



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

December 7, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

DANA L HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Disposition of Petition for Reconsideration & Amended Preliminary Order

RE: Petition for Reconsideration of Preliminary Order Rescinding Approval of Transfer 71619
Water Right Nos.: 63-3182, 63-3583, 63-7177, 63-7533, 63-31839, 63-31840, 63-31841,
63-31842, 63-31854 and 63-31855

Dear Dana:

The Department of Water Resources (IDWR) received your timely petition for reconsideration of the preliminary order rescinding approval of Transfer 71619 in the name of Basin and Range Resource Co LLC. In your petition, you identify several typographical corrections that should be addressed. After review of the items in your petition, IDWR agrees that some corrections should be made for clarification.

Item No. 2 of your petition states the number of acres of irrigation use that were changed to commercial and stockwater use identified in the preliminary order should be 284 instead of 276 based on the licensed total acres of 1274 per Right 63-7903 later split into Rights 63-31839 and 31840. The transfer was processed in 2005 based on Snake River Basin Adjudication (SRBA) recommendations of the transferred rights. A total of 1266 irrigated acres were recognized under the subject SRBA recommendations as described in the transfer application. Rights associated with 276 irrigated acres were subject to the change in nature of use; $1266 - 276 = 990$ remaining irrigated acres. The transferred rights are subject to final SRBA recommendations of the irrigation use.

IDWR grants your petition for reconsideration and issues the enclosed Amended Preliminary Order as a result of this review. The accompanying order 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 unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions, please call me at 208-287-4951, or email me at pam.skaggs@idwr.idaho.gov.

Sincerely,

Pamela S. Skaggs
Water Rights Supervisor

Enclosure

Cc: BASIN AND RANGE RESOURCE COMPANY LLC
3480 G S RICHARDS BLVD #101
CARSON CITY, NV 89703

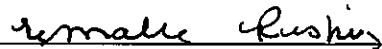
CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2010, I mailed a true and correct copy, certified postage prepaid, of the foregoing AMENDED ORDER RESCINDING PRELIMINARY ORDER to the person listed below:

RE: Amended Order Rescinding Preliminary Order
Transfer No. 71619

**DANA L HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702**

**BASIN AND RANGE RESOURCE COMPANY LLC
3480 G S RICHARDS BLVD #101
CARSON CITY NV 89703**



**Emalee Rushing
Office Services Supervisor**

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.