

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

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 1-10609 IN THE)	ORDER GRANTING A PETITION
NAME OF STATE OF IDAHO, IDAHO)	FOR RECONSIDERATION AND
WATER RESOURCE BOARD)	MODIFYING A PRELIMINARY
_____)	ORDER

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider the issuance of a permit to appropriate water, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On June 9, 2017, the Department issued water appropriation permit no. 1-10609 ("Permit") to the State of Idaho, Idaho Water Resource Board ("Board"), for the diversion of water from the Snake River in Blaine, Cassia, Jerome, and Twin Falls Counties for ground water recharge purposes.

2. Approval condition no. 3 of the Permit 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.

3. On June 19, 2017, the Department issued the Permit as a preliminary order ("Preliminary Order") pursuant to IDAPA 37.01.01.730.

4. IDAPA 37.01.01.730.02.a states, in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will 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.

5. On June 30, 2017, the Department received a petition for reconsideration of the issuance of the permit ("Petition") from the Board's attorney, Deputy Attorney General Ann Y. Vonde. The Petition requests two modifications to approval condition no. 3 of the Permit. First, the Petition asks the Department to more clearly incorporate the digital file containing the public

land survey system place of use description for the permitted water use into the Permit. Second, the Petition asks the Department to change the general place of use description by removing the reference to Northside Canal Company and including references to American Falls Reservoir District #2, Milner Irrigation District, and Minidoka Irrigation District.

ANALYSIS

Describing the place of use for the permit by quarter-quarter or government lot, section, township, and range of the public land survey system (“PLSS place of use description”) requires 813 pages of text. For administrative economy, the Department accepted the proposed PLSS place of use description from the permit holder as a digital image rather than as a printed document. For the same reason, when issuing the Permit the Department chose to incorporate the digital image of the PLSS place of use description by reference rather than issue a permit exceeding 800 pages in length. The incorporation by reference referred to the digital image of the PLSS place of use description as “Place of Use 1-10609.” However, while the scanned image of the PLSS place of use description is stored in the Department’s electronic document management system and is available for review via the Department’s website or at any Department office, the Department did not label the document “Place of Use 1-10609” as stated in the Permit. To rectify this oversight, the Department should copy the scanned image of the PLSS place of use description submitted with the application for the Permit, rename the copy “Place of Use for 1-10609”, and place the copy in the Department’s electronic management system. By doing so, the PLSS place of use description will be available in the Department’s electronic document management system twice – once as submitted with the application for the Permit and again as incorporated by reference in the Permit.

The Department also included a general place of use description in approval condition no. 3 of the Permit to assist the reader in knowing more-or-less where the place of use is located without requiring an exhausting scrutiny of the 813-page PLSS place of use description. The general place of use description lists canal companies and irrigation districts with service areas within which the PLSS place of use description exists. The list of canal companies and irrigation districts erroneously included the Northside Canal Company and erroneously excluded American Falls Reservoir District #2, Milner Irrigation District, and Minidoka Irrigation District. The Department should revise the general place of use description in approval condition no. 3 of the Permit to correct the errors.

CONCLUSIONS OF LAW

1. The petition was filed timely.
2. IDAPA 37.01.01.730.02.a authorizes the Department to reconsider the issuance of a preliminary order.
3. Idaho Code § 28-50-117 states:

Each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

4. The Department should grant the Petition and revise approval condition no. 3 of the Permit to more clearly incorporate by reference the digital document containing the PLSS legal description for the permitted water use and to correct the list of canal companies and irrigation districts in the general place of use description.
5. The Department should copy the digital image of the PLSS place of use description, rename the copy "Place of Use for 1-10609", and maintain the copy in the Department's electronic management system.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order issuing water appropriation Permit No. 1-10609 is **GRANTED** pursuant to IDAPA 37.01.01.730.02.a.

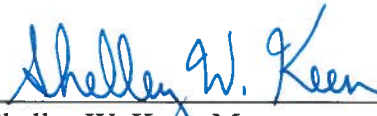
IT IS FURTHER HEREBY ORDERED that approval condition no. 3 of the permit is **MODIFIED** to say:

The place of use for this right -- described by government lot or quarter-quarter, section, township, and range of the Public Land Survey System -- is on a digital document called "Place of Use for 1-10609" which is hereby incorporated into this approval document by reference and is available among the Department's digital records for this right. The place of use is generally within the service area of Southwest Irrigation District, Burley Irrigation District, Minidoka Irrigation District, A & B Irrigation District, Twin Falls Canal Company, American Falls Reservoir District No. 2, and Milner Irrigation District.

IT IS FURTHER HEREBY ORDERED that Department **MAINTAIN** the place of use description for this right in a digital document titled "Place of Use for 1-10609" and make the document available in the Department's digital document management system.

IT IS FURTHER HEREBY ORDERED that the Department **ISSUE** an amended permit document in connection with this order.

Dated this 21st day of July, 2017.



Shelley W. Keen, Manager
Water Rights Section

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.