

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.	)	
74650 IN THE NAME OF VAL E	)	ORDER GRANTING PETITION
SCHWENDIMAN FARMS INC	)	FOR RECONSIDERATION
_____	)	

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider a preliminary order amending approval of a transfer, the Department findings, concludes, and orders:

FINDINGS OF FACT

1. On October 13, 2009, the Department issued a preliminary order amending approval of transfer no. 74650 ("transfer") in the name of Val E Schwendiman Farms Inc.
2. In the amended approval of the transfer, the same land list is identified for the place of use of associated water right nos. 22-7287 and 22-12656 containing 495.3 acres while the total for the irrigated acres was shown as 644.5 acres.
3. The amended approval of the transfer was issued as preliminary order ("order") of the Department pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
4. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

5. On October 26, 2009, the Department received a petition for reconsideration ("petition") of the amended approval of the transfer. The petition seeks an explanation of why the land list for the place of use of associated water right no. 22-7287 identifies 495.3 acres though the total for the irrigated acres was shown as 644.5 acres.
6. A review of the Department's records reveals the final version for the recommendations on water rights nos.22-7287 and 22-12656 in the Snake River Basin Adjudication indentified the same place of use for water rights nos.22-7287 and 22-12656 containing 644.5 acres.
7. Because water right nos. 22-7287 and 22-12656 are associated rights in the transfer, the place of use for each right was not changed by the transfer and should remain 644.5 acres.

CONCLUSIONS OF LAW

1. The amended approval of the transfer did not authorize a change in the land list for the place of use of associated water right nos. 22-7287 and 22-12656.
2. The petition was filed timely.
3. The Department should grant the petition and revise the amended approval of the transfer to reflect the correct land list for associated water right nos. 22-7287 and 22-12656.

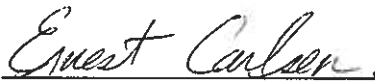
ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order amending approval of transfer no. 74650 is **GRANTED** pursuant to Idaho Code § 67-5243.

IT IS FURTHER HEREBY ORDERED that the land list for the place of use of associated water right nos. 22-7287 and 22-12656 is **MODIFIED** to identify 644.5 acres in Sections 21, 22 and 23 of Township 07N, Range 42E, BM.

IT IS FURTHER HEREBY ORDERED that a revised amended approval of transfer no. 74650 shall be ISSUED in connection with this order.

Dated this 2 day of November, 2009

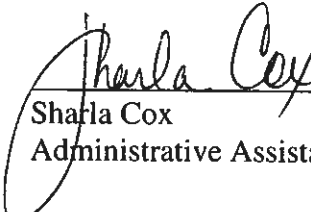


ERNEST CARLSEN

Water Resource Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 3RD day of November 2009, I mailed a true and correct copy, postage prepaid, of the foregoing AMENDED TRANSFER APPROVAL to the person(s) listed below:


Sharla Cox
Administrative Assistant

VAL E SCHWENDIMAN FARMS INC
9633 E HWY 33
NEWDALE ID 83436

WATER DISTRICT 01
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402

ROCKY MOUNTAIN ENVIRONMENTAL
482 CONSTITUTION WAY #303
IDAHO FALLS ID 83402

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.