

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO. 72553 IN THE	)	
NAME OF LEIGH CREEK CANAL CO.	)	PRELIMINARY ORDER REJECTING
	)	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 November 21, 2005, Leigh Creek Canal Company filed an Application for Transfer, No. 72553, with the Department seeking to change a portion of water right 22-608 from irrigation to recreation and aesthetic storage for a small pond within the water right place of use. The application identifies 0.50 cfs of water right 22-608 as the source of water for filling the pond. Aerial photography from 2004 shows that the pond was already in existence at the time of the application.

2. A transfer filed to provide water for a recreation/aesthetic pond must identify a source of water for the initial fill of the pond and must account for and offset any seepage and evaporation losses associated with the pond. Although the transfer application describes a specific portion of water right 22-608 and a number of acres to be dried up to offset the initial and annual fill of the pond, the application does not specifically address evaporation or seepage losses.

3. A water right on South Leigh Creek with a 1916 priority date is only delivered for a short time period during the snowmelt runoff. In order to qualify as an offset for the annual fill of the pond and losses, the acres dried up should have a reliable supply of water. No other, more-reliable water rights were identified in the transfer application.

4. A water right for a recreation/aesthetic pond should list diversion to storage and recreation/aesthetic storage as water uses. The transfer application does not clearly set forth both of these water uses.

5. On February 5, 2010, the Department sent a letter to the applicant notifying them that the transfer application would need to be amended to bring it into a form that could be approved. The Department offered to assist the applicant in making the needed changes. The Department has received no response to that letter.

CONCLUSIONS OF LAW

1. Idaho Code Section 42-222 gives the Department the authority to accept transfers that are complete and accurate. Transfer application 72553 is not drafted correctly and does not adequately address evaporation and seepage losses. Although the Department offered to assist the applicant in amending the application to bring it into a form that could be approved, the applicant has not responded to the Department's letter and has not amended the application.
2. The Department should reject Transfer Application 72533.

ORDER

IT IS HEREBY ORDERED that Transfer Application 72553 in the name of Leigh Creek Canal Company is REJECTED.

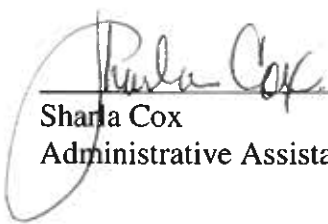
Dated this 15th day of December, 2010.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of December 2010, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER REJECTING APPLICATION FOR TRANSFER to the person(s) listed below:

LEIGH CREEK CANAL COMPANY
446 NORTH HIGHWAY 33
TETONIA, ID 83452


Sharla Cox
Administrative Assistant

US MAIL

RE: APPLICATION FOR TRANSFER NO. 72553

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.