

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
LICENSE NO. 65-23097 IN THE)
NAME OF KCM ENTERPRISES LP)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

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

FINDINGS OF FACT

1. On July 15, 2010, the Department issued a preliminary order approving Application for Permit to Appropriate Water No. 65-23097 (permit) authorizing KCM Enterprises LP (permit holder) to divert ground water for domestic and stockwater purposes, and to irrigate up to 10 acres of land.
2. On June 29, 2015, the Department received a Statement of Completion for Submitting Proof of Beneficial Use for the permit signed by the permit holder.
3. On August 5, 2016, the Department conducted a beneficial use field examination. Based on information gathered to prepare the field exam report, the field examiner did not recommend licensing the irrigation component of the permit.
4. The Department issued a license for the permit on February 6, 2017 for the domestic and stockwater uses only.
5. On February 21, 2017 the Department received a FAX message from the permit holder questioning why the irrigation component was not licensed. The Department considers the document to be a petition for reconsideration (petition) of the preliminary order issuing a license for the permit.
6. On February 22, 2017 the Department asked the permit holder for additional information to support a claim that 10-acres of irrigation was developed as authorized by the permit. The permit holder provided the requested information on February 28, 2017.
7. The Department finds no additional evidence that irrigation occurred on the permitted lands during the development period as asserted by the permit holder (April through June 2015 and May through June 2016).

CONCLUSIONS OF LAW

1. Idaho Code §67-5243(3) provides in pertinent part as follows:
Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order

disposing of the petition.

2. The permit holder filed the petition timely.
3. While the permit holder has provided information that an irrigation system has been installed, that fact was not in question. At issue is whether the permit holder applied water to land in beneficial quantities and as authorized by the permit. The permit holder has not provided adequate information to support a conclusion that the license is in error.
4. The Department should deny the petition for reconsideration of the order pursuant to Idaho Code §67-5243(3).

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the order approving License No. 65-23097 is **DENIED** pursuant to Idaho Code §67-5243(3).

Dated this 14th day of March, 2017.



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 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 15, 2017

KCM ENTERPRISES LP
C/O RON MAYHEW
2098 W CHAMPAGNE CT
EAGLE ID 83616

Re: Preliminary Order in the matter of Water Right License No. 65-23097

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the Department. It can and will become a final order without further action of the department unless a 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 208-334-2190.

Sincerely,

 Rachel Neely for:

Nick Miller
Western Regional Manager

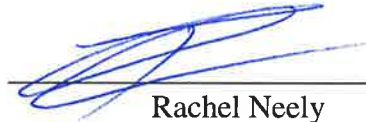
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2017, true and correct copies of the foregoing **PRELIMINARY ORDER** were served by placing a copy of the same with return receipt requested, postage prepaid, and properly addressed to the following:

RE: 65-23097

KCM ENTERPRISES LP
C/O RON MAYHEW
2098 W CHAMPAGNE CT
EAGLE ID 83616



Rachel Neely
Administrative Assistant

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.