

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

IN THE MATTER OF PERMIT)
NO. 65-13963 IN THE NAME OF)
TINA MARIE 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 December 30, 1999, Tina Marie Hoven applied to the Department for a permit to appropriate 0.5 cubic feet per second of water from Dodge Creek within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 01, Township 08 North, Range 05 East, B.M., for power generation purposes in Boise County.
2. On August 15, 2000, the Department received a letter from Tina Marie Hoven requesting that the application be placed on hold for two (2) years. The Department notified her via letter that application processing would resume on August, 17, 2001, a hold of one (1) year per department policy.
3. On October 31, 2001, the application was amended to change the proposed beneficial use from power to aesthetic, storage, irrigation, and commercial use.
4. Notice of the application was published on December 05 and 12, 2001. A timely protest was filed by Steve Spencer representing the U.S. Forest Service.
5. On July 08, 2004, Steve Spencer, on behalf of the U.S. Forest Service, withdrew the protest.
6. On August 13, 2004, the Department approved the application as permit no. 65-13963 (permit) with the deadline to submit a proof of beneficial use statement set as August 01, 2006.
7. On August 02, 2006, 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 August 01, 2008.
8. On August 01, 2008, the Department received the proof of beneficial use statement.
9. On April 24, 2014, 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.
10. 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.

11. 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.

12. 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 has not been received.

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

14. 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. Following this, the diversion system was apparently destroyed or damaged in a fire. While these difficulties 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.

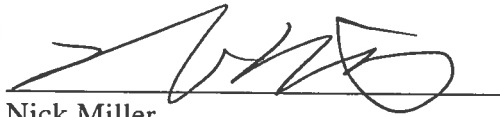
ORDER

IT IS HEREBY ORDERED that the Department's April 4, 2018 *Preliminary Order Voiding Permit* in the Matter of Permit No. 65-13963 is withdrawn and the permit is reinstated.

IT IS FURTHER HEREBY ORDERED that the applicant Tina Marie 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 applicant 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: 65-13963

TINA MARIE HOVEN
PO BOX 300
GARDEN VALLEY ID 83622



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. "BLTCH" OTTER
Governor

GARY SPACKMAN
Director

May 8, 2018

TINA MARIE HOVEN
PO BOX 300
GARDEN VALLEY ID 83622

Re: Order in the matter of Water Right Permit No. 65-13963

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,

A handwritten signature in cursive script, appearing to read "Rachel Neely".

Nick Miller
Western Regional Manager