

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO. 69638 IN THE	)	PRELIMINARY ORDER
<u>NAME OF LA VAR NEWMAN</u>	)	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. In 2002, La Var Newman filed Application for Transfer No. 69638 seeking to change the point of diversion and place of use for a split portion of water right 32-10358. Mr. Newman's split portion of the right (assigned water right no. 32-13211) authorized the diversion of 8.23 cfs and the irrigation of 368.6 acres.
2. Application for Transfer No. 69638 was approved by the Department on October 24, 2003. Transfer Approval 69638 included a description of water right 32-13211. It also included a description of water right 32-7116, which partially overlaps the place of use for right 32-13211. At the time of the transfer approval, Mr. Newman also diverted water under Permit 32-7253, which also partially overlaps the place of use for right 32-13211.
3. The Department recently conducted a licensing review for Permit 32-7253. During that review, the Department discovered an error in Transfer Approval 69638, specifically in the place of use description for right 32-13211. The acres listed in the SESE and the SWSE of Section 31, T12N, R29E had been inadvertently transposed.
4. Application for Transfer No. 69683 correctly identified the proposed place of use for right 32-13211. The application identified 36 irrigated acres in the SESE of Section 31, T12N, R29E, and 11 irrigated acres in the SWSE of Section 31.
5. The place of use description for right 32-7116 in Transfer Approval 69638 matched the application's place of use description for the acres in Section 31. The map included with the transfer application agreed with the application's place of use description. The ArcGIS shapefile created by the department for Transfer Approval 69638 also agrees with the application's place of use description.
6. In Transfer Approval 69638 the irrigated acres listed in water right 31-13211 for the SWSE and SESE of Section 31 were transposed. 36 acres were listed in the SWSE of Section 31

and 11 acres were listed in the SESE of Section 31. Evidence suggests this transposition of numbers is simply a clerical, data-entry error.

7. The current water right holder should not be required to file a new transfer to correct the Department's clerical error. The Department should correct the error and Transfer Approval 69638 through this order.

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 32-13211 in Transfer Approval 69638.

2. The Department should issue an Amended Transfer Approval 69638 correcting the clerical error in the place of use description for right 32-13211. 36 irrigated acres should be listed in the SESE of Section 31, T12N, R29E. 11 irrigated acres should be listed in the SWSE of Section 31, T12N, R29E.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 69638 is CORRECTED as set forth in the Amended Transfer Approval 69638 issued in conjunction with this Order.

Dated this 24th day of August, 2012.



James Cefalo

Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of August 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 (69683)

**La Var Newman
2943 North 800 East
Monteview, ID 83435**

**Howard Taylor & Sons
PO Box 51780
Idaho Falls, ID 83403**

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.