



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

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

October 14, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of Petition for Declaratory Ruling submitted by Michael G. Branchflower and Katherine L. Branchflower

Dear Interested Parties:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance 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.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. 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 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

C: IDWR - Region, Dick Larsen

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

IN THE MATTER OF PETITION FOR	)	
DECLARATORY RULING SUBMITTED BY	)	
MICHAEL G. BRANCHFLOWER AND	)	FINAL ORDER
KATHERINE L. BRANCHFLOWER	)	
_____	)	

This matter having come before the Idaho Department of Water Resources (department), as a result of the filing of a petition for a declaratory ruling, the department makes the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On February 18, 1997, Michael G. Branchflower and Katherine L. Branchflower (petitioner) filed a Petition for Declaratory Ruling in connection with certain transfer approvals and licenses granted by the department to the petitioner.

2. On May 22, 1996, the department issued license no. **36-08581** with Conditions of Approval no's. 5 and 9 as follows:

This right when combined with all other water rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre for the lands above.

Diversion and use of water under this right is subject to rules that may subsequently be promulgated for the use of existing rights used for supplemental purposes.

Water right no. 36-08581 was not established as a supplemental water right for use with surface water.

Condition no. 5 is general in nature relative to the maximum amount of water authorized for diversion and does not limit use of the right to use as a supplemental source of water.

3. On February 20, 1996, the department issued license no. **36-08560B** with Conditions of Approval no's. 7 and 8 as follows:

Diversion and use of water under this right is subject to rules that may subsequently be promulgated for the use of existing rights used for supplemental purposes.

This right when combined with all other water rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre for the lands above.

The original water right no. 36-08560 was not established as a supplemental water right for use with surface water.

Condition of Approval no. 8 is general in nature relative to the maximum amount of water authorized for diversion and does not limit use of the right to use as a supplemental source of water.

4. On February 20, 1996, the department issued license no. 36-08582 with Conditions of Approval no's. 7 and 8 as follows:

Diversion and use of water under this right is subject to rules that may subsequently be promulgated for the use of existing rights used for supplemental conditions.

This right when combined with all other water rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre for the lands above.

Water Right no. 36-08582 was not established as a supplemental water right for use with surface water.

Condition of Approval no. 8 is general in nature relative to the maximum amount of water authorized for diversion and does not limit use of the right to use as a supplemental source of water.

5. On January 31, 1996, the department issued transfer no. 4375 involving water right no. 36-02517C with Conditions of Approval no's. 6, 7, and 10 as follows:

The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under this right.

This right shall not be used if the surface water right(s) appurtenant to the place of use is sold, transferred, leased, or used on any other place of use.

Use of this right is combined with water from the North Side Canal Co. Ltd.

The original water right no. 36-02517 was established as a supplemental water right to supplement surface water from North Side Canal Company shares. Transfer no. 4375 did not change the use of water right no. 36-02517C from supplementing surface water.

6. On January 31, 1996, the department approved transfer no. 4404 involving water right no. 36-07460G with Conditions of Approval Nos. 6 and 7 as follows:

The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under this right.

This right shall not be used if the surface water right(s) appurtenant to the place of use is sold, transferred, leased, or used on any other place of use.

The original water right 36-07460 was not established as a supplemental water right for use with surface water.

7. Water right no. **36-07460E** is the remaining portion of right 36-07460D after transfer no. 4052 involving right no's. 36-07460F and 36-07460G was approved on June 20, 1995. Right no. 36-07460E contains the following remark:

Use of this right is combined with water from North Side Canal Co. Ltd.

This remark is based on the recommendation of this right in the Snake River Basin Adjudication.

8. On June 9, 1994, the department issued license no's. **36-08313A** and **36-08313B** with Condition of Approval no. 10 as follows:

The right holder shall fully use all surface water rights appurtenant to the lands identified above prior to using water under this right.

The original water right no. 36-08313 was not established as a supplemental water right for use with surface water.

9. On March 17, 1994, the department issued transfer no. 4053 involving water right no. **36-02517B** with Condition of Approval no. 2 as follows:

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre for the lands above.

The original water right no. 36-02517 was established as a supplemental water right to supplement surface water from North Side Canal Company shares. Transfer no. 4053 did not change the use of water right no. 36-02517B from supplementing surface water.

CONCLUSIONS OF LAW

1. IDAPA 37.01.01402 (Rule of Procedure 402) provides in pertinent part as follows:

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (Rule 402).

01. Final Agency Action. The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order.

2. The department should respond to the request for declaratory ruling as follows:
 - a. 36-07460E and 36-07460G - The department should rescind Condition of Approval no's. 6 and 7.
 - b. 36-08313A and 36-08313B - The department should rescind Condition of Approval no. 10.
 - c. 36-08560B and 36-08582 - The department should rescind Condition of Approval no. 7.
 - d. 36-08581 - The department should rescind Condition of Approval no. 9.
 - e. The department should not change the remarks or conditions of approval for right no's. 36-02517B and 36-02517C.

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. Condition of Approval no's. 6 and 7 for right no's. 36-07460E and 36-07460G are **RESCINDED**.
2. Condition of Approval no. 10 for right no's. 36-08313A and 36-08313B is **RESCINDED**.
3. Condition of Approval no. 7 for right no's. 36-08560B and 36-08582 is **RESCINDED**.
4. Condition of Approval no. 9 for right no. 36-08581 is **RESCINDED**.
5. The department will not change the remarks or Conditions of Approval for right no's. 36-02517B and 36-02517C.

DATED this 2nd day of October, 1997.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I do hereby certify that on this 14th day of October, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing FINAL ORDER to the following:

Mike and Kathy Branchflower
Box 392
Wendell, ID 83355

Kevin F. Trainor
STEPHAN KVANVIG STONE
& TRAINOR
102 Main Ave. South
P.O. Box 83
Twin Falls, ID 83303-0083

HAND DELIVERED

Scott King
Idaho Dept. of Water Resources
1301 N. Orchard St.
Boise, ID 83706


JULIE L. YARBROUGH
Senior Secretary