

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 70728)
IN THE NAME OF THE BIG WOOD)
CANAL COMPANY)
_____)

PRELIMINARY ORDER

This matter came before the Idaho Department of Water Resources ("IDWR" or "Department") in the form of an application for transfer. The Department makes the following Findings of Fact, Conclusions of Law and Preliminary Order:

STANDARD FOR DECISION

Transfer applications are processed under Idaho Code § 42-222 which provides, in 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, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have

been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth.

FINDINGS OF FACT

1. On August 27, 2003, Big Wood Canal Company ("BWCC" or "applicant") filed application for transfer No. 70728 ("application") with the Department.

2. The purpose of the application is to expand the historical service area of the applicant to include the following area:

PLACE OF USE:

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04S	20E	8	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
04S	20E	17					x												

3. The Department published notice of the application during September 2003.

4. Protests were not filed against approval of the application.

5. The applicant owns numerous water rights diverted from the Big Wood River, the Little Wood River and their tributaries.

6. The water rights owned by the applicant are delivered by the watermaster of Water District Nos. 37 and 37M.

7. The water rights owned by the applicant are currently being reviewed in the Snake River Basin Adjudication ("SRBA").

CONCLUSIONS OF LAW

1. Expansion of the historical service area cannot result in an enlargement of the place of use for the water rights owned by BWCCC.

2. The approval of the Department should provide for continued review of the applicant's water rights in the SRBA process to determine the elements of the BWCCC water rights, including places of use limitations within the larger service area recognized by this approval.

3. The Department should partially approve the application to expand the service area of the applicant.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 70728 is **PARTIALLY APPROVED**, subject to the following conditions:

1. This approval changes only the service area of the Big Wood Canal Company and does not determine the specific place of use for each water right, other elements of the rights, or the validity of water rights involved in the application.

2. The service area of the Big Wood Canal Company shall be expanded to include the following described area:

PLACE OF USE:

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04S	20E	8	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
04S	20E	17						x											

3. Expansion of the historical service area cannot result in an enlargement of the place of use for the water rights owned by BWCCC.

4. Use of the water rights held by the applicant will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, the water rights held by the applicant are within State Water District Nos. 37 and 37M.

5. The right holder shall maintain measuring devices and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control at all authorized diversions for the water rights of the right holder.

6. Approval of this transfer does not preclude the opportunity for review of the applicant's water rights in the ongoing Snake River Basin Adjudication.

7. Failure of the right holder to comply with the conditions of this partial approval is cause for the Director to rescind this approval.

Signed this 8th day of April, 2004.



L. Glen Saxton, P.E.

Administrator

Water Management Division