

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. _____)
73532 IN THE NAME OF PANCHERI INC.) **PRELIMINARY ORDER CORRECTING**
_____) **TRANSFER APPROVAL**

This matter having come before the Department of Water Resources (Department) as a result of a request to correct a Water Right Transfer Approval, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Water Right No. 33-35A was decreed in the Snake River Basin Adjudication (SRBA) May 1, 2002, authorizing a withdrawal from Badger Creek from a point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 9 North, Range 27 East, B.M. Water Right No. 33-2068A was decreed in the SRBA May 1, 2002, authorizing a ground water withdrawal from a point of diversion in Government Lot 3 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 3, Township 8 North, Range 27 East, B.M., a point of injection into the Little Lost River in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 8 North, Range 27 East, B.M., and a point of rediversion out of Badger Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 9 North, Range 27 East. Water Right No. 33-10997 was decreed in the SRBA March 6, 2002, authorizing a ground water withdrawal from a point of diversion in Government Lot 3 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 3, Township 8 North, Range 27 East, B.M.
2. On October 25, 2005, the Department approved transfer no. 71666. The transfer updated the point of injection into the Little Lost River for Water Right No. 33-2068A to the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 8 North, Range 27 East, B.M. The transfer also authorized the exchange of water by injection of ground water under Water Right No. 33-10997 into the Little Lost River and rediversion from Badger Creek through condition of approval no. 2.
3. On August 22, 2007, the Department approved Transfer No. 73532 (transfer) as a preliminary order. The transfer applicant was Pancheri, Inc. (applicant). The transfer changed the point of diversion for Water Right Nos. 33-10997 and 33-2068A to ground water in Government Lot 3 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 3, Township 8 North, Range 27 East, B.M., a point of injection into the Little Lost River in Government Lot 3 (SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 3, Township 8 North, Range 27 East, B.M., and a point of rediversion out of the Little Lost River in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 9 North, Range 27 East, B.M. The point of diversion for Water Right No. 33-35A was changed to the Little Lost River in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 9 North, Range 27 East, B.M., Butte County.

4. On February 25, 2008, the Department received a letter from the Law Offices of Holden, Kidwell, Hahn, & Crapo (representative), requesting corrections to transfer no. 73532 on behalf of the applicant. The letter requested the following items be corrected:
 - a. The decreed or previously transferred point of diversion/rediversion on Badger Creek for Rights 33-35A, 33-2068A and 33-10997 should be authorized as an alternative point of diversion for these water rights.
 - b. An addition to the conditions of approval on each of the water rights should be made as follows:

"The diversion point on Badger Creek, NESESW, T09N., R27E., Sec. 34 within Butte county, Idaho, shall not be used under this water right prior to December 31, 2037."
5. The representative asserts that the purpose of the transfer was to add a point of diversion to the decreed points of diversion and that it did not request removal of the Badger Creek point of diversion/rediversion from any of the rights.
6. On December 6, 2007, the applicant signed a "non-diversion" agreement on the Badger Creek point of diversion/rediversion with Trout Unlimited, Inc. to be effective until December 31, 2037.
7. The transfer application indicates that the purpose of the transfer is to "add diversion points", not "change the point of diversion."

CONCLUSIONS OF LAW

1. In filing transfer application no. 73532, the applicant intended to add a point of diversion from the Little Lost River to Water Right No. 33-35A in addition to the original point of diversion from Badger Creek, and to add a point of rediversion from the Little Lost River to Rights 33-2068A and 33-10997 in addition to the original diversion, injection and rediversion points previously authorized.
2. The Department mistakenly omitted the Badger Creek point of diversion/rediversion from Rights 33-35A, 33-2068A and 33-10997.
3. Despite the fact that the preliminary order issuing the transfer became final, the Department should correct its clerical mistake by reinstating the Badger Creek point of diversion/rediversion described on the rights prior to transfer approval no. 73532.
4. The Department should add a condition on the transfer approval to reflect the "non-diversion" agreement with Trout Unlimited, Inc. for Water Right Nos. 33-35A, 33-2068A and 33-10997.

5. The Department should revise condition of approval #1 for 33-2068A and #8 for 33-10997 to include the rediversion point from Badger Creek in addition to the point from Little Lost River.

ORDER

IT IS HEREBY ORDERED that the legal description for the point of diversion(s) for Water Right Nos. 33-35A, 33-2068A and 33-10997 are **CORRECTED** to:

1. Rights 33-10997 and 33-2068A will maintain their point of diversion, rediversion and injection per transfer approval no. 73532 dated August 22, 2007, and will include the previously authorized rediversion point from Badger Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 9 North, Range 27 East, B.M.
2. Right 33-35A will retain the point of diversion from the Little Lost River per transfer approval no. 73532 dated August 22, 2007, and will also include the decreed source and point of diversion from Badger Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 9 North, Range 27 East, B.M.

IT IS FURTHER HEREBY ORDERED that condition of approval no. 1 for Water Right No. 33-2068A and no. 8 for Water Right No. 33-10997 for transfer no. 73532 dated August 22, 2007 are **CORRECTED**:

IT IS FURTHER HEREBY ORDERED that an additional condition of approval for transfer no. 73532 for Water Right Nos. 33-35A, 33-2068A and 33-10997 be **ADDED** as follows:

The diversion or rediversion on Badger Creek described within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 9 North, Range 27 East, B.M., Butte County, shall not be used under this right prior to December 31, 2037.

IT IS FURTHER HEREBY ORDERED that the Department's order approving transfer no. 73532, dated August 22, 2007 is **SUPERSEDED** by the amended transfer approval issued in conjunction with this order.

Dated this 13th day of May, 2008.



JEFF PEPPERSACK
Chief, Water Allocation Bureau