

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5743 IN THE NAME OF) PRELIMINARY ORDER
TIMOTHY R WILLIE) 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 23, 2000, Timothy R. Willie ("Willie") filed Application for Transfer No. 5743, seeking to change the point of diversion for a 108-acre portion of water right 15-2052. The application included the following statement: "I want to move to a well on my own property."

2. As part of the transfer process, Willie provided deeds confirming his ownership of the 108-acre portion of water right 15-2052. The Willie portion of the right was, and is still, identified as water right 15-2052C.

3. Transfer Application 5743 proposed changing the point of diversion for water right 15-2052C to a well located on Willie's property. According to the application, the proposed point of diversion was located in the NWNW of Section 36, T14S, R35E.

4. On June 1 and 8, 2000, the Department published notice of Transfer Application 5743 in The Idaho Enterprise (Oneida County). The notice stated that the proposed point of diversion was located in the NWNW of Section 36, T14S, R35E. No protests were filed against the application.

5. On August 18, 2000, the Department approved Transfer 5743. The approval stated that the new point of diversion was located in the NWNW of Section 35, T14S, R35E. There is no evidence in the Department's records for water right 15-2052C suggesting that the change from Section 36 to Section 35 was intentional. Identifying the new point of diversion in Section 35 instead of Section 36 appears to be a clerical error.

6. Department records do not show any irrigation wells located in the NWNW of Section 35, T14S, R35E. Willie does not own any property in Section 35, T14S, R35E. Willie does own property in Section 36, T14S, R35E, under the corporate entity "Hanging T Farms". There is a well on the Willie property in the NWNW of Section 36, T14S, R35E, which is also used to divert ground water under water right 15-7189.

7. The evidence available to the Department at this time strongly suggests that Transfer Approval 5743 included a clerical error in the point of diversion description. Instead of being located in Section 35, the new point of diversion for water right 15-2052C should have been located in the NWNW of Section 36, T14S, R35E. The Department should issue an order correcting the transfer approval.

CONCLUSIONS OF LAW

1. 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 right 15-2052C in Transfer Approval 5743. The new point of diversion should be located in the NWNW of Section 36, T14S, R35E.

2. The Department has the authority to issue an Amended Transfer Approval 5743, correcting the error in the water right point of diversion.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 5743 is CORRECTED as set forth in the Amended Transfer Approval 5743 issued in conjunction with this Order.

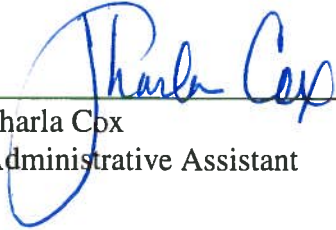
Dated this 15th day of March, 2016.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of March, 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 (5743)

**Timothy R. Willie
3585 West Highway 38
Malad, ID 83252**

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.