State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

September 11, 2008

STEVECO CANYON FARMS INC
C/O MIKE STEVENS
49 E SUNSET CIR
REXBURG ID 83440

NORTHWEST FARM CREDIT SERVICES ACA
PO BOX 157
REXBURG ID 83440-0157

RE: Preliminary Order in the Matter of Permit No. 22-7114

Dear Permit Holders:

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 208-287-4947

Sincerely,

Pamela S Skaggs

for Shelley W. Keen, Manager
Water Right Permits Section

Enclosures

# CERTIFICATE OF SERVICE

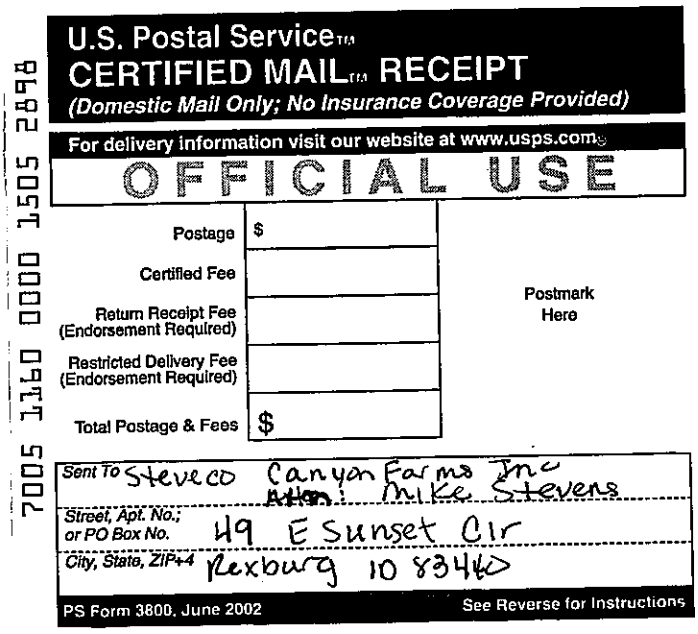
I hereby certify that September 11, 2008 I mailed a true and correct copy, certified postage prepaid, of the foregoing PRELIMINARY ORDER to the persons listed below:

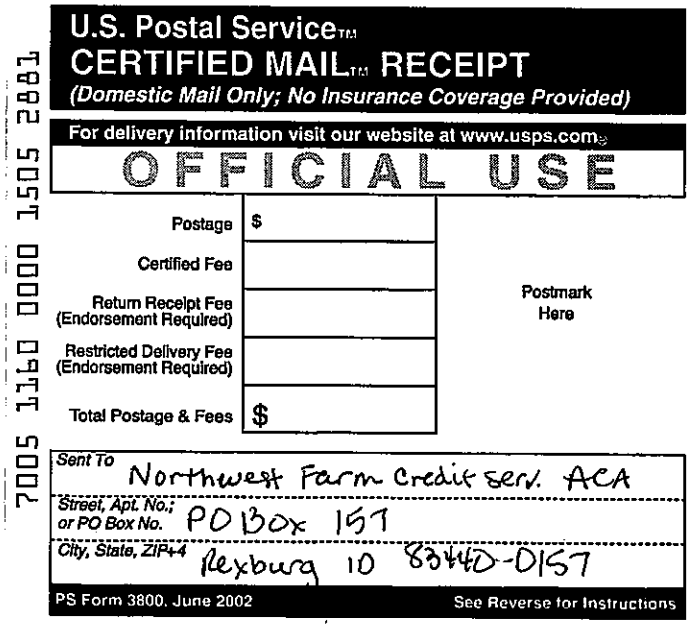
RE: Preliminary Order in the Matter of Permit No. 22-7114

STEVECO CANYON FARMS INC
C/O MIKE STEVENS
49 E SUNSET CIR
REXBURG ID 83440

NORTHWEST FARM CREDIT SERVICES ACA
PO BOX 157
REXBURG ID 83440-0157

Emalee Rushing
**Office Services Supervisor**



## Statement of Available Procedures and Applicable Time Limits

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

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

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. **Note: the petition must be received by the department within this fourteen (14) day period.** 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 Water Resource 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.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 22-7114

WATER RIGHT NUMBER: 22-7114

| Owner Type | Name and Address |
|---|---|
| Current Owner | STEVECO CANYON FARMS INC<br>C/O MIKE STEVENS<br>49 E SUNSET CIR<br>REXBURG, ID 83440<br>(208)458-4469 |
| Original Owner | J WAYNE STEVENS<br><br>, ID |
| Current Owner | NORTHWEST FARM CREDIT SERVICES ACA<br>PO BOX 157<br>REXBURG, ID 83440-0157<br>(208)356-4442 |

Priority Date: 11/20/1974

Basis:

Status: Voided

| Source | Tributary |
|---|---|
| CANYON CREEK | TETON RIVER |

| Beneficial Use | From To | Diversion Rate | Annual Volume |
|---|---|---|---|
| IRRIGATION | 4/01 to 11/01 | 20.000 CFS | |
| | Total Diversion: | 20.000 CFS | |

Location of Point(s) of Diversion

CANYON CREEK SE¼SE¼ Sec. 13, Twp 06N, Rge 42E, B.M. MADISON County

Place of Use

IRRIGATION

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | |
| 06N 42E 11 | | | | | | | | | 15.0 | 25.0 | 40.0 | 40.0 | | | 25.0 | 15.0 | 160.0 |
| 06N 42E 13 | | | | | 5.0 | 35.0 | 40.0 | 20.0 | 40.0 | 40.0 | | 40.0 | | 22.0 | 35.0 | | 277.0 |
| 06N 42E 14 | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | | | 40.0 | 40.0 | | | 480.0 |
| 06N 42E 15 | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | | 40.0 | 40.0 | | | 40.0 | 40.0 | 40.0 | 40.0 | 40.0 | 520.0 |
| 06N 42E 22 | 40.0 | 40.0 | | | 40.0 | | | | | | | | | | | | 120.0 |
| 06N 43E 18 | 40.0 | 40.0 | | 40.0 | 25.0 | | | | | | | | | | | | 145.0 |

Total Acres: 1702

Conditions of Approval:

1. 2 P/D IN SESE, S13, T6N, R42E.
   PERMIT INCORRECTLY DESCRIBES P/D AS SESE, S13, T6N, R43E.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 22-7114

Comments:

1. CZIMMERM 12/8/1994 CORPORATE OFFICERS
Comment: The corporate officers of Steveco Canyon Farms Inc are: Mike A Stevens, President; Phyllis F Stevens, Secretary; Phil J Stevens, Vice President.

2. dcarlson 5/31/2007 POD
Comment: Correlated PODID 9440 from SpatialDataID 374708 to SpatialDataID 267050

3. dcarlson 5/31/2007 POD
Comment: Correlated PODID 9440 from SpatialDataID 374708 to SpatialDataID 267050

4. dcarlson 5/31/2007 POD
Comment: Correlated PODID 9440 from SpatialDataID 374708 to SpatialDataID 267050

5. amarshall 8/1/2008 Licensing Review
Comment: Application for permit no. 22-7114 (permit) was approved on February 25, 1975, with a proof due date of March 1, 1978. The permit authorized the use of water from Canyon Creek for irrigation of 1,702 acres at a rate of 20.0 cfs. A condition of approval required the permit holder to permanently install and maintain a measuring device as part of the diverting works.

The proof due date was later extended by order to August 1, 1978, since the permit holder was not given 60 days notice prior to the proof due date. A request for extension of time was approved on July 13, 1978, further postponing the proof due date to August 1, 1980, since installation of larger motors were needed at the pumping plant to divert the permitted rate. Proof of beneficial use was received on July 9, 1980, thereby ending the authorized development period under this permit.

The beneficial use field report was completed for this right on June 25, 2008. The examiner recommended licensing this right for the irrigation of 1,702 acres within a 2,725.4 acre permissible place of use at a rate of 20.0 cfs.

State Water District No. 1 (WD 01) staff measured the diversion works capacity at 21.65 cfs on June 20, 2008. IDWR has diversion records for this pumping plant from 1978 to present. The greatest diversion rate during the authorized development period, 1975 to 1980, was 10.0 cfs in 1978 (see attached records for 1978 through 1980).

Prior licensed water rights 22-7069, 22-7103, and 22-7230 are claimed in the Snake River Basin Adjudication (SRBA) and recommended with a combined rate limit of 12.94 cfs and the irrigation of 2,725.4 acres. These rights overlap entirely the place of use recommended by the examiner.

I have been informed by WD 01 staff that the permit holder has not maintained measuring devices at the point of diversion from Canyon Creek as required by the permit. The permit holder was notified by telephone in July 2007 of the requirement for permanent measuring devices. The permit holder has not yet fulfilled this obligation.

No beneficial use of water was developed under permit no. 22-7114 above and beyond prior water rights. The permit holder has not complied with all conditions of the permit. The permit should be voided.

6. amarshall 9/10/2008 9:28:59 AM Explanatory Comment
Comment: Permit voided since no beneficial use of water was developed above and beyond prior water rights.

Dates and Other Information:

Permit Proof Due Date: 8/1/1980
Permit Proof Made Date: 7/9/1980
Permit Approved Date: 2/25/1975
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Field Exam Date: 6/20/2008
Date Sent to State Office: 6/25/2008
Date Received at State Office: 6/30/2008
State or Federal:
Owner Name Connector:
Water District Number: 01