BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 72150 IN THE NAME OF SALMON FALLS LAND & LIVESTOCK CO.	)))))	**ORDER CONDITIONALLY DISMISSING APPLICATION FOR TRANSFER**

This matter is before the Director of the Department of Water Resources ("Director" or "Department") as a result of an application for transfer filed by the Salmon Falls Land & Livestock Company ("Salmon Falls") on June 30, 2005.

Application for transfer no. 72150 appears to be substantially similar to application for transfer no. 5464, which the Department denied on September 3, 2004. *See Final Order In the Matter of Application for Transfer No. 5464 in the Name of Salmon Falls Land & Livestock Co.* ("Final Order"). Salmon Falls appealed the Final Order in a proceeding for judicial review before District Judge G. Richard Bevan of the Fifth Judicial District in Twin Falls County Case No. CV 04-4923 entitled *Salmon Falls Land and Livestock v. Idaho Department of Water Resources.* On June 20, 2005, Judge Bevan dismissed the appeal with prejudice based upon a stipulation of the parties.

After Salmon Falls filed its new application for transfer no. 72150, but before any publication of notice, the Department received numerous protests regarding Salmon Falls' current proposal.

Because of the substantial similarities between denied application for transfer no. 5464 and new application for transfer no. 72150, it appears that, unless Salmon Falls can demonstrate good cause to the contrary, the Department should dismiss application for transfer no. 72150 without further processing based upon the doctrine of *res judicata*, as recently summarized by the Idaho Supreme Court in *Union Pacific Land Resources Corp. v. Shoshone County Assessor*, 140 Idaho 528, 534, 96 P.3d 629, 635 (2004). *See also Sagewillow, Inc. v. Idaho Department of Water Resources*, 138 Idaho 831, 844-45, 70 P.3d 669, 682-63 (2003).

ORDER

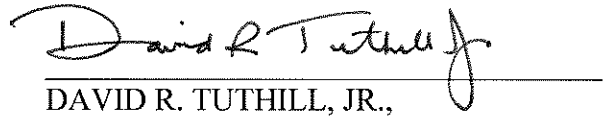
Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

Application for transfer no. 72150, in the name of the Salmon Falls Land & Livestock Company, is conditionally dismissed without further processing. The Director will, however, accept briefing on the question of whether or not the denial of application for transfer no. 5464 should preclude the processing of application for transfer no. 72150 based upon the doctrine of

res judicata. Salmon Falls, any party to the prior proceeding on application for transfer no. 5464, and any person who has submitted a protest regarding application for transfer no. 72150 may file briefing.

Salmon Falls shall file any brief opposing the dismissal of application for transfer no. 72150 with the Department within thirty-five (35) days of the date of this order. Respondent briefs shall be due within twenty-eight (28) days of the filing of the Salmon Falls brief. Salmon Falls may file a reply brief within fourteen (14) days of the filing of any respondent brief. Thereafter, the Director will issue a written order accepting or rejecting application for transfer no. 72150 for processing.

DATED this 11th day of April, 2007.



DAVID R. TUTHILL, JR.,
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April, 2007, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

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