P/U AC. IRR = 5580. FROM TRANS. 2118 IN SEC 18 & SEC 19, T12S, R44E, ONLY 160 AC OF 194 AC WILL BE IRRIGATED IN ANY ONE YEAR. REMAINDER WILL BE SUPPLEMENTED WITH STORAGE.

3. The MIC scheduled a special stockholder's meeting for May 10, 2004, at 8:00 p.m., to discuss issues related to its Application for Transfer 71529. The MIC invited Ronald D. Carlson, Eastern Regional Manager of the Department, to attend. On May 6, 2004, Ronald D. Carlson, received a letter from Clifford Peterson, a stockholder in MIC. Mr. Peterson's letter raised issues he believed the Department should be aware of prior to the May 10, 2004 meeting because he would not be able to attend due to work responsibilities. Mr. Peterson expressed concern about water being used outside the boundaries of the MIC. He complained specifically that the water diverted under water right no. 11-1014 was inequitably divided during 2004, and Phelps brothers were receiving more water than their shares should authorize.

4. On May 10, 2004, the MIC held a special stockholders meeting. The company's attorney, Randy Budge, represented the MIC. Kent Foster, an attorney from Idaho Falls represented Mr. John Ipsen, a MIC stockholder. Ron Carlson and Roger Warner from the Department's Eastern Regional office attended the meeting. The concerns expressed by some of the stockholders related to past management and distribution of water. The concerns included some of the issues raised by Clifford Peterson in his letter and the potential for the management situation to worsen rather than improve if the Department approved transfer 71529.

5. On May 18, 2004, Roger Warner of the Department, Marden Phelps, and Bryce Boehme, MIC manager, identified and inventoried eleven (11) points of diversion used by MIC. They also inspected specific lands that were no longer supplied water by MIC and land MIC proposed to add through the filing of transfer application 71529. The Department provided a map for the MIC representatives to use in locating lands irrigated by the MIC and all points of diversion.

6. On November 1, 2004, the Department sent to the applicant's counsel, Randy Budge, a letter via email stating additional points of diversion had been discovered during the field inventory conducted on May 18, 2004. The letter advised MIC the transfer application should be amended to reflect all of the points of diversion that had been identified.

7. On November 3, 2004, the Department received a letter from Mr. Budge, requesting the application be amended to include the added or changed points of diversion identified during the field inventory. They include:

Paul Loertcher Pump	NWNESW,	Sec 32, T12S, R45E
Larry Hayes Pump	NENESW,	Sec 1, T13S, R44E
Costello Pipeline	NENESW,	Sec 1, T13S, R44E
Costello Meadow	SWSENE,	Sec 2, T13S, R44E
Costello Pump	SESENE,	Sec 2, T13S, R44E
North Canal	NESWNW,	Sec 2, T13S, R44E
Old Mill Road	SWSENE,	Sec 3, T13S, R44E
Peterson Diversion	NWNESE,	Sec 8, T13S, R44E
S. 12th Street Diversion	NWNENE,	Sec 9, T13S, R44E
Earl Wuthrich Pump	SWSWNW,	Sec 6, T13S, R45E
Landfill Diversion	SWSWNW,	Sec 6, T13S, R45E

The notice for Application for Transfer no. 71529 was published on January 26 and February 2, 2005.

8. The Department received protests to Application for Transfer no. 71529 from Daryl Sparks of 525 Danish Avenue, Montpelier, Idaho 83254, and from John D. Ipsen of 850 N 8th Street, Montpelier, Idaho 83254-1009. The initial letter received from Clifford Peterson was noted but was not recognized as an official protest in this matter because it was not received with the requisite protest fee.

9. The Department held a pre-hearing conference on April 8, 2005 at 9:00 am at the Bear Lake Senior Citizen Center, 300 Hospital Plaza, Montpelier, Idaho 83254. Present at the prehearing conference were the following:

Ron Carlson, IDWR Eastern Region Manager;
Roger Warner, IDWR Eastern Region Water Rights Supervisor;
Marden Phelps, President, Montpelier Irrigation Company;
Rhett Phelps, Vice President, Montpelier Irrigation Company;
Don Burdick, Director, Montpelier Irrigation Company;
Lyona Burdick, Secretary of Montpelier Irrigation Company;
Jerry Scott, Director, Montpelier Irrigation Company;
Randy Budge, Attorney representing Montpelier Irrigation Company;
John D. Ipsen, Protestor and Shareholder;
Lillas Ipsen, Daughter of John D. Ipsen; and
Daryl Sparks, Protestor.

10. The Montpellier Irrigation Company is organized under the laws of the State of Idaho. The board of directors authorized the filing of application for transfer no. 71529 and the changes in points of diversion and place of use the transfer represents. Distribution of water

among the various points of diversion for use on the lands of the company is the responsibility of the board of directors and the management staff they hire.

11. The new points of diversion are being added to the water rights due to accomplished changes of point of diversions. The new points of diversion have allowed specific share holders to install pump systems to directly divert from Montpelier Creek under the MIC's water rights.

12. The current place of use for the MIC water rights describes the following 237 acres that are no longer irrigated:

Township	Range	Section	Tract	Acres
13S	44E	8	NWNE	17
			NESE	10
			SENE	37
		9	SESW	28
			NESW	40
			SWNW	34
			NWNW	40
			NWNE	31
				237

13. Application for transfer no. 71529 proposes to change the place of use from the unirrigated lands listed above to 237 acres described below:

Township	Range	Section	Tract	Acres
12S	44E	21	NWNE	40
			SWNE	30
			NENE	20
			SENE	20
		22	NWNW	10
			SWNW	28
			SENW	29
		23	SWSW	20
		33	SWNW	40
				237

14. The Department's processing of transfer no. 71529 employed the use of improved tools for water resource management including the use of Geographic Information System (GIS) mapping software. An electronic GIS shape file was created that simulates the legal description of the MIC service area. The GIS generated shape of the MIC service area shows the location of areas that have historically been provided water. The electronic shape also includes both 237-acre areas described to be deleted and to be added in the transfer. Finally, the shape file for the

MIC service area was also edited to delete areas that were included before in the legal description, but were not irrigated and not likely to be irrigated in the future (i.e. steep mountain terrain).

15. The new GIS shape boundary encompasses more acres than the number of acres authorized for irrigation with water diverted under the MIC water rights. Irrigation by MIC's shareholders will be limited to the water right acres within the boundaries of the shape file. The larger shape file allows MIC to flexibly move the location of water use within its system service area.

16. The proposed added points of diversion will require additional measurement and oversight to insure that the total diversions from Montpelier Creek do not exceed the total flow rate authorized by the MIC water rights. MIC will measure water to each of its points of diversion simultaneously and record the flows to insure that it does not exceed its water rights.

17. There are no other water right holders diverting water from Montpelier Creek that would be injured by diverting water from the added points of diversion. Careful monitoring will prevent over diversion that might injure other water right holders.

18. Irrigation with sprinklers increases the efficiency of application of water.

19. Adding the points of diversion will allow MIC to maximize the use of its water. The new diversions allow for direct delivery to shareholders with negligible losses of water.

CONCLUSIONS OF LAW

1. Idaho Code, Section 42-222, provides in pertinent part as follows:

> The director of the department of water resources shall examine all 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 water right, and 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.....

2. The directors of the MIC are elected to represent the interests of the company's stockholders. The directors are entitled, if not obligated, to make application to the Department to add points of diversion and place of use of the water rights held in the name of Montpelier Irrigation Company (MIC) when changes in these elements of the company's water rights differ from the descriptions shown in the records of the Idaho Department of Water Resources.

3. The protestants hold shares of stock in the MIC. The delivery of the Protestants' water entitlements is the responsibility of MIC. The issues of injury in this case are internal

issues for which the Protestants have direct recourse through the MIC board of directors and the manager hired by the company.

4. The approval of transfer no. 71529 will not result in an enlargement of use allowed under MIC's water rights.

5. Approval of the transfer will result in more efficient delivery of water and is consistent with principals of conservation of water in the state of Idaho.

6. Approval of transfer no. 71529 will maintain the integrity of the water rights of the Montpelier Irrigation Company and will result in better service to the shareholders of MIC. Application for Transfer no. 71529 is in the local public interest.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Application for Transfer 71529 filed in the name of Montpelier Irrigation Company is **APPROVED** subject to following conditions:

1. Rights 11-1012, 11-1013, 11-1014, 11-1015, 11-1016, 11-1017, 11-1018, 11-1019, 11-1020, 11-1021, 11-1022, 11-1023, 11-1024, 11-1025, 11-1026, 11-1027, 11-1028, 11-1029, 11-1030, 11-1031, 11-1032, 11-1033, 11-1034, 11-1035, 11-1036, 11-1037, 11-1038, 11-1039, 11-1040, 11-1041 and 11-2159 when combined shall not exceed a total diversion rate of 96.48 cfs, and the irrigation of 5580.0 acres.

2. 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. 11H.

3. 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.

4. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

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

6. Place of use is within the area served by Montpelier Irrigation Company.

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

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

IT IS FURTHER ORDERED that any person aggrieved by this decision may contest this preliminary order by requesting a hearing within fifteen days (15) of the date of mailing of this decision, as provided by Idaho Code § 42-1701A. In addition, any party to the contested case may petition for reconsideration of the preliminary order or exceptions to the preliminary order with the Department within fourteen (14) days of the date of mailing this decision. The procedures for requesting a hearing, filing a petition for reconsideration, filing exceptions, or appealing the decision are set forth in the document enclosed with this preliminary order.

Dated this 19th day of January, 2006.

Gary Spackman, Chief
Water Allocation Bureau