

Nelson, Dan

From: Nelson, Dan
Sent: Wednesday, October 12, 2016 2:50 PM
To: 'SPFFBK'
Subject: RE: water permit 96-9573
Attachments: Order Insert.pdf; 96-9573_01_858258.pdf

Mr. and Ms. Nicolades,

I want to let you know up front that you can file a formal "Petition for Reconsideration" if you disagree with the license that was issued. I have included an explanatory document that should assist you if you wish to file a "Petition for Reconsideration". A formal petition must state the facts and provide proof that the water right license was issued in error.

Now that you know that you have a remedy if you feel the license was issued in error, I want to explain why your license was issued for 2.3 acres. The Department issues a water permit to develop a water use during a set development period. That development period runs from the time the permit is approved until the Department receives the proof of beneficial use statement. By filing a proof of beneficial use statement, you are saying that all development has been completed under the permit and no further development will be taking place. In your case, your permit was approved on October 16, 2015 and you submitted your proof of beneficial use statement on September 14, 2016. Therefore, your development period for permit 96-9573 was from October 16, 2015 to September 14, 2016, and no further development can take place after September 14, 2016.

Your permit allowed you the opportunity to develop an irrigation system that could irrigate up to 4 acres. **A license can only be issued for the amount of land actually irrigated during the development period.** In your case, we can only issue a license for the amount of land that you irrigated from October 16, 2015 to September 14, 2016. I initially contacted you by email on October 5, 2016, in order to ensure that I was correctly identifying the number of acres being irrigated, and informed you that I could only find approximately 2.2 acres of irrigation. I also requested that you provide additional information to ensure that the license would reflect the correct number of acres being irrigated. I have included a portion of that email for your reference below:

If you could review the map and mark the area that you are actually irrigating and return it to me, then I can move forward with licensing this permit without someone from the Department coming out to verify the use. If you are irrigating ground in one of the other 40 acre tracts, I can make the changes to our records and send you an amendment of permit to review and sign to correct the permit. There is a \$100.00 fee to amend a permit, but I want to make sure that all of your irrigation practices are fully covered by a valid water right if you are irrigating more than the east pasture. The reason for my concern is that the area around the house and the east pasture only include approximately 2.2 acres, and your permit requested 4 acres. I can license up to 4 acres under this permit, so it is best to get everything that you are irrigating.

On October 6, 2016, I received a map from you that showed the lands that you were actively irrigating. I used that map to determine the number of acres actually being irrigated and found 2.3 acres being irrigated once you removed the buildings and drive ways that cannot be irrigated. The map I created was included with the water right license you received (I have included a copy of the license map with this email). Please review this map to ensure it is correct.

If the map is correct, then you only developed 2.3 acres under your permit, and that is all that can be licensed according to Idaho Code. If the map is incorrect, then you would need to file the "Petition for Reconsideration" and supply information that clearly shows the acres you developed prior to September 14, 2016, not described by the water right license. If you plan to develop additional lands to be irrigated in the future, then you will need to file another water right application for those lands. By filing proof of beneficial use no additional uses can be developed under this water right.

I hope this explains what happened. If you have any further questions, I would be happy to call you and speak with you if you wish, or you can always call me.

Respectfully,

Daniel Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

From: SPFFBK [<mailto:SPFFBK@idahocritters.net>]
Sent: Wednesday, October 12, 2016 10:17 AM
To: Nelson, Dan
Subject: water permit 96-9573
Importance: High

Hello Dan,

Yesterday we received the Issuance of License in the mail, however it is only showing a permit for 2.3 acres, when in fact we applied for 4 acres. Please contact us as soon as possible so it can be corrected to state the 4 acres.

Regards,

Andreas and Rebecca Nicolades
208-627-4053

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

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

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

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, requests 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 IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director 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.

State of Idaho
Department of Water Resources
Attachment to Water Right License
96-9573

This map depicts the IRRIGATION place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.

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