

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

IN THE MATTER OF PERMIT )  
NO. 65-13654 IN THE NAME OF )  
WOOD LIVING TRUST )  
\_\_\_\_\_ )

**PRELIMINARY ORDER  
VOIDING A PERMIT**

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

**FINDINGS OF FACT**

1. On April 10, 1996, the Department issued Permit No. 65-13654 ("Permit") to Edward M. Wood on behalf of Wood Living Trust ("Permit Holder") for the diversion of 2.26 cubic feet per second of water from Camp Creek for irrigation purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, Township 11 North, Range 04 East, B.M., Valley County. A condition of permit approval required the Permit Holder to submit proof of beneficial use of water to the Department on or before April 1, 1997.
2. On August 21, 1996, the Department received a proof of beneficial use statement from Edward Wood as a representative of the Permit Holder. The proof of beneficial use statement included a request that the Department waive the condition requiring a lockable controlling works.
3. On October 30, 1996, the Department issued an order modifying the Permit to remove the lockable device requirement. The Permit retained the requirement to install and maintain a measurement device of a type acceptable to the Department.
4. On June 6, 2002, the Department conducted a field examination of the Permit. The field examiner determined that the measurement device for the diversion was inadequate and did not comply with Department standards.
5. On August 03, 2018, the Department sent a letter to Keith V. Wood, the current permit place of use property owner, requesting confirmation that an adequate measurement device was installed.
6. On March 1, 2019, the Department sent a *Notice of Intent to Void Permit* ("Notice") to Keith V. Wood. The Notice stated confirmation that a measurement device approved by the watermaster had been installed must be received within 30 days or the Department would take action to void the Permit.
7. On April 1, 2019, the Department received an email from Keith V. Wood that stated he was the personal representative of his deceased father's, Edward M. Wood, and trustee of Edward M. Wood's surviving estate trust. Keith Wood stated he was willing to relinquish the permit if doing so did not influence the ownership or use of the other water rights held by his father's estate.

8. On April 1, 2019, the Department responded to Keith V. Wood's April 1, 2019 email informing him that he needed to provide documentation that he is the actual representative of the Permit Holder, or proof of ownership of the permit place of use property. The Department also informed Keith V. Wood that he would need to provide information showing a proper measurement device has been installed or the permit would be voided.
9. On November 27, 2019, the Department received a Notice of Change in Water Right Ownership for the Permit documenting the Permit Holder conveyed the permit place of use property to Keith V. Wood and subsequently, Keith V. Wood conveyed the permit place of use property to Keith V. Wood or Monika G. Wood, trustees of the Keith and Monika Wood Living Trust.
10. The Department has not received confirmation that a measuring device has been installed.

### 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(8) 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. The field examiner reported a measuring device meeting the Department standards had not been installed during the development period. The permit has a condition that requires that the diversions have a measurement device installed and maintained according to Department standards. Confirmation that a measuring device has been installed has not been received.
4. The Department should void the Permit pursuant to Idaho Code § 42-219(8).

### ORDER

IT IS HEREBY ORDERED that Permit No. 65-13654 is **VOIDED** and issuance of a license is **REFUSED**.

DATED this 7<sup>th</sup> day of January, 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 **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.



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

January 7, 2020

WOOD LIVING TRUST  
C/O EDWARD M WOOD  
PO BOX 670  
CASCADE, ID 83611

RE: Permit No. 65-13654

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 208-287-4947.

Sincerely,

A handwritten signature in cursive script, reading 'Jean Hersley'.

Jean Hersley  
Technical Records Specialist II

Enclosure(s)

c: Keith & Monika Wood Living Trust

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 7, 2020, I mailed a certified true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER VOIDING PERMIT** to the person (s) listed below:

**RE: PERMIT NO 65-13654**

**WOOD LIVING TRUST  
C/O EDWARD M WOOD  
9908 SPOOR RD  
PO BOX 670  
CASCADE, ID 83611**

**KEITH & MONIKA WOOD LIVING TRUST  
PO BOX 670  
CASCADE ID 83611**

  
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**Jean Hersley**  
**Technical Records Specialist II**