

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO 73341 IN THE	)	PRELIMINARY ORDER
NAME OF SUNDANCE INVESTMENT	)	DISMISSING PROTEST
LTD PARTNERSHIP	)	
_____	)	

FINDING OF FACT

On May 26, 2004, Sundance Investment LTD Partnership filed with the Idaho Department of Water Resources (IDWR) an application for transfer No 73341. The application proposed changing the point of diversion and place of use for license # 63-31194. On November 18, 2004, the application was amended to reflect description changes.

The application for transfer notice was published twice in the Idaho Statesman Newspaper on April 5 & 12, 2007. Protests together with the \$25.00 protest fee were to be submitted to IDWR on or before the deadline of April 23, 2007.

On April 10, 2007, the IDWR State Office received a protest against the transfer application from Attorney, John Gould on behalf of client Darwin McKay.

On April 24, 2007, the Western Regional Office examined the protest. Although the protest was submitted in a timely manner before the April 23, 2007 deadline, the \$25.00 protest fee was not attached. John Gould, Mr. McKay's Attorney was contacted. Mr. Gould's office confirmed, the \$25.00 protest fee had not been submitted. Mr. Gould's office hand delivered the \$25.00 protest fee to the IDWR Western Regional Office at 4:00 PM, April 24, 2007, receipt # IDW035314.

CONCLUSIONS

Idaho Code §42-222 (1) in part states: ***Change in point of diversion, place of use, period of use, or nature of use of water under established rights-.....*** Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section 42-203A Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221 Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and conduct a hearing thereon.....

The protest together with the \$25.00 protest fee was not submitted to IDWR on April 10, 2007. Public notice of the application stated: *Any protest against the proposed change must be filed with IDWR together with a protest fee of \$25.00 for each application on or before April 23, 2007.* The protest fee of \$25.00 was submitted late April 24, 2007-- past the April 23, 2007 deadline.

The protest together with fees did not meet the protest date deadline criteria set forth under IC §42-222 (1).

ORDER

In the matter of Application for Transfer #73341, **IT IS HEREBY ORDERED** the protest submitted by Darwin McKay is **DISMISSED**.

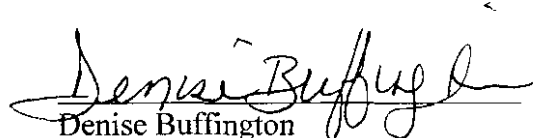
Dated this 27th day of April 2007.



JOHN WESTRA, Manager Western Region

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2007, I mailed a true and correct copy, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:


Denise Buffington
Administrative Assistant

Darwin Mc Kay
c/o Ringert Clark Chtd
Attn: Jon Gould
PO Box 2773
Boise ID 83701



State of Idaho

DEPARTMENT OF WATER RESOURCES

2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

WESTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

April 27, 2007

DARWIN MC KAY
C/O RINGERT CLARK CHTD
ATTN: JON GOULD
PO BOX 2773
BOISE ID 83701

RE: Preliminary Order in the matter of Application for Transfer # 73341

To Whom It May Concern:

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 regarding this matter, please call me at 208-334-2190.

Sincerely,

for:

John Westra, Manager
Western Regional Office

Enclosures

JW:db

cc: Sundance Investment Ltd Partnership

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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. 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 Idaho Water Resource Board (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 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.

RINGERT CLARK CHARTERED / LAWYERS ACCOUNT

10829

		CHECK		
DATE	DESCRIPTION	INVOICE #	AMOUNT	DEDUCTION
04/24/07	#10324		25.00	
				25.00

RECEIVED

APR 24 2007

WATER RESOURCES
WESTERN REGION

04/24/07	CONTROL NUMBER	10829	TOTALS ▶	Gross:	25.00	Ded:	0.00	Net:	25.00
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RINGERT CLARK CHARTERED

LAWYERS ACCOUNT
PO BOX 2773
BOISE, ID 83701
(208) 342 4591

FARMERS & MERCHANTS
A BANK OF THE CASCADES COMPANY
GARDEN CITY OFFICE
BOISE, ID 83714
96-602-1232

10829

DATE	CHECK	AMOUNT
04/24/07	10829 *****	\$25.00

*** TWENTY-FIVE & 00/100 DOLLARS

PAY
TO THE
ORDER OF: IDWR

Lance Bunn

⑈010829⑈ ⑆123206024⑆ 520096500⑈

CONVERSATION MEMORANDUM

To: File X-fer 73341
From: Denise Buffington
Date: April 24, 2007
Subj: Protest Information

The above referenced transfer file was recently advertised, and is currently being processed. During a review of the file, it is indicated that there was one (1) protest filed on April 10, 2007 by Ringert Clark, on behalf of Darwin Mc Kay. However, in looking at the protest information, it appears that the \$25 filing fee was not received with the protest. After checking the database, there was no receipt found for this filing fee.

I contacted Jon Gould at Ringert Clark and he will do some checking to verify whether or not the fee was submitted on April 10th with the protest.

Kimmie at Ringert Clark (secretary for Jon Gould), called to let me know that they had forgotten to include the filing fee with the protest filed on April 10th. She indicated that they could hand-deliver it today, if that would be acceptable.