

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 81-11924 IN THE NAME OF)
WILLIAM C. ATHENS)
_____)

**ORDER GRANTING PETITION
FOR RECONSIDERATION
AND WITHDRAWING A
PRELIMINARY ORDER**

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 finds, concludes, and orders:

FINDINGS OF FACT

1. On March 1, 2005, the Department issued water appropriation permit 81-11924 (permit) authorizing the diversion of water from a spring located in Township 30 North, Range 13 East, Section 15, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, B.M. for domestic purposes with the place of use in Township 30 North, Range 13 East, Section 15, NW $\frac{1}{4}$ SW $\frac{1}{4}$, B.M.

2. On May 16, 2012, Department staff conducted an examination of permit file 81-11924 per guidance under rule 035.01.r of the Departments Beneficial Use Field Examination Rules (IDAPA 37.03.02.035.01.r). With the available information, the examiner recommended issuing water right license 81-11924 for the water use authorized by permit 81-11924. The examiner recommended describing the point of diversion (POD) and place of use (POU) on the license as described in permit 81-11924.

3. On June 4, 2012, the Department issued water right license 81-11924 (license) confirming that William C. Athens has established a right to divert 0.03 cubic feet per second (cfs) of water from a spring located in Township 30 North, Range 13 East, Section 15, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, B.M. for domestic purposes with the place of use in Township 30 North, Range 13 East, Section 15, NW $\frac{1}{4}$ SW $\frac{1}{4}$, B.M.

4. The license was issued as a preliminary order (order) of the Department pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).

5. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a) provides in pertinent part as follows:

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.

6. On June 13, 2012, John Athens (brother of the deceased William C. Athens) filed a petition for reconsideration of the license (petition) on behalf of the right holder. Mr. Athens stated that license 81-11924 incorrectly described the location of the POD and POU.

7. On June 22, 2012, and June 24, 2012, John Athens submitted electronic mail messages with maps describing the correct location for the POU and POD.

CONCLUSIONS OF LAW

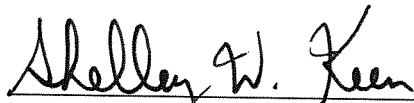
1. The petition was timely.
2. The Department can withdraw a preliminary order before it becomes final.
3. Under Section 42-219, *Idaho Code*, the Department has a statutory obligation to issue a water right license that accurately portrays the extent of beneficial use of water developed in accordance with the permit.
4. The developed place of use and point of diversion are different than authorized on permit 81-11924.
5. Permit 81-11924 authorized different POD and POU locations than were actually established by the right holder. Permit 81-11924 must be amended for the Department to be able to license the developed location of the POU and POD on license 81-11924.
6. The Department needs additional time to process an application to amend the permit.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the issuance of water right license 81-11924 is **GRANTED** pursuant to Rule 730 of the Department's Rules of Procedure.

IT IS FURTHER HEREBY ORDERED that the preliminary order issuing water right license 81-11924 is **WITHDRAWN**.

Dated this 29th day of June, 2012.



Shelley W. Keen, Manager
Water Right Permits Section