

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

RECEIVED

AUG 05 2008

DEPARTMENT OF
WATER RESOURCES

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 73732 IN THE)
NAME OF FRANK A. AND PHYLLIS)
BEDKE)
_____)

**PRELIMINARY ORDER REJECTING
APPLICATION FOR TRANSFER**

This matter having come before the Department of Water Resources (Department) as a result of an application to transfer water rights, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On April 5, 2007, Frank A. and Phyllis Bedke applied to the Department for authorization to change a 47.2 acre portion of supplemental groundwater water right 45-4217 to stock water and commercial uses associated with a feedlot operation in Cassia County. The transfer application, designated no. 73732 by the Department, also proposes to modify the existing groundwater right, 45-2448B, which is currently associated with the feedlot operation.

2. Idaho Code §42-222 says, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.

3. On May 22, 2008, the Department mailed Frank A. and Phyllis Bedke a letter asking them to provide additional information and/or modify transfer application no. 73732 to ensure that the proposed change would not result in the enlargement of the use of water right 45-4217. The letter also requested that additional information be provided relating to the applicant's authority to file the application and modify rights 45-2448B and 45-4217 by moving them to land not owned by

the applicants. The letter also requested additional information relating to the nature of the security interest and real estate mortgage involved with the rights and properties involved with the application. In the letter, the Department informed Frank A. and Phyllis Bedke that if they did not respond to the request within 30 days, the Department would reject their transfer application.

4. The Department has not received a response from Frank A. and Phyllis Bedke to the request for additional information and/or modification of transfer application no. 73732.

CONCLUSIONS OF LAW

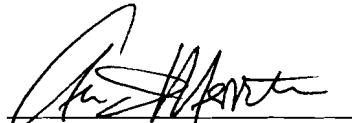
1. Without the additional information requested from Frank A. and Phyllis Bedke, the Department cannot ascertain that the change in water use proposed in transfer application no. 73732 will not result in an enlargement in use of water right 45-4217 and cannot ascertain that the applicants have the authority to file the application.

2. The Department should reject transfer application no. 73732.

ORDER

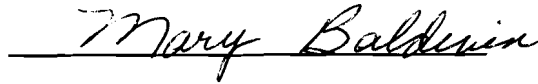
IT IS HEREBY ORDERED that transfer application no. 73732 in the name of Frank A. and Phyllis Bedke is **REJECTED** without prejudice.

Dated this 15th day of July, 2008.


ALLEN MERRITT

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of July, 2008 a true and correct copy of the above and foregoing Preliminary Order Rejecting Application for Transfer was forwarded with all required charges prepared, by Regular U.S. Mail to the parties listed:

A handwritten signature in cursive script, reading "Mary Baldwin", written over a horizontal line.

Mary A. Baldwin
Administrative Assistant I

FRANK A. & PHYLLIS BEDKE
PO BOX 83
OAKLEY ID 83346