

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION     )  
FOR TRANSFER NO. 73811 IN THE     )  
NAME OF IDAHO WATER COMPANY     )  
\_\_\_\_\_ )

**PRELIMINARY ORDER REJECTING  
CONTESTED 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 September 8, 2008, Idaho Water Company (Applicant) submitted an application for transfer to the Department for authorization to change the point of diversion and place of use for water rights nos. 61-7119, 61-7396, 61-2154, 61-10378, 61-7005, and 61-2155. Idaho Water Company was granted the authority to file the application for transfer by agreements with Brown Farms LLC and Shekinah Industries Inc. The Application was protested by the City of Mountain Home, G3 LLC, Nevid LLC & Elk Creek Ranch LLC, and Mayfield Townsite.
2. On January 5, 2011, the Department sent the Applicant a letter requesting current information regarding the status of the agreements with Brown Farms LLC (Mr. Brown) and Shekinah Industries Inc (Mr. Preston). The Applicant was to provide current status and validity of the agreements, copies of change made to the existing agreements, or copies of applicable new agreements/purchases. The information was to be submitted to the Department by February 10, 2011.
3. To date, the Department has not received the information or documents requested from the Applicant.

**CONCLUSIONS OF LAW**

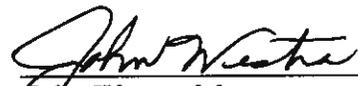
1. Idaho Code (IC)§42-222 states in part:  
*Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree 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..... Upon receipt of such application, it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code.....*

2. Under the above statute, an applicant must be entitled to use the water to make an application to the Department for water right change(s). Without current valid agreements, the Applicant does not have authority (entitlement) to file the application for transfer. The Department should reject the application for transfer.

**ORDER**

IT IS HEREBY ORDERED that transfer application no. 73811 in the name of Idaho Water Company is **REJECTED**.

Dated this 15<sup>th</sup> day of February, 2011.

  
\_\_\_\_\_  
John Westra, Manager

## CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of February, 2011, I mailed a true and correct copy of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

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EDEN ID 83325

GIVENS PURSLEY LLP  
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BOISE ID 83701-2720

BROCKWAY ENGINEERING  
ATTN: ERICK POWELL  
2016 N WASHINGTON ST, STE 4  
TWIN FALLS ID 83301

CITY OF MOUNTAIN HOME  
ATTN: WAYNE SHEPHERD  
PO BOX 10  
MOUNTAIN HOME, ID 83647

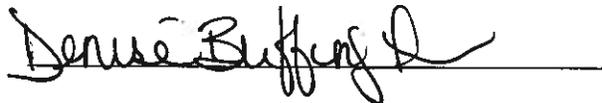
G3 LLC  
ATTN: CRAIG HAYNES  
2136 E LEWANDOWSKI LN  
BOISE ID 83716

NEVID LLC & ELK CREEK RANCH LLC  
C/O BARKER ROSHOLT & SIMPSON  
ATTN: NORM SEMANKO  
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MAYFIELD TOWNSITE LLC  
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MOORE SMITH BUXTON & TURCKE  
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Denise Buffington  
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