

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER	)	
NO. 72881 IN THE NAME OF	)	PRELIMINARY ORDER CORRECTING
THE CITY OF AMMON	)	TRANSFER APPROVAL
_____	)	

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

FINDINGS OF FACT

1. Transfer No. 72881 was filed in 2006 and sought to add two new points of diversion to eight of the City of Ammon's water rights. It also sought to cross list all ten points of diversion maintained by the City of Ammon on all of the eight water rights.
2. One of the water rights included in the transfer, 25-13964, was licensed in 2007 and carries a priority date of March 8, 2001. The license identified two points of diversion for the right: one in Section 27 of Township 02 North, Range 38 East, and one in Section 30 of Township 02 North, **Range 39 East**. A field exam was conducted by the Department in May 2006, prior to issuing the license. The examiner determined that the second point of diversion was located in Section 30 of Township 02 North, **Range 39 East**. The transfer application also listed the point of diversion in Section 30 of Township 02 North, **Range 39 East**.
3. Transfer No. 72881 was protested. The Department issued an order in the contested case on April 23, 2008. The order acknowledged that the point of diversion in question is located in **Range 39 East**. The location of the ground water well in Range 39 East had no bearing on the outcome of the April 2008 order and therefore does not limit the Department's ability to issue this preliminary order correcting the point of diversion designation.
4. On July 18, 2008 the Department approved Transfer 72881. All of the water rights included in the transfer listed the point of diversion in question in Section 30 of Township 02 North, **Range 38 East**. The listing was clearly an error as there is no evidence in the transfer file that the City of Ammon intended to move the specific point of diversion to Range 38 East.

CONCLUSIONS OF LAW

1. The point of diversion (ground water well) in question is located in Section 30 of Township 02 North, **Range 39 East**. Transfer approval 72881 contained a clerical error, listing the point of diversion in Range 38 East.

2. Transfer Approval 72881 should accurately describe each established water right as changed by the transfer pursuant to Section 42-222, *Idaho Code*.
3. The Department should correct the transfer approval to list the point of diversion in question in Range 39 East.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 72881 is **CORRECTED** to describe one of the points of diversion listed on all of the water rights included in the transfer in the NESENW, Sec. 30, Township 02 North, Range 39 South.

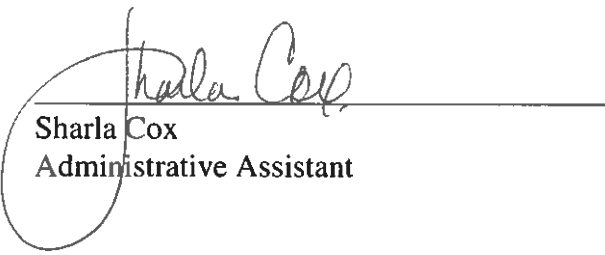
IT IS FURTHER ORDERED that the Transfer Approval 72881 dated July 18, 2008 is **SUPERSEDED** by the amended transfer approval issued in conjunction with this order.

Dated this 13th day of January, 2011.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of January, 2011, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL** to the person(s) listed below:


Sharla Cox
Administrative Assistant

US MAIL

RE: TRANSFER APPROVAL 72881

City of Ammon
2135 South Ammon Road
Ammon, ID 83406

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.