

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO.71056 IN THE)
NAME OF SUTTON, SELLGREN &)
SELLGREN INC.)
_____)

**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 April 25, 1991, Sutton, Sellgren & Sellgren Inc. ("applicant") applied to the Department for authorization to change the place of use for 5.08 cubic feet per second of water diverted from the Big Wood River for irrigation purposes in Blaine County in accordance with all or a portion of decreed Water Rights 37-158, 37-274, 37-276 and 37-892. The transfer application, designated no. 71056 ("application") by the Department, lists the reason for the application as "take water from subdivided land to allow expansion of golf course."

2. 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, 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.

3. On January 23, 1992, February 27, 1998 and January 6, 2004, the Department mailed the applicant a letter asking for additional information to clarify ownership discrepancies and to address potential enlargement issues related to the water rights involved in the application. In the January 6, 2004 letter, the Department informed the applicant that if they did not respond to the

request within 30 days, the Department would reject or deny the application.

4. 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. 71056 in the name of Sutton, Sellgren & Sellgren Inc. is **REJECTED** without prejudice.

Dated this 27th day of February, 2004.


GARY SHACKMAN
Chief, Water Allocation Bureau