

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
AMENDMENT OF PERMIT NO. 15-7346) PRELIMINARY ORDER CORRECTING
IN THE NAME OF PAUL GUNNELL) AMENDMENT OF PERMIT

This matter having come before the Idaho Department of Water Resources ("Department") as the result of errors discovered in the approval of a permit amendment, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On December 1, 2011, the Department issued Permit No. 15-7346 in the name of Paul Gunnell, authorizing the diversion of 5.00 cfs from ground water for the irrigation of 359 acres. The authorized point of diversion was located in the SWNESE, Section 27, T16S, R36E.
2. On July 25, 2013, Paul Gunnell filed an Application for Amendment of Permit, seeking to change the point of diversion for Permit 15-7346. The proposed point of diversion was located in the SWNWSW, Section 26, T16S, R36E. The application included the following statement: "Applicant proposes to change POD to avoid crossing over the railroad."
3. The Department published notice of the application on August 15 and 22, 2013. The public notice correctly described the proposed point of diversion in the SWNWSW, Section 26, T16S, R36E. No protests were filed against the application.
4. The Department issued an Amendment of Permit No. 15-7346 on October 22, 2013. The authorized point of diversion was incorrectly described as the SWNWSW, Section 27, T16S, R36E. The point of diversion should have been described as Section 26 rather than Section 27.
5. On May 18, 2017, the Department conducted a field exam for Permit 15-7346 and confirmed that the point of diversion had been developed in the SWNWSW, Section 26, T16S, R36E. Department staff discovered the error in the Amendment of Permit while preparing a license for water right 15-7346.

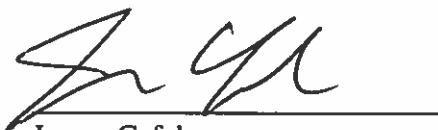
CONCLUSIONS OF LAW

1. Pursuant to Idaho Code § 42-211, the Department has a duty to issue an amended permit which accurately describes the elements of the permit, including the point of diversion. The Department did not accurately describe Permit 15-7346 in the Amendment of Permit issued on October 22, 2013.
2. The Department has the authority to issue a Corrected Amendment of Permit No. 15-7346, correcting the error in the point of diversion description.

ORDER

IT IS HEREBY ORDERED that Amendment of Permit No. 15-7346 is CORRECTED as set forth in the Corrected Amendment of Permit No. 15-7346 issued in conjunction with this order.

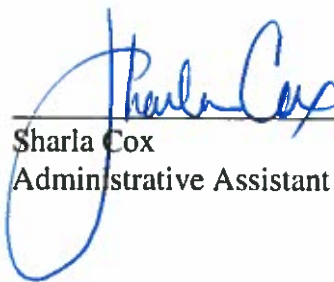
Dated this 12th day of July, 2017



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of July, 2017, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING AMENDMENT OF PERMIT to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER CORRECTING AMENDMENT OF PERMIT

**Paul Gunnell
c/o Don Harris
12295 S 300 E
Malad, ID 83252**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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.