

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

IN THE MATTER OF APPLICATION FOR
TEMPORARY CHANGE (NO. TC-34-149)
OF WATER RIGHT NOS.: 34-170, 34-496a,
34-556, 34-692D, 34-2248, 34-14022, 34-
14024, 34-14026, & 34-14028

FINAL ORDER

FINDINGS OF FACT

On May 22, 2015, Mitchell Sorenson filed an application for temporary transfer with the Idaho Department of Water Resources ("IDWR"). IDWR assigned number TC-34-149 to the application for temporary transfer.

Sorenson's application no. TC-34-149 for temporary transfer (Big Lost River Basin) proposed adding a point of diversion for Sorenson's water rights that would authorize diversion of Big Lost River water from the Three-in-One or Blaine diversion instead of from the Moore Diversion, an upstream change in the point of diversion of approximately six river miles.

On May 27, 2015, IDWR's Eastern Regional Office approved the application for temporary transfer no. TC-34-149.

Sorenson's application no. TC-34-149 for temporary transfer raises the following unique, significant issues: (a) the distance between the old point of diversion and the proposed new point of diversion on a natural stream channel could dewater or reduce water in a significant reach of the Big Lost River, (b) water rights held by other water users authorize diversion of Big Lost River water from points of diversion located within the six mile distance between the old and new points of diversion, and (c) public interest values could be compromised by the temporary transfer. These issues require a full public airing of the application rather than the abbreviated process for a routine temporary transfer.

The Director conversed with Sorenson and told him that, prior to approval of a transfer moving a point of diversion as he had proposed, IDWR would publish notice of the proposed addition of a point of diversion and send direct notice to all holders of water rights with points of diversion within the six mile reach. The Director offered Sorenson a choice: (a) The Director would publish notice of the temporary transfer application, (b) Sorenson could file for a permanent transfer, and the Director would publish notice of the permanent transfer as required by Idaho Code § 42-222, or (c) the Director would revoke the approval of the temporary transfer.

Sorenson asked for some additional time to talk to other water right holders and consider his options. Sorenson was informed the Director would not immediately withdraw the approval of temporary transfer no. TC-34-149, but would allow Sorenson until June 12, 2015 to decide which transfer process he wants to pursue.

Sorenson did not inform the Director by June 12, 2015 whether he wanted to further pursue either a temporary transfer or a permanent transfer.

CONCLUSIONS OF LAW

Rule 760 of IDWR's Rules of Procedure (IDAPA 37.01.01.760) states:

760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (Rule 760).

. . . The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it.

The May 27, 2015 order was a preliminary order. Rule 730 of IDWR's Rules of Procedure (IDAPA 37.01.01.730) states:

730. PRELIMINARY ORDERS (Rule 730).

01. Preliminary Orders – Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head.

02. Contents of a Preliminary Order. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs:

a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officers superiors in the agency.

The preliminary order did not become final until June 10, 2015. The 28 day period for appealing the preliminary order to the district court expires July 8, 2015.

Application for temporary transfer no. TC-34-149 raised issues of fact and law as described in the findings of fact, the Department should withdraw its approval of temporary transfer no. TC-34-149.

Sorenson did not ask IDWR to publish notice of the application for temporary transfer.

Sorenson did not file a long-form application for transfer with IDWR.

The Director should withdraw the approval of temporary transfer no. TC-34-149.

The Director should deny temporary transfer no. TC-34-149.

ORDER

IT IS HEREBY ORDERED that the order approving Sorenson's application for temporary transfer no. TC-34-149 is **WITHDRAWN**.

IT IS FURTHER ORDERED that application for temporary transfer no. TC-34-149 is **DENIED**.

Dated this 30th day of June, 2015.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2015, a true and correct copy of the document(s) described below were served on the following by placing a copy of the same in the United States mail, postage prepaid, and by email properly addressed to the following:

Document(s) Served: FINAL ORDER and Explanatory Information to Accompany a Final Order

Mitchell D. Sorenson
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Deborah J. Gibson
Admin. Assistant for the Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, 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 as shown on the certificate of service. **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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

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 of: a) the service date of the final order, b) the service date 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.