

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	ORDER GRANTING PETITION
NO. 15-7268 IN THE NAME OF	)	FOR RECONSIDERATION
GORDON SMITH	)	AND WITHDRAWING
_____	)	PRELIMINARY ORDER

On September 1, 2015, the Idaho Department of Water Resources ("Department") conducted a field exam to determine the extent of beneficial use occurring under Permit 15-7268. The examiner found that a ground water well had been constructed, but did not find any evidence of irrigation or stockwater use from the well. The Department issued a Preliminary Order Voiding Permit 15-7268 on October 2, 2015. The order stated that, based on the evidence available, no beneficial use had been developed under Permit 15-7268.

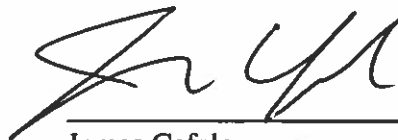
On October 13, 2015, Gordon Smith filed a timely Petition for Reconsideration in the form of a letter to the Department. Mr. Smith asserted that the well had been pumped for irrigation use prior to the proof of beneficial use deadline (May 1, 2015). Mr. Smith provided a copy of a pump test report. According to the report, Glenn's Electrical Motor and Supply conducted a test of the Smith well on April 20, 2015. Water was pumped from the well for 2 hours and, according to Mr. Smith, was discharged into an old ditch on the east side of the Smith property.

Based on the additional evidence provided by Mr. Smith, it appears that some ground water irrigation did occur on the Smith property prior to May 1, 2015. The Preliminary Order should be withdrawn and a license issued consistent with the evidence provided by Mr. Smith.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration filed by Mr. Smith is GRANTED. The Preliminary Order Voiding Permit 15-7268 is hereby WITHDRAWN. The Department should issue a license for water right 15-7268, consistent with the evidence now available to the Department.

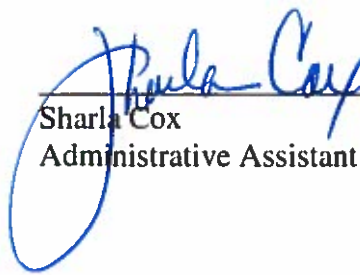
Dated this 27th day of October, 2015.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of October 2015, I mailed a true and correct copy of the foregoing ORDER GRANTING PETITION FOR RECONSIDERATION AND WITHDRAWING PRELIMINARY ORDER, with the United States Postal Service, postage prepaid and properly addressed to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: ORDER GRANTING PETITION FOR RECONSIDERATION

**Gordon Smith
1605 Grandview Drive N. # 46
Twin Falls, ID 83301**

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.