

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

IN THE MATTER OF	)	ORDER ADOPTING STIPULATED
APPLICATION FOR TRANSFER	)	FINDINGS OF FACT AND
NO. 87701 IN THE NAME OF	)	ESTABLISHING SCHEDULE
<u>GARDNER FARMS</u>	)	FOR BRIEFING

On March 23, 2023, Garnder Farms filed Application for Transfer 87701 with the Idaho Department of Water Resources ("Department"). The Department published notice of Application 87701 on April 19 and 26, 2023. Idaho Power Company filed a protest against the application on May 8, 2023.

The Department conducted an informal settlement conference on July 19, 2023, a pre-hearing conference on August 22, 2023, and a status conference on September 20, 2023. Attorney Luke Marchant represented Garnder Farms. Attorney John Simpson represented Idaho Power Company. During the conferences, the parties determined that the issues of protest were primarily legal in nature. On September 26, 2023, the parties filed Stipulated Findings of Fact, setting forth the following facts, and asked the hearing officer to adopt these stipulated facts in lieu of conducting an evidentiary hearing.

1. Application for Transfer 87701 proposes to change the point of diversion and place of use for a combined 13-acre portion of water rights 35-14407 and 35-14408.
2. The existing point of diversion for water rights 35-14407 and 35-14408 is in the SWSENE, Section 31, T01N, R36E.
3. The proposed point of diversion for the combined 13-acre portion of water rights 35-14407 and 35-14408 proposed to be changed is in the NWSWSW, Section 1, T01S, R34E.
4. The "Trust Water Area," established through the 1984 Swan Falls Agreement, is a geographic area in the State of Idaho which is intended to represent the area where surface water and ground water are tributary to the Snake River between Milner Dam and Swan Falls Dam. *See* Idaho State Water Plan Section 4C.
5. "Trust Water" refers to "that portion of an unsubordinated water right used for hydropower generation purposes" as defined in IDAPA 37.03.08.010.17 and 37.03.08.030.c and made available for future development as a result of the 1984 Swan Falls Settlement. *See* Idaho State Water Plan 4C.
6. The existing point of diversion for water rights 35-14407 and 35-14408 is located outside of the Trust Water Area.
7. The proposed point of diversion and place of use are located within the Trust Water Area.
8. The proposed diversion would be a new diversion of water within the Trust Water Area.
9. Water right 35-14407 is a split portion of water right 35-2380, which was licensed by the State Reclamation Engineer of Idaho in 1961. The licensed point of diversion for water right 35-2380 was located outside of the Trust Water Area. Water right 35-2380 bore a priority date of June 4, 1954, and was not a reallocation of trust water as described in Idaho Code § 42-203B(3).

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10. Water right 35-14408 is a split portion of water right 35-8026, which was licensed by the Idaho Department of Water Resources in 1990. The licensed point of diversion for water right 35-8026 was located outside of the Trust Water Area. Water right 35-8026 bore a priority date of March 5, 1982, and was not a reallocation of trust water as described in Idaho Code § 42-203B(3).
11. Application 87701 included an analysis of the impacts of the proposed changes on the Snake River using the Department's Eastern Snake Plain Aquifer ("ESPA") Transfer Tool. Under the current thresholds utilized by the Department pursuant to an internal Department memorandum for ground water transfers in the Eastern Snake Plain Aquifer, the changes proposed in Application 87701 do not require mitigation for impacts to the Snake River.
12. According to the results of the Department's ESPA Transfer Tool, provided with the application, the changes proposed in Application 87701 will decrease depletions to the Snake River in some reaches above Milner Dam and increase depletions in reaches between Milner Dam and Swan Falls Dam.
13. The proposed point of diversion, which delivers water under other irrigation water rights to separate acres, is regulated by the watermaster for Water District 120, and is already equipped with a flow meter.
14. Although the proposed place of use has been irrigated in the past, the water rights associated with those acres have been transferred to a separate place of use in the past.
15. The applicant will use a center pivot and sprinklers to irrigate the proposed place of use.

These stipulated facts accurately summarize the facts associated with Application 87701 and should be adopted as findings in this contested case. *See* IDAPA 37.01.01.556. The parties also asked for an opportunity to file argument briefs addressing the legal issues of the contested case. During the pre-hearing conference, the parties agreed to a schedule for argument briefs. The hearing officer should confirm the briefing schedule in this order.

ORDER

IT IS HEREBY ORDERED that the Stipulated Findings of Fact are adopted as findings of fact for this contested case. Further, pursuant to IDAPA 37.01.01.562, the hearing officer authorizes the parties to file argument briefs addressing any of the legal issues raised in this contested case and addressing the question of whether Application 87701 satisfies the review criteria set forth in Idaho Code § 42-222(1). Initial briefs from both parties are due on or before October 31, 2023. Response briefs from both parties, if any are filed, are due on or before November 29, 2023. Argument briefs may be filed and served by email.

This is an Interlocutory Order issued pursuant to IDAPA 37.01.01.710.

Dated this 27th day of September 2023.



James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September 2023, true and correct copies of the documents described below were served by email to the following:

Document(s): Order Adopting Stipulated Findings of Fact and Establishing Briefing Schedule

LUKE MARCHANT
HOLDEN KIDWELL HAHN & CRAPO
lmarchant@holdenlegal.com

JOHN SIMPSON
MARTEN LAW
jsimpson@martenlaw.com

GREG SULLIVAN
BROCKWAY ENGINEERING
greg.sullivan@brockwayeng.com

SCOTT PUGRUD
IDAHO POWER COMPANY
spugrud2@idahopower.com

GARDNER FARMS
doug@dc-farms.net



Christina Henman
Administrative Assistant

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