

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

IN THE MATTER OF	)	
APPLICATION FOR TRANSFER	)	PRELIMINARY ORDER
89018 IN THE NAME OF RICK	)	DENYING APPLICATION
<u>MOWREY AND KRISTY MOWREY</u>	)	

PROCEDURAL HISTORY

On April 4, 2024, Rick Mowrey and Kristy Mowrey (“Mowrey”) filed Application for Transfer 89018 with the Idaho Department of Water Resources (“Department”). Mowrey amended Application 89018 on July 16, 2024. The Department published notice of the application on July 24 and 31, 2024. No protests were filed against the application. On September 5, 2024, the Department requested additional information from Mowrey about the hydraulic connection between the existing point of diversion and the proposed point of diversion. Mowrey did not provide any additional information.

After carefully considering the application and other relevant information available to the Department, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application 89018 proposes to change the point of diversion and place of use for a 3.5-acre portion of ground water right 29-7009.

2. Water right 29-7009 bears a priority date of March 22, 1968, and authorizes the diversion of 0.11 cfs and an annual diversion volume of 18 acre-feet from ground water for domestic and stockwater use and the irrigation of 4.5 acres.

3. The existing point of diversion for water right 29-7009 is a ground water well in the NWSWNW, Section 7, T07S, R35E. The ground water well diverts water from the Lower Portneuf River Valley (“LPRV”) aquifer. *See Memo – Hydrology staff review of application for transfer 82496*, Jennifer Sukow (11/26/2018) at page 3 (map depicting the approximate boundaries of the LPRV aquifer).

4. The proposed point of diversion is in the NESW, Section 22, T08S, R36E, approximately ten miles southeast of the existing point of diversion. The proposed point of diversion is an existing ground water well that diverts water from the Marsh Valley aquifer. Application 89018 (map showing proposed point of diversion less than ½ mile from Marsh Creek in Marsh Valley).

5. “The LPRV aquifer is hydraulically connected to the [Eastern Snake Plain Aquifer (“ESPA”)] and there is not a definitive boundary at the transition between the aquifers.” *Memo –*

Hydrology staff review of application for transfer 82496, Jennifer Sukow (11/26/2018) at page 1.
“The Marsh Valley aquifer is not directly connected to the ESPA, but groundwater discharge to Marsh Creek may be conveyed to the ESPA boundary as surface flow via the Portneuf River.”
Memo – Hydrology staff review of application for transfer 79844, Jennifer Sukow (7/10/2015) at page 1.

6. The LPRV aquifer and the Marsh Valley aquifer are not hydraulically connected underground. Ceasing to divert water under water right 29-7009 at the existing point of diversion will not result in an increase in the water supply at the proposed point of diversion.

7. “Based on the available data, there is evidence of long-term groundwater level decline in the Marsh Valley aquifer system and long-term decline in aquifer discharge to Marsh Creek.” *Groundwater Resources in Marsh Valley, Bannock County, Idaho, Jennifer Sukow (October 2021) at page 31.*

RELEVANT LEGAL PROVISIONS

Idaho Code § 42-222(1) sets forth the criteria used to evaluate transfer applications and states, in pertinent part:

Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change.

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.

ANALYSIS

Idaho Code § 42-222(1) does not authorize a water user to change the source of a water right. Based on the technical information available to the Department, the Marsh Valley aquifer (the source for the proposed point of diversion) and the LPRV aquifer (the source for the existing point of diversion) are not hydraulically connected underground. Therefore, the two aquifers

would be considered separate sources of water. Even though the source at the existing point of diversion and the source at the proposed point of diversion are both called "ground water," they are hydraulically separate sources of water for purposes of water right administration. The Department should not approve a transfer proposing to move a ground water right from the LPRV aquifer to the Marsh Valley aquifer because such a change would constitute a change in water right source, which is not authorized by statute.

As part of its review of a transfer application, the Department must confirm that the proposed change will not injure existing water rights. Based on the technical information available to the Department, the Marsh Valley aquifer and the LPRV aquifer are not hydraulically connected underground. Therefore, any proposal to move a ground water right from the LPRV aquifer into the Marsh Valley aquifer would be equivalent to a new diversion from the Marsh Valley aquifer.

Water right 29-7009 bears a priority date of March 22, 1968, and is senior to several ground water rights diverted from the Marsh Valley aquifer. Based on ground water level measurements, there is a long-term decline in water levels in the Marsh Valley aquifer. Additional withdrawals from an aquifer with declining water levels increases the likelihood that ground water rights will be administered in the basin. If ground water rights were administered in the Marsh Valley aquifer, junior ground water rights would be curtailed prior to the portion of water right 29-7009 proposed to be changed. This injury concern could be addressed by making the Mowrey water right the most junior ground water right in Marsh Valley for purposes of water right administration. Although such a condition may mitigate injury concerns, it does not resolve the change in source concerns described above.

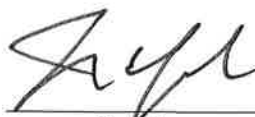
CONCLUSIONS OF LAW

Mowrey has not demonstrated that the proposal to change the source for a portion of water right 29-7009 from the LPRV aquifer to the Marsh Valley aquifer is allowed under Idaho Code § 42-222(1). Therefore, Application 89018 should be denied.

ORDER

IT IS HEREBY ORDERED that Application for Transfer 89018 in the name of Rick Mowrey and Kristy Mowrey is DENIED.

Dated this 15th day of October, 2024.



James Cefalo
Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of October 2024, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER DENYING APPLICATION, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:

US MAIL - CERTIFIED

RE: APPLICATION FOR TRANSFER 89018

**Rick Mowrey and Kristy Mowrey
4160 Techfarm Rd
Pocatello, ID 83204**



Christina Henman
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.