

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 51-13107 IN THE)
NAME OF PETER AND/OR RUTH)
JACKSON JR.)
_____)

**PRELIMINARY ORDER GRANTING
PETITION FOR RECONSIDERATION**

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider a preliminary order voiding an application for permit, the Department makes the following finds, concludes, and orders:

FINDINGS OF FACT

1. On June 17, 2014, the Department issued a preliminary order voiding Application for Permit No. 51-13107 in the name of Peter and/or Ruth Jackson Jr. (Applicant). The order was issued for failure of the Applicant to respond to a March 4, 2014 Department letter requesting additional information. A sixty (60) day deadline was set for the information and response.

2. On June 30, 2014, a petition for reconsideration and the requested information was submitted to the Department.

CONCLUSIONS OF LAW

1. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) in part states:

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.

2. Upon receiving the void, the Applicant, through their attorney Charles L. Honsinger, filed a timely petition for reconsideration with the Department. These actions show due diligence.

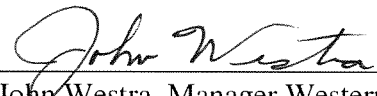
3. The Department should grant the petition for reconsideration.

ORDER

IT IS HEREBY ORDERED the Petition for Reconsideration submitted by the Applicant is **GRANTED** pursuant to Rule 730.02.a. of the Department's Rules of Procedure.

IT IS FURTHER ORDERED the preliminary order voiding Application for Permit No. 51-13107 is **WITHDRAWN**. The application is **REINSTATED** and will continue to be processed.

Dated this 9th day of July, 2014.



John Westra, Manager Western Region

CERTIFICATE OF SERVICE

I hereby certify that on this 11 day of July, 2014, I mailed a true and correct copy of the foregoing Preliminary Order to the person(s) listed below:



Rachel Sommer
Administrative Assistant

PETER AND/OR RUTH JACKSON JR
51800 JT LANE
RIDDLE ID 83604

CHARLES L HONSINGER
RINGERT CLARK CHARTERED
455 S THIRD
PO BOX 2773
BOISE ID 83701-2773

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)

A preliminary order is not a final order. It is a "Preliminary Order" as defined 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 of 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 brief 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 before 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.

CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
clh@ringertlaw.com

RECEIVED

JUN 30 2014

WATER RESOURCES
WESTERN REGION

Attorneys for Petitioners Ruth and Peter Jackson, Jr.

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

_____	)	
IN THE MATTER OF APPLICATION FOR	)	
PERMIT #51-13107 IN THE NAME OF RUTH	)	PETITION FOR
AND/OR PETER JACKSON JR.	)	RECONSIDERATION
	)	
	)	
_____	)	

COMES NOW, Petitioners Ruth and Peter Jackson, Jr., and hereby petition the Idaho Department of Water Resources ("IDWR") to reconsider its Preliminary Order Voiding Application issued in the above-captioned matter on June 17, 2014. This petition is filed pursuant to IDAPA 37.01.01.730.02(a) and I.C. § 67-5243. The grounds for this Petition is that Petitioners did not receive notice of information requested by the agency. The specific relief sought by petitioners is the reinstatement of permit application no. 51-13107 with, if necessary, an advanced priority date. This Petition is supported by the *Affidavit of Peter Jackson, Jr. in Support of Petition for Reconsideration*.

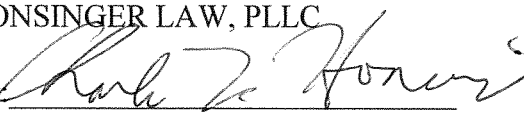
DISCUSSION

IDWR voided this application as a result of Petitioners' failure to provide information enabling a determination of whether the water sought to be appropriated is waste water available for appropriation or "live" water under the control of an irrigation delivery organization that is necessary to satisfy downstream users. This information was sought per a March 4, 2014 letter from IDWR to Ruth and/or Peter Jackson, Jr. at their home address. Petitioners did not receive a copy of the March 4, 2014 letter, and only became aware of its existence after receiving the June 17, 2014 Preliminary Order Voiding Application. *Affidavit of Peter Jackson, Jr. in Support of Petition for Reconsideration*. Once becoming aware of IDWR's need for the requested information, Petitioners promptly obtained the same. *Affidavit of Peter Jackson, Jr. in Support of Petition for Reconsideration*, Ex. A.

Petitioners seek reconsideration of the Preliminary Order Voiding Application on grounds that they did not receive a copy of the March 4, 2014 letter seeking additional information. Petitioners have promptly supplied such information upon learning of the request, and should not be penalized for a mail delivery failure. It is not necessary, but to the extent IDWR determines the priority date of the permit should be advanced, it should be advanced the number of days between issuance of the Preliminary Order and the date of receipt of this Petition for Reconsideration.

Respectfully submitted this 30th day of June, 2014.

HONSINGER LAW, PLLC

By 
Charles L. Honsinger
Attorney for Petitioners

4. The March 4, 2014 letter to Ruth Jackson and myself was properly addressed, but we simply do not know why it was never delivered to us.

5. Attached hereto as the sole exhibit to this Affidavit is a June 20, 2014 letter from Bruneau Buckaroo Cooperative Ditch Company that meets the request for information contained in IDWR's March 4, 2014 letter to Ruth Jackson and myself.

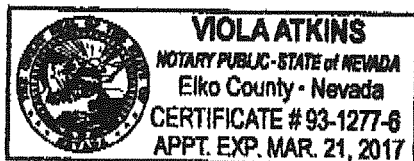
Further your affiant sayeth naught.


Peter Jackson, Jr.

STATE OF Nevada)
)ss.
County of Elko)

On this 30th day of June, 2014, before me, the undersigned, a notary public in and for said state, personally appeared Peter Jackson, Jr., known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.




Notary Public for Nevada
Residing at Owyhee, Nevada
My Commission Expires: 3/21/2017

Bruneau Buckaroo Co-Op Ditch Co.
Frank L Bachman, President
PO Box 186
Bruneau, ID 83604

June 30, 2014

Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Re: Application 51-13107

Dear Ms Grimm,

Bruneau Buckaroo Co-Op Ditch Co. (BBDC) received a request from Ruth and Peter Jackson regarding any possible impact to the BBDC should their recent drain water application be approved by Idaho Dept. of Water Resources (IDWR).

BBDC does not maintain control of any waste water within their system. The drain ditch referred to in this application is located on property own by Ruth and/or Peter Jackson. There will be no impact to the BBDC. The BBDC has no diversion works downstream of Jackson's application. Several BBDC shareholders presently capture and use drain water (waste water) on their property.

Please contact me at 208-845-2090 should you have additional questions.

Sincerely,



Frank L. Bachman
Bruneau Buckaroo Co-Op Ditch Co., President

Bruneau Buckaroo Co-Op Ditch Co.
Frank L Bachman, President
PO Box 186
Bruneau, ID 83604

RECEIVED
JUL 02 2014
WATER RESOURCES
WESTERN REGION

June 30, 2014

Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

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Frank L. Bachman
Bruneau Buckaroo Co-Op Ditch Co., President