

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 69-11501 IN THE NAME)
OF IDAHO FISH & GAME)
COMMISSION)

**ORDER GRANTING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right license, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On January 12, 2006, the Department of Water Resources issued Permit No. 69-11501 (permit) to the Idaho Fish and Game Commission (permit holder) authorizing appropriation of 0.23 cubic feet per second from a spring tributary to sinks, to be used for stockwater purposes within the NW¼SE¼, Sec. 27; E½NE¼, Sec. 36; Township 17 North, Range 5 West, B.M., Washington County.
2. On May 4, 2006, the Department received Proof of Beneficial Use for the permit.
3. On June 17, 2013, the Department received a field examination from the permit holder and found that the permit holder had developed one of the points of diversion at a different legal description than authorized by the permit.
4. On June 28, 2013, the Department sent notice to the permit holder stating that the permit had to be amended before the Department can issue a water right license including the point of diversion developed at a different legal description than authorized by the permit. An Application for Amendment form was enclosed with the notice.
5. On August 9, 2013, the Department sent a second notice to the permit holder stating that the permit has to be amended before the Department can issue a water right license.
6. The Department did not receive the Application for Amendment of the permit by September 23, 2013.
7. Idaho Code § 42-219(8) provides in pertinent part as follows:

In the event that the Department shall find that the applicant has not fully complied with the law and the conditions of the permit, it may issue a license for that portion of use which is in accordance with the permit, or may refuse issuance of a license and void the permit.

8. On September 23, 2013, the Department mailed the right holder a preliminary order (order) voiding Permit No. 69-11501 in the name of the right holder.
9. On October 1, 2013, the permit holder contacted the Department by telephone requesting reconsideration of the preliminary order.
10. On October 18, 2013, the right holder submitted the filing fee for the Amendment of Permit with the Department. The right holder also submitted the Amendment of Permit necessary to issue a water right license on November 25, 2013.

CONCLUSIONS OF LAW

1. Section 67-5243(3), *Idaho Code*, provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

2. The petition was requested with fourteen days of the service date of the order.
3. The Department should conditionally grant the petition for reconsideration of the order pursuant to Section 67-5243(3), *Idaho Code*, to give the right holder an opportunity to submit the Application for Amendment of the permit.

ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to Section 67-5243(3), *Idaho Code*, to allow the right holder to submit the Application for Amendment of the permit and cause the Department to issue a License of Right 69-11501 that contains the points of diversion identified by the field examiner.

Dated this 9th day of December, 2013.



John Westra
Western Regional Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 18, 2013

STATE OF IDAHO
IDAHO FISH & GAME COMMISSION
PO BOX 25
BOISE ID 83707-0025

**RE: Order Granting Petition for Reconsideration
Application for Permit No. 69-11501**

Dear Applicants:

The accompanying order is an "**Order Granting Petition for Reconsideration and Void Order Withdrawal**" 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 yellow information sheet.

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

Sincerely,

Rachel Snymen
For:

John Westra, Manager
Western Regional Office

Enclosures

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.

Walker, Kay

From: Poole, Walt [walt.poole@idfg.idaho.gov]
Sent: Monday, November 25, 2013 3:46 PM
To: Walker, Kay
Subject: RE: Jerry's copies

Kay:

You're welcome. I'm sorry for the confusion and delay. Have a nice Thanksgiving.

Walt

From: Walker, Kay [mailto:Kay.Walker@idwr.idaho.gov]
Sent: Monday, November 25, 2013 3:31 PM
To: Poole, Walt
Cc: Walker, Kay
Subject: RE: Jerry's copies

Walt:
I will make the signed copies work. Thanks for your help!
Kay Walker
334-2190

From: Poole, Walt [mailto:walt.poole@idfg.idaho.gov]
Sent: Monday, November 25, 2013 12:58 PM
To: Walker, Kay
Subject: Jerry's copies

Hi Kay:

Will this work?

Walt

Walker, Kay

From: Deal, Jerry [jerry.deal@idfg.idaho.gov]
Sent: Monday, November 25, 2013 12:41 PM
To: Poole, Walt; Walker, Kay
Subject: RE: Licensing amendments
Attachments: 69-11501 amendment.pdf; 69-11502 amendment.pdf; IDWR Amendment ltr 100313.pdf

Please see attached files. Not sure where the original hard copies ended up, but I hope you can work with these copies.
jd

*Jerry Deal, Wildlife Habitat Manager
IDFG Southwest Region
3101 S. Powerline Road, Nampa, ID 83686
(208)465-8465 office (208)465-8467 fax
jerry.deal@idfg.idaho.gov*

From: Poole, Walt
Sent: Monday, November 25, 2013 10:06 AM
To: Deal, Jerry
Subject: RE: Licensing amendments

Jerry:

They have the money, but not the signed amendments. Did you keep copies?

Walt

From: Deal, Jerry
Sent: Friday, November 22, 2013 3:24 PM
To: Poole, Walt
Subject: RE: Licensing amendments

I realize this is old, but I must have missed your response. Attached is a copy of the letter that was sent. jd

*Jerry Deal, Wildlife Habitat Manager
IDFG Southwest Region
3101 S. Powerline Road, Nampa, ID 83686
(208)465-8465 office (208)465-8467 fax
jerry.deal@idfg.idaho.gov*

From: Poole, Walt
Sent: Thursday, October 31, 2013 9:46 AM
To: Deal, Jerry
Subject: RE: Licensing amendments

Who did you send it to?

From: Deal, Jerry
Sent: Thursday, October 31, 2013 8:03 AM



RECEIVED

OCT 25 2013

WATER RESOURCES
WESTERN REGION

IDAHO DEPARTMENT OF FISH AND GAME

SOUTHWEST REGION
3101 South Powerline Road
Nampa, Idaho 83686

C.L. "Butch" Otter / Governor
Virgil Moore / Director

October 3, 2013

Idaho Department of Water Resources
Attn: Kay Walker, Sr. Water Resource Agent
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

Re: Applications for Amendment for Water Rights 69-11501 and 69-11502

Dear Kay:

Two Application for Amendment forms are signed and enclosed for Water Rights 69-11501 and 69-11502.

Please initiate the Interagency Billing process for the applicable \$100.00 fee for each of these applications. The PCA is 41301, the ABC code is C3AX, and the Project Code is W3CECI00. Please send the billing documents to IDFG Headquarters Office, Attention: Cindy Robertson, P.O. Box 25, Boise, ID 83707.

Sincerely,

Scott Reinecker
Southwest Regional Supervisor

Cc: Cindy Robertson
Walt Poole

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-334-3700 • Fax: 208-334-2114 • Idaho Relay (TDD) Service: 1-800-377-3529 •
<http://fishandgame.idaho.gov>

To: Poole,Walt
Subject: RE: Licensing amendments

Yes, we sent out a letter with the interagency billing request on October 4th. jd

*Jerry Deal, Wildlife Habitat Manager
IDFG Southwest Region
3101 S. Powerline Road, Nampa, ID 83686
(208)465-8465 office (208)465-8467 fax
jerry.deal@idfg.idaho.gov*

From: Poole,Walt
Sent: Wednesday, October 30, 2013 1:54 PM
To: Deal,Jerry
Subject: FW: Licensing amendments

Didn't we talk about these?

From: Walker, Kay [<mailto:Kay.Walker@idwr.idaho.gov>]
Sent: Tuesday, October 01, 2013 2:18 PM
To: Poole,Walt
Cc: Walker, Kay
Subject: Licensing amendments

Mr. Poole:

Attached are the licensing amendments for Permits 69-11501 and 69-11502 as we discussed. Please print out the forms, sign and return with a \$100.00 filing fee for each form.
Thank you for your attention to this matter. If you have any other questions or concerns, feel free to contact me.

Kay Walker
Sr. Water Resource Agent
334-2190

Walker, Kay

From: Poole, Walt [walt.poole@idfg.idaho.gov]
Sent: Tuesday, November 12, 2013 1:53 PM
To: Walker, Kay
Subject: RE: Licensing amendments

Hi Kay:

I didn't/haven't forgotten. I asked the regional office about the forms on the day we spoke and they indicated by e-mail that they had the forms signed and sent along. They didn't say who they sent them to, so I asked and haven't heard yet. Apparently there are signed forms somewhere. Thanks for your patience.

Walt

From: Walker, Kay [<mailto:Kay.Walker@idwr.idaho.gov>]
Sent: Tuesday, November 12, 2013 12:07 PM
To: Poole, Walt
Cc: Walker, Kay
Subject: FW: Licensing amendments

Mr. Poole:

We have still not received the signed licensing amendment forms for Permits 69-11501 and 69-11502. I am sending the amendment applications to you, once again, so you can sign them and return them to me. Once I receive the signed forms we will be able to issue the licenses for these developments. We have received the filing fee for the amendments so now we just need the signed forms.

Please print out the above forms, sign and return them to me at:

Idaho Dept. of Water Resources
Attn: Kay Walker
2735 Airport Way
Boise, ID 83705-5082

Thank you for your attention to this matter. If you have any other questions or concerns, feel free to contact me.

Kay Walker
Sr. Water Resource Agent
334-2190

Walker, Kay

From: Walker, Kay
Sent: Monday, October 21, 2013 2:11 PM
To: walt.poole@idfg.idaho.gov
Cc: Walker, Kay
Subject: License Amendments for 69-11501 and 69-11502

Mr. Poole:

It appears that we have received the filing fee for the above referenced licensing amendments but we do not have the signed forms. Do you still have the amendment forms that needed to be signed and returned to our office? I had e-mailed the forms to you on October 1, 2013. If you need me to send the forms again, please let me know. We can't change the permits without the signed amendment forms.

Thanks for your attention to this matter.

KAY WALKER
Sr. Water Resource Agent
334-2190

10-30-13 @ 11:15 AM
287-2714) Left voice mail for Walt that
we need the signed amendment
forms - fw

10-30 @ 1:00 pm
Walt says he had sent the forms
to the regional office - he will check
his end to see if they might still
be there. fw

Walker, Kay

From: Poole, Walt [walt.poole@idfg.idaho.gov]
Sent: Friday, October 04, 2013 10:17 AM
To: Walker, Kay
Subject: RE: Licensing amendments

Thank you Kay. They are being processed.

From: Walker, Kay [mailto:Kay.Walker@idwr.idaho.gov]
Sent: Tuesday, October 01, 2013 2:18 PM
To: Poole, Walt
Cc: Walker, Kay
Subject: Licensing amendments

Mr. Poole:

Attached are the licensing amendments for Permits 69-11501 and 69-11502 as we discussed. Please print out the forms, sign and return with a \$100.00 filing fee for each form.

Thank you for your attention to this matter. If you have any other questions or concerns, feel free to contact me.

Kay Walker
Sr. Water Resource Agent
334-2190

MEMO

TO: Files 69-11501 & 69-11502

FROM: Kay Walker

RE: Licensing Amendments

Date: October 1, 2013

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I talked to Walt Poole of the Dept. of Fish and Game this afternoon. He had called the office in regard to the Orders he received which voided the above permits. Mr. Poole said he had not received the licensing amendment requests. He asked what address I had sent them to and I told him we had sent them to PO Box 25, Boise, which is the address he gets mail. He said he had not seen the forms and requested that we send them again. Today I scanned and e-mailed the forms to Mr. Poole. He said he would sign them and get them submitted with the filing fees. I did not give him a deadline to get this accomplished.