

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

IN THE MATTER OF APPLICATIONS FOR
PERMIT 32-13308 AND 32-13309 IN THE
NAME OF E. MARLOWE GOBLE

**ORDER WITHDRAWING
PERMIT APPROVALS**

This matter having come before the Idaho Department of Water Resources ("Department") as a result of two applications for permit, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Applications for permit 32-13308 and 32-13309 were filed by E. Marlowe Goble ("Applicant") on June 4, 2010. Application 32-13308 proposes diverting ground water for aesthetic storage. Application 32-13309 proposes diverting springs tributary to Medicine Lodge Creek for aesthetic flows. The applications were advertised to the public and were protested by the Advisory Board for Water District 32C ("WD32C").

2. The Department conducted a pre-hearing conference on September 27, 2010, giving the parties an opportunity to discuss the issues of protest. The parties asked the Department to prepare draft permit approvals and circulate them to the parties for review. If the draft permit approvals were acceptable, WD32C would withdraw its protests.

3. Draft permit approvals were circulated to the parties. Despite multiple requests by the Department, WD32C never notified the Department whether the draft permit approvals were acceptable. On March 19, 2012, WD32C filed two documents titled "Withdrawal of Protest." One referenced Permit 32-13308. The other referenced Permit 32-13309.

4. The withdrawal of protest for 32-13309 indicated that the withdrawal was conditional and listed four conditions for withdrawal: 1) Instantaneous measuring devices at both ends of inflow and outflow; 2) No beaver dams on Medicine Lodge Creek from point A to point B (as referenced on a map included with the withdrawal); 3) Illegal diversion put in above pond must be removed and filled in; and 4) Any additional cost beyond watermaster's duties due to monitoring will be assessed to E. Marlowe Goble. The withdrawal of protest for 32-13309 was not conditional, but did include the following statement: "Protest not withdrawn due to withdrawing water transfer #32-13309."

5. Assuming the protests had been adequately withdrawn for both pending permits, the Department issued the two permits on March 26, 2012. The issuance of the permits constituted a preliminary order for purposes of the Department's Rules of Procedure (IDAPA 37.01.01). The permit for 32-13309 included language addressing withdrawal condition #1. The remaining conditions of withdrawal may not be enforceable by the Department and should preferably be memorialized in a private agreement.

6. On April 9, 2012, WD32C filed a Petition for Reconsideration for both permits. The petition argued that Permit 32-13309 did not contain all of the conditions of withdrawal and therefore, the protest withdrawal for 32-13309 is of no effect. The petition also argued that the protest for Permit 32-13308 was never withdrawn.

CONCLUSIONS OF LAW

1. Pursuant to the deadlines set forth in Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01), Permit Approvals 32-13308 and 32-13309 are preliminary orders and have not yet become final orders. The Department can withdraw a preliminary order before it becomes a final order.

2. Permit Approvals 32-13308 and 32-13309 can only be approved if the pending protests filed by WD32C have been officially withdrawn. WD32C's petition for reconsideration raises sufficient doubt as to whether the protests were officially withdrawn.

3. It is not fair to the applicant or the water users in Basin 32 to delay the application review process further. Therefore, the Department should withdraw Permit Approvals 32-13308 and 32-13309 and should immediately schedule an administrative hearing to resolve the contested applications.

ORDER

IT IS HEREBY ORDERED that Permit Approvals 32-13308 and 32-13309 are **WITHDRAWN**. The Department shall schedule contested applications 32-13308 and 32-13309 for administrative hearing.

Dated this 10th day of April, 2012.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2012, a true and correct copy of the document(s) described below were served by delivering a copy of the same to the United States Postal Service, postage prepaid and properly addressed to the following:

Document: Order Withdrawing Permit Approvals (Permits 32-13308 and 32-13309)

E. Marlowe Goble
1125 Cedar Heights Dr.
Logan, UT 84341

Advisory Board for Water District 32C
573 Medicine Lodge Road
Dubois, ID 83423

Ernie Carlsen
4838 East Wind River Dr.
Idaho Falls, ID 83401



Sharla Cox
Administrative Assistant

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (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 service as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service.

Note: the petition must be received by the Department within this fourteen (14) day period. The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 issuance 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.