

Attorneys for Thompson Creek Mining Company

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DEPARTMENT OF  
WATER RESOURCES

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

IN THE MATTER OF TRANSFER  
NO. 71264 IN THE NAME OF  
THOMPSON CREEK MINING COMPANY

PETITION FOR REVIEW OF PRELIMINARY  
ORDER (TRANSFER APPROVAL) AND  
REQUEST FOR HEARING

COMES NOW Thompson Creek Mining Company ("Thompson Creek"), by and through its counsel of record, MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED, and, pursuant to Code § 67-5245(3) and Idaho Department of Water Resources Rule of Procedure 730 (IDAPA 37 01 01 730.02(a)), hereby petitions the Department to reconsider its Transfer Approval, dated January 18, 2005, and more specifically, to remove Condition of Approval Number 4 from the Transfer Approval. Thompson Creek further petitions the Department for a hearing on the matters raised in this Petition in accordance with Idaho Code § 42-1701A(3) and Idaho Department of Water Resources Rule of Procedure 730 (IDAPA 37.01.01.730.02(e)). This Petition is made on the grounds and for the reasons set forth herein

**PETITION FOR REVIEW OF PRELIMINARY ORDER  
(TRANSFER APPROVAL) AND REQUEST FOR HEARING - 1**

## **I. BACKGROUND**

On or about May 24, 2004, Thompson Creek filed with the Idaho Department of Water Resources ("Department") an Application for Exchange of Water regarding water right number 72-07193. The Application for Exchange of Water was subsequently replaced with an Amended Application for Transfer of a Water Right, also involving water right number 72-07193, which was filed with the Department on or about October 29, 2004. The purpose of the Amended Application for Transfer was to:

modify right 72 7193 currently authorized to divert 20 89 cfs and 1600 afa from the Salmon River for industrial uses at the mine. The proposed modifications are to add diversion points on tributary streams to the Salmon River that are near the mine to eliminate any potential runoff and seepage from the mine site. The proposed diversions from these streams will allow recycling of site runoff water to preserve water quality and lessen impacts to the Salmon River. It is proposed to at times divert up to 8 0 cfs from Buckskin detention dam, at times divert 11 0 cfs from Pat Hughes detention dam and 0.2 cfs from springs tributary to Buckskin Creek in lieu of diversion from the Salmon River. Additionally this application identifies the place where water is stored in detention and tailings dams that is utilized in the mine process and is already part of the existing right.

Application for Transfer of Water Right, p. 1.

On or about January 18, 2005, the Department issued its Transfer Approval, which, pursuant to Idaho Code § 67-5243, is deemed a Preliminary Order. The Transfer Approval contained ten (10) Conditions of Approval, as follows:

1. Industrial use is for mining and milling of molybdenum ore.
2. The use of this right is limited such that at no time shall more than 20 89 cfs be diverted at any instant from the multiple authorized points of diversion. Additionally the following limits shall apply:

Buckskin Creek limited to 8 0 cfs  
Pat Hughes Creek limited to 11 0 cfs  
Springs tributary to Buckskin Creek limited to 0 20 cfs  
Salmon River limited to 20 89 cfs

3. Rights 72-07257 and 72-7193 when combined shall not exceed a total annual maximum diversion volume of 2916 af.
4. Rights 72-07257, 72-7414, and 72-7193 when combined shall not exceed a total annual maximum diversion volume of 3108 af.
5. Prior to the diversion and use of water under Transfer approval 71264, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications
6. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality standards of the Department of Environmental Quality.
7. Place of use does not include Federal Public Lands.
8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Pursuant to Section 42 1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Transfer Approval, p. 3.

## **II. ARGUMENT**

Thompson Creek disagrees with the inclusion of Condition 4 in the Transfer Approval, which purports to limit the total annual maximum diversion rate for water right numbers 72-07257, 72-7414, and 72-7193, when combined, to 3,108 acre feet. Such total annual maximum diversion rate was not contained in the partial decrees issued for water right numbers 72-07257 and 72-7193. *See* Exhibits 1 and 2 to Affidavit of Scott L. Campbell, filed concurrently herewith. In fact, this exact issue was litigated before the Snake River Basin Adjudication District Court in Subcase Nos. 72-07414, 72-07257, and 72-07193, prior to entry of the Partial Decrees. Following settlement discussions between Thompson Creek and the Department, the Department agreed to remove the total annual maximum diversion rate limitation as a condition of the partial decree for water right numbers 72-07257 and 72-07193. Such agreement was memorialized with the filing of a Standard Form 5 for water right Numbers 72-07257 and 72-07193, *See* Exhibits 3 and 4 to Affidavit of Scott L. Campbell, and accepted by the Court with the entry of the Partial Decrees for water right numbers 72-07257 and 72-07193. Through the above-captioned transfer proceeding, the Department cannot now rescind its earlier agreement to remove the total annual maximum diversion rate limitation by attempting to include such limitation as a condition of approval.

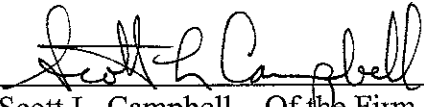
## **III. CONCLUSION**

For the reasons set forth herein, Thompson Creek respectfully moves the Department to reconsider its Transfer Approval and remove Condition for Approval Number 4 from the Transfer Approval. Again, Thompson Creek requests a hearing on the matters raised in

this Petition in accordance with Idaho Code § 42-1701A(3) and Idaho Department of Water Resources Rule of Procedure 730 (IDAPA 37.01.01.730.02(e)).

DATED this 1st day of February, 2005,

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

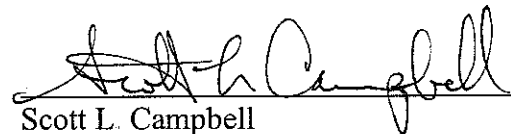
By   
Scott L. Campbell – Of the Firm  
Attorneys for Thompson Creek Mining  
Company

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2005, I caused a true and correct copy of the foregoing **PETITION FOR REVIEW OF PRELIMINARY ORDER (TRANSFER APPROVAL) AND REQUEST FOR HEARING** to be served by the method indicated below, and addressed to the following:

Karl Dreher, Director  
Idaho Department of Water Resources  
322 E. Front Street, 6th Floor  
Idaho Water Center  
Boise, Idaho 83702

( ) U.S. Mail, Postage Prepaid  
(x) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile

  
Scott L. Campbell