

T4560 JORGENSEN



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 20, 1995

RE: In the matter of Application for Transfer No. 4560 (Water Right No. 13-07161) in the name of Carl B. or Patricia Jorgenson

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer 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 twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

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Department of Water Resources
Eastern District Office

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, 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 recommended order shall be served on all other parties to these proceedings in accordance with 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 agency 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with Sections 67-5271 through 67-5279, Idaho Code.

Sincerely,



L. Glen Saxton
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 4560 (WATER)
RIGHT NO. 13-07161) IN THE)
NAME OF CARL B. OR PATRICIA)
JORGENSEN)
_____)

RECOMMENDED
ORDER

Carl B. or Patricia Jorgenson filed application for transfer no. 4560 with the Department of Water Resources (Department), proposing to move the place of use described by license no. 13-07161. The application for transfer was protested by Warren and Jennie Lloyd and by Lloyd Farms. David Lloyd signed on behalf of Lloyd Farms.

A hearing was conducted at the Pocatello Airport on November 2, 1995. Carl Jorgenson (Jorgenson) was present, and was represented by his attorney, A. Bruce Larsen. Warren and Jennie Lloyd also attended. No one appeared representing Lloyd Farms. As a result, Lloyd Farms' protest is set aside because of their failure to appear.

Evidence having been taken, and the record having closed, the hearing officer recommends the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. License no. 13-07161 authorizes diversion of ground water from a well located in the NWNW, S32, T9S, R40E. It also authorizes irrigation of 230 acres, described as follows:

Place of use

<u>Township</u>	<u>Range</u>	<u>Section</u>		<u>Acres</u>
9S	40E	29	SESW	38
		32	NENW	38
			NWNW	38
			SWNW	38
			SENW	40
			NWSW	38
				230 Total

2. Each of the parcels described above contain 40 acres. The license describes less than 40 acres irrigated within each of

these parcels because of boundary roads and perhaps some unirrigated rocks or rough terrain.

3. Jorgenson testified he owns 240 acres of which 230 acres are authorized for irrigation. Approximately 41 acres of the 240 acres owned by Jorgenson contain rock piles or natural land features which are not tillable acres (hereafter referred to as "the nonproductive acres").

4. Jorgenson's irrigation system has applied water to the nonproductive acres. The licensing examiner recognized that nonproductive acres were being watered, but included the nonproductive acres within the recommended place of use. He also stated that some of the nonproductive acres were not watered where adjacent productive acres were irrigated with handlines. Some of the nonproductive acres were described by the license as part of the place of use upon which the water was being beneficially used.

5. Jorgenson testified that water was applied to 30 of the 41 nonproductive acres.

6. Application for transfer no. 4560 proposes to dry up 38 acres in the SESE of S29, T9S, R40E, 38 acres in the NWSW of S32, and the corners of a pivot located in the NW of S32, T9S, R40E. The place of use proposed by the application for transfer is described as follows:

Place of Use

<u>Township</u>	<u>Range</u>	<u>Section</u>		<u>Acres</u>	
9S	40E	31	NENE	30	
			NWNE	32	
			SWNE	33	
			SENE	30	
		32	NENW	30	
			NWNW	28	
			SWNW	20	
			SENW	27	
				230 Total	

7. Jorgenson testified that 5 to 7 acres of the nonproductive acres which had previously been watered would no longer be watered. He also testified that approximately 23 more acres would be irrigated than had previously been irrigated.

8. A 1/4 mile radius circular pivot irrigation system like Jorgenson's pivot typically waters 125 to 135 acres. A low estimate of 128 acres is a factual assumption which benefits Jorgenson's proposal. A 128 acre circular pivot centered in a

160 acre parcel should water approximately 128 acres, or 32 acres in each 40 acre parcel. One would expect that the application for transfer would describe approximately 32 acres in each 40 acre tract.

9. The proposed place of use for each 40 acre parcel in the NW1/4 of Section 32 is less than 32 acres. The difference between 32 acres and what is proposed for a place of use in each of the 40 acre parcels is described below.

<u>Twncshp</u>	<u>Rng</u>	<u>Sec</u>	<u>Parcel</u>	<u>Acres under Pivot</u>	<u>Proposed POU</u>	<u>Diff</u>
9S	40E	32	NENW	32	30	2
			NWNW	32	28	4
			SWNW	32	20	12
			SEnw	32	27	5
			TOTALS	128	105	23

10. At the hearing, Carl Jorgenson testified that part of the purpose of the application was to move water traditionally applied to the nonproductive acres, described as a place of use by license no. 13-07161, to more productive lands. He also stated that the nonproductive acres within Section 32 will continue to be irrigated, but will not identified as a place of use by water right 13-07161.

11. The proposed place of use for the NW1/4 of Section 32 was derived by determining the number of productive, tillable acres irrigated by the pivot, even though the 23 nonproductive acres will continue to be watered as described by license no. 13-07161.

12. Jorgenson proposes to irrigate 7 productive acres and abandon 7 non-productive acres which were previously watered, presumably in the corners of the NW1/4 of Section 32, which will be taken out of production. He also proposes to irrigate 23 new productive acres, and ignore describing as a place of use the 23 non-productive acres in the NW1/4 of Section 32 which will continue to be watered.

13. Jorgenson owns 750 shares of Last Chance Canal Company water. The lands from which the water is being removed, and the lands to which the water is proposed to be applied, are served by the Last Chance Canal Company system. These lands were also described as lands irrigated by Last Chance Canal Company at the time license no. 13-07161 was approved.

14. The water is delivered to both the old place of use, and the new place of use through a common system which commingles surface and ground water. Jorgenson stated he will construct the

system so that surface water can be injected into the system delivering ground water, but will install valves which will prevent delivery of ground water to lands not described by the ground water right, but are irrigated by surface water delivered by Last Chance Canal.

15. Some water is consumed by evaporation and consumptive use of natural growth when applied to the non-productive acres, but consumption resulting from watering of the nonproductive acres is less than consumption resulting from irrigation of productive acres.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

[T]he director of the department of water resources shall examine all of 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, 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 42-203A, Idaho Code; . . .

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights and is consistent with conservation of water resources.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than the public interests with which it conflicts.

4. The applicant bears the ultimate burden of proof regarding all issues.

5. Transfer of water from 23 acres of a place of use to other lands, while continuing to apply water to the lands from which the water was to be removed is an enlargement of the right.

6. Transfer of water from 7 acres of unproductive land to 7 acres of productive lands is an enlargement of use.

7. The proposed project will irrigate more acres than

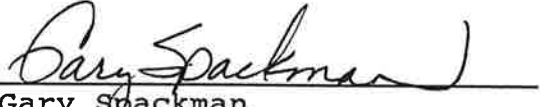
authorized by license no. 13-07161.

8. The Department should deny application for transfer no. 4560.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 4560 in the name of Carl B. or Patricia Jorgenson is DENIED.

Dated this 19th day of December, 1995.



Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I do hereby certify that on this 20th day of December, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing RECOMMENDED ORDER to the following:

Carl B. or Patricia Jorgenson
1699 Lloyd Rd
Bancroft ID 83217

Warren P & Jennie G Lloyd
Bancroft ID 83217

David Lloyd
Lloyd Farms
1915 Lund Rd
Bancroft ID 83217

A BRUCE LARSON
241 S MAIN
SODA SPRINGS ID 83276



Kris Rhodes