

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

IN THE MATTER OF PERMIT)
NO. 63-33679 IN THE NAME OF)
BUYRITE LLC)
_____)

**PRELIMINARY ORDER
VOIDING PERMIT**

This matter having come before the Department of Water Resources (“Department”) as a result of an examination by Department staff to determine the extent of beneficial use of water, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On December 23, 2013, the Department issued Permit No. 63-33679 (“Permit”) in the name of Hold It LLC to appropriate 0.63 cubic feet per second of ground water for irrigation and commercial purposes within the SW $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21, Township 03 North, Range 01 West, B.M., in Ada County. A condition of permit approval required Hold It, LLC to submit proof of beneficial use of water to the Department on or before January 1, 2019.
2. On January 28, 2019, the Department sent notice to Hold It, LLC that the Permit had lapsed on January 1, 2019 because an acceptable *Statement of Completion for Submitting Proof of Beneficial Use* (“Proof”) or a *Request for Extension of Time* (“Extension Request”) had not been received.
3. On February 8, 2019, Hold It, LLC assigned the Permit to Buyrite LLC (“Permit Holder”).
4. On February 28, 2019, the Permit Holder filed an acceptable Proof.
5. On April 3, 2019, the Department issued a *Preliminary Order Reinstating a Permit* reinstating the Permit and advancing the priority date to October 3, 2012 based on the February 28, 2019 filing of the Proof.
6. On August 1, 2019, the Department staff conducted the beneficial use field examination of the Permit. The field examination found one well on site and reported that it had not been used. The field examiner did not find evidence that water from the well had been used for irrigation and commercial purposes within the place of use.
7. On August 20, 2019, the Department Staff sent a *Notice of Pending Order to Void Permit* (“Notice”). The Notice informed the Permit Holder that the field examiner found no evidence that beneficial use had been developed under the Permit and outlined the documentation needed to prove beneficial use had been developed. The Notice also informed the Permit Holder that the Department would take action to void the Permit if the documents were not received within thirty (30) days.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219(8) states, in pertinent part:
In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit or may refuse issuance of a license and void the permit.
2. The provisions of Idaho Code § 42-219 authorize the Department to void permits for which the permit holder has not fully complied with the law and the conditions of the permit.
3. When Department staff cannot determine the extent of beneficial use developed and the permit holder cannot provide relevant documentation proving beneficial use, the Department must conclude that the proposed project was not developed and that a water right was not established.
4. The Department should void the Permit pursuant to Idaho Code § 42-219.

ORDER

IT IS HEREBY ORDERED that Permit No. 63-33679 is **VOIDED** and issuance of a license is **REFUSED**.

Dated this 6th day of NOVEMBER, 2020.



Angela Grimm
Water Rights Section Manager

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.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 9, 2020

BUYRITE LLC
16130 N ELDER ST
NAMPA ID 83687

RE: Permit No. 63-33679

Dear Permit Holder(s):

The accompanying order is a "**preliminary order**" issued by the department pursuant to Rule 730 of the department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action of the department unless any party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-287-4951.

Sincerely,

FOR
Angela M Grimm
Water Rights Section Manager


Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2020 I mailed a true and correct copy, certified, postage prepaid, of the foregoing **(PRELIMINARY ORDER VOIDING PERMIT)** to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **63-33679**

**BUYRITE LLC
16130 N ELDER ST
NAMPA ID 83687**



Jean Hersley
Technical Records Specialist II