

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 77610 IN THE)	ORDER DENYING PETITION
<u>NAME OF PARKINSON FARMS</u>)	FOR RECONSIDERATION

On May 17 and 18, 2012, the Idaho Department of Water Resources ("Department") conducted an administrative hearing for the contested case referenced above. A supplemental hearing was held on August 13, 2013. The hearing officer issued a *Second Preliminary Order Approving Application for Transfer* on January 7, 2014.

A petition for reconsideration was filed by protestant Kirby Jensen on January 21, 2014. Pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01), a petition for reconsideration must be filed within 14 days of the service date of a preliminary order. Therefore, Mr. Jensen's petition was filed in a timely manner. No other petitions for reconsideration were filed.

Mr. Jensen's petition restates some of the arguments made by Mr. Jensen and other protestants during the administrative hearing. Mr. Jensen's petition also identifies a number of exhibits within the record which Mr. Jensen argues were not given proper consideration by the hearing officer.

Prior to issuing a decision, the hearing officer carefully reviewed all of the exhibits accepted into the administrative record. In conjunction with Mr. Jensen's petition, the hearing officer again reviewed the passages and exhibits cited by Mr. Jensen and found nothing contained therein that would warrant a change to the *Second Preliminary Order Approving Application for Transfer*. Therefore, Mr. Jensen's petition for reconsideration should be denied.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration filed by protestant Kirby Jensen is DENIED.

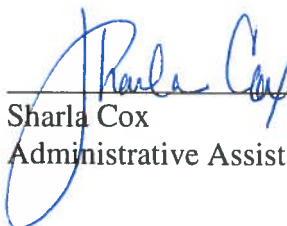
Dated this 24th day of January, 2014.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of January 2014, I mailed a true and correct copy, certified and postage prepaid, of the foregoing ORDER DENYING PETITION FOR RECONSIDERATION to the person(s) listed below:


Sharla Cox
Administrative Assistant

US MAIL

RE: Order Denying Petition for Reconsideration - Transfer 77610

**Parkinson Farms
2253 North 3100 West
Arco, ID 83213**

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

**James P. Speck
Speck & Aanestad
PO Box 987
Ketchum, ID 83340**

**Darrell L. McDonald
PO Box 246
Arco, ID 83213**

**Seth Beal
2827 North 3375 West
Moore, ID 83255**

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.