

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

IN THE MATTER OF WATER RIGHT	)	ORDER GRANTING
LICENSE NO. 65-23047 IN THE NAME	)	PETITION FOR
OF UNITED STATES DEPARTMENT OF	)	RECONSIDERATION
THE INTERIOR BUREAU OF RECLAMATION	)	IN PART
	)	

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

PROCEDURAL HISTORY

Permit No. 65-23047 ("Permit") in the name of the United States Department of the Interior Bureau of Reclamation ("USBOR") was approved by the Department on March 20, 2007. The Permit authorized the USBOR to divert up to 0.20 cfs of ground water for domestic and irrigation purposes associated with a recreational area on the shore of Lake Cascade in Valley County, ID.

On September 9, 2019, Department Staff performed a field examination to determine the extent of beneficial use developed under the Permit. On October 31, 2019, the Department issued a license for the Permit ("License") authorizing only the domestic uses developed under the Permit. On November 14, 2019, the Department received a petition for reconsideration of the preliminary order approving the License. The Petition asserts the License should include irrigation because the USBOR had developed the irrigation component of the Permit and continues to irrigate land as authorized under the Permit. The Petition requests the Department reissue the License to include the irrigation component.

FINDINGS OF FACT

1. The License was issued as a preliminary order of the Department pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
2. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

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.

3. The Department Field Examiner was accompanied by a representative of the USBOR during the September 9, 2019 field examination. The Field Examiner reported the USBOR representative stated irrigation had been developed under the Permit, but irrigation was no longer provided by the ground water well as authorized by the Permit, and the place of use is currently irrigated solely by a system that diverts water from Lake Cascade.

4. In the Petition, the USBOR asserts, "The Lake Cascade State Park Manager maintains that the groundwater irrigation is in use, as well as the surface irrigation."

5. The USBOR representative was not able to provide the Field Examiner access to the pump house during the field examination and was not familiar with the system or the historical irrigation development.

6. The Field Examiners Beneficial Use Field Report does not describe the irrigation delivery system or the amount of land irrigated within the permitted place of use.

7. The Field Examiner concluded the system capacity was approximately 0.03 cfs and that this amount of water is insufficient to irrigate 10 acres as authorized by the Permit.

CONCLUSIONS OF LAW

1. The Petition was filed timely.

2. The USBOR has provided conflicting descriptions of the extent of irrigation development and use under the Permit. The extent of development cannot be confirmed based on information existing in the record.

3. The preliminary order approving the License should be withdrawn to provide an opportunity to verify the USBOR's assertion that the irrigation component was developed and should be licensed.

ORDER

IT IS HEREBY ORDERED that, pursuant to Idaho Code § 67-5243, the petition for reconsideration of the preliminary order issuing Water Right License No. 65-23047 is **GRANTED IN PART**. The October 31, 2019 Preliminary Order Approving Water Right License No. 65-23047 is **WITHDRAWN** and the Permit is **REINSTATED** to allow additional information to be gathered.

IT IS FURTHER ORDERED that the USBOR cooperate with the Department's Field Examiner to provide information necessary to determine the extent of irrigation development under the Permit.

Dated this 5th day of December 2019



Nick Miller
Manager, IDWR Western Region



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

December 5, 2019

US DEPT OF INTERIOR
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

Re: Petition for Reconsideration for License No: 65-23047

Dear Interested Party:

The accompanying order issued by the Department is an Order Granting Petition for Reconsideration In Part for License No. 65-23047 in the name of United States Department of the Interior Bureau of Reclamation.

If you have any questions regarding this matter, please contact the Department at 208-334-2190.

Sincerely,

Kensie Thorneycroft
Administrative Assistant

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2019, I served a true and correct copy of the Order Granting Petition for Reconsideration In Part for License No. 65-23047 by U.S. Mail, postage prepaid, to the following:

US DEPT OF INTERIOR
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234



Kensie Thorneycroft
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief in support of the party's position on any issue in the proceeding with the Director. Otherwise, the preliminary order will become a final order of the agency.

If any party files an exception and/or brief, opposing parties shall have fourteen (14) days to respond to the exception and/or brief. 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, 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 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.