

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 79388 IN THE NAME OF) **PRELIMINARY ORDER**
SUMMERCO MANAGEMENT INC.) **CORRECTING TRANSFER APPROVAL**

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:

FINDINGS OF FACT

1. On May 27, 2014, Summerco Management Inc. filed Application for Transfer No. 79388, proposing to change the point of diversion and place of use for a split portion of water rights 22-7136 and 22-10972 and combine the split portion with water rights 22-2191, 22-2258A, 22-2295, 22-7515, 22-10646, 22-10777 and 22-13955 to create a 1,605-acre combined place of use.
2. The amended partial decree for water right 22-10777, issued by the Snake River Basin Adjudication Court on January 21, 2010, described a priority date of June 1, 1962. Transfer Approval 79388, issued by the Department on August 19, 2014 incorrectly described the priority date for water right 22-10777 as June 3, 1962.
3. The place of use proposed in Application 79388 included the SW1/4 of Section 26, T06N, R40E, which was not owned by Summerco Management Inc. The SW1/4 of Section 26 was owned and continues to be owned by Frank Summers Inc. Ground water irrigation rights 22-2183, 22-7491 and 22-10483 in the name of Frank Summers Inc. are appurtenant to the SW1/4 of Section 26. The transfer application did not include any documents authorizing Summerco Management Inc. to transfer its water rights onto the property owned by Frank Summers Inc.
4. Department staff who worked with Summerco Management Inc. to formulate Application 79388 and who reviewed the application and prepared the transfer approval did not identify the property ownership issue in the SW1/4 of Section 26, T06N, R40E.
5. The Department did not have the authority to transfer water rights 22-2191, 22-2258A, 22-2295, 22-7136, 22-7515, 22-10646, 22-10777, 22-10972 and 22-13955 onto property owned by Frank Summers Inc. in the SW1/4 of Section 26, T06N, R40E and combine the Summerco Management Inc. water rights with the existing water rights on the property without the consent of Frank Summers Inc.

SUPPORT DATA
IN FILE # 22-2191

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 water rights 22-2191, 22-2258A, 22-2295, 22-7136, 22-7515, 22-10646, 22-10777, 22-10972 and 22-13955 in Transfer Approval 79388. The approved place of use should not have included the SW1/4 of Section 26, T06N, R40E and, therefore, should have been limited to 1,447 acres. Further, water right 22-10777 should have described a priority date of June 1, 1962.

The Department has the authority to issue Amended Transfer Approval 79388, correcting the errors described above.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 79388 is CORRECTED as set forth in Amended Transfer Approval 79388 issued in conjunction with this order.

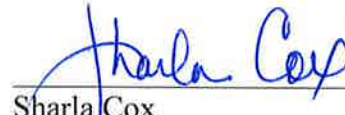
Dated this 29th day of May, 2018.

A handwritten signature in black ink, appearing to read 'J. Cefalo', written over a horizontal line.

James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of May 2017, 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 (79388)

**Summerco Management Inc.
27 N 3000 E
Sugar City, ID 83448**

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.