

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	
NO. 15-7268 IN THE NAME OF	)	
<u>GORDON SMITH</u>	)	PRELIMINARY ORDER VOIDING PERMIT

This matter having come before the Idaho Department of Water Resources ("Department") as a result of an investigation by the Department to determine the extent of beneficial use occurring under a permit, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On February 9, 2005, Gordon Smith filed Application for Permit No. 15-7268 with the Department, seeking a permit to divert 0.80 cfs from ground water for the irrigation of 40 acres in Section 16, T14S, R36E and for stockwater use. The application described a new ground water well to be constructed in the NESE of Section 16, T14S, R36E. The application stated that the property was also irrigated with 49 shares from Deep Creek Irrigation Company. The proposed ground water right was intended to be supplemental to the canal company shares.

2. The application was approved by the Department and Permit 15-7268 was issued on May 26, 2005. Proof of beneficial use was due by May 1, 2010.

3. The Department's files include a well driller's report for the well drilled under Permit 15-7268. The well was constructed by Mountain West Well Drilling in January 2010. According to the report, the well was completed to a depth of 376 feet. Water was only present between 280 and 376 feet below land surface. The report stated that the well produced 50 gallons per minute (0.11 cfs) in a pump test run by the well driller.

4. On April 9, 2010, Mr. Smith spoke with Shelley Keen, the Department's Water Rights Section Manager, about the status of Permit 15-7268. Mr. Smith stated that he had not been able to complete development under the permit because the ground water well produced far less water than expected.

5. On April 13, 2010, Mr. Smith filed a Request for Extension of Time to provide proof of beneficial use. The request stated: "Well has been drilled, waiting for weather good enough to get water out and to place where it can be useful. Water amount was not what I expected to run one wheel line, let alone 3. [Inclement], cold, miserable weather – not enough water found to water the 40 acres or even one wheel line, less than a quarter mile wheel line." The Department approved the request and the due date for proof of beneficial use was extended to May 1, 2015.

6. On March 18, 2015, Mr. Smith spoke with Cherie Palmer, a water rights supervisor for the Department, about the status of Permit 15-7268. Ms. Palmer prepared a memo summarizing the conversation:

I spoke with Gordon Smith today regarding his permit. He told me the well is drilled by he does not have a pump in the well and hasn't used the well since it was drilled. . . . Mr. Smith said he has a pump reserved and has a few options of using a 10 or 15 hp. He is working with a few different irrigation companies to get that in place. He told me that he has some wheel lines but thinks that he might just do flood irrigation from the well. I told Mr. Smith that he needs to have beneficial use occurring by May 1 under the permit in order to avoid cancellation of his permit.

7. On April 29, 2015, Gordon Smith filed proof of beneficial use. Mr. Smith asserted that he had developed 0.80 cfs from the well and had irrigated 40 acres with ground water. However, Mr. Smith also wrote: "Not enough water found."

8. On September 1, 2015, Department staff conducted a beneficial use field examination for Permit 15-7268. The examiner reported that the well had been completed and a submersible pump was installed, but there was no power source the pump. Electric power was not available at the well and there was no generator present. Photos show the electrical wiring for the pump wrapped loosely around the well head. No flow measurements were taken because the system was not operable. Even though there was irrigation infrastructure on the property (wheel lines and hand lines), the ground water well was not physically connected to the irrigation system.

9. The evidence available to the Department at this time suggests that no beneficial use of water has occurred under Permit 15-7268.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 states: "In the event that the Department shall find that the applicant has not fully complied with the law and conditions of the permit, it may . . . refuse issuance of a license and void the permit."

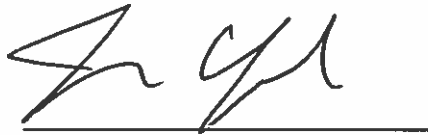
2. The examination by the Department reveals that the permit holders have not complied with the conditions of the permit and Idaho Code § 42-219 because they did not develop a beneficial use of water within the development period authorized under Permit 15-7268.

3. The Department should void Permit 15-7268 pursuant to Idaho Code § 42-219.

ORDER

IT IS HEREBY ORDERED that issuance of a license is REFUSED and Permit 15-7268 is VOIDED.

Dated this 2nd day of October, 2015.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of October 2015, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER VOIDING PERMIT, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL - CERTIFIED

RE: PRELIMINARY ORDER VOIDING PERMIT (15-7268)

**Gordon Smith
1605 Grandview Dr. 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.