

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 43-07321 AND)
APPLICATION FOR TRANSFER)
NO. 4640 IN THE NAME OF)
ROUND MOUNTAIN RANCH)
_____)

FINAL ORDER

Protests were filed with the Idaho Department of Water Resources (department) contesting application for permit to appropriate water no. 43-07321 and application for transfer no. 4640. The department conducted a hearing on February 21 and 22, 1996. A recommended order was issued on October 15, 1996. On October 29, 1996, Round Mountain Ranch (applicant) petitioned the hearing officer for reconsideration of the recommended order. On November 19, 1996, the hearing officer granted reconsideration. On December 31, 1996, the hearing officer issued an amended recommended order. Exceptions to the amended recommended order were filed by the applicant and by Harold Jones and Ray Jones (protestants).

ANALYSIS

Applicant's Exceptions

The applicant filed numerous exceptions to the amended recommended order. Most of the exceptions can be consolidated into a larger issue: does the department have the authority to review the extent of beneficial use under a water right sought to be transferred pursuant to Idaho Code § 42-222?

Application for transfer no. 4640 sought to change the place of use, the period of use, and the nature of use of existing water rights. By filing the application for transfer, the applicant subjected the water rights to review by the department pursuant to the criteria of Idaho Code § 42-222. The only change in the place of use proposed by the application was a

(2) water from Clear Creek is being diverted by Sessions pursuant to water right no. 43-00286(part) as ordered by the adjudication court.

IT IS FURTHER ORDERED that permit no. 43-07321 is conditioned as follows:

1. The storage of water under this right is contingent upon the certification of the dam and authorization of storage as provided by the dam safety provisions of Idaho Code.
2. This right only allows for the storage of a volume of water up to the maximum amount authorized once in each given year during the non-irrigation season. Once the authorized volume of water has been stored during the non-irrigation season in a given year, no additional water can be diverted to storage during the non-irrigation season of that year.
3. The right holder shall install suitable measuring devices to determine the amount of water diverted and shall report the information to the department annually.
4. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before November 1, 1998.

IT IS FURTHER ORDERED that application for transfer no. 4640 is PARTIALLY APPROVED to allow a change in the place of use for water right no. 43-00286(part) as described below, and to allow the retention of summer flows diverted pursuant to existing water rights for water management purposes.

IT IS FURTHER ORDERED that 35 acres located in the NESW of Section 13, T16S, R27E, can only be irrigated with Clear Creek water when water is available pursuant to water right no. 43-00286(part). The 35 acres may be irrigated from the reservoir provided that: (1) Clear Creek water is simultaneously being delivered to the reservoir, and (2) water from Clear Creek is being diverted by Sessions pursuant to water right no. 43-00286(part) as ordered by the adjudication court.

IT IS FURTHER ORDERED that the remaining five acres of the 40 acres located in the NESW of Section 13, T16S, R27E, will be described as a place of use for water right nos. 43-00045, 43-00286, 43-000182, 43-00414, and will also be described as a place of use in the adjudication claim nos. A43-10824 and A43-10116.

IT IS FURTHER ORDERED that the remainder of the place of use proposed by the application for transfer will be recognized as proposed with the following condition:

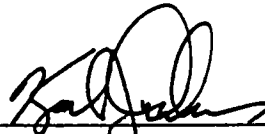
Other than the 40 acres in the NESW of Section 13, T16S, R27E, the place of use described is the place of use set forth in the adjudication claims that has not been field verified.

3. During a single irrigation season, right no. 43-00045 is limited to the irrigation of 160 acres within the 231-acre place of use described above.

4. During a single irrigation season, right nos. 43-00182 and 43-00414 are limited to the irrigation of 160 acres each and a combined total of 231 irrigated acres within the place of use described above.

5. During a single irrigation season, claim no. A43-10116 is limited to the irrigation of 231 acres in the place of use described above.

Signed this 7th day of November, 1997.



KARL J. DREHER
Director

CERTIFICATE OF MAILING

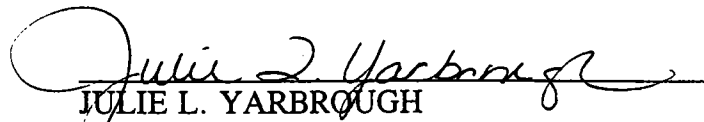
I HEREBY CERTIFY that on this 11th day of November, 1997, I mailed a true and correct copy, postage paid, of the foregoing **FINAL ORDER** to the following:

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