

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 61-7619 IN THE NAME OF)
WILLIAM VAN HANDEL)
_____)

**ORDER GRANTING PETITION
FOR RECONSIDERATION AND
MODIFYING A PRELIMINARY ORDER**

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider the issuance of a water right license, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On February 4, 2010, the Department issued Permit No. 61-7619 ("Permit") to William Van Handel ("Right Holder") authorizing the diversion of 0.04 cubic feet per second ("cfs") from groundwater to be used for commercial and domestic purposes within the SW¹/₄SW¹/₄, Section 26, Township 03 South, Range 06 East, B.M., Elmore County.
2. On August 26, 2011, the Department issued Transfer No. 76960, which changed the nature of use, point of diversion, and place of use of rights 61-12265 and 61-12267. The Right Holder transferred rights 61-12265 and 61-12267 for commercial use in the same system as the Permit.
3. On October 28, 2019, the Department received the Right Holder's Proof of Beneficial Use statement for the Permit and a Beneficial Use Field Report completed by a certified water right examiner.
4. The Beneficial Use Field Report stated the average volume of water diverted from January to September of 2019 for the commercial use was 5,039 gallons per day (5.6 acre-feet).
5. The Department found that the Right Holder had developed the permitted water use, and on December 23, 2019, the Department issued Water Right License No. 61-7619 ("License") to the Right Holder.
6. The License authorizes diversion of 0.04 cfs for commercial use.
7. Approval condition no. 1 of the License limits the daily diversion volume under this right to 2,500 gallons per day ("gpd").
8. Approval condition no. 2 on the License authorizes a total combined diversion rate of 0.05 cfs

and a total combined annual diversion volume of 6.0 acre-feet for Rights 61-7619, 61-12265, and 61-12267.

9. Approval condition no. 4 on the License states the watermaster of State Water District No. 161 may regulate use of water under this right.
10. On December 23, 2019, the Department mailed the License to the Right Holder. The Department's cover letter states that the License is a preliminary order of the Department.
11. On December 30, 2019, the right holder's representative filed a Petition for Reconsideration ("Petition") with the Department in connection with the License. The Petition asks that the Department reconsider the combined annual diversion volume authorized by the License. The Petition seeks to remove the combined annual diversion volume from approval condition no. 2. The Petition states "... the 0.04 cfs diversion rate and 2500 gpd use authorized under permit 61-7619 for commercial use was fully developed at the time of permit approval on February 4, 2010." The petition further states "The beneficial use under permit 61-7619 was fully developed in 2010, prior to transfer of additional water rights 61-12265 and 61-12267 to the facility. As such, the volume under 61-7619 does not need to be considered in combination with 61-12265 and 61-12267."
12. On February 29, 2016, the Department issued an order creating Water District No. 161. The order stated all ground water rights in Basin 61, except ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11), are included in Water District No. 161.

APPLICABLE STATUTES AND RULES

1. Idaho Code § 42-219(1) states, 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 confirming such use. Such license shall state the name and post-office address of such user, the purpose for which such water is used and the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied.

2. Idaho Code § 42-111(1) states:

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, or

- (b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

- 3. Rule 035.01.j of the Department's Beneficial Use Examination Rules (IDAPA 37.03.02) states, in pertinent part:

For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period for the permit....

The following water uses are exempt from the volume reporting requirement:...

- ii. Domestic uses as defined in Section 42-111, Idaho Code....

- 4. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01) states, in pertinent part:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law....

CONCLUSIONS OF LAW

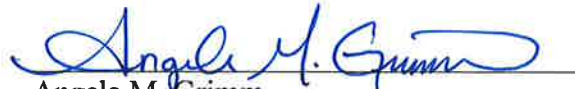
- 1. The petition was filed timely.
- 2. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01) authorizes the Department to reconsider the issuance of a preliminary order.
- 3. Pursuant to Rule 035.01.j of the Department's Beneficial Use Examination Rules (IDAPA 37.03.02), water uses consistent with the definition in Idaho Code § 42-111 are exempt from the volume reporting requirement.
- 4. The Right Holder made beneficial use of the Permit prior to approval of Transfer No. 76960. The License should reflect that beneficial use.
- 5. The Department should grant the petition for reconsideration of the preliminary order and modify approval condition no. 2 to remove the combined annual diversion volume limit on the License.
- 6. The Department should remove condition no. 4, because water uses consistent with the definition in Idaho Code § 42-111 are exempt from watermaster regulation within Water District 161.

ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to IDAPA 37.01.01.730.02.a.

IT IS FURTHER ORDERED that approval condition no. 2 on the license is **MODIFIED** and approval condition no. 4 is **REMOVED** as set forth in the amended water right license issued on this date in conjunction with this order.

Dated this 17th day of January, 2020.


Angela M. Grimm
Water Rights Section Manager

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2020, I served a true and correct copy of the foregoing **ORDER GRANTING PETITION FOR RECONSIDERATION AND MODIFYING A PRELIMINARY ORDER** by U.S. Mail, postage prepaid and properly addressed to the persons listed below:

**WILLIAM VAN HANDEL
PO BOX 231
MOUNTAIN HOME ID 83647**

**TERRY SCANLAN
SPF WATER ENGINEERING LLC
300 E MALLARD DR STE 350
BOISE ID 83706-6660**

**WATER DISTRICT # 161
NICK MILLER-WATERMASTER
2735 AIRPORT WAY
BOISE ID 83705-5082**



**Jean Hersley
Technical Records Specialist II**

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.