

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 73763 IN THE)
NAME OF JEFF & CARRIE BENTON)
_____)

**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 September 7, 2006, Jeff & Carrie Benton (applicant) applied to the Department for authorization to change the place of use for 0.03 cubic feet per second of water diverted from the Boise River for irrigation purposes in Ada County in accordance with a portion of decreed Water Rights 63-32593 (formerly 63-196) and 63-32595 (formerly 63-197). The transfer application was designated no. 73763 by the Department.

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 March 18, 2008, the Department mailed the applicant and their consultant a letter asking them to provide additional information and/or modify transfer application no. 73763 to ensure that the proposed change would not result in the enlargement of their use of the water diverted from the Boise River. In the letter, the Department informed the applicant 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 the applicant to the request for additional information and/or modification of transfer application no. 73763.

CONCLUSIONS OF LAW

1. Without the additional information requested from the applicant, the Department cannot ascertain that the change in water use proposed in transfer application no. 73763 will not result in an enlargement in use of Water Rights 63-32593 and 63-32595.

2. The Department should reject transfer application no. 73763.

ORDER

IT IS HEREBY ORDERED that transfer application no. 73763 in the name of Jeff & Carrie Benton is **REJECTED** without prejudice.

Dated this 24th day of April, 2008.

Pamela S. Skaggs
PAMELA S. SKAGGS
Water Rights Supervisor