

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

IN THE MATTER OF APPLICATIONS FOR)	ORDER DENYING MOTION FOR
PERMIT NOS. 63-34079 AND 63-34080)	RECONSIDERATION OF ORDER
IN THE NAME OF CHRIS EMMERT)	GRANTING MOTION FOR
_____)	CONTINUANCE OF HEARING

FINDINGS OF FACT

On May 8, 2015, Chris Emmert ("Applicant") filed Applications for Permit Nos. 63-34079 and 63-34080 ("Applications") with the Idaho Department of Water Resources ("Department"). The Applications seek a supplemental supply of ground water to irrigate land in Canyon County approximately four to five miles southeast of Lake Lowell. The Boise Project Board of Control ("Boise Project") protested both Applications on October 22, 2015. The Department held a pre-hearing conference on the matter on September 29, 2016. At the conference, the parties asked to schedule a hearing and to initiate discovery.

On October 4, 2016, the Department issued an order consolidating the contested cases, authorizing discovery, and setting disclosure deadlines.

On October 20, 2016, the Department issued an order setting February 15, 2017, as the hearing date for the Applications.

On December 16, 2016, the Department received the *Boise Project Board of Control's Motion for Continuance of Hearing*. The Boise Project seeks to vacate the hearing scheduled for February 15, 2017, and to reschedule it for six to eight weeks later. The Boise Project argues it needs the additional time because it has had difficulty finding and retaining a qualified hydrologist without a pre-existing conflict of interest to evaluate the ground water in the vicinity of Lake Lowell in time to meet the January 2017 deadline for disclosing expert witnesses and materials in this matter.

On January 4, 2017, the Department issued its *Order Granting Motion for Continuance of Hearing* ("Order"). The Department emailed the Order to the Applicant and the Boise Project on January 4, 2017. The Department mailed the Order to the Applicant and the Boise Project via the United States mail on January 5, 2017.

On January 4, 2017, in response to the Department's emailing of the Order, the Applicant emailed the Department a *Response in Opposition to Motion for Continuance* ("Response"). The certificate of service included with the Response shows that it was mailed via the United States mail to the Boise Project on December 28, 2016. The certificate of service does not indicate that the Response was addressed or mailed to the Department, and the Department has not received the Response except by the email submittal on January 4, 2017. The Applicant argues in the Response that it will be harmed by delaying the hearing on its Applications because, assuming

the Department rules in its favor, it would not have ample time to drill its proposed wells and begin using water during the 2017 irrigation season.

On January 5, 2017, the Applicant emailed the Department an *Applicant's Motion for Reconsideration* ("Motion") seeking reversal of the Order. The Applicant supported its Motion with an *Affidavit of John Marshall in Support of Motion for Reconsideration* ("Affidavit"). The Affidavit asserts that the Applicant mailed the Response to the Department via the United States mail at the same time it mailed the Response to the Boise Project.

On January 5, 2017, the Boise Project emailed the Department its *Boise Project Board of Control's Memorandum in Opposition to Applicant's Motion for Reconsideration* ("Memorandum"). In the Memorandum, the Boise Project states that it received the Response on January 3, 2017. The Boise Project asserts that because the Applicant has its primary surface water supply to irrigate the Applications' proposed places of use, the Applicant will not be substantially harmed by the proposed delay.

On January 6, 2017, the Applicant emailed the Department its *Applicant's Reply on Motion for Reconsideration* arguing that the Department should not penalize the Applicant for the late Response because the United States mail is generally and customarily reliable.

APPLICABLE RULES AND LAW

The determination of whether to grant a motion for continuance lies is within the discretion of the hearing officer. See *Gunter v. Murphy's Lounge, LLC*, 141 Idaho 16, 24, 105 P.3d 676, 684 (2005).

CONCLUSIONS OF LAW

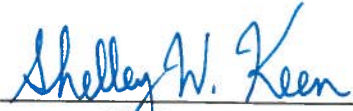
The Boise Project has shown good cause why the February 15, 2017, hearing should be vacated and a new hearing date should be set for six to eight weeks later. Establishing a mid-February hearing date in October is an aggressive schedule when potentially complex technical matters are involved. The Boise Project agreed to the mid-February hearing date to accommodate the Applicant's desire for a decision prior to the 2017 irrigation season. The Boise Project strove to meet the existing schedule but was stymied by the unforeseen circumstance of being unable to secure the services of a qualified hydrologist until recently. The Applicant already has a source of water to irrigate its land, and it has not shown it will be substantially harmed by possibly delaying the development of a supplemental supply. Therefore, postponing the hearing six to eight weeks to allow the Boise Project time to prepare its case is reasonable.

Because the Department's decision to grant the Boise Project's request for a continuance is based on good cause, the question of whether the Response was timely is moot.

ORDER

IT IS HEREBY ORDERED that the *Applicant's Motion for Reconsideration* is DENIED.

Dated this 9th day of January, 2017.



Shelley W. Keen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January, 2017, true and correct copies of the *Order Denying Motion for Reconsideration of Order Granting Motion for Continuance of Hearing* were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

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