BEFORE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 74650 IN THE NAME OF VAL E SCHWENDIMAN FARMS INC	))))	**PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL**

This matter having come before the Department of Water Resources ("Department") as a result of an application for transfer of water rights, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On February 20, 2009, transfer no. 74650 ("transfer") was approved as a preliminary order in the name of Val E Schwendiman Farms Inc. The transfer changed the place of use to several water rights including water right nos. 22-7210 and 22-7313B.

2. The transfer approval for water right nos. 22-7210 and 22-7313B included condition of approval no. 2 as follows:

    2. Rights 22-7205, 22-7210, 22-7265A, 22-7265B, and 22-7314 when combined shall not exceed a total diversion rate of 56.36 cfs.

3. The transfer approval for water right no. 22-7210 included condition of approval no. 11 as follows:

    11. The following rights are diverted through point(s) of rediversion described above: 22-7210, 22-7270, 22-7313A, 22-7313.

CONCLUSIONS OF LAW

1. Condition of approval no. 2 on the transfer approval for water right nos. 22-7210 and 22-7313B contains clerical errors regarding the water rights affected by the combined total diversion rate. The list of water rights should include 22-7313A and 22-7313B.

2. Condition of approval no. 11 on the transfer approval for water right nos. 22-7210 contains a clerical error regarding the water rights diverted through the point of rediversion. Water right no. 22-7313B should replace water right no. 22-7313.

3. The transfer approval should accurately describe each established water right as changed by the transfer pursuant to Section 42-222, *Idaho Code*.

4. The Department should correct the conditions on the transfer approval and issue an amended transfer approval with the corrected conditions for water right nos. 22-7210 and 22-7313B.

ORDER

IT IS HEREBY ORDERED that conditions of approval nos. 2 and 11 for water right no. 22-7210 and condition of approval no. 2 for water right no. 22-7313B on the approved transfer no. 74650 are **CORRECTED** as follows:

2. Rights 22-7205, 22-7210, 22-7265A, 22-7265B, 22-7313A, 22-7313B and 22-7314 when combined shall not exceed a total diversion rate of 56.36 cfs.

11. The following rights are diverted through point(s) of rediversion described above: 22-7210, 22-7270, 22-7313A, 22-7313B.

IT IS FURTHER HEREBY ORDERED that the Department's order approving transfer no. 74650, dated February 20, 2009 is **SUPERSEDED** by the amended transfer approval issued in conjunction with this order.

Dated this 13 day of October, 2009

ERNEST CARLSEN
Water Resource Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of October 2009, I mailed a true and correct copy, postage prepaid, of the foregoing AMENDED TRANSFER APPROVAL to the person(s) listed below:

Sharla Cox
Administrative Assistant

VAL E SCHWENDIMAN FARMS INC
9633 E HWY 33
NEWDALE ID 83436

WATER DISTRICT 01
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402

ROCKY MOUNTAIN ENVIRONMENTAL
482 CONSTITUTION WAY #303
IDAHO FALLS ID 83402

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration within fourteen (14) days after service as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 issuance 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:
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> (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.