

BEFORE THE STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 66087 IN THE)
NAME OF YOUNG & YOUNG)
_____)

**PRELIMINARY ORDER
AMENDING TRANSFER APPROVAL**

This matter having come before the Department of Water Resources (Department) as a result of an application for transfer of water rights, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On May 14, 2002, the Department approved Application for Transfer No. 66087 (transfer) changing the place of use under Rights 36-4006, 36-11340 and 58 other water rights diverted from the same point of diversion and used for irrigation of the same lands.
2. Right 36-4006 as described on pages 77 and 78 of the transfer approval document contained the following condition (listed as condition No. 9):

This right is limited to the irrigation of 1,240 acres within the place of use described above in a single irrigation season.

3. Right 36-4006 is an enlargement of Rights 36-2619 and 36-2620 pursuant to Section 42-1426, Idaho Code. This right, when originally filed as a statutory claim, listed irrigation of a total of 640 acres. As an enlargement right, it is limited to the irrigation of 1,240 acres only in combination with Rights 36-2619 and 36-2620. This limitation was correctly stated in condition No. 10.
4. Right 36-11340 is an enlargement of Right 36-7041 pursuant to Section 42-1426, Idaho Code and is described as such on pages 119 and 120 of the transfer approval document.
5. Enlargement rights filed in the Snake River Basin Adjudication typically contain a condition subordinating them to all water rights with a priority date earlier than April 12, 1994 that are not decreed as enlargements.

CONCLUSIONS OF LAW

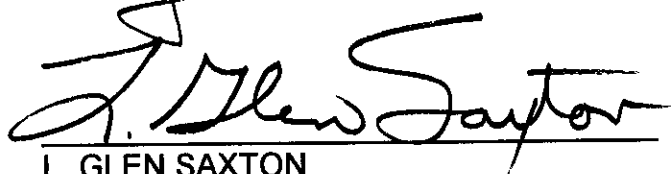
1. Rule 730.02.c of the Idaho Department of Water Resources' Rules of Procedure (IDAPA 37.01.01), authorizes IDWR to review a preliminary order on its own motion.
2. The transfer approval should have contained a subordination condition on both enlargement rights as outlined in Finding of Fact No. 5 above.
3. The transfer approval of Right 36-4006 did not require the condition stated in Finding of Fact No. 2, but rather was correctly described in transfer approval condition No. 10.
4. The Department should amend the transfer approval to remove condition number 9 from the transfer approval describing Right 36-4006.
5. The Department should amend the transfer approval to add a condition subordinating Rights 36-4006 and 36-1130 to all other water rights with a priority date earlier than April 12, 1994 that are not decreed as enlargement rights.

ORDER

IT IS HEREBY ORDERED that the following condition is **ADDED** to the transfer approval of Right 36-11340 and that the language contained in Approval Condition No. 9 for Right 36-4006 on the transfer approval document is hereby **RESCINDED** and is **REPLACED** by the following condition:

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

Dated this 21st day of May, 2002.



L. GLEN SAXTON
Chief, Water Allocation Bureau