

MEMORANDUM

TO: Water Right Permit File 25-14425

FROM: Daniel A. Nelson

DATE: April 26, 2018

SUBJECT: Petition for Reconsideration

On April 5, 2018, I spoke with Mr. Davidson today concerning the petition for reconsideration recent license/order for water right 25-14425. I informed Mr. Davidson, that we have 21 days to dispose of the petition for reconsideration. The formal petition has not been received as of this date, but the formal petition has been mailed and should be received shortly.

I asked how long it would take the Church to work with the Idaho Department of Fish and Game (IDFG) to discuss alternatives of measurement. I told him that we are working on a deadline that is described by Idaho Code, and didn't have much time to make a decision. I also informed him that he also has several options after our decision regarding the petition of reconsideration has been rendered. Mr. Davidson informed me that he would work with the IDFG as soon as possible and let us know.

During our conversation, Mr. Davidson asked what he needed to attain from IDFG. I informed Mr. Davidson, that we could consider alterations of the measurement method, but it was unlikely that the Department would remove the condition requiring no more than $\frac{1}{2}$ of the water in the stream to be diverted at any given time, because the Department would consider this an enlargement of the original permit requirements.

Mr. Davidson stated that limiting the diversion of water to $\frac{1}{2}$ of the stream flow was a condition placed on the permit to resolve a protest of IDFG, and was not part of Idaho water law. Therefore, the Department should be able to remove the condition if IDFG agreed to the removal of the condition. I informed Mr. Davidson that if we removed this condition from the water right license it could allow the Church to divert more than $\frac{1}{2}$ of the creek flow, which would result in an enlargement of the original permit. Mr. Davidson and I discussed this issue, but Mr. Davidson didn't agree that it would be considered an enlargement of the water right, since it was only placed on the permit to satisfy the IDFG protest.

Mr. Davidson also asked what we would accept as a modification of the Department's standard measurement rules for a rated stream. I told him I would not be making that decision, so he should supply any information that he should with a statement for IDFG approving the alternative. I tried to explain to Mr. Davidson that the watermaster will be ultimately responsible for regulating the stream, but he feels this is solely between the Church and IDFG, and that an agreement between the Church and IDFG should guide the Department on how the measurements are made and what should be required. Mr. Davidson feels that the measurement device on the diversion should be more than adequate to supply all the measurement requirements needed by the Department.

Mr. Davidson then asked if they could withdraw the water right and file a new water right without the condition requiring a measurement device in the stream and the condition limiting the Church to diverting no more than ½ of the stream flow if he attained IDFG approval. I informed Mr. Davidson that I would like to discuss this issue with my supervisor to be able to give him as clear answer.

Unfortunately, I was not able to work through these issues with Mr. Davidson. He believes that these conditions should be able to be removed from the license if he provides a statement of approval from IDFG. I did tell Mr. Davidson that he should supply the agreement and information within the next two weeks to allow us time to do what is necessary to dispose of the petition for reconsideration. I also told Mr. Davidson that I would speak to my supervisor concerning the filing of the new permit and give him an answer on that issue by April 10th.

On April 9, 2018, I called and spoke again to Mr. Davidson. I informed Mr. Davidson, that we had received the formal petition for reconsideration in the mail on April 9, 2018. I told Mr. Davidson, that we would need any additional information he could supply regarding this matter to our office by no later than April 23, 2018, which would allow us time to prepare a response to the petition for reconsideration. I also provided a link to IDAPA Rule 37.01.01.730 that provided the deadlines for petitions for reconsideration. I went over the information with Mr. Davidson to ensure he was aware of the timelines imposed by the rules after an order was issued. I also informed Mr. Davidson, that the license issued for 25-14425 was an order, and would follow the procedures set forth by IDAPA Rule 37.01.01.730.

I also informed Mr. Davidson that I had spoken to my supervisor concerning the possibility of relinquishing permit 25-14425 and filing a new application for permit per our earlier discussion on April 5, 2018. I informed Mr. Davidson that he could file a new water right for this use, but there would be no changes in the conditions of any future permit unless he supplied an agreement from IDFG that they no longer wished to pursue the condition requirements. I also informed Mr. Davidson, that I would not recommend relinquishing water right 25-14425 until a new permit has been approved. I also informed Mr. Davidson, that if he did relinquish 25-14425 before a new permit was approved, he could not divert water into the pond for recreation purposes until the new permit had been approved.

On April 11, 2018, I spoke with a representative of the IDFG in charge of the area where water right 25-14425 is located. Unfortunately, I forgot to write down the name of the IDFG representative. The IDFG representative informed me that he had spoken to Mr. Davidson, and asked if I could update him on the situation. I told the IDFG representative that we had licensed permit 25-14425 with conditions that required measurements of the Sellars Creek according to the Department's measurement guidelines and that no more than ½ of the water in Sellars Creek could be diverted at any given time. The IDFG representative informed me that they would review the water right license, but at the time of the telephone call, the IDFG representative felt the conditions were a necessity to due to the endangered trout species in Sellars Creek.

The IDFG representative informed me that he understood what was going on with this permit, and would contact Mr. Davidson with their decision after he could further review the water right records. I also informed the IDFG representative, that Mr. Davidson had to provide us with additional information by no later than the April 23, 2018 in order for his petition for reconsideration to be addressed. The IDFG representative informed me he would contact Mr. Davidson later that day.

As of April 27, 2018, I have received no further communication from Mr. Davidson, their water right consultant or the IDFG representative. Due to the lack of response from Mr. Davidson, I am assuming that he was unable to convince the IDFG representative to agree to remove these conditions from water right 25-14425. Therefore, I do not believe that any further action by the Department is necessary. Mr. Davidson has been made aware that if we do not dispose of the petition within 21 days of the receipt of the petition that the petition would be considered denied. I personally read this line of IDAPA Rule 37.01.01.730 to Mr. Davidson, so he is aware that if no response is received the petition would be denied. I also verbally gave Mr. Davidson a link to the IDAPA Rule 37.01.01.730, so he should be well aware of the procedure the Department must follow in these matters.