

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO )  
CORRECT WATER RIGHT LICENSE )  
NO. 34-7543 IN THE NAME OF )  
MOORE WATER & SEWER ASSN )  
\_\_\_\_\_)

**PRELIMINARY ORDER  
CORRECTING LICENSE**

This matter having come before the Department of Water Resources ("Department") as a result of the filing of a request to amend a water right license, the Department finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. On September 6, 1994, the Department issued water right license no. 34-7543 ("License") in the name of Moore Water & Sewer Assn for municipal use from groundwater from two points of diversion within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, Township 05N, Range 26E, B.M. Butte County.
2. On February 11, 2020, the Department received a request to review and amend the License from Lin Pearson, Moore Water & Sewer Assn Board Member Vice President ("Request").
3. The Request provided notice that the water amount authorized by the License was incorrect.
4. The diversion system constructed under the permit consisted of two ground water wells that were pumped into a storage tank using one five hp pump and one 7.5 hp pump. *Beneficial Use Field Report 1993* at 2 and 3.
5. On August 28, 2020, the Department conducted a review of the 1993 Beneficial Use Field Report and the Well Driller's Report for each well. The review concluded the system was likely capable of diverting the permitted diversion rate of 0.44 cfs, which is greater than the diversion rate authorized on the License.
6. On September 1, 2020, the Department sent Moore Water & Sewer Assn a Notice of Intent to Correct the License ("Notice"). No objects were received in response to the Notice.

**CONCLUSIONS OF LAW**

1. Idaho Code § 42-219(1) provides in pertinent part:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the

department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license corresponding to the beneficial use.

2. Idaho Code § 67-5254(1) provides in pertinent part:

An agency shall not revoke, suspend, modify, annul, withdraw, or amend a license... unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provision of this chapter or other statute.

3. The Department has an obligation to issue water right licenses that accurately portray the beneficial use of water development in accordance with the permit.
4. The Department issued the License with a diversion rate of 0.36 cfs in error.
5. The Department provided notice and no objections were filed.
6. The Department should correct the License by increasing the diversion rate to 0.44 cfs.

### ORDER

IT IS HEREBY ORDERED that Water Right License No. 34-7543 is **CORRECTED** as set forth in the Revised Water Right License No. 34-7543 issued in conjunction with this order.

Dated this 2<sup>nd</sup> day of OCTOBER, 2020.



Angela Grimm  
Water Rights Section Manager

## CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2020, I served a true and correct copy of Revised Water Right License No. 34-7543 by U.S. Mail, postage prepaid, to the following:

MOORE WATER & SEWER ASSN (Current Owner)  
PO BOX 638  
MOORE ID 83255-0638

  
\_\_\_\_\_  
Jean Hersley  
Technical Records Specialist 2

## **EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

### **PETITION FOR RECONSIDERATION**

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

### **REQUEST FOR HEARING**

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

### **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, requests 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 IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

## FINAL ORDER

The Director 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.