

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5760 IN THE)
NAME OF RENO DITCH COMPANY,) **PRELIMINARY ORDER**
INC.)
_____)

This matter having come before the Idaho Department of Water Resources ("Department") in the form of an application for transfer, the Department proposes to enter the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. The Department has recommended the Snake River Basin Adjudication ("SRBA") claim filed on License No. **33-02141** as follows:

Source: Ground water
Priority: January 29, 1949
Rate of diversion: 3.2 cubic feet per second ("cfs")
Point of diversion: NW1/4SE1/4 Section 19, T10N, R27E, B.M.
Use: Irrigation
Place of use: 167.2 acres within parts of Sections 19, 20, 29 and 30,
 T10N, R27E, B.M.

Conditions of Approval:
Use of this right together with right nos. 33-00087 and 33-02034 shall not exceed 3.34 cfs.
Use of this right together with right nos. 33-00087 and 33-02034 is limited to 167.1 acres in a given irrigation season.
This right is limited to the irrigation of 160 acres within the above described place of use in a single irrigation season.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The Department also has recommended the SRBA claim filed on License No. **33-02106** as follows:

Source: Ground water
Priority: August 7, 1961
Rate of diversion: 3.0 cfs
Point of diversion: NESW Section 19, T10N, R27E, B.M.
Use: Irrigation
Place of use: 150 acres within parts of Sections 19, 20, 29 and 30, T10N,
 R27E, B.M.

Conditions of approval:

Use of this right together with right nos. 33-00087, 33-02034 and 33-02141 shall not exceed 6.14 cfs.

Use of this right when combined with right nos. 33-00087, 33-02034, and 33-02141 is limited to the irrigation of 307.1 acres in a given irrigation season.

3. The Department also has recommended SRBA Claim No. **A33-11002** filed by Ted S. Sorenson, Birch Creek Ranches, LLC as follows:

Source: Ground water
Priority: August 8, 1961
Rate of diversion: 1.8 cfs
Point of diversion: NESE Section 19, T10N, R27E, B.M.
Use: Irrigation
Season of use: April 1 to October 31
Place of use: 150 acres within parts of Sections 19, 20, 29 and 30, T10N, R27E, B.M.

Conditions of approval:

Use of this right when combined with right nos. 33-00087, 33-02034, 33-02141 and 33-02106 shall not exceed a combined rate of diversion of 6.14 cfs

Use of this right when combined with right no. 33-02106 is limited to a combined diversion rate of 4.8 cfs and 525 acre feet per annum ("AFA")

Use of this right when combined with right nos. 33-00087, 33-02034 and 33-02141 shall not be used for the irrigation of more than 307.1 acres in any irrigation season.

4. On November 16, 1999, the Reno Ditch Company, Inc. ("applicant") filed Application for Transfer No. 5760 ("application") with the Department proposing to change the point of diversion and place of use of water right nos. 33-02106, 33-02141 and R33-11002 to 306.8 acres in Section 32, T9N, R33E, B.M. The proposed points of diversion are within Sections 19, 29 and 32 in T10N, R30E, B.M. and Section 24, T10N, R29E, B.M.

5. The Department published notice of the application that was subsequently protested on July 7, 2000 by Mud Lake Water Users, Inc. ("protestant"). The protestant subsequently withdrew its protest.

6. The applicant proposes to change the place of use of water rights from the Little Lost River drainage in Butte County to a place of use in the Birch Creek drainage located approximately 36 miles to the southeast in Clark County. The proposed new points of diversion are wells located near Blue Dome that are approximately 19 miles east of the authorized place of use and about 18 miles northwest of the proposed place

of use.

7. The application proposes to divert ground water near Blue Dome, inject the water into Birch Creek, redivert the water from Birch Creek at a point used by the applicant to divert surface water to a hydropower generation plant owned by the applicant, use the water in the power plant, and then convey the water on to the place of use for irrigation.

8. The aquifer in the Little Lost River drainage is a separate aquifer from the aquifer in the Birch Creek drainage. The ground water in the Little Lost River drainage is not directly hydraulically connected to ground water in the Birch Creek drainage although both aquifers are connected to the Eastern Snake River Plain aquifer.

9. On April 16, 2001, the Department corresponded with the applicant seeking information related to potential enlargement of water use and potential injury to other water rights. In March 2002, the applicant responded to the information request relative to the consumptive irrigation requirement but did not address enlargement and injury concerns associated with a change from the Little Lost River Drainage to the Birch Creek drainage. On January 27, 2003, the applicant provided additional information to address the enlargement and injury concerns of the Department.

ANALYSIS

Section 42-222, Idaho Code, allows changes in certain elements of a water right but not others. Source is one of the elements not included in Section 42-222. The application can not be approved.

The application for transfer filed by the applicant essentially proposes a new appropriation of water in the Birch Creek drainage. The application could also be viewed as an exchange between ground water sources and there are no provisions for ground water exchanges in the Idaho statutes.

Even though the net effect of the discharge of ground water from either the Birch Creek drainage or from the Little Lost River drainage upon the Eastern Snake River Plain aquifer might be similar in amount and/or timing, the effects of the change within either drainage themselves are unknown and will result in changes and can not be accurately predicted.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

(1) 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. ... (Emphasis added).

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, and 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 42-203A(5), Idaho Code; ...

2. The change of water use as proposed in the application is not readily administrable and could result in the diversion and use of more ground water and surface water in the Little Lost River drainage.

3. The Department should deny the application.

ORDER

IT IS THEREFORE hereby ORDERED that Application for Transfer No. 5760 in the name of Reno Ditch Company, Inc. is **DENIED**.

Signed this 4th day of February, 2003.

/Signed/
L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau