BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 79384 IN THE NAME OF THOMAS AND DOROTHY LENO	)))	**PRELIMINARY ORDER DENYING TRANSFER**

On May 20, 2014, Thomas and Dorothy Leno filed Application for Transfer No. 79384 with the Idaho Department of Water Resources ("Department"). The application was advertised to the public beginning on July 3, 2014. Protests were filed by Richard Parrott, Jimmie L. Conder, Michael and Jana Humphries, William D. Hamby, Eric Parrott, Lois M. Rice, Leslie Ellsworth (for herself and 9 other individuals), Pam Ritter, Ed Smith, Victoria Henson, Scott Houtz, Delea Miller (Andrew), Jeanie McCreary, Barbara and Lynn Stephens, Margaret Winsryg and Leroy Elliott, Elizabeth (Betty) Slifer, and Martin F. Hackard.

A pre-hearing conference was conducted on November 19, 2014. The parties were unable to resolve the issues of protest during the conference and requested that a hearing be held to decide the contested case.

On January 20, 2015, Cedar Ridge Dairy, LLC ("Cedar Ridge") filed a motion to intervene in support of the application. The motion to intervene was granted on March 5, 2015 based on the fact that Cedar Ridge was represented by the same attorney as Thomas and Dorothy Leno and agreed to rely on the evidence presented by the Lenos.

An administrative hearing was conducted on March 18 and 19, 2015 in Twin Falls, Idaho. Thomas and Dorothy Leno and Cedar Ridge were represented by attorney Travis Thompson. Margaret Winsryg and Leroy Elliot were represented by attorney David Coleman. The hearing was held in conjunction with hearings for Application for Transfer Nos. 79357, 79380 and 79466. Separate orders will be issued for Applications 79357, 79380 and 79466. After carefully considering the evidence in the administrative record, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application for Transfer 79384 proposes to move a split portion (41.6 acres, 0.49 cfs and 124.8 acre-feet) of water right 47-17589 from property near the Idaho-Nevada border to farm ground near Berger, Idaho. Ex. 5. Thomas and Dorothy Leno are the current owners of record for water right 47-17589. Ex. 3. Thomas Leno ("Leno") signed the application.

2. Dorothy Leno passed away in August 2011. *See* Attachments to Application 79384. Leno's attorney, Travis Thompson, provided an order from the Idaho Fifth Judicial District Court settling the estate of Dorothy Leno and confirming that the entire estate was distributed to Leno.

3. In July 2014, Leno sold the property at the existing place of use for water right 47-17589 to Y-3 II (an Idaho general partnership), but reserved the portion of water right 47-17589 associated with transfer applications 79357, 79380 and 79384. *See* Attachments to Application 79384.

4. Application 79384 included a Contract of Agreement between Cedar Ridge and Leno stating that Cedar Ridge agreed to purchase 41.6 acres of water right 47-17589 from Leno. Ex. 1, page 3. The agreement states that ownership of the split portion of the water right would not be changed until after the proposed transfer is approved. *Id.*

5. The proposed place of use and point of diversion are on property owned by Henry C. Hafliger Jr. ("Hafliger") and L&S Land Holdings, LLC. *See* Attachments to Application 79384. Hafliger is a manager of Cedar Ridge. *Id.* L&S Land Holdings, LLC provided a letter consenting to the proposed changes. *Id.*

6. On May 16, 2014, Leno and Cedar Ridge signed a Water Right Purchase and Sale Agreement for a portion (1.10 cfs, 279.6 afa, 93.2 acres) of water right 47-17589. See Attachment to Application 79384. The portion of water right 47-17589 being sold to Cedar Ridge was divided into three parts, which are the water rights involved in Applications for Transfer 79357, 79380 and 79384. *Id.*

7. On June 1, 2010, a partial decree was issued for water right 47-7106 in the Snake River Basin Adjudication ("SRBA"). Ex. 3. Water right 47-7106 bore a priority date of December 25, 1970, authorized the diversion of 1.85 cfs and an annual diversion volume of 465 acre-feet for the irrigation of 155 acres. *Id.*

8. In three previous transfers approved by the Department (77406, 77669 and 78127), portions of water right 47-7106 were moved to other locations. Brockway Report, App. C. Water right 47-7106 was split into four parts as a result of the previous transfers. The portion of water right 47-7106 remaining at the original place of use was assigned water right number 47-17589.

9. An analysis was provided with the three previous transfers, which calculated the number of acres irrigated with ground water at the original place of use for water right 47-7106. Brockway Report, pages 3-6; *Historical Water Use Analysis on Parent Water Right 47-7106* (Attachment to Application 79384). That analysis shows that 145.7 acres of the 155 acres described in water right 47-7106 were primarily irrigated with ground water. *Id.* The 41.6 acres proposed to be moved in the pending application are part of the 145.7 acres considered primary ground water acres. *Id.*

10. As it currently exists, water right 47-17589 authorizes the diversion of 1.21 cfs and an annual diversion volume of 307.5 acre-feet for the irrigation of 102.5 acres.

11. The existing place of use for water right 47-17589 is located in Sections 20 and 29, T16S, R16E. The existing point of diversion is located in Section 20, T16S, R16E.

12. The existing place of use for water right 47-17589 is also irrigated with surface water rights 47-2118, 47-2048, 47-14285 and 47-7287 from Mule Creek. Ex. 6. Leno proposes to abandon or relinquish the portions of the Mule Creek rights associated with the 41.6 acres proposed

to be transferred. *See* Attachments to Application 79384. Leno has demonstrated continued ownership of the portions of water rights 47-2118, 47-2048, 47-14285 and 47-7287 that are proposed to be relinquished if Application 79384 is approved. *Id.*

13. The proposed place of use is currently irrigated with surface water shares from the Salmon River Canal Company. Visser Testimony. The portion of water right 47-17589 proposed to be transferred would be used as a primary ground water right at the proposed place of use and the canal company shares would be moved to some other property. Ex. 1; Visser Testimony.

14. The proposed point of diversion is an existing ground water well that is currently used for domestic and stockwater purposes. Visser Testimony. The well is approximately 550 feet deep, has an 8-inch casing, and can be easily converted for irrigation use. Sullivan Testimony; Visser Testimony. The proposed point of diversion is located in the SWSW of Section 8, T11S, R16E, approximately 32 miles north of the existing point of diversion for water right 47-17589. Ex. 5.

15. Cedar Ridge proposes to divert ground water from the proposed point of diversion into a small holding pond in the SWSW of Section 8, T11S, R16E, where it will be comingled with surface water from Salmon River Canal Company and waste water from nearby dairies. Visser Testimony; Ex. 2. Cedar Ridge will pump water from the pond for irrigation at the proposed place of use. *Id.*

16. The existing point of diversion and proposed point of diversion are located within Administrative Basin 47 ("Basin 47"). On February 6, 2014, the SRBA Court issued General Provisions for Basin 47. Ex. 4. The document included the following statement: "Except as otherwise specified above [nothing is specified], all other water rights within Basin 47 will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law." *Id.*

17. The protestants in this contested case divert ground water from the local aquifer for domestic and stockwater purposes. Protestant Jeanie McCreary's domestic well is located the closest to the proposed point of diversion, about 528 feet to the southeast of the proposed well. Brockway Report, pages 20-22. Protestants Jeanie McCreary, Delea Miller, Margaret Winsryg, Martin Hackard, Scott Houtz, Richard Parrott, Eric Parrott, Pam Ritter and Lois Rice/Victoria Henson pump from domestic wells located less than one mile from the proposed well. *Id.*

18. The term "Salmon Tract" refers to an area south of Twin Falls that lies within the service area for the Salmon River Canal Company. Berger, Idaho is located in the north central part of the Salmon Tract.

19. The productive aquifer in the Berger area is primarily comprised of basalt. Bonnichsen Report, page 1; Bonnichsen Rebuttal Report, pages 3-4. Most of the domestic, irrigation and stockwater wells in the area divert water from the basalt or the intercalated sedimentary layers. Kimball Rebuttal Report, page 3. The basalt aquifer in the Berger area is underlain by geologic formations that do not readily transmit water. *Id.* Hydraulic conductivity and transmissivity values can vary greatly throughout the Salmon Tract aquifer. C. Brockway Testimony.

20. "[T]he elevation of the bottom of the basalt zone in the Berger area may very locally by several hundred feet." Bonnichsen Report, page 3. "[T]he bottom of the basalt zone represents the bottom of the aquifer from which sustained water volumes can be obtained." *Id.* at 4. Wells logs in the record suggest that the saturated zone of the aquifer is between 100 and 250 feet thick in the Berger area. *Id.*

21. Cedar Ridge hired Brockway Engineering, PLLC ("Brockway") to evaluate the effects of diverting ground water as proposed in Application 79384. Brockway prepared two Winflow models to estimate the drawdown impacts resulting from pumping 124.8 acre-feet from the proposed well during the irrigation season. The Winflow models relied on the Theis equation to estimate drawdown and evaluate impacts after 20 years of pumping. Exs. 14-17; Sullivan Testimony.

22. The first Brockway model incorporated the following assumed aquifer parameters:

> Ground water gradient: 50 feet/mile
> Saturated thickness: 435 feet (265 feet to 700 feet below land surface)
> Hydraulic conductivity: 55 feet/day
> Storativity: 0.12

Brockway Report, page 19.

23. The conductivity and storativity values used by Brockway were taken from a regional evaluation of the Salmon Tract aquifer completed by Cosgrove, et al. in the late 1990s. Brockway Report, pages 19 and 31.

24. The first Brockway model predicted a drawdown of 0.7 feet at the McCreary well, located 528 feet from the proposed point of diversion.

25. Brockway conducted a pump test on the proposed well on October 7th and 8th, 2014. Ex. 8. During the test, between 120 and 170 gallons per minute was pumped from the well over an 18-hour period. *Id.* The maximum measured drawdown in the proposed well during the pump test was about 200 feet. *Id.*

26. Brockway asserts that the pump test conducted on the proposed well was not intended to obtain the characteristics of the local aquifer or to measure impacts to nearby wells. Brockway Rebuttal Report, pages 5-6. Rather, the pump test was performed for the sole purpose of determining the yield of the proposed well. *Id.* The pump test was not adequate to show whether the well can produce 0.49 cfs (220 gpm). Sullivan Testimony. A second pump test is likely needed to confirm the actual yield of the well. *Id.*

27. Due to the large drawdown in the well during the pump test, Brockway decided to prepare a second Winflow model to estimate the drawdown impacts at the protestants' wells. C. Brockway Testimony; Brockway Report, pages 26-28. In the second model, Brockway reduced the assumed hydraulic conductivity value to 15.3 feet/day. *Id.*

28. Brockway derived the hydraulic conductivity value of 15.3 feet/day through an analysis of well driller reports for ten wells located within five miles of the proposed point of diversion. Brockway Report, pages 26-28. The average hydraulic conductivity calculated for the ten wells is 15.3 feet/day. The median hydraulic conductivity for the ten wells is 0.9 feet/day. *Id.* Brockway chose to use a conductivity value of 15.3 feet per day even though the estimated hydraulic conductivity for the proposed well was calculated to be only 1.0 feet/day. *Id.*

29. The second Brockway model predicted a drawdown of about 2 feet at the McCreary well.

30. Some of the protestants, including Jeanie McCreary, testified that their domestic wells are unable to produce a reliable amount of water for common household uses. Testimony of Henson, McCreary, Ritter, Stephens and Winsryg. Some of these supply problems may be caused by inefficiencies of the individual domestic wells. However, the similarity in the reports of the protestants living near the proposed well raise a concern that local conductivity may be less than reported rates for the regional aquifer.

31. Ground water at the existing point of diversion for water right 47-17589 flows south into Nevada toward Shoshone Creek, a tributary of Salmon Falls Creek. Bonnichsen Rebuttal Report, page 3; C. Brockway Testimony. "[T]here is absolutely no reason to believe that water from the [existing point of diversion] . . . would travel underground northward to become part of the groundwater system in the Berger area." Bonnichsen Report, page 5.

32. "Shoshone Creek joins Salmon Falls Creek about 3.7 miles south of the Idaho-Nevada border." Bonnichsen Rebuttal Report, page 2. Ground water and surface water in this area leaves the valley as surface water in Salmon Falls Creek near Jackpot, Nevada. Bonnichsen Report. "[T]here does not appear to be any sort of subterranean rock sequence through which groundwater readily could flow out of the basin [near] Jackpot [Nevada] and into the Salmon Tract area to the north." Bonnichsen Report, page 5

33. Water flowing in Salmon Falls Creek at the Idaho-Nevada border can be captured and stored in Salmon Falls Creek Reservoir and then used for irrigation by Salmon River Canal Company. The proposed place of use for the pending application is within the service area of the Salmon River Canal Company.

34. A portion of the water diverted from Salmon Falls Creek by Salmon River Canal Company is lost to seepage in the company's canals and ditches. Some of this seepage occurs near the proposed well.

35. An increase in water flow in Salmon Falls Creek at the Idaho-Nevada state line increases the water supply for Salmon River Canal Company. Additional water delivered through the Salmon River Canal Company system results in additional seepage losses from the company's canals.

36. Seepage from Salmon Falls Creek and seepage from Salmon River Canal company canals contributes water to the regional aquifer. See Kimball Water Budget. Seepage from Salmon

Falls Creek Reservoir also contributes to aquifer levels in the Salmon Tract area. C. Brockway Testimony.

37. Ground water levels in the area of the proposed point of diversion are stable. Squires Testimony. Monitoring wells in the area do not show a significant decline in aquifer levels over the last 35 years. Brockway Report, pages 12-15. The static water level in the Ritter well (located one mile east of the proposed well) was measured at 240 feet below land surface in 1982 and 217 feet below land surface in 2009. Ritter Testimony. The static water level in the Hackard well (located one mile east of the proposed well) was measured at 290 feet below land surface in 2002 and 290 feet below land surface in 2014. Hackard Testimony.

38. Comparing a small set of depth to water measurements in an aquifer with seasonal fluctuations in water levels may not provide an accurate picture of increases or declines in aquifer levels. Squires Testimony. It is difficult to know whether a single water level measurement represents the maximum or minimum water level for that particular year. *Id.*

39. Twin Falls Canal Company ("TFCC") operates a High Line Canal which crosses through the Berger area from east to west approximately two miles north of the proposed point of diversion. *See* Ex. 12. The TFCC Low Line Canal is located a few miles farther north. *Id.* Seepage from these large canals provides elevated aquifer levels resulting in smaller depth-to-water levels to the north of the proposed well. Brockway Report, page 18. The static water levels in the Berger area fluctuate throughout the year due to seepage from the surface water canals and seepage from irrigation. Squires Testimony; Ex. 10.

ANALYSIS / CONCLUSIONS OF LAW

1. Idaho Code § 42-222 sets forth the criteria used to evaluate transfer applications:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

2. The applicant bears the burden of proof for all of the factors listed in Section 42-222.

Injury to Other Water Rights

3. Injury between ground water users is governed by Idaho Code § 42-226, which states: "Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources . . ."

4. Reasonable pumping levels have not been established in Basin 47. Therefore, the reasonableness of projected drawdown in neighboring wells resulting from a proposed transfer will be evaluated on a case-by-case basis.

5. A regional analysis of the Salmon Tract aquifer estimated the hydraulic conductivity of the aquifer to be 55 feet/day. Brockway Report, page 19. Regional estimates of conductivity do not necessarily reflect the actual conductivity at a specific point in the aquifer. C. Brockway Testimony. There can be significant local variation depending on the homogeneity of the aquifer substrate. It is possible that the hydraulic conductivity of the aquifer near the proposed well is much less than the regional aquifer.

6. Brockway predicts that the drawdown to neighboring wells caused by pumping 124.8 acre-feet from the proposed well will be less than 2 feet. Brockway makes this prediction based on the results of a Winflow model incorporating a hydraulic conductivity value of 15.3 feet/day.

7. Brockway asserts that using a hydraulic conductivity value of 15.3 feet/day is "very conservative" when compared to the published conductivity values for the Salmon Falls Tract. Brockway Report, page 26. However, the evidence in the administrative record shows that assuming a hydraulic conductivity value of 15.3 feet/day is not conservative.

8. Brockway derived the hydraulic conductivity value of 15.3 feet/day from an analysis of short-term pump tests conducted on ten wells in the area. Brockway Report, page 26. As part of its analysis, Brockway chose to include a domestic well located in the SESE of Section 32, T10S, R16E ("Well #7"). *Id.*

9. Well #7 is located within 200 feet of the TFCC High Line Canal. *See* Ex. 12. It is very different from the other wells used in the analysis. The driller's report states that Well #7 is only 250 feet deep. Brockway Report, page 26. All of the other wells used in Brockway's analysis are at least 340 feet deep. *Id.* Further, the static water level in Well #7 is only 188 feet below land surface, which is over 200 feet closer to the surface than the static water level in wells located near the proposed point of diversion. *Id.*

10. Greg Sullivan from Brockway Engineering stated that he did not even consider the influence of canal seepage on Well #7 when performing his analysis. Sullivan Testimony. Brockway acknowledges that proximity to the TFCC canals can influence local aquifer levels. In fact, in its aquifer stability analysis, Brockway chose to exclude USGS well 10S15E-26DDA1 (which is located about ¼ mile from the High Line Canal) because of "its close proximity and hydraulic interaction with the TFCC canal system." Brockway Report, pages 12-13, 22.

11. The calculated hydraulic conductivity for Well #7 was 108 feet/day. Brockway Report, page 26. The other nine wells used in the analysis had calculated hydraulic conductivity values of less than 30 feet/day. *Id.* In fact, six of the ten wells used in the Brockway analysis had calculated hydraulic conductivity values of 1.0 feet/day or less. *See id.*

12. If Well #7 were excluded from the analysis (which would have been a conservative approach), the average calculated hydraulic conductivity of the nine remaining wells would be 5.0 feet per day. *See* Brockway Report, page 26. It is important to note that the calculated hydraulic conductivity for the proposed well is only 1.0 feet/day. *See id.* Lower hydraulic conductivity will lead to greater drawdown in the proposed well and the nearby domestic wells. Sullivan Testimony.

13. The difference in a hydraulic conductivity value of 15.3 feet/day and a value of 1.0 feet/day is not inconsequential. As part of his rebuttal report, DuWayne Kimball, an expert witness for protestant Richard Parrott, prepared a simplified model comparing the expected drawdown in a well pumping from an aquifer having a hydraulic conductivity of 15.3 feet/day and from an aquifer having a hydraulic conductivity of 0.9 feet/day. Kimball Rebuttal Report, page 7.

14. For his model, Kimball assumed a pumping rate of 140 gpm and a storativity coefficient of 0.12. Kimball Rebuttal Report, Appendix. After 24 hours, the expected drawdown in a well pumping from an aquifer with a hydraulic conductivity of 15.3 feet/day would be about 5 feet. *Id.* After 24 hours, the expected drawdown in a well pumping from an aquifer with a hydraulic conductivity of 0.9 feet/day would be about 90 feet. *Id.*

15. During the pump test performed by Brockway, the drawdown in the proposed well was more than 180 feet after about 18 hours of pumping. *See* Ex. 8. Sullivan acknowledged that the hydraulic conductivity at the proposed well is likely less than the hydraulic conductivity values used in the Winflow models. Sullivan Testimony.

16. Sullivan testified that it would not be appropriate to use the hydraulic conductivity value estimated for a single location (in this case, at the proposed point of diversion) to determine the drawdown impacts at wells located 3 or 4 miles away. Sullivan's statement is correct. A regional conductivity value would be more appropriate in estimating impacts over long distances. However, it would have been appropriate to use the local hydraulic conductivity value (1.0 feet/day) to determine drawdown impacts to a domestic well located just 500 feet from the proposed well.

17. The well driller reports collected and presented by Brockway support using a lower hydraulic conductivity value when estimating the drawdown impacts to local wells. For example, a domestic well in the NENW of Section 17, T11S, R16E (located within ¼ mile of the proposed well) shows a drawdown of 90 feet in the pumping well after only pumping 20 gallons per minute (0.04 cfs). Brockway Report, page 26. Application 79384 proposes diverting ten times that amount (220 gpm or 0.49 cfs).

18. Prior to the hearing, Kimball prepared a simplified model to determine what drawdown may result if a hydraulic conductivity of 0.9 feet/day were used in the Brockway analysis. Kimball Testimony. To create his model, Kimball assumed that the proposed well would divert 124.8 acre-feet over a seven month period (which equates to a continuous diversion rate of about 0.3 cfs). *Id.* Kimball also assumed an aquifer storativity value of 0.12 and an aquifer thickness of 250 feet. *Id.*

19. Kimball found that, after one season of pumping, the drawdown at a location 750 feet from the proposed well would be approximately 6.8 feet. Kimball Testimony. The drawdown after 20 years at that same location could be as much as 9 feet. *See* Ex. 16 (drawdown in year 20 is approximately 30% greater than year 1).

20. Protestant Jeanie McCreary diverts water from a domestic well located 528 feet to the southeast of the proposed well. Ex. 12. The evidence in the administrative record and summarized above suggests that the drawdown at the McCreary well resulting from the proposed change could be more than 9 feet after twenty years. However, there is not sufficient evidence in the record to determine the expected drawdown at the McCreary well assuming a hydraulic conductivity of 1.0 feet/day.

21. Leno has not sufficiently demonstrated that the proposed change will not result in unreasonable drawdown (injury) to domestic water rights in the immediate area of the proposed well. The assumptions incorporated into Brockway's analysis were not conservative and do not reflect the full extent of potential drawdown at nearby wells.

Other Injury Issues Raised by Protestants

22. The protestants raised a concern about the effect of pumping from the proposed well if a large percentage of water users in the area were to convert from flood irrigation to sprinkler irrigation. *See* Kimball Water Budget. A transfer applicant does not bear the burden of addressing changes to the regional aquifer (which may occur irrespective of approval or denial of a transfer). Idaho Code § 42-222 only requires an applicant to address injury to other water rights in the context of current hydrologic conditions.

23. The protestants argued that there is not sufficient water available at the proposed point of diversion to satisfy a diversion rate of 0.49 cfs. Testimony of Squires (arguing that the specific capacity derived from the October 2014 pump test on the proposed well suggests that Cedar Ridge will draw down to the bottom of the basalt aquifer before being able to pump 0.49 cfs.) Mr. Sullivan acknowledged that the proposed well may not be able to produce 0.49 cfs. Sullivan Testimony.

24. Sufficiency of water supply is not an element of review under Idaho Code § 42-222. Applicants proposing to change the point of diversion for ground water rights run the risk of not being able to find sufficient water at the proposed point of diversion.

Connectivity of Ground Water in Basin 47

25. A significant amount of testimony was presented at the hearing addressing the question of whether ground water at the existing point of diversion is hydraulically connected to the ground water at the proposed point of diversion.

26. The evidence presented on this issue was inconclusive. Brockway and Bonnichsen agree that ground water at the existing point of diversion flows south into Nevada. Brockway and

Bonnichsen also acknowledge that there is not much data about ground water between Jackpot, Nevada and Berger, Idaho because there are so few ground water wells in that area. The hydraulic connection between ground water at these locations may include residence time as surface water in Shoshone Creek or Salmon Falls Creek and seepage from Salmon Falls Creek, Salmon Falls Creek Reservoir, or from the Salmon River Canal Company delivery system.

27. 0.49 cfs is not a large amount of water, particularly in the context of ground water flow. In the absence of more-reliable evidence that there is not a hydraulic connection between the existing point of diversion and the proposed point of diversion, the Department should rely on the general provision from the SRBA Court and treat ground water in Basin 47 as a hydraulically connected source.

Enlargement of Water Rights

28. Leno sufficiently demonstrated that approval of this transfer will not result in the enlargement of the split portion of water right 47-17589. If the transfer were approved, the water right would be limited to 0.49 cfs, 124.8 acre-feet and 41.6 acres of irrigation.

Conservation of Water Resources

29. Leno satisfied his burden of proof regarding conservation of water resources. Application 79384 proposes to irrigate using pivots and sprinklers, a conservative use of water. There is no evidence in the record that the proposed water use would be inconsistent with the conservation of water resources in the state of Idaho.

Local Public Interest

30. The local public interest analysis under Section 42-222 is meant to be separate and distinct from the injury analysis. Local public interest is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Idaho Code § 42-202B(3).

31. There is no evidence in the record that the changes proposed in Application 79384 are not in the local public interest.

Summary

32. Leno did not satisfy his burden of proof for the review criteria set forth in Idaho Code § 42-222. Specifically, Leno did not sufficiently demonstrate that the proposed change will not result in injury to other water rights. Therefore, Application for Transfer 79384 should be denied.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 79384 in the name of Thomas and Dorothy Leno is DENIED.

Dated this 29th day of May, 2015.

James Cefalo
Water Resources Program Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May 2015, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed, certified with return receipt requested, to the following:

Document Served: Preliminary Order Denying Transfer (79384)

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EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

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 or files an exception and brief 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 service date 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:
>
> (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.