

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

|                             |   |                    |
|-----------------------------|---|--------------------|
| IN THE MATTER OF LICENSE    | ) |                    |
| NO. 34-13869 IN THE NAME OF | ) | PRELIMINARY ORDER  |
| <u>TOMMY C WADDOUPS</u>     | ) | CORRECTING LICENSE |

This matter having come before the Idaho Department of Water Resources (“Department”) as the result of a clerical error found in a recently issued water right license, the Department finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. On July 27, 2012, the Department issued a license for water right 34-13869. Water right 34-13869 authorizes the diversion of 0.02 cfs from a spring for domestic use at one home. The home is also supplied water for domestic use by a ground water well, described in water right 34-13606.

2. License 34-13869 included a condition noting that the domestic use described in water right 34-13869 and the domestic use described in water right 34-13606 represent the same domestic use. The license included the following Condition #4: “Rights 35-13606 and 34-13869 when combined shall not exceed one domestic use.”

3. Condition #4 contains an obvious clerical error. The condition should have referred to water right 34-13606 rather than 35-13606.

**CONCLUSIONS OF LAW**

1. Under Idaho Code § 42-219, the Department has a duty to issue a water right license that accurately describes the water right, including any combined use limits. License 34-13869 does not accurately describe one of the combined use conditions because it incorrectly identifies one of the water rights.

2. The Department should issue a corrected license fixing the clerical error and eliminating any ambiguity regarding the combined use limit. The combined use condition should list water rights 34-13606 and 34-13869.

## ORDER

IT IS HEREBY ORDERED that Water Right License 34-13869 is CORRECTED as set forth in the Amended Water Right License issued in conjunction with this Order.

Dated this 28<sup>th</sup> day of September, 2012.

  
James Cefalo  
Water Resources Program Manager

## CERTIFICATE OF MAILING

I hereby certify that on the 28<sup>th</sup> day of September 2012, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING LICENSE, to the person(s) listed below:

  
Sharla Cox  
Administrative Assistant

## US MAIL

**RE: PRELIMINARY ORDER CORRECTING LICENSE (34-13869)**

**Tommy C Waddoups  
6 Tamarack Court  
Garden Valley, ID 83622**

## **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.