

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	ORDER GRANTING PETITION FOR
TRANSFER NO. 83534 IN THE NAME OF	)	RECONSIDERATION AND
JANE E DOUGHERTY SANDSTROM AND	)	AMENDING TRANSFER APPROVAL
MICHAEL CHARLES DOUGHERTY	)	
_____	)	

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider a preliminary order approving a transfer application, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On January 28, 2020, the Department issued a preliminary order ("Order") approving Application for Transfer No. 83534 ("Transfer") in the name of Jane E. Dougherty Sandstrom and Michael Charles Dougherty ("Applicants").
2. The Applicants' transfer application proposed to correct the point of diversion public land survey legal description for water right nos. 75-14313 and 75-14641. The Applicants' transfer application did not propose any physical changes to the diversion system or water use practices.
3. The Department approval of the Transfer included approval condition no. 2 stating "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 place of use." ("Condition No. 2").
4. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01) provides in pertinent part:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law....

5. On February 10, 2020, the Applicants filed a Petition for Reconsideration ("Petition") with the Department in connection with the Order. In their petition, the Applicants asked the Department to reconsider Condition No. 2. The Applicants cited the 1982 district court judgment [*Judgment, Merrill M. Brown, et al. vs. Frank R. Nelson, et al.*, Case No. 5235 (7th Jud. Dist. Ct. 1982)] involving Fourth of July Creek water use ("Fourth of July Creek decree") as justification for a quantity greater than 0.02 cfs per acre and more than 3.5 afa per acre at the field headgate.

6. On November 17, 2008, the district court issued a partial decree in the matter of the Snake River Basin Adjudication ("SRBA") that affirmed the quantities stated in the Fourth of July Creek decree for water right nos. 75-14313 and 75-14312. On August 26, 2014, the district court issued the Final Unified Decree for the SRBA affirming the previously issued partial decree.
7. On March 5, 2010, the Department processed a Notice of Change in Water Right Ownership filing that split a portion from water right no. 75-14312 and assigned that portion water right no. 75-14641.

CONCLUSIONS OF LAW

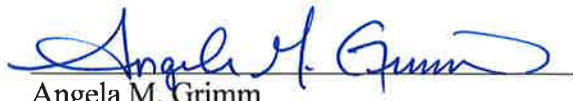
1. The Applicants filed the Petition timely.
2. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01) authorizes the Department to reconsider the issuance of a preliminary order.
3. The Applicants' transfer application proposed no physical changes to the diversion works system or historic water use practices.
4. Condition No. 2 limits the quantity of water available at the field headgate for irrigation use to a value less than historically recognized by the Fourth of July Creek decree and subsequent SRBA partial decree.
5. The Department should remove Condition No. 2 from the Transfer approval.

ORDER

IT IS HEREBY ORDERED that the Petition is **GRANTED** pursuant to IDAPA 37.01.01.730.02.a.

IT IS FURTHER ORDERED that Condition No. 2 on the Transfer is **REMOVED** as set forth in the amended transfer issued on this date in conjunction with this order.

Dated this 26th day of February, 2020.


Angela M. Grimm
Water Rights Section Manager

CERTIFICATE OF SERVICE

I hereby certify that on **February 28, 2020** I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER GRANTING PETITION FOR RECONSIDERATION AND AMENDING TRANSFER APPROVAL** to the persons listed below:

**JANE E DOUGHERTY SANDSTROM
MICHAEL CHARLES DOUGHERTY
502 FOURTH OF JULY CREEK RD
NORTH FORK ID 83466**



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.