

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

**IN THE MATTER OF APPLICATION FOR) PRELIMINARY ORDER GRANTING
TRANSFER NO. 74776 IN THE NAME OF) PETITION FOR RECONSIDERATION,
DALE &/OR JACKIE VAN ES) RESCINDING TRANSFER APPROVAL,
_____) AND REJECTING APPLICATION**

FINDINGS OF FACT

1. On April 29, 2008, Dale &/or Jackie Van Es (Applicant) filed Application for Transfer No. 74776 with the Idaho Department of Water Resources (IDWR) seeking to change the place of use for water right Nos. 57-2254, 02-10238, 02/10239, 02-10240, 02-10241, 02-10242, and 02-10243. .
2. Public notice of the transfer application was made in the Owyhee Avalanche on January 4 & 11, 2004. The application was not contested.
3. On February 4, 2010, IDWR issued a preliminary order approving the transfer application.
4. On February 10, 2010, IDWR received a Petition for Reconsideration from Lavada Loucks questioning the authority/ownership of Van Es to file the transfer application. The transfer of water rights is contingent on the Contract of Sale (Loucks & VanEs-May 30, 2001) upon final payment being made by VanEs.
5. On February 18, 2010, IDWR sent the Applicant a letter requesting authority to file/ownership documents for the lands and water rights described in the transfer application. The letter also served as notice IDWR was acting on the Petition for Reconsideration. A May 1, 2010 deadline was set for submitting the information, ref. Idaho Code (IC) 67-5243.
6. On May 14, 2010, Lori Graves of SPF Water Engineering submitted a written letter response with information. Complete copies of the Loucks/VanEs *Contract of Sale*, *Contract of Sale Credit Sale With Escrow Holder*, a *transfer authorization* from DL Evans Bank, and an email from Wells Fargo Bank requesting a 30 day extension of time for parties to agree/document the Bank's protection in the event of a foreclosure. An amended application for transfer part 1 form was also enclosed listing both Loucks and VanEs as applicants with their signatures.
7. The Loucks/VanEs *Contract of Sale* under water rights (pages 5-6) clearly states that parent water rights #02-07461, 02-07155, & 02-07186 (now 02-10238, 02-10239, 02-10240, 02-10241, 02-10242, & 02-10243) will be transferred by the Seller (Loucks) to the Buyer (Van Es) upon final payment of the contract balance and interest.

SUPPORT DATA

IN FILE # 2-10238

SCANNED

MAY 17 2010

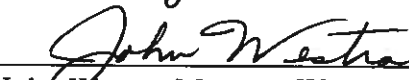
CONCLUSIONS OF LAW

1. The Applicant must provide information and documentation that clearly shows the authority to file the transfer or current ownership under IC§ 42-222 & 42-248.
2. The Loucks/VanEs *Contract of Sale* clearly states that water rights will be transferred upon full execution/payment of the contract. The final contract payment and interest have not been received; therefore, actions by VanEs to transfer the water rights are **not** in compliance with the contract.
3. Wells Fargo Bank has not provided the necessary authorization for VanEs to file transfer No. 74776, but has requested additional time to confirm the Bank's interest with parties.
4. Although there has been an attempt, the Applicant has failed to provide IDWR clear documentation that shows the Applicant's authority to file the transfer application by the May 1, 2010 deadline.
5. The Petition for Reconsideration submitted by Lavada Loucks should be granted. The transfer approval should be ordered rescinded and the transfer application rejected.

ORDER

IT IS HEREBY ORDERED the Petition for Reconsideration submitted by Lavada Loucks is GRANTED. Approval of Transfer No. 74776 is RESCINDED and Application for Transfer No. 74776 is REJECTED.

Dated this 17th day of May, 2010


John Westra, Manager Western Regional Office

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2010 I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:



Denise Buffington, Admin. Assistant

Documents: Trans. No. 74776-Preliminary Grant-Rescind-Rejection Order, Order Explanatory

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