

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 63-33245 IN THE NAME OF)
UNION BLOCK ASSOCIATES, LLC)

**ORDER GRANTING PETITION
FOR RECONSIDERATION AND
MODIFYING A PRELIMINARY ORDER**

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 September 20, 2011, the Department issued Permit No. 63-33245 (“permit”) to Parklane Company, Inc. authorizing it to appropriate 0.41 cubic feet per second (“cfs”) from groundwater to be used for heating and cooling purposes within the NW¼NE¼, Section 10, Township 03 North, Range 02 East, B.M., Ada County.
2. On May 27, 2014, Parklane Company, Inc., assigned ownership of the permit to Union Block Associates, LLC (“right holder”).
3. On September 14, 2016, the Department received the right holder’s Proof of Beneficial Use statement for the permit and a Beneficial Use Field Report completed by a certified water right examiner.
4. The Department found that the right holder had developed the permitted water use, and on October 31, 2017, the Department issued Water Right License No. 63-33245 (“license”) to the right holder.
5. Approval condition no. 9 on the license authorizes a total combined diversion rate of 0.41 cfs and a total combined annual diversion volume of 125 acre-feet (“af”) of ground water for Rights 63-12342 and 63-33245.
6. On November 2, 2017, the Department mailed the license to the right holder. The Department’s cover letter states that the license is a preliminary order of the Department.
7. On November 14, 2017, the right holder’s representative filed a Petition for Reconsideration (“petition”) with the Department in connection with the license. The petition asks that the Department reconsider the annual diversion volume authorized by the license. The petition seeks an annual diversion volume “based on 275 days of continuous pumping from March 1 to

November 30 at the 0.41 cfs diversion rate.” As the petition further explains, “The pumps are operated continuously at constant speed, and the entire diverted volume is run through the heat exchanger to supply heating or cooling.” The petition requests that “the volume authorized for diversion under Rights 63-12342 and 63-33245, in combination, be limited to 223.6 af” and that the annual diversion volume for Right 63-33245 alone “should be a minimum of 98.6 af.”

8. The right holder uses low-temperature geothermal (“LGT”) water delivered through the City of Boise’s geothermal system for wintertime heating. The cool-water uses authorized by Rights 63-12342 and 63-33245 were developed to supplement the LGT resource use. Each year when the outside air temperature no longer dips below 30° F, the right holder switches the cool-water system on. Each year when the outside temperature first drops below 30° F, the right holder switches the cool-water system off and the LGT water system back on.
9. The greatest demand for the cool-water heating and cooling uses authorized by Rights 63-12342 and 63-33245 occurs when cooling is required. Therefore, the maximum beneficial use would occur during a year with hot weather. Department personnel found 2003 to be the year within the 50 years preceding the right holder’s Proof of Beneficial Use statement which would have required the most cooling.
10. Department personnel found that the cool-water system would have been needed for 271 days during 2003 to meet the supplemental heating and cooling requirements for the place-of-use. At the maximum diversion rate of 0.41 cfs, continuous operation for 271 days will utilize 220.4 af of water.
11. Right 63-12342 authorizes an annual diversion volume of 125 af for cooling use, leaving 95.4 af as the total annual diversion volume to be authorized by the license.

APPLICABLE RULES AND STATUTES

1. Idaho Code § 42-219 directs the Department to examine the evidence in relation to the permit as follows:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall state the name and post-office address of such user, the purpose for which such water is used and **the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied.** (Emphasis added)

2. Rule 035.01.j of the Department’s Beneficial Use Examination Rules (IDAPA 37.03.02) states, in pertinent parts:

For each use of water the examiner shall report an annual diversion volume based

on actual beneficial use during the development period for the permit.

...

Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit.

3. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01) 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.

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. Pursuant to Rule 035.01.j of the Department's Beneficial Use Examination Rules (IDAPA 37.03.02), neither heating nor cooling water uses are exempt from the annual diversion volume reporting requirement.
4. Department analysis shows an annual beneficial use of 95.4 af in addition to the annual diversion volume authorized by Right 63-12342.
5. The Department should grant the petition for reconsideration of the preliminary order and modify the annual diversion volume limit on 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 annual diversion volumes on the license are **MODIFIED** as follows:

For the beneficial use of heating, the annual diversion volume limit is 95.4 AF

For the beneficial use of cooling, the annual diversion volume limit is 95.4 AF

The Maximum Diversion Volume for the license is: 95.4 AF

IT IS FURTHER ORDERED that approval condition no. 9 on the license is **MODIFIED** to state:

Rights 63-12342 and 63-33245 when combined shall not exceed a total diversion rate of 0.41 cfs.

Dated this 5th day of December, 2017.



Shelley W. Keen, Manager
Water Rights Section