

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER	)	
NO. 69213 IN THE NAME OF	)	PRELIMINARY ORDER
<u>VAUGHN AND CLARA ANDERSON</u>	)	RESCINDING TRANSFER

This matter having come before the Idaho Department of Water Resources ("Department") as a result of a water right transfer, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On August 20, 2001, the Department approved Application for Transfer No. 69213 in the name of Vaughn and Clara Anderson. The transfer authorized the right holder to change the location of the ground water point of diversion for water right 35-8940 from the SENW, Section 3, T04N, R37E to the NESW, Section 34, T05N, R37E. A new ground water well was to be drilled and the existing ground water well was to be abandoned. The place of use for water right 35-8940 remained the same.

2. The transfer approval included the following conditions:

The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.

Failure of the right holder to comply with the conditions of this transfer is cause for the director to rescind approval of the transfer.

3. In October 2016, the Department conducted a field inspection of the proposed well site, attempting to obtain latitude/longitude coordinates for the new well and affix an identification tag to the well casing. The Department discovered that the proposed ground water well had never been drilled. The irrigated acres described under water right 35-8940 continue to be irrigated from the original ground water well, located in the SENW, Section 3, T04N, R37E.

4. The change proposed in Transfer Approval 69213 was never accomplished.

5. The current owners of record for water right 35-8940 are Merlin and Belinda Sharp.

CONCLUSIONS OF LAW

1. The Department is authorized to issue a preliminary order changing a prior approval.

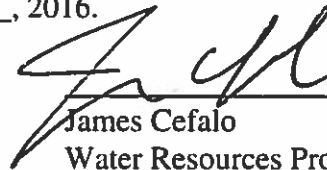
2. Transfer Approval 69213 included a condition requiring the new ground water well to be developed within one year of the approval (by August 2002). The evidence available to the Department indicates the point of diversion change proposed in Transfer Approval 69213 was never accomplished. The Department should rescind Transfer Approval 69213 for failure to comply with the conditions of approval. Water right 35-8940 should be returned to its pre-transfer elements and conditions, with the authorized point of diversion located in the SENW, Section 3, T04N, R37E.

ORDER

IT IS HEREBY ORDERED that Transfer No. 69213, approved on August 20, 2001, is **RESCINDED**. The point of diversion for water right 35-8940 shall revert to the location listed prior to Transfer 69213 (SENW, Section 3, T04N, R37E).

Water right 35-8940 has been updated as an associated water right through Transfer 81182, approved by the Department on the same day as this order. The changes described above are reflected in Transfer Approval 81182.

Dated this 29th day of November, 2016.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of November 2016, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER RESCINDING TRANSFER, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:

Merlin and Belinda Sharp
340 North 4400 East
Rigby, ID 83442


Sharla Cox
Administrative Assistant

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.