

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF TRANSFER)
NO. 71010 IN THE NAME OF)
DIAMOND A LIVESTOCK, INC.)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right transfer approval, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On May 3, 2004, the Department issued a preliminary order approving Transfer No. 71010 authorizing Diamond A Livestock, Inc. (right holder) to add a point of diversion and change the place of use for water right nos. 37-228, 37-229, and 37-2147.
2. The approval for Transfer No. 71010 (transfer) limited the irrigation use under rights 37-228 and 37-229 to a total of 227.7 acres through the following conditions applied to each water right:

This right is limited to the irrigation of 227.7 acres within the place of use described above in a single irrigation season.

Rights 37-228 and 37-229 when combined shall not exceed the irrigation of 227.7 acres.

3. On May 17, 2004, the Department received a petition for reconsideration (petition) from Charles G. Brockway, P.E. (petitioner), who filed on behalf of the right holder. The petition asks the Department to amend the transfer approval to allow irrigation of a total of 257.3 under water right nos. 37-228 and 37-229.
4. The Department reviewed the petition and the transfer approval and concluded that, prior to the transfer approval, the originally decreed place of use included about 227 irrigated acres. An additional 30 irrigated acres were not part of the originally decreed place of use, and were presumably covered by water right no. 37-2147 as licensed or through an accomplished transfer. It is possible that the water use under water right nos. 37-228 and 37-229 was expanded to the additional 30 acres, but no claims were filed in the Snake River Basin Adjudication (SRBA) asserting an enlargement of the use under water right nos. 37-228 and 37-229.
5. The Department disposed of the petition for reconsideration by corresponding with the petitioner in a letter dated May 24, 2004. The letter provided instruction to the petitioner to

provide information confirming the historic acreage irrigated under the water rights involved in the transfer. The information was to include location of diversions, ditches and irrigated lands as developed and as changed over time.

6. On June 14, 2004, the Department received a letter from the petitioner describing the rate of flow used under the water rights involved in the transfer and indicating that water use authorized under water right nos. 37-228 and 37-229 was used on additional acres based on an accomplished transfer. The petitioner did not provide information showing the location of diversions, ditches and irrigated lands as developed and as changed over time.

CONCLUSIONS OF LAW

1. Section 67-5243(3), *Idaho Code*, provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

2. Rule 730.02a of the Rules of Procedure of the Department provides in pertinent part that the Department will "... dispose of the petition for reconsideration within twenty-one (21) days of its receipt or the petition will be considered denied by operation of law."

3. Section 42-222(1), *Idaho Code*, provides in pertinent part as follows:

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...

4. Section 42-1426(2), *Idaho Code*, provides in pertinent part as follows:

The mandatory permit requirements of sections 42-201 and/or 42-229, *Idaho Code*, are waived, and a new water right may be decreed for the enlarged use of the original water right based upon the diversion and application to beneficial use, with a priority date as of the date of completion of the enlargement of use for any enlargement occurring on or before November 19, 1987; provided however, that the rate of diversion of the original water right and the separate water right for the enlarged use, combined, shall not exceed the rate of diversion authorized for the original water right...

5. The right holder does not have a basis for consideration of additional acres associated with water right nos. 37-228 and 37-229 because claims have not been filed in the SRBA for enlargement pursuant to Section 42-1426, *Idaho Code*.

6. The petitioner has not provided suitable justification for the Department to amend the transfer approval.
7. The Department should deny the petition for reconsideration of the preliminary order pursuant to Section 67-5243(3), *Idaho Code*.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order approving Transfer No. 71010 is **DENIED** pursuant to Section 67-5243(3), *Idaho Code*.

Dated this 18th day of June, 2004.



Gary Spackman
Chief, Water Allocation Bureau