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

**IN THE MATTER OF APPLICATION
FOR PERMIT NO. 01-10609 (IWRB)**

**IDAHO WATER RESOURCE BOARD'S
PETITION FOR RECONSIDERATION
OF PRELIMINARY ORDER
GRANTING PERMIT**

The Idaho Water Resource Board ("IWRB"), by and through its attorneys of record,
hereby submits this *Idaho Water Resource Board's Petition for Reconsideration of Preliminary
Order Granting Permit*. This petition is submitted in response to the *Preliminary Order
Granting Permit* served June 19, 2017 by Hearing Officer Pamela Skaggs in the above-titled
matter. The petition is brought pursuant to I.C. § 67-5243(3) and IDAPA 37.01.01.730.02.b-d.

STANDARD OF REVIEW

A Preliminary Order, as defined by IDAPA 37.01.01.730.01, is an order “issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head . . . pursuant to Section 67-5245, Idaho Code.” Any party may file a motion for reconsideration of a preliminary order within fourteen (14) days of the service date of the preliminary order. I.C. § 67-5243(3), IDAPA 37.01.01.730.02.a. The hearing officer must dispose of the petition for reconsideration within twenty-one (21) days of its receipt or the petition will be considered denied by operation of law. IDAPA 37.01.01.730.02.a. If the hearing officer fails to grant or deny the petition for reconsideration within twenty-one (21) days or within fourteen (14) days of the service date of the denial of a petition for reconsideration, any party may appeal or take exceptions to any part of the preliminary order. IDAPA 37.01.01.730.02.b.i–iii.

PROCEDURAL BACKGROUND

The Idaho Water Resource Board (“IWRB”) filed Application for Permit 02-7474 (“Application”) in 1998; it was subsequently renumbered to 01-7474. In 2013, the IWRB amended the Application. It was renumbered to 01-10609 and was re-advertised. The Application was protested. In April 2017, the protests were resolved by stipulation. The hearing officer served the Preliminary Order Issuing Permit 01-10609 on June 19, 2017.

PETITION

The IWRB respectfully requests reconsideration of the Preliminary Order Issuing Permit 01-10609 ("Permit") for the following reasons:

Place of Use Legal Description

The IWRB submitted an 813 page legal description of the Place of Use with its Application. However, there was no legal description of the Place of Use attached to the Permit. Rather, the Place of Use element on the Permit states: "See Condition 3." Condition 3 states:

Place of use is within the service area of: Southwest Irrigation District, Burley Irrigation District, Northside Canal Company, Twin Falls Canal Company, and A&B Irrigation District. The place of use description by government lot or quarter-quarter, section, township, and range is in a scanned document called "Place of Use 1-10609," which is available among the Department's digital records for this right.

Condition 3 indicates that the legal description should be "available among the Department's digital records for this right." However, the IWRB could not find a document "called 'Place of Use 01-10609'" in IDWR's digital records. IDWR staff was also unable to point to where the document was located. Because the IWRB could not locate a Place of Use legal description for the Permit, it was unable to determine whether the Place of Use legal description for the Permit matches the Place of Use legal description that was requested by the Application. Therefore, the IWRB was unable to determine whether it had any objections to the Place of Use element of the Permit.

As written, the Place of Use element and Condition 3 do not clearly and accurately describe the Place of Use for the Permit. The Place of Use element should be described using a legal description by government lot or quarter-quarter, section, township, and range. The IWRB

does not object to using a digital attachment rather than a paper attachment of the legal description. However, if a digital file of the Place of Use legal description is to be used it should be clear where the digital copy is located, how it can be accessed, and it should be clearly incorporated as part of the Permit. Once such a document is attached to the Permit, the IWRB would then be able to assess whether it has any objections to the Place of Use element.

Irrigation Entities Listed in Condition 3

The 813 page legal description of the Place of Use submitted with the Application covers the service areas of the following entities: Southwest Irrigation District, Burley Irrigation District, A&B Irrigation District, American Falls Reservoir District #2, Milner Irrigation District, Minidoka Irrigation District, and Twin Falls Canal Company. However, Condition 3 states that Place of Use for the Permit is within the service area of the following entities: “Southwest Irrigation District, Burley Irrigation District, Northside Canal Company, Twin Falls Canal Company, and A&B Irrigation District.”

Because the IWRB could not locate the document containing the legal description of the Place of Use for the Permit, it was unable to assess why the list of irrigation entities in Condition 3 is different from the irrigation entities covered by the Place of Use legal description that was submitted with the Application. Assuming the 813 page legal description attached to the Application is adopted in whole for purposes of permitting, the entities listed in Condition 3 are incorrect. The list should not include Northside Canal Company. The list also incorrectly omits American Falls Reservoir District #2, Milner Irrigation District, and Minidoka Irrigation District.


The IWRB requests that the list of irrigation entities be entirely removed from Condition 3 as it is explanatory information that is not necessary for definition or administration of the

right. Alternatively, the IWRB respectfully requests that the irrigation entities listed in Condition 3 be reevaluated based on the legal description of the Place of Use for the Permit.

CONCLUSION

For the reasons stated above, the IWRB respectfully requests reconsideration of the Preliminary Order Issuing Permit 01-10609.

DATED this 30th day of June, 2017.



ANN Y. VONDE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June 2017, I caused to be served a true and correct copy of the foregoing document by placing a copy thereof in the manner listed below:

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