

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT)	PRELIMINARY ORDER RESCINDING
NO. 65-22903 IN THE NAME OF)	AN ORDER VOIDING A PERMIT AND
IRENE HULTGREN)	MODIFYING CONDITION OF APPROVAL
_____)	

This matter having come before the Department of Water Resources (Department) as a petition to reinstate an application for permit to appropriate water, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On January 21, 2005, the Department issued Permit No. 65-22903 (permit) authorizing Irene Hultgren (permit holder) to develop a right to divert 0.10 cfs from the Middle Fork of the Payette River for stockwater purposes and the irrigation of 6 acres within Boise County. The permitted place of use is within water district no. 65, Payette River. Condition of approval #4 of the permit states that:

Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.

2. On November 23, 2005, the Department received the Proof of Beneficial Use statement (proof) for the permit.

3. On October 31, 2006, the Department conducted an examination to verify the beneficial use developed in accordance with the permit. The field examiner found that a lockable device had not been installed as required by condition of approval #4 and reported that the permit holder requested a deferral of the lockable device installation.

4. On January 7, 2011, the Department sent a letter to the watermaster for water district no. 65 (watermaster) that said the Department would grant the deferment of the installation of the lockable device unless the watermaster notified the Department otherwise.

5. On January 19, 2011, the Department received a letter from the watermaster. In the letter, the watermaster said that he is opposed to the removal of the device requirement because, "The water rights will be under control of the watermaster and included in the water accounting system of the Payette River."

6. On January 25, 2011, the Department sent a letter to the permit holder that gave her sixty (60) days to respond to the Department that she has complied with condition of approval #4.

7. On May 12, 2011, the Department issued a preliminary order (order) voiding the permit on the premise that the permit holder failed or refused to provide the Department the requested information and that the permit holder had not complied with the permit requirement that she install a lockable device.

8. On May 20, 2011, the permit holder submitted a petition for reconsideration in response to the May 12, 2011 preliminary order voiding permit 65-22903. The permit holder asserts that a lockable device is not required on the diverting works pursuant to the watermaster of water district no. 65.

9. Section 67-5243 (3), *Idaho Code*, provides in part:

...any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the service date of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition.

10. On June 16, 2011, the Department received an electronic mail from the watermaster of water district no. 65 that states, "...I can recommend that this requirement receive a waiver, however the department should reserve the right to enforce the locking device requirement in the future if it should become necessary."

CONCLUSIONS OF LAW

1. The petition for reconsideration was filed timely.
2. The installation of a lockable device is not necessary for the administration of the diversion of water by the holder of Permit 65-22903 at this time, but it may be necessary in the future.
3. The Department should rescind the order voiding the permit and should issue a license in connection with the permit.

ORDER

IT IS HEREBY ORDERED that the order voiding Permit No. 65-22903 is **RESCINDED** and that permit 65-22903 is **REINSTATED** and the condition of approval #4 requiring the installation of a lockable device as part of the diversion work for the permit is **MODIFIED** as follows:

Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.

Dated this 16th day of June, 2011.



Shelley W. Keen, Manager
Water Right Permits Section