

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

**IN THE MATTER OF LAPSED)
PERMIT NO. 37-8388 IN THE NAME)
OF SDRTR, LLC)**

**ORDER DENYING PETITION
TO INTERVENE/PROTEST**

Permit No. 37-8388 in the name of Steven D. Reuther ("Reuther") lapsed for failure to submit proof of beneficial use or a request for extension of time by March 1, 2006. The Idaho Department of Water Resources ("Department") mailed a lapse notice to Reuther on March 10, 2006. On May 15, 2008, James P. Speck, attorney, filed a Petition to Reinstate Lapsed Water Right Permit No. 37-8388 on behalf of SDRTR, LLC. The Department has not acted on the petition. The petition was followed by an Assignment of Permit submitted on March 16, 2008, assigning the permit from Reuther to SDRTR, LLC ("permit holder").

On May 23, 2008, Travis L. Thompson, attorney, filed a Petition to Intervene/Protest on behalf of Lisa Vierling. The petition contests the Petition to Reinstate Lapsed Water Right Permit No. 37-8388 and requests a hearing on the matter.

On June 9, 2008, James P. Speck, attorney, filed a Motion Opposing Lisa Vierling's Petition to Intervene on behalf of the permit holder.

Reinstatement of a permit is controlled by Section 42-218a, Idaho Code. The statute does not provide for protests to initiate a contested case associated with a request to reinstate a permit.

Intervention in matters before the Department is controlled by IDAPA 37.01.01.350 – 354. IDAPA 37.01.01.350 provides:

Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding.

A formal hearing is not required by statute to be held in the proceeding. When the Department takes action on the Petition to Reinstate Lapsed Water Right Permit No. 37-8388, any person aggrieved by the decision is entitled to a hearing to contest the action pursuant to Section 42-1701A, Idaho Code.

ORDER

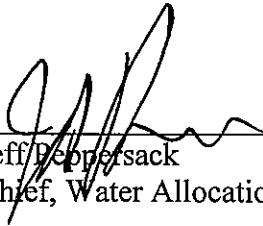
Based upon the foregoing, it is ORDERED that:

The Petition to Intervene/Protest of Lisa Vierling is **DENIED**.

It is further ORDERED that:

The Department shall provide notice to Lisa Vierling when a decision is issued on the Petition to Reinstate Lapsed Water Right Permit No. 37-8388.

DATED this 11th day of June, 2008.



Jeff Deppersack
Chief, Water Allocation Bureau

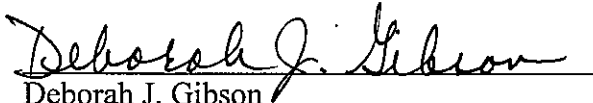
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 2008, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, by certified mail, return receipt requested, postage prepaid and properly addressed to the following:

Document(s) Served: ORDER DENYING PETITION TO INTERVENE/PROTEST and
EXPLANATORY INFORMATION sheet for a Preliminary Order when a
hearing was not held.

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Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Statement of Available Procedures and Applicable Time Limits

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