

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

IN THE MATTER OF PERMIT NO.)
67-7953 IN THE NAME OF)
JOSEPH LYNN ISAACSON)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION
AND WITHDRAWING
PRELIMINARY ORDER**

This matter having come before the department of Water Resources (Department) as a petition to reconsider a preliminary order issuing a license, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On June 16, 2017, the Department issued a preliminary order (Order) granting a license pursuant to Permit to Appropriate Water No. 67-7953 (Permit) in the name of Joseph Lynn Isaacson (Permit Holder).
2. The Department issued the Order pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
3. The field examiner conducted an in-office examination on January 9, 2017 and was informed by the Permit Holder that the well is located directly across Highway 95 from the place of use. The field examiner concluded, based on the description, that the well was located on a parcel within the NENE of Section 29, Township 11N, Range 5W, B.M. as authorized by the permit.
4. On June 26, 2017, the Department received a Petition for Reconsideration (Petition) from the Permit Holder asking the Department to correct the point of diversion description on the license to reflect the location of well in the SENE of Section 29, Township 11N, Range 5W, B.M.
5. The Petition included a map with the location of the well hand-drawn in the SENE of Section 29, Township 11N, Range 5W, B.M.
6. The file for permit 67-7953 in the department records contains a memorandum dated April 18, 2000 that describes a statement by the Permit Holder that the well that is used as a point of diversion for the Permit was drilled for water right 67-11714. That point of diversion was decreed in December 2000 and described as being in the SENE.
7. 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.

8. Rule 35.01(r) of the Beneficial Use Examination Rules (IDAPA 37.03.02) reads as follows:

r. Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate are not required for the following water uses if the beneficial use, place of use, season of use, and point of diversion can be confirmed by documentary means such as well driller reports, property tax records, receipts and other records of the permit holder, or photographs, including aerial photographs:

- i. Irrigation up to five (5) acres.
- ii. Storage of up to fourteen point six (14.6) acre-feet of water solely for stock watering purposes.
- iii. Any uses other than irrigation or storage if the total combined diversion rate for all the uses established in connection with the permit does not exceed twenty-four one hundredths (0.24) cubic feet per second.

CONCLUSIONS OF LAW

1. The Petition was filed timely.
2. The Petition asks the department to correct the location of the point of diversion developed under the Permit. While the evidence points to the conclusion that the right was developed with a point of diversion in the SENE, rather than the NENE, the Department cannot issue a license with the point of diversion described in the SENE because the Permit did not authorize a diversion at that location and an application to amend the Permit was never filed. The Department should deny the Petition to correct the Order as requested.
3. The location of the point of diversion has not been confirmed as required by the Department's Beneficial Use Examination Rules. The Department should withdraw June 16, 2017 the preliminary order issuing a license and provide an opportunity for the field examiner to verify the location of the point of diversion. The field examiner should determine the actual location of the point of diversion and resubmit the Beneficial Use Examination Report.

ORDER

IT IS HEREBY ORDERED that the Petition is **DENIED** pursuant to Rule 730.02.a. of the Department's Rules of Procedure.

IT IS FURTHER ORDERED the preliminary order issuing a license for permit number 67-7953 is **WITHDRAWN** and the Permit is **REINSTATED** to allow the field examination to be conducted.

Dated this 17th day of July, 2017.



Nick Miller

Manager, IDWR Western Region

ORDER DENYING PETITION FOR RECONSIDERATION AND WITHDRAWING PRELIMINARY ORDER



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

July 7, 2017

JOSEPH LYNN ISAACSON
777 HWY 95
WEISER ID 83672

Re: Preliminary Order in the matter of Permit No. 67-7953

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the Department. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

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

Sincerely,



Nick Miller
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2017, true and correct copies of the foregoing **PRELIMINARY ORDER** 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: 67-7953

JOSEPH LYNN ISAACSON
777 HWY 95
WEISER ID 83672



Rachel Neely
Administrative Assistant

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.