

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 35-13886)
IN THE NAME OF PACIFICORP D/B/A)
ROCKY MOUNTAIN POWER)
_____)

**PRELIMINARY ORDER
CORRECTING PERMIT**

This matter having come before the Idaho Department of Water Resources ("Department") as the result of an error discovered in the approval of a Water Right Permit, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. In February 2009, PacifiCorp d/b/a Rocky Mountain Power ("PacifiCorp") filed an application for permit for a domestic water right in Bonneville County. The water was to be used to irrigate ½ acre of landscaping surrounding an electrical substation. The application described the point of diversion as the NW ¼ NW ¼ Sec. 7, Township 1 North, Range 37 East, B.M. The place of use was described as the SW ¼ SW ¼ Sec. 6, Township 1 North, Range 37 East, B.M. The application was advertised to the public and was not protested.
2. At some point in the application evaluation process, PacifiCorp discovered an error in the application. PacifiCorp amended the application in October 2009 to correct the legal description of the place of use. The amended application listed the place of use as the NW ¼ NW ¼ Sec. 7, Township 1 North, Range 37 East, B.M. A letter accompanying the amendment further verified that the point of diversion and place of use should have been located in the same quarter-quarter.
3. The application was re-advertised to the public in November 2009 and was not protested. Although the place of use description was correct in the re-advertisement, the Department's database was not updated to reflect the amendment to the place of use.
4. On December 28, 2009, the Department approved water right permit 35-13886. Because the approval document was generated from the Department's database, the place of use was described incorrectly as the SW¼ SW¼, Section 6, Township 1 North, Range 37 East, B.M.

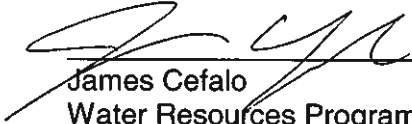
CONCLUSIONS OF LAW

1. The permit approval should accurately describe the place of use pursuant to Idaho Code § 42-204.
2. The Department should correct the place of use description in the permit approval to be the NW ¼ NW ¼ Sec. 7, Township 1 North, Range 37 East, B.M.

ORDER

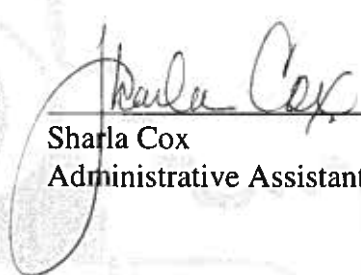
IT IS HEREBY ORDERED that Permit 35-13886 is **CORRECTED** to describe the place of use as the NW ¼ NW ¼ Sec. 7, Township 1 North, Range 37 East, B.M. The change is reflected in the corrected permit issued in conjunction with this order.

Dated this 19th day of October, 2010.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of October 2010, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER CORRECTING PERMIT** to the person(s) listed below:


Sharla Cox
Administrative Assistant

US MAIL

PacifiCorp dba Rocky Mountain Power
1407 W North Temple #110
Salt Lake City UT 84116

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.