

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF TRANSFER)
NO. 69003 IN THE NAME OF)
MARRINER JENSEN OR)
EILEEN JENSEN)**

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right transfer approval, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On September 3, 2002, the Department issued a preliminary order approving Transfer No. 69003 authorizing Marriner or Eileen Jensen (right holders) to change the place of use and point of diversion for a portion of Water Right Nos. 11-939, 11-940, 11-946, and 11-947. The transfer approval was amended and reissued as a preliminary order (transfer) on September 18, 2002. The transfer approval split the water rights into parts; the parts in the name of the right holders were numbered 11-7466 (11-939), 11-7468 (11-940), 11-7457 (11-946) and 11-7459 (11-947).
2. The transfer approval authorized irrigation under Water Right Nos. 11-7468 and 11-7459 for the period beginning on April 15 and ending on September 30 each year.
3. On October 2, 2002, the Department received a petition for reconsideration (petition) from the right holders. The petition indicated that water has historically been diverted beyond September 30 under Water Right Nos. 11-7468 (11-940) and 11-7459 (11-947) and asked to have the transfer approval changed to show the period for irrigation ending on October 31 each year. The petition included statements from several individuals indicating historical use of water on meadows beyond September 30.
4. The right holders did not request a hearing in connection with the preliminary order.
5. On October 15, 2002, the Department granted the petition and retained jurisdiction of the matter to review and consider the information submitted by the right holders.
6. The District Court of the Fifth Judicial District of the State of Idaho for Bear Lake County issued a decree of water rights on March 7, 1924 in the case *Preston-Montpelier Irrigation Company vs. Dingle Irrigation Company, et al* (Terrell decree). The Terrell decree designated rights as either a "meadow right" or "agricultural right." The Terrell decree indicated that "...the duty of water shall be fixed and determined at one and one-half (1 ½) miners inches per

acre of water from April 15th to July 1st each year, and at one (1) miners inch per acre from July 1st to September 30th of each year for the lands designated as meadow lands, and for the lands designated as agricultural lands, it is agreed that the duty shall be one miners inch per acre through the irrigation season..." The Terrell decree included Water Right Nos. 11-940 and 11-947 and designated the rights as agricultural rights.

7. The Department has historically interpreted the irrigation season for agricultural rights listed in the Terrell decree to be April 15 to September 30 based on the overall season listed for meadow rights and based on other court decrees for water rights in the Bear River basin. This interpretation ensures consistency for water distribution purposes in the Bear River Basin.

CONCLUSIONS OF LAW

1. Section 67-5243(3), *Idaho Code*, provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

2. The right holder's petition for reconsideration was filed timely.

3. Section 42-222(5), *Idaho Code*, provides in pertinent part as follows:

Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change point of diversion, place, period of use or nature of use of water under an established right...may request a hearing pursuant to section 42-1701A(3), *Idaho code*, for the purpose of contesting the action of the director...

4. Section 42-1701A(3), *Idaho Code*, provides in pertinent part as follows:

...The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding...

5. The right holders did not request a hearing in connection with the preliminary order.
6. Rule 730.02a of the Rules of Procedure of the Department provides in pertinent part that the Department will "... dispose of the petition for reconsideration within twenty-one (21) days of its receipt or the petition will be considered denied by operation of law."

7. The Department disposed of the petition by order and retained jurisdiction of the matter to review and consider the information submitted by the right holders.

8. Section 42-222(1), *Idaho Code*, provides in pertinent part as follows:

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, ...

9. The irrigation season cut-off date is necessary to prevent injury or adverse effects to other rights from the Bear River.

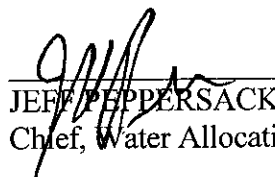
10. The right holders have not provided suitable justification for the Department to amend the transfer approval to show the period for irrigation ending on October 31 each year.

11. The Department should deny the petition for reconsideration of the preliminary order pursuant to Section 67-5243(3), *Idaho Code*.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order approving Transfer No. 69003 is **DENIED**.

Dated this 24th day of October, 2007.

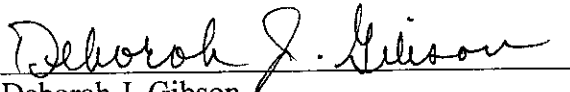

JEFF PEPPERSACK
Chief, Water Allocation Bureau

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October, 2007, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, by certified mail, return receipt requested, postage prepaid and properly addressed to the following:

Document(s) Served: ORDER DENYING PETITION FOR RECONSIDERATION and EXPLANATORY INFORMATION sheet when an Order Denying Petition for Reconsideration has been issued.

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Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau