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DEPARTMENT OF
WATER RESOURCES

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

**IN THE MATTER OF PERMIT NO.
37-7842 (IWRB)**

**IDAHO WATER RESOURCE BOARD'S
PETITION FOR RECONSIDERATION
OF PRELIMINARY ORDER
ISSUING LICENSE**

The Idaho Water Resource Board ("IWRB"), by and through its attorneys of record, hereby submits this *Idaho Water Resource Board's Petition for Reconsideration of Preliminary Order Issuing License*. This petition is submitted in response to the *Preliminary Order (Approved License)* served July 17, 2017 by Darla Block, Technical Records Specialist in the above-titled matter. The petition is brought pursuant to I.C. § 67-5243(3) and IDAPA 37.01.01.730.02.b-d.

STANDARD OF REVIEW

A Preliminary Order, as defined by IDAPA 37.01.01.730.01, is an order “issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head . . . pursuant to Section 67-5245, Idaho Code.” Any party may file a motion for reconsideration of a preliminary order within fourteen (14) days of the service date of the preliminary order. I.C. § 67-5243(3), IDAPA 37.01.01.730.02.a. The hearing officer must 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. IDAPA 37.01.01.730.02.a. If the hearing officer fails to grant or deny the petition for reconsideration within twenty-one (21) days or within fourteen (14) days of the service date of the denial of a petition for reconsideration, any party may appeal or take exceptions to any part of the preliminary order. IDAPA 37.01.01.730.02.b.i–iii.

PROCEDURAL BACKGROUND

Earl Hardy, Thorleif Rangen, John LeMoyne and John Jones Jr. filed Application for Permit 37-7842 (“Application”) in 1980. The Application was assigned to the Lower Snake Aquifer Recharge District (“LSARD”) and a permit was issued in 1982. In 1999, the permit was assigned to the Idaho Water Resource Board (“IWRB”). The Preliminary Order Issuing License 37-7842 was served on July 17, 2017.

PETITION

The IWRB respectfully requests reconsideration of the Preliminary Order Issuing License 37-7842 (“License”) for the following reasons:

Condition 5

Condition 5 on the License states:

Rights 37-7842, 37-13043, 37-13112, 37-13113, 37-13114, 37-14264, 37-21401, 37-21402, 37-21403, 37-21404, and 37-21405 when combined shall not exceed a total diversion rate of 647.38 cfs.

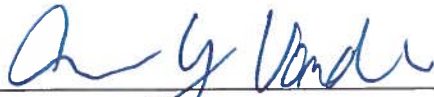
This condition was added at the licensing stage by IDWR. In discussions with IDWR staff it appears this condition was added because 647.38 cfs represents the current physical capacity of the canal that is the point of diversion and place of use for the License. As written, Condition 5 unnecessarily limits the IWRB's use of the License. The size of the canal could be increased in the future allowing for additional physical capacity and increased water deliveries. If such canal expansions took place, Condition 5 may limit the amount of recharge that could occur under the License. In addition, Condition 5 is unnecessary because, even without it, delivery of the listed rights will be limited by the physical capacity of the canal. Finally, if Condition 5 is to act as a true combined use limitation the condition should also be added to water rights 37-13043, 37-13112, 37-13113, 37-13114, 37-14264, 37-21401, 37-21402, 37-21403, 37-21404, and 37-21405.

For the foregoing reasons, the IWRB respectfully requests that Condition 5 be removed from the License.

CONCLUSION

For the reasons stated above, the IWRB respectfully requests reconsideration of the Preliminary Order Issuing License 37-7842.

DATED this 31st day of July, 2017.



ANN Y. VONDE
Deputy Attorney General

CERTIFICATE OF SERVICE

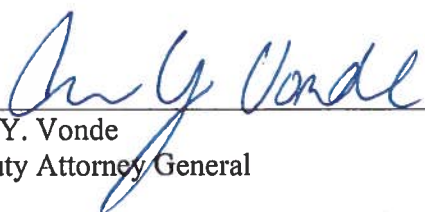
I HEREBY CERTIFY that on this 31st day of July 2017, I caused to be served a true and correct copy of the foregoing document by placing a copy thereof in the manner listed below:

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Idaho Department of Water Resources
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☐ U.S. Mail, postage prepaid
☐ Express Mail
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Water District #37
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By: 
Ann Y. Vonde
Deputy Attorney General