

BEFORE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 95-17798)
IN THE NAMES OF SUSAN A ANDERSON &)
MARK M ANDERSON REVOCABLE)
FAMILY TRUST)
_____)

**PRELIMINARY ORDER
CORRECTING PERMIT**

This matter having come before the 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 May 23, 2019, the Department approved water right permit 95-17798 (permit) pursuant to the provisions of Idaho Code §42-204.
2. Idaho Code §42-204 directs the Department to require that the application of water to full beneficial use shall be complete within five years of the date of approval. The application for permit requested one year to complete work and apply water to beneficial use.
3. Condition No.1 of the permit identified the proof of beneficial use due date as June 1, 2019, instead of June 1, 2020, as the Department intended.

CONCLUSIONS OF LAW

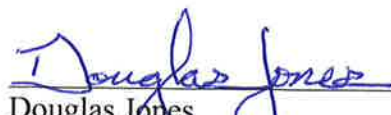
1. The Department typically authorizes at least one year after issuance of the permit to provide time for the permit holder to develop the proposed water use.
2. The date on the permit is a typographical error preceding the approval date, and it does not provide time for the permit holder to establish the proposed beneficial use.
3. The Department should correct condition No.1 on the permit to show the proof of beneficial use due date of July 1, 2020, the first day of the month following the month the permit was approved.

ORDER

IT IS THEREFORE HEREBY ORDERED that approval condition No.1 on permit 95-17798 is **CORRECTED** to:

Proof of application of water to beneficial use shall be submitted on or before July 1, 2020.

DATED this 2nd day of June, 2019.



Douglas Jones
Northern Regional Manager

State of Idaho
Department of Water Resources

CORRECTED Permit to Appropriate Water CORRECTED

No. 95-17798

Priority: April 16, 2019

Maximum Diversion Rate: 0.02 CFS

This is to certify that

SUSAN A ANDERSON & MARC M ANDERSON REVOCABLE FAMILY TRUST
C/O SUSAN A ANDERSON &/OR MARC C ANDERSON
3148 E POINT HAYDEN DR HAYDEN ID 83835-6974

has applied for a permit to appropriate water from:

Source : HAYDEN LAKE

Tributary: SINKS

and a permit is APPROVED for development of water as follows:

Beneficial Use

IRRIGATION

Period of Use

03/15 to 11/15

Rate of Diversion

0.02 CFS

Location of Point(s) of Diversion

HAYDEN LAKE SE¼ NE¼, Sec. 18, Twp 51N, Rge 03W, B.M. KOOTENAI County

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
51N	03W	18				0.3														0.3
51N	03W	18				0.2 L9														0.2

Right Acre Limit: 0.5

Total Acres: 0.5

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **July 01, 2020**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. This right when combined with all other rights shall provide no more than 0.02 Cubic Feet per Second (CFS) per acre nor more than 3.0 Acre Feet per Acre (AFA) at the field headgate for irrigation of the place of use.
5. A fish screen of 1/4 inch or smaller mesh shall be installed and maintained at the point of diversion.
6. Rights 95-14140 and 95-17798 when combined shall not exceed a total diversion rate of 0.02 Cubic Feet per Second (CFS), and the irrigation of 0.5 acres.
7. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 95A.
8. Place of use is located within Lot 24, Blk. 1, Point Hayden subdivision.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this 7th day of, 2019.


DOUGLAS JONES
Northern Regional 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.