

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 78019 IN THE NAME) PRELIMINARY ORDER
OF IDAHO WATER COMPANY LLC) CORRECTING TRANSFER APPROVAL

This matter having come before the Idaho Department of Water Resources (Department) as the result of a clerical error discovered in a transfer approval, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On June 6, 2012, Idaho Water Company LLC ("IWC") filed Application for Transfer No. 78019 seeking to change the point of diversion and place of use for water right 35-14282. This water right represents a 2.5-acre split portion of original right 35-7310A. Water right 35-7310A authorized the diversion of 2.03 cfs and the irrigation of 132 acres, which equates to approximately 0.15 cfs per acre. As part of the transfer approval, water right 35-14282 was renumbered to 25-14382 to reflect an administrative basin change.

2. Application for Transfer No. 78019 included a copy of an Agreement for Purchase and Sale of Water Right ("Agreement") between IWC and Jefferson County. The Agreement stated that IWC would sell Jefferson County a 2.5-acre portion of water right 35-14162 (a split portion of 35-7310A) in exchange for the payment of a certain purchase price. Actual conveyance of the water right would not occur until after the transfer was approved by the Department.

3. Prior to approving Transfer No. 78019, the Department split a 2.5-acre portion from 35-14162 and assigned it water right number 35-14282. The transfer application stated that the 2.5-acre portion of the water right would be used within a 68.2-acre permissible place of use, located around Jefferson County Lake.

4. The Department issued Transfer Approval 78019 on August 29, 2012. The transfer approval included the following Condition #1 on water right 25-14382: "This right is limited to the irrigation of 4.0 acres within the authorized place of use in a single irrigation season." This condition is a clerical error. The correct number of acres for 25-14382, given the 0.15 cfs per acre ratio described above, is 2.5 acres.

5. After the 14-day petition for reconsideration window had passed, a representative from IWC notified the Department of the error and asked the Department to correct the error through an administrative order. The Department should correct Transfer Approval 78019 to eliminate any ambiguity relating to the number of acres authorized under water right 25-14382.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe water right 25-14382 in Transfer Approval 78019.
2. The Department should issue an Amended Transfer Approval 78019 correcting the clerical error in the water right conditions.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 78019 is CORRECTED as set forth in the Amended Transfer Approval 78019 issued in conjunction with this Order.

Dated this 27th day of September, 2012.

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 27th day of September 2011, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL, to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL (78019)

**Idaho Water Co.
1135 Valley Road S.
Eden, ID 83325**

**Jason Helms
6755 North Albert Lane
Idaho Falls, ID 83401**

**Jefferson County
c/o Emily Kramer
210 Courthouse Way, Suite 130
Rigby, ID 83442**

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.