

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

IN THE MATTER OF LICENSE NO. 95-
11537 IN THE NAME OF SUNNY HILLS
WATER ASSN., INC.

**FINAL ORDER WITHDRAWING
PRELIMINARY ORDER**

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

FINDINGS OF FACT

1. On November 16, 2009, Sunny Hills Water Assn. Inc. (“Applicant”) submitted Application for a Permit No. 95-11537 (“application”).

2. The sources of water listed on the application were Coeur d’Alene Lake and Ground Water. The legal description on the application for the point of diversion from Coeur d’Alene Lake was Government Lot 4 (SW¼NW¼) of Section 4, Township 51 North, Range 3 West, B.M.

3. The Department issued Permit to Appropriate Water No. 95-11537 (“permit”) on June 10, 2010, pursuant to Rule 730 of the Department’s Rules of Procedure (IDAPA 37.01.01.730). The water sources and points of diversion on the permit were the same as stated on the application.

4. The Applicant submitted a Statement of Completion for Submitting Proof of Beneficial Use on June 6, 2015, identifying the sources of water as Coeur d’Alene Lake and Ground Water.

5. On March 3, 2016, a Department field examiner submitted a Beneficial Use Field Report verifying the beneficial use of water established in connection with the permit. The field examiner reported that the permit holder had established a point of diversion from Coeur d’Alene Lake within Government Lot 4 (SW¼NW¼) of Section 4, Township 51 North, Range 3 West, B.M. However, narrative remarks in the Beneficial Use Field Report identified a point of diversion from Hayden Lake.

6. The Department issued a preliminary order authorizing Water Right License No. 95-11537 on March 9, 2016, pursuant to Rule 730 of the Department’s Rules of Procedure (IDAPA 37.01.01.730). Water Right License No. 95-11537 (“license”) authorized a point of diversion from Coeur d’Alene Lake within Government Lot 4 (SW¼NW¼) of Section 4, Township 51 North, Range 3 West, B.M.

7. The preliminary order became final on March 25, 2016, pursuant to Rule 730.02.b.i. of the Department’s Rules of Procedure (IDAPA 37.01.01.730.02.b.i).

8. A representative of the Applicant contacted the Department on April 5, 2016, and informed Department staff that the surface diversion is from Hayden Lake, not Coeur d'Alene Lake.

9. Government Lot 4 (SW¼NW¼) of Section 4, Township 51 North, Range 3 West, B.M. is adjacent to Hayden Lake.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 directs the Department to issue a water right license that accurately portrays the beneficial use of water developed in accordance with the permit.

2. The license is not accurate because it lists the source of water as Coeur d'Alene Lake, not Hayden Lake, which is the actual source.

3. Rule 760 of the Department's Rules of Procedure (IDAPA 37.01.01.760) states in pertinent part as follows:

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.

4. Pursuant to Rule 730.02.g of the Department's Rules of Procedure (IDAPA 37.01.01.730.g), the deadline for appealing the license to District Court is April 22, 2016.

5. No appeal of the license has been filed in the District Court.

6. The agency head may issue a final order withdrawing a preliminary order of the Department.

ORDER

IT IS HEREBY ORDERED that the final order issuing License No. 95-11537 is **WITHDRAWN**.

Dated this 12th day of April, 2016.

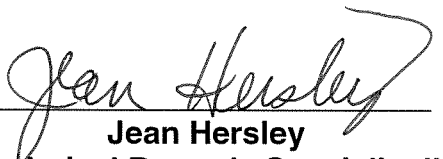

GARY SLACKMAN, DIRECTOR
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2016, I mailed a true and correct copy, postage prepaid, of the foregoing FINAL ORDER WITHDRAWING PRELIMINARY ORDER to the person (s) listed below:

RE: Water Right/Permit No.: 95-11537

**SUNNY HILLS WATER ASSN INC
14205 N TAYLORS TERRACE RD
HAYDEN LAKE ID 83835**



Jean Hersley
Technical Records Specialist II