

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 73969 IN THE NAME OF)
ROBERT ROHE)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter is before the Department of Water Resources (Department) on a petition to reconsider the preliminary order of the Department approving water right transfer No. 73969. The Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On August 7, 2009, the Department approved Application for Transfer No. 73969 (transfer) as a preliminary 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). The order was mailed to Robert Rohe (applicant) on August 7, 2009.
2. On August 21, 2009, the Department received a timely Petition for Reconsideration of the order pursuant to Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a) from the applicant through his attorney Fritz X. Haemmerle.
3. On September 4, 2009, the Department Granted the Petition for Reconsideration in Part and issued a preliminary order (order) amending the approval of the transfer.
4. On September 16, 2009, the Department received a timely Petition for Reconsideration (petition) of the September 4, 2009 order from the applicant.
5. The applicant has provided no reasons for the Department to grant the petition in addition to the reasons already provided in the petition of August 7, 2009 and considered by the Department in the September 4, 2009 order.
6. The Department should deny the petition pursuant to Idaho Code § 67-5243(3).

ORDER

IT IS HEREBY ORDERED that the September 16, 2009 Petition for Reconsideration of the Preliminary Order Amending Approval of Transfer No. 73969, dated September 4, 2009, is **DENIED** pursuant to Idaho Code § 67-5243(3).

Dated this 18th day of September, 2009.

A handwritten signature in black ink, appearing to read "Allen Merritt", written over a horizontal line.

ALLEN MERRITT

Southern Region Manager

CERTIFICATE OF SERVICE

I hereby certify that on September 18th, 2009 I mailed a true and correct copy, postage prepaid via Regular U.S. Mail, of the foregoing Order Denying Petition for Reconsideration to the persons listed below:

ROBERT ROHE
PO BOX 2288
KETCHUM ID 83340-2288

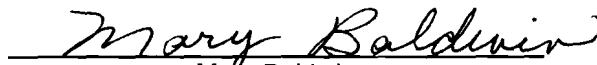
HIAWATHA CANAL CO
PO BOX 1615
HAILEY ID 83333

FISHER & ASSOCIATES
6640 HWY 200 E
MISSOULA MT 59802

HIAWATHA CANAL WATER USERS
ASSOCIATION OF LATERALS
C/O FRITZ X. HAEMMERLE
HAEMMERLE & HAEMMERLE
PO BOX 1800
HAILEY ID 83333

SOUTH COUNTY ESTATES LLC
C/O JAMES R. LASKI
LAWSON LASKI LAW FIRM
PO BOX 3310
KETCHUM ID 83340

BIG WOOD CANAL COMPANY
C/O CRAIG HOBDEY
PO BOX 176
GOODING ID 83330


Mary Baldwin
Administrative Assistant

**EXPLANATORY INFORMATION
TO ACCOMPANY AN ORDER DENYING
PETITION FOR RECONSIDERATION**

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief 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.

If any party appeals or takes exceptions to the 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, 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.