

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 2-10460	)	
IN THE NAME OF A D CATTLE CO INC AND	)	ORDER GRANTING PETITION
PERMIT NO. 2-10463 IN THE NAME OF	)	FOR RECONSIDERATION
BIGFOOT FARM LLC	)	
_____	)	

This matter having come before the department of Water Resources (department) as a petition to reconsider two preliminary orders voiding permits, the department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On June 3, 2016, the department issued two preliminary orders (orders) voiding Permits to Appropriate Water Nos. 2-10460 in the name of A D Cattle Co Inc and 2-10463 in the name of Bigfoot Farm LLC.

2. The department issued the orders because the department's field examiner reported that he could not confirm that the permit holders had established a beneficial use of water in connection with the permits.

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 June 17, 2016, the department received a Petition for Reconsideration (petition) in connection with the orders. The petition was signed by Allen Nobel for A D Cattle Inc, and by David Palfreyman for Bigfoot Farm LLC.

5. The petition states the pumps diverting water under the two permits were in need of maintenance at the time of the field examination. Consequently, the measured diversion rate did not accurately represent the rate diverted under the permits during the development period.

6. Rule 50(e) of the Beneficial Use Examination Rules (IDAPA 37.03.02) reads as follows:

An examination fee equal to the initial examination fee paid to the department shall be paid for a re-examination made at the request for the permit holder except upon a showing of error by the department on the initial examination.

CONCLUSIONS OF LAW

1. The petition was filed timely.
2. The department should grant the petition.
3. The permit holders must pay an additional examination fee and coordinate with the department to conduct a second field examination.

ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to Rule 730.02.a. of the department's Rules of Procedure.

IT IS FURTHER ORDERED the preliminary orders voiding permit numbers 2-10460 and 2-10463 are **WITHDRAWN** and the permits are **REINSTATED** to allow a second field examination to be conducted.

IT IS FURTHER ORDERED that the permit holders shall each pay an examination fee pursuant to IDAPA 37.03.02.50(e) and cooperate with the department's field examiner to make the permitted points of diversion and places of use available for inspection during the 2016 irrigation season.

Dated this 8th day of July, 2016.



Nick Miller
Manager, IDWR Western Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER

Governor

GARY SPACKMAN

Director

July 8, 2016

A D CATTLE CO INC
PO BOX 1582
BOISE ID 83701

BIGFOOT FARM LLC
DAVID PALFREYMAN
5001 FIFESHIRE PL N
BOISE ID 83713

RE: Permit Nos. 2-10460 and 2-10463 Petition for Reconsideration

Dear Permit Holders:

The accompanying order is an **Order Granting Petition for Reconsideration** 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 unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,

Nick Miller
Manager, IDWR Western Region

enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2016, true and correct copies of the foregoing Preliminary Order to the persons listed below:

A D CATTLE CO INC
PO BOX 1582
BOISE ID 83701

BIGFOOT FARM LLC
DAVID PALFREYMAN
5001 FIFESHIRE PL N
BOISE ID 83713



Nick Miller
Manager, IDWR Western Region

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.