

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 15-7369 IN THE)
NAME OF DALE W. PRICE)

**PRELIMINARY ORDER
ISSUING PERMIT**

On October 10, 2013, Dale W. Price ("Price") filed Application for Permit 15-7369 with the Idaho Department of Water Resources ("Department"), seeking a ground water right for irrigation, stockwater and domestic use. The application was advertised to the public beginning on December 19, 2013, and was protested by Samaria Water & Irrigation Company ("SWIC"). A pre-hearing conference was held on February 13, 2014. The parties were unable to resolve the issues of protest at that time and requested that a hearing be held to decide the contested case.

An administrative hearing was conducted on March 31, 2015, at the Oneida County Ag Extension Building in Malad, Idaho. The parties offered testimonial and documentary evidence into the record. After carefully considering the evidence in the administrative record for this case, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application for Permit 15-7369 proposes diverting 0.85 cfs from ground water to irrigate 42.5 acres in the NESE and NWSE of Section 2, T15S, R35E. The application also proposes providing year-round domestic water for a new home, to be constructed on the property, and year-round stockwater for 100 head of cattle. The proposed point of diversion, an existing ground water well, is located in the NESE of Section 2. The proposed point of diversion and place of use are on property owned by Price.

2. On May 12, 1997, Price and another individual (Evan Price) filed Application for Permit 15-7160, seeking a permit to irrigate 42 acres in Section 2, T15S, R35E, the same acres described in the pending application. The application was approved by the Department and Permit 15-7160 was issued on July 25, 1997. Permit 15-7160 included a condition requiring proof of beneficial use to be filed on or before August 1, 2000.

3. In May 2000, Gardner Drilling Services ("Gardner") began to drill a well for Price under Permit 15-7160 in the NESE of Section 2, T15S, R35E. The well was completed in June 2000. Price testified that Gardner was also hired to install a pump in the well. The pump was never installed and water was not diverted from the well for irrigation prior to the proof of beneficial use due date.

4. Price did not file proof of beneficial use under Permit 15-7160. The Department sent notice that Permit 15-7160 had lapsed on August 16, 2000. The ground water well drilled by

Gardner was capped and has never been used for irrigation. The pending application proposes to divert water from the existing, capped well to irrigate the acres described in lapsed Permit 15-7160.

5. Price hired Tom Wood of Clearwater Geosciences, LLP to evaluate the potential drawdown impacts to existing wells and springs in the area of the proposed permit. Wood prepared a report summarizing his conclusions, identified as Exhibit A1.

6. To determine the aquifer parameters in the area of the proposed well, Wood relied on information obtained from a pump test conducted on April 23, 2011 at a well located approximately 2.5 miles south of the proposed well. Based on that pump test, Wood estimates the transmissivity of the local aquifer to be 62,400 ft²/day. This value is consistent with another pump test conducted by Wood in the same area, which suggested a transmissivity of 51,000 ft²/day.

7. The storativity of the local aquifer could not be determined through the pump tests. Wood estimated a storativity of 0.01, which he asserts is typical for unconsolidated aquifer materials. (Exhibit A1, page 2)

8. Assuming a transmissivity value of 62,400 ft²/day and a storativity value of 0.01, Wood created a model to predict the drawdown which may occur 0.2 miles from the proposed well (the location of the nearest domestic well) and the 1.2 miles from the proposed well (the distance from the proposed well to SWIC's Warm Springs).

9. A number of other assumptions were incorporated into the model. Wood assumed that Price would divert at the proposed diversion rate (0.85 cfs) for six months (180 days). He also assumed no-flow aquifer boundaries 7,000 feet to the west of the proposed well, 25,000 feet to the east of the proposed well, and 17,000 feet south of the proposed well. Applying this set of assumptions, the model predicted 2.5 feet of drawdown at the proposed well and 0.75 feet of drawdown at a distance of 1.2 miles from the proposed well.

10. The assumptions incorporated in Wood's model are conservative and over-estimate the potential drawdown effects. The model assumes a diversion rate of 0.85 cfs for 180 consecutive days (which equates to 303 acre-feet). New ground water rights in the Malad River drainage (Basin 15) are generally limited to 3.5 acre-feet per acre at the field headgate. Therefore, Permit 15-7369 would be limited to a maximum annual diversion volume of 149 acre-feet, approximately half of the diversion volume used in the Wood model.

11. SWIC relies on two separate springs to provide water to its patrons during the irrigation season. Warm Springs is located approximately 1.2 miles to the northwest of the proposed well. A cold water spring (also known as Big Malad Spring or Elam Spring) is located approximately 5 miles to the northwest of the proposed well. The differences in temperature and water chemistry between the springs suggest that the Warm Springs and the Big Malad Spring are distinct hydrologic sources.

12. Warm Springs emanates from the ground at the base of the foothills on the west side of the valley. Most of the ground water irrigation occurring in the valley is to the east of the Warm Springs. However, there are ground water rights in the foothills above the Warm Springs.

13. SWIC has two irrigation water rights from the Warm Springs (15-2023 and 15-2024). These rights, in combination, authorize the diversion of 6.5 cfs.

14. SWIC has experienced considerable declines in spring flow in recent years, particularly from the Warm Springs during the summer months. According to company records, half as much water was delivered in 2014 as was delivered in 2008, which is a direct result of a lack of flow from the springs. The same records also indicate that present day delivery from the two springs is about one-third of historical levels.

15. SWIC representatives have observed that the flow from Warm Springs declines when nearby wells are turned on at the beginning of the irrigation season. SWIC asserts that flow reductions are visible within one week of the start of ground water pumping, and that spring flows generally return or recover within two weeks of well shutdown. The present flow of Warm Springs is approximately 200 inches, or 4.0 cfs, which represents the non-irrigation season spring discharge.

16. Department records show 74 ground water irrigation rights exist within a 3-mile radius of the Warm Springs. 24 of these rights are represented by active water right permits with priority dates of 1996 and later. The spatial distribution of these rights is mostly to the east of the Warm Springs, although the closest irrigation well is situated 300 feet to the southwest of the spring.

17. Department records show 11 additional ground water rights which may divert within the same 3-mile radius. These water rights are statutory claims (filed pursuant to Idaho Code § 42-243) and may represent an additional 1,250 acres of ground water irrigation. Neither the Department nor a court has ever verified the elements listed in the statutory claims.

18. Based on the topography of the area, it is unlikely that pumping from the proposed well will impact the Warm Springs. The proposed permit will divert water from the local aquifer. The springs are likely disconnected from the valley aquifer.

19. Price testified that the proposed place of use had been irrigated with SWIC water in the past, but has not been irrigated for many years because of the difficulty in getting surface water to the property. The last time SWIC shares were used on the property was prior to 2000.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A(5) states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho . . . the director of the department of water resources may reject such application and refuse issuance of a permit therefore, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the ultimate burden of proof regarding all factors set forth in Idaho Code § 42-203A(5).

Injury to Other Water Rights

3. Rule 45.01.a of the Department's Water Appropriation Rules (IDAPA 37.03.08) sets forth the evaluation criteria for determining whether a proposed water use will reduce the quantity of water under existing water rights. A reduction will occur if "[t]he amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less." (IDAPA 37.03.08.45.01.a.i)

4. Injury to surrounding ground water wells is governed by Idaho Code § 42-226, which states: "Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources . . ." Reasonable pumping levels have not been established for the Basin 15. Therefore, the reasonableness of drawdown impacts to neighboring wells must be evaluated on a case-by-case basis

5. The expected drawdown at nearby ground water wells is reasonable. Wood predicts the potential drawdown at the nearest neighboring well (0.2 miles away) would be 1.2 feet. The actual drawdown impact at this location will be much less than 1.2 feet because the Wood model overestimates the total volume diverted at the proposed point of diversion. The irrigation element of Permit 15-7369 will be limited to a maximum diversion volume of 149 acre-feet, less than half the volume used in the Wood model.

6. SWIC's main issue of protest related to potential impact to spring flow from Warm Springs. SWIC's Warm Springs are located just over one mile from the proposed point of

diversion. Evidence in the record suggests it is unlikely that the proposed diversion by Price will have any effect on SWIC's Warm Springs.

7. The Applicant has shown by a preponderance of the evidence that the proposed ground water diversion will not reduce the quantity of water under existing water rights.

Sufficiency of Water Supply

8. Rule 45.01.b of the Departments Water Appropriation Rules (IDAPA 37.03.08) sets forth the criteria for determining whether the water supply is not sufficient for the proposed project. "The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible" (IDAPA 37.03.08.045.01.b)

9. The Applicant met his burden of showing that the water supply is sufficient for the proposed beneficial use. The well driller's report for the existing well states that the well can produce 300 gpm with very little drawdown. Wood's previous pump tests and well logs included in the Wood report confirm that the local aquifer has a good water yield.

Speculation / Financial Resources

10. The Applicant met his burden of showing that the application was made in good faith and that he has sufficient financial resources to complete the proposed irrigation project. The lands are owned by applicant and the proposed ground water well is already constructed.

11. Prior to the hearing, the parties stipulated that speculation and Price's financial resources were not at issue in this contested case.

Local Public Interest

12. The local public interest analysis under Idaho Code § 42-203A(5)(e) is meant to be separate and distinct from the injury analysis under § 42-203A(5)(a). Local public interest is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." (Idaho Code § 42-202B(3)) The evidence presented by the protestants was focused on the question of injury (addressed above). There was no evidence presented by the protestants pertaining to the question of local public interest. Application 15-7369 states that ground water will be used for agricultural and domestic purposes, common ground water uses in the local community. The Applicant met his burden of proof for this element.

Conservation of Water Resources

13. The Applicant met his burden of showing that the proposed use will be compatible with the conservation of water resources within the state of Idaho. The proposed project will incorporate sprinkler irrigation, a conservative use of water.

ORDER

IT IS HEREBY ORDERED that Application for Permit No. 15-7369 in the name of Dale W. Price is APPROVED with the following elements and conditions:

Priority Date: October 19, 2013
Source: Ground Water
Season of Use: Irrigation 4/1 – 10/31
Domestic and Stockwater 1/1 – 12/31
Diversion Rate: Irrigation 0.85 cfs
Domestic 0.02 cfs
Stockwater 0.02 cfs
Total Diversion Rate: 0.85 cfs
Irrigation Diversion Volume : 149 acre-feet
Point of Diversion: NESE, Sec 2, T15S, R35E
Place of Use: Sec 2, T15S, R35E NESE 26.0 acres
NWSE 16.5 acres
Total 42.5 acres

Permit Conditions

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2020**.
2. Subject to all prior water rights.
3. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
5. Domestic use is for one home. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.
6. Stockwater is for 100 range cattle.
7. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

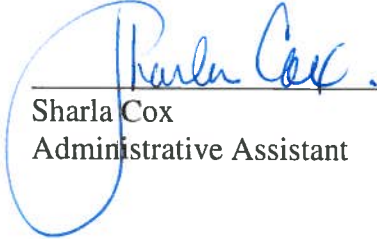
Dated this 15th day of April, 2015.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of April 2015, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER ISSUING 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

RE: PRELIMINARY ORDER ISSUING PERMIT

**Dale W. Price
4491 West 4700 South
Malad, ID 83252**

**Samaria Water & Irrigation Co.
c/o David Reel
5176 South 4400 West
Malad, ID 83252**

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.