

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 68533 IN THE)
NAME OF ROCKY MOUNTAIN LAND &)
CATTLE, LLC)
_____)

**ORDER DENYING
PETITION FOR
RECONSIDERATION**

On February 15, 2005, Rocky Mountain Land & Cattle, LLC. ("Rocky Mountain") petitioned the hearing officer to reconsider a Preliminary Order issued on February 1, 2005. The Petition for Reconsideration was timely filed.

The Petition for Reconsideration ("petition") filed by Rocky Mountain Land & Cattle, LLC, was granted by an Order in Response to Petition for Reconsideration ("Order in Response") issued on March 2, 2005. The Order in Response granted Rocky Mountain 28-days to (1) present information supporting an argument that the hearing officer should consider the data in Applicant's Exhibit 1-E spreadsheet; or, (2) file a motion to augment the record. The Order in Response stated that a motion to augment the record must be served upon all of the parties and be accompanied by a proposal for augmentation. Finally, the Order in Response stated that failure to submit additional information within 28-days of the date of the order granting their petition would result in an automatic denial of Rocky Mountain's Petition for Reconsideration.

The 28-day period has expired, and the applicant did not file additional documents with IDWR.

ORDER

IT IS HEREBY ORDERED that the Petition for Reconsideration filed by Rocky Mountain Land & Cattle, LLC is **DENIED**.

IT IS FURTHER ORDERED that Rocky Mountain is subject to the Preliminary Order issued by the department on February 1, 2005 in which their application for transfer no. 68533 was approved subject to conditions, as described in that order. Deadlines for remedies available under the Administrative Procedures Act, as explained in the enclosed information, shall be determined from the date of this order.

DATED this 18th day of April 2005.



Gary Spackman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April 2005, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

FRANKLIN & ELIZABETH POWERS
3154 S CRABAPPLE LN
BOISE ID 83706

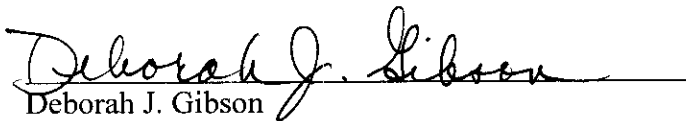
GEORGE L PRESLEY
6688 MONTGOMERY RD
KING HILL ID 83633

KING HILL IRRIGATION DISTRICT
PO BOX 428
KING HILL ID 83633

ROCKY MOUNTAIN L&C LLC
C/O KENT FOSTER
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405

JOHN WALKER
4775 E MONTGOMERY RD
KING HILL ID 83633

IDWR - WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705-5082


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:**

PETITION FOR RECONSIDERATION

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 of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure 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.

If any party appeals or takes exceptions to this 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, request 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 Department 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 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.