

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

IN THE MATTER OF APPLICATION)
FOR PERMIT TO APPROPRIATE)
WATER NO. 63-34541 IN THE NAME)
OF JONATHAN PARKER THIEL)
_____)

**DEFAULT ORDER
AND PRELIMINARY ORDER
DENYING APPLICATION**

This matter having come before the Idaho Department of Water Resources (Department) as a result of an application to appropriate water, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On January 17, 2020, for failure to appear at a prehearing conference, the Department served a notice of proposed default order denying application no. 63-34541.
2. The applicant Jonathan Parker Thiel did not, within seven (7) days of service of the notice of proposed default order, file a written petition requesting that a default order not be entered.

CONCLUSIONS OF LAW

1. Rule 702 directs the Department to promptly issue a default order after expiration of the seven days for the party to file a petition contesting the default order.
2. The Department should issue a default order and deny the application.

ORDER

IT IS THEREFORE HEREBY ORDERED that the applicant is in default and application for permit no. 63-34541 in the name of Jonathan Parker Thiel is **DENIED without prejudice**.

Dated this 28th day of January, 2020.



Nick Miller
Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of January 2020, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, certified mail with return receipt, postage prepaid and properly addressed to the following:

Documents Served: Default Order and Preliminary Order Denying Application for Permit 63-34541

JONATHAN PARKER THIEL
4211 DINES LN
HOMEDALE ID 83628

GERY W EDSON P.A.
250 S 5TH ST STE 820
PO BOX 448
BOISE ID 83701

BOISE PROJECT BOARD OF CONTROL
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE ID 83701



Kensie Thorneycroft
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

January 28, 2020

JONATHAN PARKER THIEL
4211 DINES LN
HOMEDALE ID 83628

Re: Application for Permit No: 63-34541

Dear Applicant and Interested Parties:

Please see the enclosed *Default Order* and *Preliminary Order Denying Application* for Permit No. 63-34541 in the name of Jonathan Parker Thiel.

If you have questions regarding the enclosed documents, would like additional information, or need to further discuss the process, please feel free to contact the Western Regional Office at 208-334-2190.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kensie Thorneycroft', is written over a light blue circular stamp. The signature is fluid and cursive.

Kensie Thorneycroft
Administrative Assistant
Western Regional Office

Enclosures

CC
GERY W EDSON P.A.
BOISE PROJECT BOARD OF CONTROL

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.