

STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
 PERMIT NO. 63-12202 IN THE NAME OF) **ORDER GRANTING PETITION**
 JOE CESTARO) **FOR RECONSIDERATION**
 _____)

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

FINDINGS OF FACT

1. On November 23, 2016, the Department mailed Joe Cestaro (permit holder) and Keith S. Albi and Lisa Albi (property owners) a packet containing a Preliminary Order (order) voiding Permit No. 63-12202 (permit). The Department issued the order due to non-compliance with the following condition:

Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.

2. The Department issued the order as a preliminary order of the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
3. 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.

4. On November 25, 2016, the Department received a petition for reconsideration of the order (petition) from the property owners on behalf of the permit holder. In the petition, the property owners requested the order voiding the permit be withdrawn.

5. On November 28, 2016, Department staff informed the property owners that they would need to either install a lockable controlling works on the diversion or request that condition requiring the lockable controlling works be waived. Staff also suggested the property owners seek the advice of the watermaster of Water District 63 regarding a possible waiver of the condition.

6. On December 14, 2016, the watermaster informed the Department that the water delivery system for the permitted use is designed to allow him to lock the power boxes in the off position if regulation were required. He suggested the Department waive the lockable device requirement and replace it with two conditions allowing the Department to require a more specific lockable controlling works and a measurement device in the future, if necessary.

CONCLUSIONS OF LAW

1. The petition was filed timely.
2. The Department should grant the petition to reconsider the order.
3. Rule 35.02.d of the Department's Beneficial Use Examination Rules (IDAPA 37.03.02.035.02.d) authorizes the Department to waive or modify a measuring device requirement or a lockable device requirement on a permit.
4. The Department should withdraw the order and modify the permit condition to state that the Department may require the right holder to install a lockable controlling works and a measurement device in the future.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order voiding Permit No. 63-12202 is **GRANTED** pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). A water right license should be **ISSUED** for Permit No. 63-12202 with the following conditions:

When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.

Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide suitable control of the diversion.

Dated this 15th day of December, 2016.



Shelley Keen, Manager
Water Rights Section