

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN AND FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
TRANSFER NO. 71551 (WATER RIGHT NOS.	)	ORDER REJECTING
29-10121, 29-10122, 29-10123, 29-10124,	)	PETITION FOR
29-10125, AND 29-13483) IN THE NAME OF	)	RECONSIDERATION
KING CREEK GRAZING ASSOCIATION	)	
_____	)	

On May 22, 2006, the Idaho Department of Water Resources (IDWR) issued a preliminary order approving Transfer no. 71551. A Supplemental Certificate of Service documents that the preliminary order was mailed to Michael E. and Eileen M. Chambers (Chambers) on May 25, 2006.

On June 13, 2006, IDWR received a letter from Chambers. Chambers stated that they "wish to . . . challenge the amendment on the Change of diversion . . . but also address several of the findings of fact . . . and Conclusion[s] of Law . . ." IDWR interprets the letter as an attempt to petition to the hearing officer to reconsider the preliminary order approving transfer no. 71551.

A document titled *Responding to Preliminary Orders Issued by the Idaho Department of Water Resources* was enclosed with the preliminary order served on Chambers. The second paragraph of the document states:

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

Rule 55 of IDWR's Rules of Procedure states that service is complete when IDWR deposits a copy of an order in the U.S. Mail. Idaho Code § 67-5247 states that a petition for reconsideration must be filed with the hearing officer "within fourteen (14) days of the issuance of the preliminary order." See also Rule 730 of IDWR's Rules of Procedure.

Service by IDWR was complete when the preliminary order was mailed on May 25, 2006. The 14th day following May 25, 2006 was June 8, 2006. In order to be timely filed, a petition for reconsideration had to be physically filed with IDWR on or before June 8, 2006.

IDWR received Chambers' letter on June 13, 2006. Consequently, Chambers' letter, interpreted as a petition for reconsideration, was not timely filed. The hearing officer cannot consider the petition for reconsideration.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration, filed by Mike and Eileen Chambers on June 13, 2006, was not timely filed, and cannot be considered by the hearing officer.

IT IS FURTHER ORDERED that the preliminary order issued by the hearing officer on May 22, 2006 has become a final order on June 9, 2006.

Dated this 12th day of July, 2006.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July, 2006, a true and correct copy of the document described below was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Rejecting Petition for Reconsideration

RANDALL C BUDGE
RACINE OLSON NYE BUDGE
& BAILEY
PO BOX 1391
POCATELLO ID 83204-1391

TIM MUNNS
PRESIDENT
KING CREEK GRAZING
PO BOX 670
SNOWVILLE UT 84336

JEANETTE WOLFLEY
ATTORNEY AT LAW
202 N ARTHUR ST
POCATELLO ID 83204

STEVE HEBDON
PORTNEUF RIVER WATERMASTER
190 N MEADOWVIEW DR
ARIMO ID 83214-1631

TODD HATCH
JERRY HATCH
850 W ELVA
IDAHO FALLS ID 83402

IDWR – EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402

MICHAEL E CHAMBERS
EILEEN M CHAMBERS
705 E TOPONCE CANYON RD
BANCROFT ID 83217


Deborah J. Gibson
Administrative Assistant

EXPLANATORY INFORMATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to the preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.