

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 82873 IN THE)
NAME OF AMERICAN HOMES LLC)**

**WITHDRAWAL OF
PRELIMINARY ORDER**

PROCEDURAL HISTORY

On April 16, 2019, The Idaho Department of Water Resources (Department) issued a preliminary order (Order) approving Application for Transfer No. 82873 (Application) in the name of American Homes LLC (Applicant). After receiving the approved application, the Applicant contacted the Department and made the Department aware of a factual inaccuracy regarding the availability of primary surface water at the place of use. The Department is now withdrawing the preliminary order approving the Application to reevaluate the application in light of the availability of surface water at the proposed place of use.

FINDINGS OF FACT

1. Application for Transfer 82873 proposes to change the place of use for water right 63-10738 from 31 acres in the SE ¼ of the SE ¼ of Section 2, Township 01S, Range 02W to 31 acres at the new place of use located in the SE ¼ of the NW ¼, as well as the SW ¼ and SE ¼ of the NE ¼ of Section 36, Township 01N, Range 02W.
2. Water right 63-10738 diverts from ground water and was used as a supplemental irrigation right at the original place of use. Primary irrigation water was provided by Boise Kuna Irrigation District.
3. The Application was approved, in part based on a finding that the new place of use was also provided primary irrigation water from Boise Kuna Irrigation District and the use of 63-10738 would continue to be supplemental.
4. American Homes LLC owns a 100-acre parcel at the new place of use. Approximately 40 acres of that parcel is south of the Waldvogel Canal and receives irrigation water for approximately 31 acres from the Boise Kuna Irrigation District. However, the proposed place of use for the Application is entirely north of the canal and does not receive water from the Boise Kuna Irrigation District.
5. The proposed place of use under the Application does not have appurtenant primary surface water for irrigation.

CONCLUSIONS OF LAW

1. Title 42, chapter 222, Idaho Code provides, in pertinent part:

The director of the department of water resources shall examine all the 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 right, 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. Rule 760 of the Department's Rules of Procedure (IDAPA 37.01.01) reads as follows:

MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760). A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it.

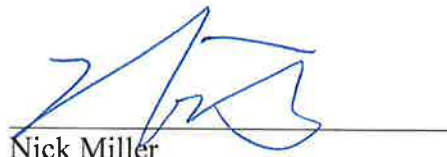
3. The Department erred in approving the Application because the new place of use does not have primary surface water available, so use of the water right at the new location would enlarge the water right.

4. The Department should withdraw the preliminary order approving the transfer and provide the Applicant an opportunity to obtain primary surface water at the new place of use.

ORDER

It is hereby therefore ordered that the April 16, 2019 preliminary order approving Application for Transfer 82873 is WITHDRAWN. The Department will resume processing the Application and will issue a substitute order thereafter.

Dated this 29th day of April, 2019.

A handwritten signature in blue ink, appearing to read 'Nick Miller', is written over a horizontal line.

Nick Miller
Manager, IDWR Western Region

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2019, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Document Served: Withdrawal of Preliminary Order

KENNETH EDWARDS
NOLA EDWARDS
12584 DEER RIDGE TRAIL
NAMPA ID 83686-7807

SPENCER CROSLAND
7800 W ALFALFA RD
MELBA ID 83641-603

A handwritten signature in blue ink, appearing to read 'Anna Kaiser', is written over a horizontal line.

Anna Kaiser
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

April 29, 2019

KENNETH EDWARDS
NOLA EDWARDS
12584 DEER RIDGE TRAIL
NAMPA ID 83686-7807

SPENCER CROSLAND
7800 W ALFALFA RD
MELBA ID 83641-603

Re: Withdrawal of Preliminary Order

Dear Applicant and Interested Parties:

Please see the enclosed *Withdrawal of Preliminary Order* for Transfer No. 82873 in the name of American Homes LLC.

If you have any questions regarding this matter, please contact the Department at 208-334-2190.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anna Kaiser'.

Anna Kaiser
Administrative Assistant

Enclosures