

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

|                                 |                                    |
|---------------------------------|------------------------------------|
| IN THE MATTER OF APPLICATION )  |                                    |
| FOR TRANSFER NO. 83418 IN THE ) |                                    |
| NAME OF COLE RANCH PROPERTIES ) | <b>PRELIMINARY ORDER REJECTING</b> |
| LLC )                           | <b>APPLICATION FOR TRANSFER</b>    |
| _____ )                         |                                    |

This matter having come before the Idaho Department of Water Resources ("Department") as a result of an application to transfer a water right, the Department finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. On July 1, 2019, Cole Ranch Properties LLC ("CRP") submitted application for transfer no. 83418 ("Transfer Application") to the Department. CRP was seeking to change the legal description of the point of diversion of water right no. 75-4500 from the recorded location in Government Lot 5 (SWSE) of Section 12, Township 20 North, Range 21 East, B.M. to a location within Government Lot 1 (SESE) Section 12, Township 20 North, Range 21 East, B.M.

2. On September 3, 2019, the Department received the amended Transfer Application requesting to correct the place of use ("POU") description too. During initial review of the Transfer Application, the Department discovered there were several quarter quarters that did not include the government lot numbers as part of the POU legal description. CRP amended the Transfer Application to include those government lot numbers.

3. On December 3, 2019, the Department sent CRP a letter requesting information to support the validity of right no. 75-4500. During review of the Transfer Application, it appeared CRP irrigated a maximum of only 325.3 acres in the five-year period preceding filing of the Transfer Application. Water right no. 75-4500 authorizes irrigation of up to 471 acres.

4. The Department's December 3, 2019 letter to CRP notifying it of the acres potentially subject to forfeiture, outlined the following options to continue processing of the Transfer Application:

- i. Withdraw the Transfer Application.
- ii. Submit information showing irrigation of the full 471 acres within the last five years.
- iii. Submit information demonstrating a defense to forfeiture, as provided by Idaho Code § 42-223.
- iv. Proceed with the Transfer Application, as filed, with the understanding irrigation authorized by water right no. 75-4500 may be reduced based on use within the last five years.

5. The Department provide CRP thirty days to respond the December 3, 2019 letter or the Department may reject the Transfer Application. CRP did not respond within the thirty-day timeline.

6. On August 6, 2020, the Department sent CRP an email requesting information on how CRP would like to move forward with Transfer Application processing. CRP responded the same day indicating they do not want the Department to move forward with Transfer Application processing.

7. On August 7, 2020, the Department sent CRP a follow-up email explaining how to withdraw the Transfer Application along with the applicable form.

8. As of March 18, 2021, the Department has not received a response from CRP regarding withdrawal of the Transfer Application.

### **ANALYSIS**

When evaluating an application for transfer of a water right, the Department first determines whether the applicant is "entitled to the use of water" per Idaho Code § 42-222(1). The Department interprets this requirement to mean that the water right proposed to be changed must be valid. To determine water right validity, the Department requires evidence of a license, claim, or decree. The Department then applies the forfeiture provisions of Idaho Code § 42-222(2). If the water right proposed to be changed is not valid, the proposed change cannot be approved, and any further analysis is moot. If the water right proposed to be changed is valid, the Department applies the additional transfer evaluation criteria in Idaho Code § 42-222(1).

The Snake River Basin Adjudication court issued a partial decree for water right no. 75-4500 on November 17, 2008. The water right was decreed for irrigation of 471 acres.

Pursuant to Idaho Code § 42-222(2), the Department conducted a review of irrigated use for the term of five years prior to the Transfer Application submittal and found a maximum of 325.3 acres were irrigated in that five-year period.

The Department requested additional information regarding validity of water right no. 75-4500 from CRP on December 3, 2019. As of March 18, 2021, the Department has not received additional information regarding the validity of water right no. 75-4500 in response to this request.

Without additional information, the Department cannot fully determine if CRP is "entitled to the use of water" per Idaho Code § 42-222(1). Specifically, the Department cannot determine if the right is all or in part subject to forfeiture per Idaho Code § 42-222(2).

### **CONCLUSIONS OF LAW**

1. The Department cannot confirm validity of the entirety of water right no. 75-4500 without additional information.

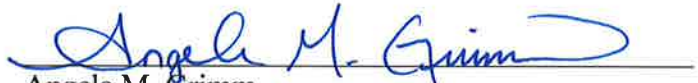
2. The Department cannot approve the Transfer Application without confirming the validity of the water right requested to be changed.

3. The Department should reject the Transfer Application.

### ORDER

IT IS HEREBY ORDERED that application for transfer no. 83418 in the name of Cole Ranch Properties, LLC is **REJECTED** without prejudice.

Dated this 18<sup>th</sup> day of MARCH, 2021.

  
Angela M. Grimm  
Water Rights Section Manager



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

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**BRAD LITTLE**  
Governor

**GARY SPACKMAN**  
Director

March 23, 2021

COLE RANCH PROPERTIES LLC  
510 HUMMINGBIRD LN  
BUTTE MT 59701

Re: Preliminary Order in the matter of Application for Transfer No. 83418

Dear Applicant:

The Department of Water Resources has issued the enclosed order rejecting an Application for Transfer of Water Right. The order is a PRELIMINARY ORDER issued by the Department pursuant to Idaho Code § 67-5243. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to Idaho Code § 42-1701A(3). A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions regarding this matter, please contact our office at (208) 287-4800.

Sincerely,

Angela Grimm

Water Rights Section Manager

Enclosure

## **CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2021 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Rejected Transfer) to the person listed below:

**Re: Preliminary Order Rejecting Application for Transfer No. 83418**

**COLE RANCH PROPERTIES LLC  
510 HUMMINGBIRD LN  
BUTTE MT 59701**



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**Debbi Judd  
Technical Records Specialist**

## **EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

### **EXCEPTIONS AND BRIEFS**

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

### **REQUEST FOR HEARING**

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

### **ORAL ARGUMENT**

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

## **CERTIFICATE OF SERVICE**

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

## **FINAL ORDER**

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

## **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.