

Keen, Shelley

From: Keen, Shelley
Sent: Sunday, January 04, 2009 2:59 PM
To: 'Rob Harris'
Subject: RE: Petition for Reconsideration for Permit Approval No. 23-11387

Rob,

I received your emailed petition for reconsideration of Permit Approval No. 23-11387. Because of the extra day to file due to the New Year's Day holiday, the petition appears timely. It seems reasonable to treat an emailed petition like a FAX, so the original will have to be mailed or delivered to IDWR on January 5, 2009, pursuant to Rule 300 of the Rules of Procedure.

Rather than act on the petition immediately, I propose to wait until the 21-day deadline for responding has nearly expired. That should give you and your clients time to consider the issue raised in the petition. Please let me know by January 20 whether you wish to pursue or withdraw the petition. If I have not heard from you by January 21, IDWR will consider its options for responding to the petition.

Shelley Keen
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4947
shelley.keen@idwr.idaho.gov

From: Rob Harris [mailto:rharris@holdenlegal.com]
Sent: Friday, January 02, 2009 2:32 PM
To: Keen, Shelley
Cc: Peppersack, Jeff; Tuthill, Dave; Carlsen, Ernie
Subject: Petition for Reconsideration for Permit Approval No. 23-11387

Shelley:

Attached is a petition for reconsideration for Permit Approval No. 23-11387. Generally speaking, I simply need more time to contact my client to discuss one of the conditions.

If you have any questions, please let me know.

Thanks,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518

1/4/2009

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

IN THE MATTER OF PERMIT
NO. 23-11387 IN THE NAME OF
JEFFREY AND MICHELLE
ALEIXO

PETITION FOR RECONSIDERATION

Jeffrey and Michelle Aleixo, by and through their counsel of record, Holden, Kidwell, Hahn & Crapo, PLLC, hereby petitions the Idaho Department of Water Resources ("IDWR" or "Department") to reconsider its Preliminary Order Approving Permit No. 23-11387. This petition is timely pursuant to Idaho Code § 67-5246(5).

The primary purpose for the petition is to allow the applicant additional time to review the conditions contained in the permit approval notice, which is dated December 18, 2008. The order was not received at the law offices of Holden, Kidwell, Hahn & Crapo, PLLC until December 22, 2008, and counsel for the applicant has been unavailable and out of the office for a number of days since that time. Because a petition for reconsideration must be filed within fourteen (14) days after service of a document, January 2nd is the last day a petition can be filed. Out of an abundance of caution, it is necessary to file the petition.

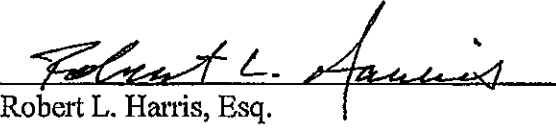
The condition that may be of concern to the applicant is condition number 6 of the approval, which provides that "[t]he right holder shall use a pump installed outside the high water mark of Palisades Creek to divert water in connection with this right. Only a flexible pipe may extend from

the pump to the water below the high water mark. The intake for the pipe shall be screened with 1/4 inch or smaller mesh to protect fish and wildlife." This condition was not requested by the applicant. Presumably, it is based upon the Comprehensive State Water Plan for the South Fork of the Snake River.

It is unclear at this point whether or not IDWR has authority to require condition number 6 in the permit approval notice. The applicant needs additional time to review and research this matter in the event the applicant elects to challenge the imposition of this condition.

For the reasons set forth above, we request that the Preliminary Order Approving Permit No. 23-11387 be held until further notice from the applicant.

DATED this 2nd day of January, 2009.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of January, 2009, I emailed and/or placed in regular mail the original and copies of this objection, including all attachments, to the following persons:

1. Original to (via email and regular mail):

Shelley Keen
Idaho Department of Water Resources
PO Box 83270
Boise, ID 83720-0098
shelley.keen@idwr.idaho.gov

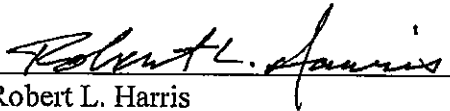
2. Copies to (via email):

Director David R. Tuthill
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Robert L. Harris
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