

OF THE STATE OF IDAHO

This matter having come before the Idaho Department of Water Resources (“Department”) as the result of clerical errors discovered in a transfer approval, the Department finds, concludes, and orders as follows:

1. On July 28, 1992, Judge Daniel Hurlbutt of the Idaho Sixth Judicial District Court entered a final decree determining the water rights for the use of surface and ground water in the Bancroft-Lund area. The 1992 decree included the following water rights:

2. On May 20, 1996, Terry Jorgensen and Keith Jorgensen dba Jorgensen Farms filed Application for Transfer 4842, proposing to change the point of diversion and place of use for water rights 13-2198 and 13-7005.

3. The proposed point of diversion and place of use were located approximately five miles to the northeast of the existing point of diversion and places of use for water rights 13-2198 and 13-7005. The proposed changes would result in water rights 13-2198 and 13-7005 being moved from Administrative Basin 13 to Administrative Basin 29.

4. Water District 13T administers ground water rights in the Bancroft-Lund area and includes portions of Administrative Basins 13 and 29. The existing points of diversion and proposed point of diversion described in Application 4842 were both within the boundaries of Water District 13T.

5. The Department published notice of Application 4842 on June 6 and 13, 1996. A protest was filed by Neibaur Farm Enterprises. On March 31, 2000, Neibaur Farms Enterprises withdrew its protest without condition.

6. On April 24, 2000, a Department employee prepared a memo ("Review Memo") evaluating the changes proposed in Application 4842. The Review Memo set forth the estimated annual diversion amounts at the existing point of diversion for water rights 13-2198 and 13-7005: "The total volumes identified for 1996-1999 were 70.2 af, 47.4 af, 81.0 af and 98.7 af, respectively." The Review Memo also included the following statement: "The transfer approval was limited to a maximum annual volume of 108.6 af (98.7 af plus 10% to compensate for calculation margin of error) to avoid expansion of use through this transfer approval.

7. The Department approved Transfer 4842 on April 24, 2000. The transfer approval included the following condition: "Rights 13-02198 and 13-07005 when combined shall not exceed a total diversion rate of 3.82 cfs, a total annual maximum diversion volume of 108.6 af, and the irrigation of 355.0 acres."

8. The Review Memo did not accurately calculate the combined annual diversion volume for water rights 13-2198 and 13-7005. The combined volume limit should have been based on the amounts set forth in the 1992 decree, rather than amounts derived from estimated annual diversion records. Therefore, the combined annual volume limit should have been 1,065 af (355 acres x 3.0 af/acre). In addition, the transfer approval was incomplete because it did not include the decreed volume limits for water rights 13-2198 and 13-7005.

CONCLUSIONS OF LAW

Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe the individual annual volume limits or the combined annual diversion volume limit for water rights 13-2198 and 13-7005. The combined annual diversion volume limit should have been 1,065 acre-feet, which is derived from the 1992 decree for the Bancroft-Lund area. The Department has the authority to issue Amended Transfer Approval 4842, correcting the error described above.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 4842 is CORRECTED as set forth in Amended Transfer Approval 4842 issued in conjunction with this order.

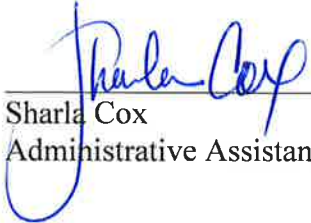
Dated this 6th day of December, 2018.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of December 2018, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL to the person(s) listed below:


Sharla Cox
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL (4842)

**T.J. BUDGE
RACINE OLSON ATTORNEYS
201 E CENTER ST
PO BOX 1391
POCATELLO, ID 83204**

**KEITH JORGENSEN
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DBA JORGENSEN BROTHERS
1928 OLD HWY 30
BANCROFT, ID 83217**

Warden District 13T

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.