

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

|                            |   |                                      |
|----------------------------|---|--------------------------------------|
| IN THE MATTER OF LICENSE   | ) | <b>ORDER GRANTING PETITION</b>       |
| NO. 57-7626 IN THE NAME OF | ) | <b>FOR RECONSIDERATION AND</b>       |
| WARDS GREENHOUSES          | ) | <b>MODIFYING A PRELIMINARY ORDER</b> |
| _____                      | ) |                                      |

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

**FINDINGS OF FACT**

1. On December 6, 1996, the Department issued Permit No. 57-7626 ("permit") to Wards Greenhouses ("right holder") authorizing it to appropriate 2.93 cubic feet per second ("cfs") from groundwater for commercial use within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 10, Township 05 South, Range 01 East, B.M., Owyhee County.
2. On October 27, 2003, the Department received the right holder's Proof of Beneficial Use statement for the permit.
3. On December 13, 2012, the Department conducted a field examination to confirm the beneficial use of water established in connection with the permit. The Department found that the right holder had developed the permitted water use on a parcel of land owned by the right holder.
4. On November 20, 2017, the right holder applied to the Department to amend the permitted place of use to SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 10, Township 05 South, Range 01 East ("amendment").
5. On November 29, 2017, the Department approved the amendment and issued Water Right License No. 57-7626 ("license") to the right holder.
6. On December 18, 2017, the United States Department of Interior, Bureau of Land Management ("United States") filed a Petition for Reconsideration ("petition") with the Department in connection with the license. The petition asks that the Department reconsider authorizing the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 10, T5S, R1E as part of the place of use. The petition claims that the United States owns the entire SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 10, T5S, R1E and that the United States would be adversely affected by including it within the licensed place of use. The petition further asserts "there is no authorization to conduct commercial use upon nor to transport water across federal land."

7. The Owyhee County Assessors office records show the Wards Greenhouses parcel of land is entirely within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 10, T5S, R1E.
8. The beneficial use of water established in connection with the permit occurs entirely on the parcel of land located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 10, T5S, R1E.

### CONCLUSIONS OF LAW

1. The petition was filed timely.
2. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01) authorizes the Department to reconsider the issuance of a preliminary order.
3. Rule 035.03.b of the Department's Beneficial Use Examination Rules (IDAPA 37.03.08) states, in pertinent parts:

The legal description of the point of diversion and place of use shall be listed.  
The location of the point(s) of diversion and the place of use shall be described to the nearest forty (40) acre subdivision or U.S. Government Lot of the Public Land Survey System.

4. The Department should grant the petition for reconsideration of the preliminary order and remove the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 10, T5S, R1E from the place of use authorized by the license.

### ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to IDAPA 37.01.01.730.02.a.

IT IS FURTHER ORDERED that the place of use on the license is **MODIFIED** as follows:

Place of Use: SE $\frac{1}{4}$ NW $\frac{1}{4}$  Sec. 10, Twp 05S, Rge 01E, B.M. OWYHEE County

Dated this 3<sup>rd</sup> day of January, 2018.

  
\_\_\_\_\_  
Shelley W. Keen, Manager  
Water Rights Section

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2018, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER GRANTING PETITION FOR RECONSIDERATION AND MODIFYING A PRELIMINARY ORDER** to the person (s) listed below:

**RE: Water Right License No. 57-7626**

**WARDS GREENHOUSES  
1722 BANKS LOWMAN RD  
GARDEN VALLEY ID 83622**

**UNITED STATES DEPT OF INTERIOR  
BUREAU OF LAND MANAGEMENT  
IDAHO STATE OFFICE  
1387 S VINNELL WAY  
BOISE ID 83709-1657**



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**Jean Hersley  
Technical Records Specialist II**

## **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.