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Department of Water Resources
Eastern District Office

November 26, 1990

Orlin D. and/or Clara J. Baker
Star Route
Mackay, ID 83251

Dear Mr. and Mrs. Baker:

Re: Application for Transfer No. 2399 of
Water Right No. 34-00868

Enclosed is a copy of the Order which sets aside the above referenced transfer. The change(s) proposed in the application for transfer which have been claimed on the related Snake River Adjudication claim(s) will be included in and considered by the department in the Director's report required by statute.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure: Order

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 2399 OF WATER RIGHT)
NO. 34-00868 IN THE NAME OF ORLIN)
D. &/OR CLARA J. BAKER)

ORDER

This matter having come before the Idaho Department of Water Resources (department) as a result of the review of pending applications for transfer and review of Snake River Adjudication claims filed in the Big Lost River Drainage, the department makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. On February 19, 1980, Orlin D. Baker (applicant) filed Application for Transfer No. 2399 (application) with the department in connection with water right no. 34-00868.

2. A review of the Snake River Adjudication claim filed in connection with the above captioned water right shows that the proposed transfer does not agree with the later in time adjudication claim.

3. The adjudication claim has been filed pursuant to Section 42-1416A, Idaho Code, as if the change(s) proposed on the pending application can be approved and decreed without the necessity of filing for a change as provided in Sections 42-108 and 42-222, Idaho Code.

4. On October 11, 1990, the department corresponded with the applicant to determine continued interest of the applicant and requested appropriate information from the applicant to justify separate consideration of the application from the more recently filed Snake River Adjudication claim.

5. The applicant has not responded to the department and has not shown any reason why the application should be considered separately from the adjudication claim.

CONCLUSIONS OF LAW

1. Section 42-1416A, Idaho Code, provides in part that:

(1) If any person entitled to the use of water has made a change in point of diversion, place of use, period of use or nature of use of all or a part of the water, including a change as part of an exchange as defined in section 42-105, Idaho Code, prior to the entry of an order commencing a general adjudication pursuant to section 42-1408, Idaho Code, and the person entitled to the use of water has not complied with the requirements of

sections 42-108 and 42-222, Idaho Code, regarding such changes, the following shall apply:

(a) the water right may be claimed in the general adjudication as changed and an application for change of the water right is not required to be filed pursuant to section 42-222, Idaho Code, and

(b) the water right may be determined by the director in the director's report pursuant to section 42-1411, Idaho Code, and decreed by the district court pursuant to section 42-1412, Idaho Code, as changed, if the change meets the substantive criteria of section 42-222, Idaho Code, for approval of such changes, provided that the change may be approved subject to conditions necessary to satisfy the substantive criteria of section 42-222, Idaho Code, for approval of such changes.

2. The department should set aside Application for Transfer No. 2399 and should consider the change(s) proposed in the application which have been claimed in the related adjudication claim(s) as being combined with and included in the review and recommendation of the adjudication claim in the Director's report as required by Section 42-1411, Idaho Code.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Application for Transfer No. 2399 in connection with water right no. 34-00868 is set aside and will not be separately considered by the department.

IT IS FURTHER, HEREBY ORDERED, that the change(s) proposed in the application for transfer which have been claimed on the related Snake River Adjudication claim(s) be included in and considered by the department in the Director's report required by Section 42-1411, Idaho Code.

Dated this 23rd day of November, 1990.



L. GLEN SAXTON, Chief
Water Allocation Bureau