

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

**IN THE MATTER OF APPLICATION
FOR PERMIT NO. 47-17664 IN THE
NAME OF ROBERT K AND JANA L
LINDERMAN**

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**PRELIMINARY ORDER
APPROVING PERMIT**

PROCEDURAL BACKGROUND

On May 24, 2017, Robert K. and Jana L. Linderman (Linderman) filed Application for Permit no. 47-17664 (Application) with the Idaho Department of Water Resources (Department) proposing a domestic use of surface water. The Department published notice of the application on July 20 and 27, 2017. James Michael Hamilton and Sally K. Hamilton (Hamiltons¹) filed protests against the application, alleging that the proposed water use would cause injury to their downstream rights. On July 19, 2018 and again on February 25, 2019, Linderman timely filed requests to delay processing of the Application. The Department granted the requests. The Department conducted a pre-hearing conference on July 29, 2020. During the conference, the parties requested that the Department hold an administrative hearing to decide the contested case.

On March 10, 2021, the Department conducted a hearing in Twin Falls, Idaho. Linderman was represented by attorney Nathan Fowler. Hamiltons were represented by attorney Patrick Brown. Linderman did not offer exhibits. Exhibits A through H and Exhibit J offered by Hamiltons were admitted into the administrative record. Exhibits C and J were modified during the hearing and the modifications made part of the record. Department Exhibit 200 was admitted to the record. Prior to the hearing, the hearing officer took official notice of water right records in the Department's files that may be relevant to the contested case. Linderman² testified on his own behalf. Hamiltons testified on their own behalf and called Tanner Butler (Butler) as a witness.

At the conclusion of the March 10, 2021 hearing, the record in the proceeding was closed. After the hearing, the Department discovered that the digital media disk from the morning session of the hearing was corrupted, and that opening remarks, stipulations to admission of exhibits, and the Linderman and Butler testimonies were not recorded. The Department held a supplemental hearing on April 8, 2021 and the record was re-opened, in order that stipulations could be read into the record, and the Linderman and Butler testimonies could be repeated and recorded.

Post-hearing briefs were requested by Hamiltons, and were due on April 29, 2021. *Applicant's Closing Argument* was received timely, and *Protestants' Brief Opposing Application* (Protestants' Brief) was received on May 4, 2021 along with a *Motion to Accept Late-Filed Brief* (Motion). Linderman did not oppose the Motion, and Protestants' Brief is accepted into the record.

After carefully considering the evidence in the record, the Department finds, concludes, and orders as follows:

¹ James Michael Hamilton and Sally K Hamilton filed separate but identical protests. Protestants will collectively be referred to as "Hamiltons" in this document. If reference is to a single individual, M. Hamilton or S. Hamilton will be used.

² Only Robert Linderman participated in the proceedings.

FINDINGS OF FACT

The Application

1. The Application proposes to divert 0.02 cubic feet per second (cfs) from an unnamed stream tributary to Mud Creek in Twin Falls County, for a domestic use which is described in the Application as the irrigation of no more than ½ acre of lawn in connection with a home. Ex. C. The proposed point of diversion is an existing pump in the unnamed stream, situated in NESENE Section 23, T09S R14E near Buhl³. *Id.*

2. The proposed point of diversion and place of use are located on a 4.3-acre parcel owned by Linderman, at 4377 N 1400E Rd, Buhl, Idaho (Application Property). Linderman testimony. *Id.*

3. The proposed place of use depicted on the original Application map is not correct. Linderman testimony. A garage and gravel driveway have been constructed to the south of the house, and this area will not receive irrigation water. *Id.* The revised place of use was described as the yard immediately around the home, and a border of grass and trees to the south and west of the garage, not to exceed ½ acre of irrigation. *Id.*

The existing irrigation system

4. When Linderman acquired the Application Property, a pressurized irrigation system was already in place. Linderman testimony. The irrigation system currently in use on the Application Property consists of a concrete cistern or sump⁴ which collects shallow ground water or seepage flows from buried tile drains. Water is pumped from the cistern to buried main lines; irrigation occurs with a mixture of yard sprinklers, fence mounted sprinklers and larger impact sprinklers mounted on portable carts. *Id.* The lawn around the home and garage, and the pasture to the west of the home are irrigated from the common irrigation system. *Id.*

5. The location of the cistern is 80 to 100 feet east of the unnamed stream. Butler testimony. Water from the cistern is delivered into the pressurized irrigation system with a two-horsepower irrigation pump (2 HP pump). *Id.*

6. A ¾ horsepower pump (Red pump) is situated on the unnamed stream at the proposed point of diversion. The Red pump is plumbed to supply surface water from the unnamed stream to the cistern. Butler testimony.

7. Linderman has used the existing irrigation system including both the Red pump in the unnamed stream and the 2 HP pump at the cistern, to irrigate a total of approximately 2.5 acres since about 2016. M. Hamilton testimony.

8. Water entering the cistern which is not diverted for irrigation is returned to the unnamed stream, via a pvc overflow line. Linderman testimony. Water flows from the tile drains all year, and there is always more flow entering the cistern during irrigation season, than can be pumped by the 2 HP pump into the existing irrigation system. *Id.*

³ There are numerous unnamed streams in the vicinity of the Application, and several are tributary to Mud Creek. The use of the term “unnamed stream” throughout this document, with no other qualifiers, will refer to the unnamed stream proposed in the Application as the source of water. Reference to other unnamed streams will include additional descriptors.

⁴ Frequently referred to as a “culvert” or “upright culvert” in testimony.

Overlapping water rights on the Application Property

9. Water right no 47-17431 for irrigation use authorizes diversions of 0.03 cfs from a separate unnamed stream tributary to Mud Creek, with a point of diversion in SWNENW Section 24, T09S R14E, one-quarter mile east of the Application Property. Ex. E. The water source for right no. 47-17431 is identified as waste water, but is also known as the Mendini Tunnel. *Id.*

10. The delivery system from the Mendini tunnel to the Application Property is no longer in use. Linderman testimony. Diversions under right no. 47-17431 occur at the Red pump. *Id.* Irrigation return flows originating east of N 4100 E Road enter the unnamed stream, are lifted by the Red pump to the cistern, then pumped by the 2HP pump into the irrigation system⁵. *Id.*

11. Water right no. 47-17431 authorizes the irrigation of 1.1 acres which are different acres than the ½ acre proposed in the Application, although the water delivery system is commingled. Linderman testimony.

12. Water right no. 47-8344 authorizes aesthetic storage of 0.3 acre-feet on the unnamed stream with a point of diversion at or near the Application proposed point of the diversion. EX. G. The pond is overgrown and the original dam and check structure are used primarily to back up water for operation of the Red pump. M. Hamilton testimony.

13. A domestic well constructed on the Application Property provides water for in-house uses only. Linderman testimony. The domestic well does not produce enough water for irrigation use, and is not connected to the pressurized irrigation system. *Id.*

Upstream water rights on the unnamed stream

14. Right no. 47-17420, held by David A. and Norma J. Keaton, authorizes diversion of 0.02 cfs from the unnamed stream in NESENE Section 23, T09SR14E, for irrigation use from 03/15 to 11/15 each year.

15. Right no. 47-17421, held by Sally K. Hamilton, authorizes diversions of 0.13 cfs from the unnamed stream in NESENE Section 23, T09SR14E, for irrigation and stockwater uses from 03/15 to 11/15 each year.

16. The shared pipeline diversion for 47-14721 and 47-14720 is situated upstream from the Red pump. M. Hamilton testimony.

Downstream water rights on the unnamed stream

17. Hamiltons own properties⁶ on Mellon Valley Road situated west of the Application Property and downstream on the unnamed stream. S Hamilton testimony. Since Linderman purchased the Application Property, instream flows in the unnamed stream past the Hamilton properties have diminished. *Id.* Hamiltons pasture cattle on their property which are dependent on the unnamed stream for stockwater. *Id.*

⁵ This diversion of water is not in conformance with the decreed water right 47-17431. Linderman may need to file an application for transfer to make changes to water right 47-17431. This contested case is not the proper forum to evaluate compliance under right no. 47-17431.

⁶ Some properties are held in the name of Sally Baugh.

18. The following existing water rights divert from the unnamed stream, downstream from the Red pump to the confluence with Mud Creek:

Right No.	Rate (cfs)	Water Use, Season of Use	Owner	Point of Diversion
47-4074	0.12	Irrigation 3/15-11/15 stockwater 1/1-12/31	Andrea and Lenard Womack	SESWSE S14 T09S R14E
47-4166A	0.05	Irrigation 3/15-11/15	Dale Butterworth, Tammie Peterson	SWNWSE and NWSWSE S14 T09S R14E
47-4166B	0.08	Irrigation 3/15-11/15	Dale Butterworth, Tammie Peterson	SWNWSE and NWNWSE S14 T09S R14E
47-13727	0.03	Irrigation 3/15-11/15	Hallie J Graham	NWSWSE S14 T09S R14E
47-4095	0.16	Irrigation 3/15-11/15 stockwater 1/1-12/31	Diane G and Donald K Campbell	NWSWSE S14 T09S R14E
47-14112	0.06	Irrigation 3/15-11/15	John Pember	NWSWSE S14 T09S R14E
47-4223	0.39	Irrigation 3/15-11/15	Diane G and Donald K Campbell	NWSWSE S14 T09S R14E

19. Downstream water rights authorize total diversions of 0.89 cfs. All but one of these rights contains a condition that the source of the unnamed stream is waste water, or includes waste water.

APPLICABLE LEGAL STANDARDS

Idaho Code § 42-203A(5) states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho . . . the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The applicant bears the burden of proof for the elements set forth in Idaho Code § 42-203A(5). IDAPA 37.03.08.40.04.

Idaho Code § 42-111 states, in pertinent part:

(1) For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase "domestic purposes" or "domestic uses" means:

(a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day.

...

(3) Multiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section. The purpose of this limitation is to prohibit the diversion and use of water, under a combination of domestic purposes or domestic uses as defined in this section, to provide a supply of water for a use that does not meet the exemption of section 42-227, Idaho Code, and is required to comply with the mandatory application and permit process for developing a right to the use of water pursuant to chapter 2, title 42, Idaho Code.

ANALYSIS

Reduction to Existing Water Rights

Rule 45.01.a of the Department's Water Appropriation Rules (IDAPA 37.03.08) sets forth the criteria used for determining whether a proposed use of water will reduce the quantity of water under an existing water right:

A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if:

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less.

...

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the Director.

IDAPA 3 7.03.08.0 45.01.a.

Hamiltons allege that since Linderman acquired the Application Property, flows in the unnamed stream past the Hamiltons properties on Mellon Valley Road have declined to the point that the Hamiltons' livestock cannot drink from the stream. The S. Hamilton water right 47-17421 contains a stockwater component, but the right identifies irrigation and stockwater use *diverted* at a point in NESENE Section 23, T09S R14E, and not an instream stockwater use on a lower reach of the unnamed stream. M. Hamilton testified that right no. 47-17421 is diverted and conveyed in a pipeline from the unnamed stream, with a point of diversion upstream from the Linderman pump. The authorized point of diversion for water right 47-17421 is situated upstream from the proposed point of diversion and will not be affected by reduced water availability due to the new diversion. Hamiltons are not able to show that approval of the Application will result in injury to their upstream water right 47-17421.

A permit may be issued, but shall not be required for appropriation of water for the in-stream watering of livestock. Idaho Code §42-113(1). Use of the unnamed stream by Hamiltons for in-stream stock watering is permissible in Idaho. However, the Hamiltons instream stockwater use is not represented by their decreed water right 47-17421, or by any other recorded water right. Instream stockwater uses not represented by a water right permit, license, decree or valid claim are not deliverable in priority with other permitted, licensed or decreed water uses. Hamiltons cannot allege injury to a non-recorded use.

Recorded water rights diverting from the unnamed stream downstream of the Red pump to the confluence of Mud Creek, authorize a combined diversion rate of 0.89 cfs. Linderman argues that no evidence was provided to prove that granting the permit would injure downstream rights. The protestants and the Department do not bear the burden to show injury. Rather, the applicant bears the ultimate burden to show that a proposed use will not reduce the quantity of water under existing water rights. Linderman did not provide any evidence that his proposed use will not reduce water available to existing downstream water rights. Hamiltons confirmed that diversions at the Red pump have been occurring since at least 2016. In spite of this diversion, none of the downstream water right holders filed protests against the Application.

The proposed diversion rate is very small. The probability that diversions pursuant to this Application will injure downstream rights is minor, but it is not nonexistent. A party applying for a water right permit is not required to show that the proposed use will never interfere with an existing water use. Occasional impacts on senior water rights are resolved by the prior appropriation doctrine. The diversion described in the Application could occur when there is sufficient flow in the unnamed stream, and might be curtailed if downstream senior water right holders make a call for water. Downstream right holders will not be injured as long as the proposed permit is subject to existing rights.

Sufficiency of Water Supply

Rule 45.01.b of the Department's Water Appropriation Rules sets forth the criteria for determining whether the water supply is sufficient for a proposed project: "The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible" IDAPA 37.03.08.4s.01.b.

Linderman testified that water flows all year from the tile drains to the cistern, that water entering the cistern which is not diverted for irrigation is returned to the unnamed stream, and that there is always more flow entering the cistern during irrigation season than can be pumped by the irrigation pump. This testimony was not disputed. The ground water at the cistern is not the proposed source for the Application, but Linderman's testimony suggests that, during the irrigation season, there is an ample supply of irrigation return flow from surrounding agricultural lands entering the unnamed stream, either directly or through seeps and springs.

Water supplies are variable. A party applying for a water right permit is not required to show that water supply will always exceed existing recorded rights, only that water is likely to be available in sufficient quantity, frequently enough, and during the correct time of year, that development of the project makes sense. The hearing officer finds there is a reasonable probability that water supply in the unnamed stream would be available for an adequate period of time and in sufficient quantities to make the project economically feasible, and that the applicant will find sufficient water to complete the proposed water use.

Good Faith/Speculation

Rule 45.01.c of the Department's Water Appropriation Rules sets forth the criteria for determining whether an application is filed in good faith and not for speculative purposes. An applicant must have "legal access to the property necessary to construct and operate the proposed project." IDAPA 37.03.08.45.01.c.i. An applicant must also demonstrate that it is "in the process of obtaining other permits needed to construct and operate the project" and that there are no obvious legal impediments to prevent successful completion of the project. IDAPA 37.03.08.45.01.c.ii-iii.

The proposed point of diversion and place of use are located on property owned by Linderman. No other permits are required. Linderman has demonstrated that the Application was filed in good faith and not for delay or speculative purposes.

Sufficient Financial Resources

Rule 45.01.d of the Department's Water Appropriation Rules sets forth the criteria for determining whether an applicant has sufficient financial resources to complete a project. "An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director." IDAPA 37.03.08.45.01.d.ii. The irrigation system is already in place. Linderman has demonstrated that sufficient financial resources are available to complete the project.

Local Public Interest

The local public interest analysis under Idaho Code § 42-203A(5)(e) is meant to be separate and distinct from the injury analysis under § 42-203A(5)(a). 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 § 42-2028(3).

It is undisputed that the proposed permit would benefit Linderman. The proposed ½ acre to be irrigated on the Application Property is not irrigated under Linderman's existing irrigation water right 47-17431. Linderman's domestic well does not produce adequate water for irrigation use.

IDWR Administrative Basin 47, and the Application area, are within the Eastern Snake Plain Moratorium (Moratorium) area. The Moratorium restricts appropriation for new consumptive uses to "protect existing water rights and established minimum stream flows." Moratorium Order, May 15, 1992, Conclusions of Law at 5. It would not be in the public interest to allow a new consumptive use within the Moratorium area. However, the Moratorium does not apply to any application for domestic purposes as such term is defined in Section 42-111, Idaho Code. *Id.*, Order at 5. The Application meets the definition of domestic use and is eligible for processing and approval under the terms of the Moratorium Order.

After weighing the local public interest factors in this case, the hearing officer concludes that the proposed project is in the public interest.

Conservation of Water Resources

Diverting from stream sources for irrigation uses around homes through sprinkler irrigation is a common practice in Idaho and is consistent with the conservation of water resources within the state of Idaho.

Multiple Water Rights for Domestic Uses

Linderman testified that ground water pumped from the cistern is used for irrigation around his home and garage. Linderman also testified that his domestic well is used for in-house purposes only and was no longer connected to the domestic sprinkler system. Idaho Code § 42-111(1)(a) defines domestic uses as “[t]he use of water for *homes*, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, *including irrigation of up to one-half (1/2) acre of land*, if the total use is not in excess of thirteen thousand (13,000) gallons per day. (emphasis added)

Idaho Code § 42-227 states that “[t]he excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the [water right] permit requirement under section 42-229...Rights to ground water for such domestic purposes may be acquired by withdrawal and use.” Linderman described the following domestic uses of ground water on the Application Property: in-house use from the domestic well, and irrigation around the house and garage from the cistern. To the extent that irrigation from the cistern does not exceed ½ acre, each described use independently falls within the statutory definition of domestic use.

Idaho Code § 42-111(3) states that “[m]ultiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section.” Collectively, use of ground water on the Application Property, including use of the domestic well and irrigation of up to ½ acre from ground water pumped at the cistern, does not exceed the domestic definition and may be considered a single domestic use. No water rights are required⁷.

Water rights are required for domestic uses from surface water. Idaho Code § 42-201. The Application proposes a domestic use from surface water - ½ acre of irrigation associated with a home - diverted at the Red pump. In accordance with Idaho Code § 42-111(3), the domestic irrigation use proposed by the Application may not exceed a total of ½ acre when combined with domestic irrigation use from ground water (either the cistern or the domestic well) on the Application Property. In other words, Linderman may choose to irrigate the same ½ acre around his home and garage with *either* ground water, or with water pumped from the unnamed stream, or with a combination of these sources, but at no time shall more than ½ acre be irrigated pursuant to combined domestic uses, using all available combined sources. The proposed permit should include a condition describing the ½-acre combined limit with the existing domestic uses on the Application Property.

Other Arguments

Amendment of Application Source

Linderman alleges that the source of water for the Application is ground water or seep water, originating from a series of tiled drains on the Application Property, and contends that the

⁷ It is not significant that separate ground water diversions are used for different components of the single domestic use. I.C. § 42-111 does not restrict use of multiple points of diversion.

Application should have been filed to authorize use of ground water. Hamiltons argue that the hearing process cannot be used to modify the water source on an application, and the application must be

denied. Rule 35.04.b of the Department's Water Appropriation Rules (IDAPA 37.03.08) states that "[a]n application can be amended to clarify the name of the source of water but may not be amended to change the source of water." IDAPA 37.03.08.35.04.b. The shallow ground water flows entering the cistern are a distinct and separate source from the unnamed stream. The Application may not be amended to name a different source. However, the hearing officer does not agree that the Application must be denied on this basis. Separate sources may be permitted to irrigate the same lands, provided that enlargement of use does not occur.

Installation of Measuring Devices

Hamiltons argue that if the Application is approved that the Linderman irrigation system must be controlled and measured at the 2 HP pump from the cistern. Idaho Code § 42-701 requires that all diversions have a proper controlling works "at the point where the water is diverted", and that water users shall install a measuring device when required by the Department. The Application proposes a diversion of surface water from the unnamed stream at the Red pump, so control and measurement at the cistern does not make sense. Idaho Code § 42-111(1)(a), as applied to diversion and use of ground water, imposes no maximum diversion rate, so the rate of flow diverted at the cistern for domestic irrigation need not be measured. Domestic uses of surface water require a water right which must include a maximum instantaneous diversion rate. The Application proposes an appropriation of surface water at the Red pump, with a diversion rate of 0.02 cfs. Diversions authorized at the Red pump would be subject to control and/or measurement requirements.

The Department uses a variety of methods to monitor and regulate small water uses. Flow meters are certainly one method, but a flow meter requirement on a small domestic water diversion is burdensome to both the water user and to the Department. Most small pressurized irrigation systems operate at a fairly constant rate of flow which may be measured by the Department using standard portable measuring equipment. Once rate of diversion is confirmed, the most efficient way to regulate domestic irrigation use is simply by monitoring total irrigated area. Any irrigation system which is found diverting in excess of the authorized diversion rate or in excess of authorized acres is subject to Department enforcement action.

This project area is not within a regulatory water district, and flow meter requirements are not commonly applied by the Department to domestic uses. Lockable controlling works are required for surface water diversions. A flow meter will not be required at permitting but may be ordered by the Department at a later date.

Alleged Water Right Violations

Hamiltons testified that Linderman's pumping capacity exceeds the flow rate limit of the Application, that Linderman is irrigating in excess of established water rights, and that Linderman is not using the authorized diversion for right no. 47-14731. Hamiltons argue these are grounds to deny the Application. Hamiltons arguments are not persuasive. The diversion system capacity is not a detail that is required on an application for permit, except that the system as generally described should be reasonably able to divert the rate applied for. Theoretical pumping capacities related to the existing irrigation system on the Application Property were disclosed and discussed at length during this proceeding. The hearing officer is convinced that the Red pump at the proposed point of diversion is reasonably able to divert at least the 0.02 cfs proposed on the Application.

Mr. Linderman's current or prior irrigation practices and operation of the existing irrigation system, which may or may not constitute a violation of water appropriation law, have no bearing on the hearing officer's decision to approve or deny the Application. Alleged unauthorized uses of water must be investigated by the Department pursuant to a separate complaint.

CONCLUSIONS OF LAW

Linderman has demonstrated that the water supply is sufficient to accomplish the proposed project, that the application was made in good faith, that he has sufficient financial resources to complete the project, that the proposed water use is consistent with the conservation of water resources within the state of Idaho, and that the proposed project is in the local public interest. Linderman did not provide evidence about injury to existing water rights. Given the small rate proposed in the application and the flows entering the unnamed stream from other irrigation activities, downstream rights will be adequately protected from a reduction in quantity by the prior appropriation doctrine.

The ½ acre proposed place of use is presently irrigated with ground water under an unrecorded domestic right. In order to prevent enlargement of the existing domestic right, the Application must be approved with a condition which limits total irrigation under all domestic rights and sources, to no more than ½ acre.

Application 47-17664 should be approved with conditions.

ORDER

IT IS HEREBY ORDERED that Application for Permit 47-17664 in the name of Robert K. and Jana L. Linderman is APPROVED.

IT IS FURTHER ORDERED that Permit 47-17664 shall include the following conditions:

1. Subject to all prior rights.
2. Domestic use is for uses associated with one home.
3. The quantity of water diverted under this right shall not exceed 13,000 gallons per day.
4. The irrigation occurring under this domestic use shall not exceed ½ acre.
5. This right when combined with other existing or future domestic rights, recorded or unrecorded, from wells or other sources, shall not exceed 13,000 gallons per day and ½ acre irrigation.
6. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.
7. This right is for the use of trust water, and it is subject to review 5 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.

Dated this 28th day of May, 2021



Cindy Yenter
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May, 2021, 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 to the following:

Document Served: Preliminary Order Approving Permit 47-17664

ROBERT K LINDERMAN
JANA L LINDERMAN
4377 N 1400 E
BUHL, ID 83316-5234

NATHAN FOWLER
ANGSTMAN JOHNSON
516 HANSEN ST E
TWIN FALLS ID 83301-6254

JAMES MICHAEL HAMILTON
526 SAWTOOTH AVE
BUHL, ID 83316-5708

SALLY K HAMILTON
526 SAWTOOTH AVE
BUHL, ID 83316-5708

PATRICK D BROWN
PATRICK D BROWN, PC
PO BOX 125
TWIN FALLS ID 83303-0125



Denise Maline
Administrative Assistant

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.