

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

IN THE MATTER OF APPLICATION	)	
FOR EXCHANGE OF WATER IN THE	)	PRELIMINARY ORDER
NAME OF WILDERNESS RANCH	)	AUTHORIZING EXCHANGE
OWNERS ASSOCIATION INC AND	)	
THE U.S. BUREAU OF RECLAMATION	)	
	)	

WHEREAS, Idaho Code § 42-240 provides that the Director of the Idaho Department of Water Resources ("Director" or "Department") is authorized to allow exchanges of surface water authorized under a water right with the same or a different source or with water authorized to be diverted under one or more other rights from the same source or another surface water source when the Director determines that such changes can be accomplished in accordance with the provisions of Idaho Code § 42-240; and,

WHEREAS, on July 1, 2010, the Wilderness Ranch Owners Association, Inc. and the U.S. Bureau of Reclamation ("Applicants") requested that the Director approve the attached Application for Exchange of Water and Exchange Agreement ("Application"). The water rights that are the subject of this exchange are the U.S. Bureau of Reclamation right 63-3618 and the Wilderness Ranch Owners Association, Inc. rights 63-4629A, 63-10318 and 63-31336.

WHEREAS, the Director has reviewed the Application and has determined the Application can be approved with certain conditions.

ORDER

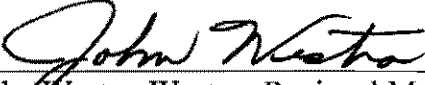
IT IS HEREBY ORDERED that the Application is APPROVED subject to the following Conditions:

1. The agreement to exchange water under the contract rights held by the Applicants as described in the Application is authorized at the location described in the Application.
2. Diversion and use of water under the exchange is only authorized:
 - a. When the Wilderness Ranch Owners Association, Inc. has water accrued and available in its Lucky Peak storage account up to its contract volume of 200 afa;

PRELIMINARY ORDER AUTHORIZING EXCHANGE

- b. When water is not available in priority to fill water right nos. 63-4629A, 63-10318 and 63-31336 and the Wilderness Ranch Owners Association, Inc. is diverting the water rights out of priority.
3. This exchange mitigates for diversion under Rights 63-4629A, 63-10318 and 63-31336 when they are not in priority. Rights 63-4629A and 63-10318 include authorized points of diversion with a direct and immediate hydraulic connection to Mores Creek.
 4. Diversion and use of water under the exchange is limited to the extent that storage water is available in the Wilderness Ranch Owners Association, Inc. storage account up to 200 afa .
 5. The exchange is effective from the date of approval through an indefinite period unless terminated by the right holders or rescinded for cause by the Director.
 6. The diversion and use of water described in the exchange may be subject to additional limitations agreed to by the right holders under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
 7. Right 63-10318 and the water use described in Right 63-4629A when combined shall not exceed a total diversion rate of 0.45 cfs and a total annual maximum diversion volume of 315.2 af.
 8. The watermaster of State Water District No. 63 is authorized to administer the exchange as approved. The watermaster shall regulate and keep a record of the amount of water diverted and accumulated as described in the application under the exchange of the contract right held or controlled by the Applicants.
 9. Prior to diversion of water for Wilderness Ranch Owners Association rights 63-4629A, 63-10318 and 63-31336 under this exchange, the right holder shall install and maintain a measuring device and lockable controlling works of a time approved by the Department in a manner that will provide the watermaster suitable control of the diversions.
 10. Failure of the right holder to comply with the conditions of this exchange is cause for the Director to rescind approval of the exchange.

Dated this 7th day of June, 2011


John Westra, Western Regional Manager
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2011, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:


JEAN HERSHEY
Office Specialist II

**BUREAU OF RECLAMATION
PN-3100
1150 N CURTIS RD STE 100
BOISE ID 83706**

**WILDERNESS RANCH OWNERS ASSOCIATION INC
46 WILDERNESS RANCH RD
BOISE ID 83716**

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.