

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
LICENSE NO. 95-9490 IN THE NAME OF)
ROLLING MEADOWS RANCH HOA)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (“Department”) as a petition to reconsider the preliminary order establishing water right license no. 95-9490, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On June 5, 2008, the Department issued Permit to Appropriate Water No. 95-9490 (“Permit”) in the name of Kootenai Land and Trust LLC (“Original Permit Holder”) authorizing the diversion of 0.30 cfs and 40.3 acre-feet of ground water for municipal use in Section 1, Township 53 North, Range 03 West, B.M. Kootenai County. The Department issued the Permit as a preliminary order pursuant to Rule 730 of the Department’s Rule of Procedure (IDAPA 37.01.01.730).
2. A condition of permit approval set a deadline for filing proof of application of water to beneficial use as April 1, 2013. The Original Permit Holder filed a Request for Extension of Time (“First Extension Request”) on March 15, 2013, and the Department granted the First Extension Request establishing a new proof of beneficial use due date of April 1, 2018.
3. The Original Permit Holder filed an Assignment of Permit on June 2, 2017, to assign ownership of the Permit to Rolling Meadows Ranch HOA (“HOA”). The HOA filed a Request for Extension of Time (“Second extension Request”) on March 12, 2018, and the Department granted the Second Extension Request establishing a new proof of beneficial use due date of April 1, 2023. The HOA filed a Statement of Completion for Submitting Proof of Beneficial Use on March 17, 2023, which included the HOA’s annual volume records for the calendar years 2018 through 2022.
4. On May 9, 2023, Department staff conducted a beneficial use field exam for licensing purposes. The HOA’s Director, Michael Foster, accompanied the examiner.
5. During the examination, and through follow up analysis, the Department determined elements of the water right, including flow rate, distribution system details, and annual volume. The examiner determined the diversion rate to be 0.13 cfs and the annual volume to be 14.2 AF.

6. The examiner evaluated actual volume records supplied by the HOA. The licensed annual volume is based on 2022 usage records.
7. On May 22, 2024, the Department issued Water Right License no. 95-9490 (“License”) in the name of the HOA. The Department mailed the License via USPS on May 23, 2024, as a preliminary order.
8. On June 4, 2024, the HOA filed a Petition for Reconsideration (“Petition”). The Petition seeks relief for the licensed annual volume to be increased from 14.2 to 16.0 acre-feet (“AF”) to reflect volume increases occurring in the year 2023, and to account for anticipated volume increases for the year 2024.
9. The Petition states, “The Board of Directors would like to request the diversion rate be increased to 16 acre-feet to allow for growth.”
10. On June 10, 2024, the Department requested additional volume records from the HOA for the months of January through March of 2023. The Department received the requested records on June 12, 2024.
11. The development period ended on March 17, 2023. The volume records provided by the HOA for January through March of 2023 demonstrate a volume usage of .64 AF, and this does not substantiate the requested volume increase of 1.8 AF, for a total licensed volume of 16.0 AF.
12. Idaho Code § 42-219(1) states, in relevant part:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall state...the purpose for which such water is used and the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied.

CONCLUSIONS OF LAW

1. Rule 730 of the Departments Rules of Procedure (IDAPA 37.01.01.730.02.a) states in part that any party may file a petition for reconsideration of a preliminary order with the Department within fourteen (14) days of the service date of the order. The Department received the HOA’s Petition twelve (12) days after the service date of the License. The petition was filed timely.
2. The License should accurately describe each established water right as confirmed pursuant to Idaho Code § 42-219.

3. The licensed volume of 14.2 AF reflects the amount of water that was beneficially applied during the development period. An annual volume of 16 AF represents a volume in excess of the volume that was beneficially applied.
4. The Department should deny the Petition.

ORDER

IT IS HEREBY ORDERED that the Petition is **DENIED**.

Dated this 20th day of June, 2024.



Michelle Richman
Northern Region Manager

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2024, I served true and correct copies of Order Denying Petition for Reconsideration and Explanatory Information to Accompany Preliminary Order by U.S. Mail, postage prepaid, to the following:

ROLLING MEADOWS RANCH HOA
PO BOX 264
ATHOL ID 83801-0264



Micki Bowman
Administrative Assistant 1

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.