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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 71132 IN THE
NAME OF TIMOTHY P. DEEG

**PETITION FOR
RECONSIDERATION**

The applicant, Timothy P. Deeg, hereby petitions the Idaho Department of Water Resources ("IDWR" or "Department") for reconsideration of its Preliminary Order approving his application with conditions, the service date of which is June 17, 2005. This Petition is made upon the grounds and reasons set forth more fully below.

First, in its analysis of this transfer, IDWR has essentially broadened the scope of the transfer procedure for transfer no. 71132, which must be narrowly defined only by water rights No. 41-7030, No. 41-7034, and 41-7071. The transfer order further attempts to apply validity to conditions and elements of the beneficial use test dated August 27, 1997 to license water right no. 41-7081 and water right no. 41-7076 by default actions within the order. These two procedures, (1) the transfer, and (2) the licensing of the beneficial use

permits must be kept separate and distinct for purposes of developing a clear and accurate administrative record. The transfer involving these rights should not be tied to the licensing of these rights because the practical effect of such an action is that an objector to the transfer is an objector to the licensing. Licensing procedures and transfer procedures are different issues and furthermore, parties to a transfer proceeding are not necessarily parties to the licensing procedures. The Order further recognizes the extent to which it creates elements and/or conditions of water rights No. 41-7076 and No. 41-7081, and as such, Deeg hereby requests a hearing before the Department pursuant to Idaho Code § 42-1701A.

Furthermore, the Department's action of staying the transfer until all such administrative proceedings are resolved has placed an undue burden on Deeg. The Department should not have placed conditions on this transfer based upon its inappropriate licensing of permit nos. 41-7076 and 41-7081. Upon reconsideration, the conditions relating to the inappropriate licensing of water right no. 41-7076 and water right no. 41-7081 should be absolved in order to prevent undue burden on Deeg that would result from a stay of this transfer.

Secondly, IDWR determined the following in its Preliminary Order:

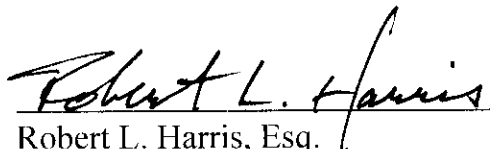
4. While the place of use described by permit nos. 41-7076 and 41-7081 is within the larger place of use sought by the application for transfer, Deeg did not simultaneously attempt to amend the permits to describe a larger place of use for the permits in conjunction with the application for transfer.

Preliminary Order, ¶ 4. Deeg did in fact initially submit his transfer application in accordance with the above paragraph, but that application was rejected by IDWR and Deeg was asked by IDWR to amend his application. A copy of this initial application

should be contained in IDWR's files for its review. As a result of IDWR's rejection, Deeg amended his application to satisfy the Department's wishes, but Deeg never intended to change the substance of what he wished to accomplish with his water rights in seeking a permissible place of use of 1011 acres. It appears that IDWR has exalted form over substance in this instance and upon reconsideration, should amend permit nos. 41-7076 and 41-7081 to include the larger place of use sought by Deeg.

Lastly, IDWR has limited Deeg's use of water right nos. 41-7030, 41-7034, 41-7076, and 41-7081 to 793.5 acres. Individually, these rights authorize irrigation of 805 acres. In his transfer application, Deeg sought a permissible place of use for all of the above water rights and for water right no. 41-7071 (which authorizes irrigation of 11 acres) for a place of use of 1011 acres. IDWR must reconsider its decision to limit the permissible place of use to 793.5 acres. This acreage is less than the acreage already authorized under water right nos. 41-7030, 41-7034, 41-7076, and 41-7081 and is substantially less than the 1011-acre place of use sought by Deeg under the above four water rights and water right no. 41-7071.

Dated this 28th day of June, 2005.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the individuals listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

DOCUMENT SERVED: PETITION FOR RECONSIDERATION

PARTIES SERVED:

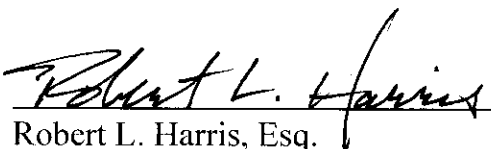
Idaho Department of Water Resources Attn: Gary Spackman 322 E. Center St. PO Box 83720 Boise, ID 83706-0098	<i>[Facsimile and First Class Mail]</i>
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Idaho Department of Water Resources Attn: Allen Meritt 1341 Fillmore St, Ste. 200 Twin Falls, ID 83301-3380	<i>[First Class Mail]</i>
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CE Brockway, PE Brockway Engineering 2016 N. Washington St., Ste. 4 Twin Falls, ID 83301	<i>[First Class Mail]</i>
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Warm Creek Irrigation Co. 3298 S. Isaak Lp. American Falls, ID 83211	<i>[First Class Mail]</i>
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William Isaak 3082 Isaak Lp American Falls, ID 83211	<i>[First Class Mail]</i>
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Dated: JUNE 28, 2005

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