

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 79006 IN THE NAME OF)
MARSHAL TODD AND NORMA PERKES)

**ORDER GRANTING PETITIONS
FOR RECONSIDERATION**

On December 13, 2013, Todd and Norma Perkes filed Application for Transfer 79006 with the Idaho Department of Water Resources ("Department"). The application was advertised to the public and was protested by Joel Andersen, Jason Andersen, Kirby Jensen, and Don Cain. Joel and Jason Andersen were represented by attorney Jim Speck of Speck & Aanestad. The Perkes were represented by attorney Rob Harris of Holden Kidwell Hahn & Crapo.

The parties were able to resolve the issues of protest informally and filed a Stipulation for Withdrawal of Protests with the Department on October 23, 2014. The Department issued Transfer Approval 79006 on December 10, 2014.

On December 23, 2014, Jim Speck filed a Petition for Reconsideration on behalf of Joel and Jason Andersen. On December 24, 2014, Kirby Jensen filed a Petition for Reconsideration. The petitioners requested revisions to the conditions listed on the water rights. The hearing officer granted the petitions and made changes to the water right conditions. An Amended Transfer Approval was issued by the Department on January 13, 2015.

On January 26, 2015, Kirby Jensen filed another petition for reconsideration. On January 27, 2015, Jim Speck filed another petition for reconsideration on behalf of Joel and Jason Anderson. The petitions asked the hearing officer to remove the following condition from water rights 34-7096A, 34-7097A, and 34-7223: "Water is delivered through the Timberdome Canal."

The petitioners argued that the condition in question does not accurately describe the water delivery occurring under the existing exchange agreements. In a previous filing, Rob Harris argued that such conditions should not be included on the water rights at all because there is a danger that courts may mandate that water be conveyed to a property in a specific pathway.

In light of the arguments raised in the petitions and the evidence in the administrative record for this transfer application, the condition relating to delivery of water through the Timberdome Canal should be removed.

ORDER

IT IS HEREBY ORDERED that the Petitions for Reconsideration filed by protestants Joel Andersen, Jason Andersen and Kirby Jensen are GRANTED. Transfer Approval 79006 shall be amended to remove the condition about the Timberdome Canal from water rights 34-7096A, 34-7097A, and 34-7223.

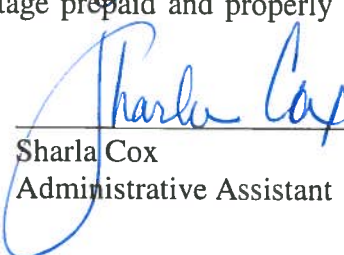
Dated this 28th day of January, 2015.

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

James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of January 2015, I mailed a true and correct copy of the foregoing ORDER GRANTING PETITION FOR RECONSIDERATION, with the United States Postal Service, postage prepaid and properly addressed to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: ORDER GRANTING PETITION FOR RECONSIDERATION

**Marshal Todd Perkes
Norma Perkes
2790 North 3325 West
Moore, ID 83255**

**Speck & Aanestad
James Speck
PO Box 987
Ketchum, ID 83340-0987**

**Holden Kidwell Hahn & Crapo PLLC
Rob Harris
PO Box 50130
Idaho Falls, ID 83405**

**Kirby Jensen
2781 North 3375 West
Moore, ID 83255**

**Joel Andersen
2791 North 3375 West
Moore, ID 83255**

**Don Cain
3230 North Highway 93
PO Box 927
Moore, ID 83255**

**Jason Andersen
2791 North 3375 West
Moore, ID 83255**

**Water District 34
PO Box 53
Mackay, ID 83251**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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.