

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

IN THE MATTER OF LICENSE NO.) **PRELIMINARY ORDER DENYING**
65-13767 IN THE NAME OF KAREN) **PETITION FOR RECONSIDERATION**
C BRUNER)
_____)

This matter having come before the Idaho Department of Water Resources (Department) as a Petition for Reconsideration.

FINDINGS OF FACT

1. On November 14, 1997, Karen C. Bruner (Applicant) applied to the Department for a permit to appropriate 0.17 cubic feet per second (cfs) of ground water for irrigation (5 acres) and domestic beneficial uses.
2. On June 24, 1998, the Department approved the application as Permit No. 65-13767. A condition of approval on the permit required the permit holder to submit proof of beneficial use of water (proof) to the Department on or before July 1, 2002.
3. On July 31, 2002, the Department received the "Proof of Beneficial Use" from the permit holder. The permit holder listed 5 acres of irrigation on the proof form.
4. A license field examination was conducted on October 22, 2013 by Western Regional Field Agent, Rick Collingswood. The examination found 1 acre of irrigation. The mainline and system were apparent for the remaining acreage, but the parcel showed no evidence of any irrigation.
5. On March 27, 2014, permit no 63-13767 was licensed for irrigation of 1 acre and domestic beneficial uses.
6. On April 22, 2014, the Department received a petition for reconsideration from the license holder. The petition requested the license be amended to include irrigation of 4 acres. Also, condition of approval #2 be changed to read "well" instead of "headgate" and delete the second sentence of condition of approval #3.

CONCLUSIONS OF LAW

1. The provisions of Idaho Code § 42-217 require the permit holder to submit proof of application for beneficial use. Upon receipt of the proof and fee, the Department shall examine or cause to be examined:
 1. *The place where such water is diverted and used , and, if the use is for irrigation, shall ascertain the area and location of the land irrigated and the nature of all the improvements which have been made as a direct result of such use.*

2. The field examiner only found evidence water had been diverted and used on 1 acre of the 5 acres permitted. The license holder has not provided evidence that water had been diverted and beneficially used on the remaining 4 acres.

3. The Petition for Reconsideration asked for conditions of approval #2 and #3 be amended. Conditions #2 and #3 are standard Department conditions of approval placed on water right licenses. The standard conditions apply to the license as read.

4. The Department should deny the Petition for Reconsideration pursuant to Idaho Code § 42-219(8) and Beneficial Use Examination Rule 35(IDAPA 37.03.02.35).

ORDER

IT IS THEREFORE HEREBY ORDERED that the Petition for Reconsideration in the matter of license No. 65-13767 in the name of Karen C Bruner is **DENIED**.

Dated this 28th day of April 2014



John Westra, Manager
Western Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website:

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 28, 2014

Karen C Bruner
9650 Brownlee- Liberty RD
Sweet ID 83670

RE: Preliminary Order in the Matter of License No. 65-13767

Dear License Holder:

The accompanying order 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 unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

When you are ready to begin development of the non-irrigated acres, a new permit application can be submitted.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,

A handwritten signature in cursive script that reads "John Westra". The signature is written in dark ink and is positioned above the printed name and title.

John Westra, Manager
Western Regional Office

Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of April, 2014, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Documents Sent:

Order Denying Petition for Reconsideration
License Proof—new address
Explanatory Information Sheet.
Order Letter

Karen C Bruner
9650 Brownlee-Liberty RD
Sweet ID 83670

A handwritten signature in cursive script, appearing to read "Crystal Nute", is written over a horizontal line.

Crystal Nute, Office Specialist II

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.