

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 69381 IN THE)
NAME OF ROBERT &/OR DEANNE)
MANNING)
_____)

**PRELIMINARY ORDER REJECTING
APPLICATION FOR TRANSFER**

This matter having come before the Department of Water Resources ("Department") as a result of an application to transfer water rights, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On February 22, 2001, Robert and/or Deanne Manning ("applicant") applied to the Department for authorization to change the place of use and point of diversion for 0.02 cubic feet per second of water diverted from Birch Creek for irrigation purposes in Cassia County in accordance with a portion of decreed Water Right 45-77 (claimed in the Snake River Basin Adjudication as 45-77Y). The transfer application, designated no. 69381 ("application") by the Department, lists the reason for the application as "...lawn around our house has been watered with Birch Ck. water for a long time, but has no water appurtenant to it. We want to move this right legally to our lawn."

2. The application indicates that the place of use authorized under the water right is irrigated with Oakley Canal Co. water and will continue to be after the transfer.

3. The application was reviewed by Department staff in coordination with review for the Snake River Basin Adjudication. The review was summarized in a memo dated January 12, 2004. The review memo indicated that the transfer would result in an enlargement of the water right because the place of use authorized under the water right is also irrigated with other sources of water and the proposed place of use does not have canal shares. The reviewer recommended that the application be denied unless the enlargement can be addressed.

4. Idaho Code §42-222 says, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, ...

5. On January 15, 2004 and April 23, 2004, the Department mailed the applicant a letter asking for information to address the potential enlargement issue related to the water right involved in the application. In the April 23, 2004 letter, the Department informed the applicant that if they did not respond by May 3, 2004, the Department would reject or deny the application.

6. The Department has not received a response from the applicant to the request by the Department for additional information.

CONCLUSIONS OF LAW

1. Without the additional information requested from the applicant, the Department cannot ascertain that the change in water use proposed in the application is consistent with the provisions of Idaho Code §42-222.

2. The Department should reject the application.

ORDER

IT IS HEREBY ORDERED that transfer application no. 69381 in the name of Robert and/or Deanne Manning is **REJECTED** without prejudice.

Dated this 10th day of November, 2004.



GARY SPACKMAN
Chief, Water Allocation Bureau