



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

January 11, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

SCOTT J SMITH
RACINE OLSON NYE BUDGE & BAILEY CHTD
PO BOX 1391
POCATELLO ID 83204-1391

RE: Petition for Reconsideration of Preliminary Orders for Rights 11-7399 and 11-7424

Dear Scott:

In response to your petition for reconsideration of the annual volume limits in Water Right Licenses 11-7399 and 11-7424, IDWR has withdrawn the licenses. By withdrawing the licenses, IDWR can grant more time to address the issue raised in your petition.

For more than 20 years IDWR has used 1.2 af per year as a standard volume limit for a single home. The 1.2 af volume is comprised of 0.6 af per year, or about 500 gallons per day, for in-house use and 0.6 af per year, or about 500 gallons per day, for lawn and garden irrigation. The notations on the chart you received from Roger Warner are not contained on the chart in IDWR's field examiner's handbook (copy enclosed). The chart is typically used by IDWR only for estimating the diversion rate required to provide domestic water to more than one home. IDWR does not rely on the chart to determine annual volume limits for water rights.

The following water rights are typical examples of the thousands of domestic water rights confirmed using 0.6 af per home for the in-house volume and/or 0.6 af per home for the volume for the outside use.

11-7013A	13-7554	96-9228
11-7013B	57-11610	95-9303
11-7377	47-7744	22-13155

If you would like to review the licenses and field reports for these rights or any other water rights issued by IDWR, scanned images of the documents are available from IDWR's Internet site at <http://www.idwr.idaho.gov/apps/ExtSearch/SearchWRAJ.asp>.

The use of 1.2 af per year per home evolved because most homeowners do not want to bear the expense of installing the meters needed to determine the actual annual in-house usage, nor has it been convenient to measure the square-footage of lawn and garden irrigation needed to calculate an annual volume for the irrigation component of the domestic use. If the information is available, however, IDWR will base the annual volume limit for Licenses 11-7399 and 11-7424 on actual pumping records and/or on the area actually irrigated.

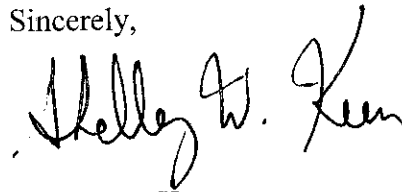
Scott J. Smith
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The field examiner for Rights 11-7399 and 11-7424 reported, "The maximum irrigation per lot would be 1/8 acre, but 1/16 acre would be the norm." Applying IDWR's standard field headgate volume of 3.5 af/acre/year would suggest a range of 10.9 af to 21.8 af for the outside-use component of each right. Applying 0.6 af per home for the outside component yielded 30 af for each right.

IDWR will hold Rights 11-7399 and 11-7424 for 90 days so that you can gather information and decide how to proceed. If IDWR has not received additional information from you in that time, the licenses will be re-issued.

If you have any questions, please call me at 208-287-4947, or email me at shelley.keen@idwr.idaho.gov.

Sincerely,

A handwritten signature in black ink, reading "Shelley W. Keen". The signature is written in a cursive, flowing style. The first name "Shelley" is written with a large, prominent 'S'. The middle initial "W." is written in a smaller, more compact script. The last name "Keen" is written with a large, sweeping 'K' and a long, horizontal tail stroke.

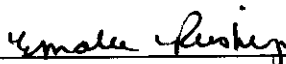
Shelley W. Keen
Water Rights Supervisor

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2008 I mailed a true and correct copy, certified postage prepaid, of the foregoing ORDER WITHDRAWING PRELIMINARY ORDER to the person listed below:

RE: Order Withdrawing Preliminary Order in the Matter of Permit Nos. 11-7399 & 11-7424

**SCOTT J SMITH
RACINE OLSON NYE BUDGE & BAILEY CHTD
PO BOX 1391
POCATELLO ID 83204-1391**



**Emalee Rushing
Office Services Supervisor**

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.