

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

IN THE MATTER OF TRANSFER NO. 73830	)	
IN THE NAME OF MONSON FAMILY TRUST	)	
	)	PRELIMINARY ORDER TO RESCIND TRANSFER

FINDINGS OF FACT

1. On April 29, 2008, the Department of Water Resources (Department) approved the above referenced Application for Transfer with a condition that:

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

2. Transfer approval incorporated a change of ownership splitting right 63-7941, resulting in Right No. 63-32787 for Monson Family Trust (Monson). The approval authorized a new point of diversion for Monson in Lot 2, Spring Creek Estates, instead of the original diversion in Lot 3 of that subdivision.

3. Monson subsequently requested more time to accomplish the change. On April 30, 2009, the Department approved an extension of time to accomplish the transfer by April 29, 2010.

4. On May 18, 2010, Monson again requested more time in this regard.

5. The Department approved that request on May 25, 2010, authorizing the transfer to be accomplished by April 29, 2013.

6. Unable to meet the current deadline, Monson petitioned the Department on April 25, 2013, to rescind the transfer. The right owner pleaded financial difficulty.

CONCLUSIONS OF LAW

1. The Department is authorized to issue a Preliminary Order changing a prior approval for cause.

2. Monson has shown sufficient cause for the transfer to be rescinded.

3. A change in water right ownership can be accomplished as a separate matter ripened within a transfer proceeding.

4. Monson is the owner of Right No. 63-32787.

5. The Department should issue a Preliminary Order rescinding the April 29, 2008, approval of Transfer No. 73830. Rescinding the transfer does not affect ownership of the water right.

6. Right No. 63-32787 should authorize diversion from the original point of diversion prior to transfer approval but not the new point of diversion approved in the transfer.

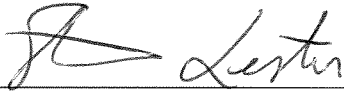
7. The Department should remove conditions of approval associated only with transfer approval for Right No. 63-32787, and the Department should add a condition of approval to that right identifying all rights diverted from the same point of diversion in Lot 3, Spring Creek Estates.

ORDER

IT IS HEREBY ORDERED that Transfer No. 73830 is **RESCINDED** and the authorized point of diversion under Water Right No. 63-32787 is a well located in Lot 3, Spring Creek Estates, SW ¼ SW ¼ Section 25, T5N, R1E, B.M.

IT IS ALSO ORDERED that conditions of approval germane to the transfer are removed from Water Right No. 63-32787. Furthermore, a condition of approval is added to the right stating that Water Right Nos. 63-32786 and 63-32787 are diverted from the same point of diversion.

DATED this 10th day of MAY 2013.

for 

JOHN WESTRA
Western Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of May 2013, I mailed a true and correct copy, postage prepaid, of this Preliminary Order to the parties listed:



Rachel Sommer
Administrative Assistant I

ATTN CLARK OR JEAN MONSON
MONSON FAMILY TRUST
8153 TRACK RD
NAMPA ID 83686

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-32787

WATER RIGHT NUMBER: 63-32787**PER RESCINDED TRANSFER 73830**

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MONSON FAMILY TRUST 8153 TRACK RD NAMPA, ID 83686 (208)250-1025
Trustee	CLARK I MONSON 8153 TRACK RD NAMPA, ID 83686 (208)250-1025
Trustee	JEAN D MONSON 8153 TRACK RD NAMPA, ID 83686 (208)250-1025

Priority Date: 02/26/1974

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 11/15	0.100 CFS	22.50 AF
	<u>Total Diversion:</u>	0.100 CFS	22.50 AF

Location of Point(s) of Diversion

GROUND WATER SW1/4SW1/4 Sec. 25, Twp 05N, Rge 01E, B.M. ADA County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE	NW	SW	SE	Totals
05N	01E	25	NE	NW	SW	SE	5.0
							5.0

Total Acres: 5

Conditions of Approval:

1. R69 This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
3. X61 The period of use for the irrigation described in this approval may be extended to a beginning date of 3/1 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 3/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 4/11/2007.

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4. X59 Point of diversion is located within Lot 3 and place of use is located within Lot 2, Spring Creek Estates.
5. F06 The following rights are diverted through point of diversion described above: 63-32786 and 63-32787.

Comments:

1. slester 5/10/2013 Transfer 73830 Rescinded

Comment: Transfer rescinded by Preliminary Order 5/10/2013. Does not affect split from that transfer but restores POD to original well shared with 63-32786 (splits from parent 63-7941). See Order for details.

Dates and Other Information:

Decreed Date: 4/11/2007

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.