

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.)
75533 IN THE NAME OF JENTZSH KEARL)
FARMS)
_____)

**PRELIMINARY ORDER
CORRECTING APPROVAL**

This matter having come before the Department of Water Resources (Department) as a result of a request to correct a transfer approval, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On August 26, 2010, the Department approved Application for Transfer No. 75533 (transfer) changing the point of diversion and place of use for a portion of water right 36-2121.
2. The condition of approval #3 for right 36-16826 on page 17 of the approval references right 36-16826 incorrectly as 36-18626 due to a clerical error.

CONCLUSIONS OF LAW

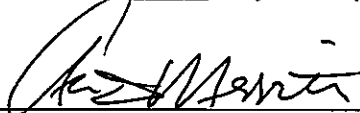
1. The transfer approval should accurately describe the established water right as changed by the transfer pursuant to Section 42-222, *Idaho Code*.
2. The Department should correct condition #3 for right 36-16826 changing "36-18626" to "36-16826".

ORDER

IT IS HEREBY ORDERED that the condition of approval for right 36-16826 is **CORRECTED** as follows:

Rights 36-16826, 36-2122A, 36-2122B, 36-2123, 36-2124, 36-2190A and 36-7193 when combined shall not exceed a total diversion rate of 17.3 cfs, a total annual maximum diversion volume of 4628 af at the field headgate, and the irrigation of 1157 acres.

Dated this 13th day of September, 2010.



ALLEN MERRITT
Southern Region Manager

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2010 I mailed a true and correct copy, postage prepaid, of the foregoing Preliminary Order Correcting Transfer Approval to the persons listed below:

RE: Transfer No. 75533, Water Right Nos. 36-2121, 36-2122A, 36-2122B, 36-2123, 36-2124, 36-2190A & 36-7193

JENTZSCH KEARL FARMS
20511 F ST
RUPERT ID 83350

RODNEY A JENTZSCH &
SHIRLEY S JENTZSCH
20106 5TH ST
RUPERT ID 83350

ZACH LATHAM
BROCKWAY ENGINEERING
2016 NORTH WASHINGTON ST-STE 4
TWIN FALLS ID 83301



Mary Baldwin
Administrative Assistant

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.