

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	
TRANSFER NO. 74916 IN THE NAME OF)	PRELIMINARY ORDER VOIDING
THE RETREAT AT BLACK BEAR, LLC)	APPLICATION FOR TRANSFER
_____)	

This matter having come before the Idaho Department of Water Resources ("Department") as a result of an application to transfer water rights, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On July 3, 2008, The Retreat at Bear Lake, LLC d/b/a Black Bear Resort ("The Retreat") filed an Application for Transfer, No. 74916, with the Department seeking to re-arrange the place of use for water rights 11-7597 and 11-7601. Water right 11-7597 is a split portion of old right 11-924. In May 2008, the Department reviewed old right 11-924 and various conveyance documents associated with the right and split the right into two portions: 11-7596 (Transtrum) and 11-7597 (The Retreat). The Retreat disagreed with the Department's split of the water right. Transfer 74916 also sought to revise the ownership split of old right 11-924 to grant The Retreat a greater amount of irrigated acres.

2. Transfer 74916 was advertised to the public in October 2008 and was protested by Gary Payne and UR Ranches, represented by David Ure. Both of the protests were withdrawn in September 2010.

3. Even though the two protests were resolved, the Department has been unable to process Transfer 74916 until the issues related to the ownership split of right 11-924 were resolved. A meeting was held in February 2011, seeking to address ownership splits for all water rights on the Nuffer Ditch, including right 11-924. The water users on the Nuffer Ditch have agreed to continue negotiations to determine the proper ownership splits of the relevant water rights.

4. In September 2011, the Department was notified that water rights 11-7597 and 11-7601 were no longer owned by The Retreat. The new owner, Deseret First Credit Union ("Deseret First"), provided a Water Deed, dated February 18, 2011, in which The Retreat conveyed all of its interest in water rights 11-7597 and 11-7601 to Deseret First.

CONCLUSIONS OF LAW

1. The Retreat does not have a legal interest in water rights 11-7597 or 11-7601. Therefore, The Retreat no longer has the authority to change any of the elements of water rights 11-7597 or 11-7601. There is no evidence that Transfer 74016 was assigned to Deseret First in conjunction with the water rights conveyance.

2. The Department should void Transfer Application No. 74916.

ORDER

IT IS HEREBY ORDERED that Transfer Application No. 74916 in the name of The Retreat at Black Bear, LLC is VOIDED.

Dated this 21st day of October, 2011.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF SERVICE

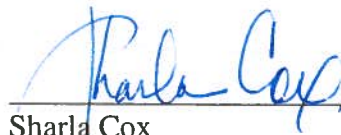
I hereby certify that on the 21st day of October, 2011, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed below:

Gary Payne
2940 W Wapoot St
Meridian Id 83646

UR Ranches LLC
661 S Lambert Ln
Kamas UT 84036

Deseret First Credit Union
PO Box 45046
Salt Lake City UT 84145

The Retreat at Bear Lake, LLC
346 E 3300 South
Salt Lake City UT 84115


Sharla Cox
Administrative Assistant

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

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 within fourteen (14) days after service 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 issuance 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.