

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPROVED)
TRANSFER NO'S. 74013 IN THE)
NAME OF JOHN LEZAMIZ)
FAMILY LTD PARTNERSHIP)

PRELIMINARY ORDER

FINDINGS OF FACT

1. On April 16, 2008, the Department of Water Resources ("Department") approved Application for Transfer No. 74013 (transfer) submitted in the name of John Lezamiz Family LTD Partnership ("water right holder"). Transfer No. 74013 changed the place of use and added a point of diversion of 147 acres of irrigation use authorized under Water Right No's. 34-231, 34-230, 34-652, 34-361B and 34-797C in Custer County.
2. On March 11, 2009, the right holder through his attorney Haemmerle & Haemmerle PLLC, asked the Department to rescind the transfer approval allowing the rights to revert back to irrigation use authorized before the transfers were approved.
3. The water right holder does not intend to accomplish the approved changes.

CONCLUSIONS OF LAW

1. The Department is authorized to issue Preliminary Orders changing a prior approval.
2. The right holder having shown sufficient cause, the Department should issue a Preliminary Order rescinding the January 20, 2009 transfer approval.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Transfer No. 74013 approved on January 20, 2009, is **RESCINDED** and that the rights shall revert to irrigation use as licensed.

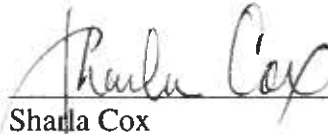
Dated this 31 day of December, 2009.



ERNEST CARLSEN
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of January 2010, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: TRANSFER NO. 74013

**JOHN LEZAMIZ FAMILY LTD PARTNERSHIP
PO BOX 389
TWIN FALLS ID 83303-0389**

**WATER DISTRICT 34
PO BXO 53
MACKAY ID 83251**

**L VERNON WOODBURY
VERNETTA WOODBURY
4021 W HOUSTON RD
MACKAY ID 83251**

**BROCKWAY ENGINEERING INC
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301**

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (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 service as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service.

Note: the petition must be received by the Department within this fourteen (14) day period. The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 issuance 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.