

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
LICENSE NO. 95-15576 IN THE NAME OF)
JANICE SHANO)
_____)

**FINAL ORDER ISSUING A
WATER RIGHT LICENSE**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right license, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On December 6, 2011, the Department issued Permit 95-15576 ("permit") authorizing Janice Shano ("right holder") to establish a right to divert 0.12 cfs from ground water in the SE¼SE¼ of Section 31, Township 49 North, Range 4 West, B. M., for irrigation of 2.0 acres in Government Lot 1 (NE¼NE¼) of Section 6, Township 48 North, Range 4 West, and 2.0 acres in the SE¼SE¼ of Section 31, Township 49 North, Range 4 West, in Kootenai County. The permit stated that proof of beneficial use would be due on December 1, 2016.

2. The Department received the right holder's proof of beneficial use statement on October 24, 2016.

3. After reviewing aerial imagery and other available evidence, on October 28, 2016, the Department issued Water Right License 95-15576 ("license") confirming that the right holder established a right to divert 0.06 cfs from ground water in the SE¼SE¼ of Section 31, Township 49 North, Range 4 West, B. M., for irrigation of 1.0 acre in Government Lot 1 (NE¼NE¼) of Section 6, Township 48 North, Range 4 West, and 1.1 acres in the SE¼SE¼ of Section 31, Township 49 North, Range 4 West, in Kootenai County. The Department issued the license as a preliminary order pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01).

4. The Department did not conduct an onsite field examination to verify the beneficial use of water established in connection with the permit. Rule 35.01.r of the Department's Beneficial Use Examination Rules (IDAPA 37.03.02) states, in pertinent part:

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.

5. On November 1, 2016, the Department mailed a copy of the license to the right holder.

6. On November 15, 2016, the license became a final order of the Department pursuant to Rule 730.02.b of the Department's Rules of Procedure.

7. On November 28, 2016, the Department received the right holder's request ("request") to set aside the license and reissue it for the irrigation of 4.0 acres as was permitted in 2011. The right holder's request included photographs showing that the right holder irrigated 4.0 acres prior to submitting proof of beneficial use for the permit. The right holder's photographs showed irrigated trees as well as grass.

ANALYSIS

Using aerial photography and satellite imagery, the Department's beneficial use examiner found a total of 2.1 acres to be pasture or grassy areas irrigated by the right holder. Because the right holder did not discuss the irrigation of trees in her application for permit or her beneficial use statement, the examiner recommended only the grassy or pasture areas for licensing.

Upon review of the additional information the right holder submitted, the portion of the permitted place of use on the west side of the county road was irrigated and should be included in the place of use on the license. Including these lands increases the acres being irrigated to 2.2 acres in Government Lot 1 (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 6, Township 48 North, Range 4 West, and 1.8 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 49 North, Range 4 West, for a total of 4.0 acres, as was originally permitted.

The Department should also adjust the licensed diversion rate and annual volume to be consistent with the increase in the licensed number of irrigated acres.

CONCLUSIONS OF LAW

1. Rule 730 of the Department's Rules of Procedure states, in pertinent part, "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."

2. The Department did not receive the right holder's request within fourteen days of the service date of the preliminary order issuing the license. Therefore, the request is not a timely petition for reconsideration.

3. Pursuant to Rule 730.02.g of the Department's Rules of Procedure, the deadline for appealing the issuance of the license to district court is 28 days from the date the preliminary order became final, or December 13, 2016.

4. Rule 760 of the Department's Rules of Procedure states, in pertinent part:

The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it.

5. The right holder irrigated 4.0 acres as permitted within the authorized development period for the permit.

6. The Department should issue a final order for water right license 95-15576 with a diversion rate of 0.12 cubic feet per second, an annual diversion volume of 12 acre feet, and a total of 4.0 acres of irrigation.

ORDER

IT IS HEREBY ORDERED that water right license 95-15573 is **ISSUED** with a diversion rate of 0.12 cfs, an annual diversion volume of 12.0 acre-feet, and an irrigated place of use of 4.0 acres.

IT IS FURTHER HEREBY ORDERED that the Department shall issue a revised Water Right License document on this date in connection with this order.

Dated this 1st day of December, 2016.


GARY SPACKMAN, Director