

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

IN THE MATTER OF PERMIT)
NO. 65-13392 IN THE NAME OF)
TINA MARIE HOVEN AND/OR)
SHIRLEY C. HOVEN)
_____)

**ORDER GRANTING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a result of petition to reconsider issuance of a preliminary order voiding a permit and refusing issuance of a license, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On June 12, 1992, Tina Marie Hoven and Shirley C. Hoven applied to the Department for a permit to appropriate 0.26 cubic feet per second of water from the South Fork Payette River within the L6 NW¼NW¼, and from Dodge Creek within the SW¼SW¼ of Section 01, Township 08 North, Range 05 East, B.M., for irrigation and commercial purposes in Boise County.
2. Notice of the application was published on June 02 and June 09, 1993. A timely protest was filed by Gary F. Reynolds on behalf of the U.S. Forest Service.
3. On May 23, 1997, the Department received a copy of a special use permit authorizing the maintenance of a water pipeline on National Forest land in Section 01, Township 08 North, Range 05 East, B.M. The special use permit resolved the protest filed by the U.S. Forest Service and on September 30, 1998, the Department issued an order dismissing the protest.
4. On November 04, 1998, the Department sent a letter requesting information necessary to complete application processing. The letter stated specifically that a response to the letter must be received by the Department within thirty (30) days. A response was not received.
5. On December 31, 2000, the Department issued a preliminary order to void application no. 65-13392 under the provisions of Idaho Code §42-204.
6. On February 14, 2000 the Department received a petition for reconsideration and the application was reinstated on March 17, 2000.
7. On December 04, 2000, the Department approved the application as permit no. 65-13392 (permit) with the deadline to submit a proof of beneficial use statement set as December 01, 2005.
8. On November 25, 2005, the Department received a request for an extension of time to submit the proof of beneficial use statement. The request was granted and the deadline was extended to December 01, 2008.
9. On December 05, 2008, the Department sent Tina Marie Hoven and Shirley C. Hoven a lapse notice. The notice stated that the application could be reinstated if the proof of beneficial use statement was received within sixty (60) days. The proof of beneficial use

statement was received on December 31, 2008 and on January 06, 2009, the Department issued an order to reinstate permit no. 65-13392.

10. On April 28, 2014, the Department sent a notice that a field examination of the diversion works is required to verify that the system was constructed in accordance with the permit.

11. On October 17, 2014, the Department received a letter from Tina Marie Hoven requesting one (1) additional year to repair damage that had occurred to the diversion system. The request was granted and on October 16, 2015 the Department received notice that repairs had been made.

12. On April 20, 2017, Department staff sent a notice that a field examination of the diversion works is required to verify that the system was constructed in accordance with the permit. A response was not received.

13. On June 08, 2017, the Department sent a notice of intent to void. The notice specified that the Department would take action to void the permit if a reply was not made within thirty (30) days. A response was not received.

14. On April 04, 2018, the Department issued a preliminary order voiding the permit and refusing issuance of a license.

15. On April 18, 2018, the Department received a document ("petition") petitioning for reconsideration of the April 04, 2018 preliminary order. The petition alludes to a pending lawsuit and "circumstances beyond my control". The Department interprets the document to be a request to rescind the order voiding the permit and to grant additional time to schedule a field exam.

ANALYSIS

Information available in the file demonstrates that the applicant had encountered some difficulty in obtaining and developing the permit. The application was protested and encountered some delay because of a need to obtain a special use authorization from the US Forest Service. Following this, the diversion system was apparently destroyed or damaged in a fire. While these delays seem to have been overcome, the development period ended almost ten years ago. The applicant has provided some information that suggests a beneficial use was developed under the permit, and so the Department has attempted to conduct a field exam. However, the Department has been unable to maintain contact with the applicant to conduct a field examination. The applicant's unwillingness or inability to schedule a field exam with the Department was the basis for the preliminary order voiding the permit.

The petition does not provide detailed information as to why a field exam cannot be conducted for another year, or why the applicant has been unresponsive. The petition doesn't explain why additional time is needed, beyond a vague reference to "a lawsuit".

Because a beneficial use seems to have been developed, and the applicant may, in fact have a reason that the Department should wait up to another year to conduct the field examination, it is reasonable to withdraw the preliminary order voiding the permit and provide an opportunity to either schedule and follow through with the field exam, or provide substantial evidence that the applicant does not have access to the property to allow a field examination to be conducted. However, it is not in the public interest to continue to expend

Department resources if the applicant is unwilling to make the site available for inspection in a timely manner.

CONCLUSIONS OF LAW

1. 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.

2. The petition was filed timely.
3. The Department should grant the petition. It should withdraw the preliminary order voiding the permit to provide an opportunity for the applicant to make the site available for a field examination or demonstrate that the applicant does not have access to the site and cannot make the site available for a field examination.

ORDER

IT IS HEREBY ORDERED that the Department's April 4, 2018 *Preliminary Order Voiding Permit* in the Matter of Permit No. 65-13392 is withdrawn and the permit is reinstated.

IT IS FURTHER HEREBY ORDERED that the applicant Tina Marie Hoven and/or Shirley C. Hoven shall contact the Department in writing within 30 days of the service date of this order to either 1) propose a date during the 2018 irrigation season that you will make the site available for the Department to conduct a field examination, or 2) provide evidence that the site cannot be made available before the end of the 2018 irrigation season.

IT IS FURTHER HEREBY ORDERED that the Department may void the permit upon failure of the applicants to timely respond as required by this order.

Dated this 8th day of May, 2018.



Nick Miller
Manager, IDWR Western Region

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2018, true and correct copies of the foregoing **ORDER GRANTING PETITION FOR RECONSIDERATION** were served by placing a copy of the same with the United States Postal Service certified mail, with return receipt requested, postage prepaid, and properly addressed to the following:

RE: 65-13392

TINA MARIE HOVEN
PO BOX 300
GARDEN VALLEY ID 83622

SHIRLEY C HOVEN
23792 E HINDSDALE
AURORA CA 80016



Rachel Neely
Administrative Assistant



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

C.L. "BUTCH" OTTER
Governor

GARY SPACEMAN
Director

May 8, 2018

TINA MARIE HOVEN
PO BOX 300
GARDEN VALLEY ID 83622

SHIRLEY C HOVEN
23792 E HINDSDALE
AURORA CA 80016

Re: Order in the matter of Water Right Permit No. 65-13392

Dear Interested Parties:

The accompanying order issued by the Department is an Order Granting Petition for Reconsideration.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,

 Rachel Nealey for:

Nick Miller
Western Regional Manager