

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

IN THE MATTER OF PERMIT TO  
APPROPRIATE WATER NO. 63-32573

**PRELIMINARY ORDER MODIFYING  
CONDITIONS OF APPROVAL**

**FINDINGS OF FACT**

1. On July 30, 2012, the Department of Water Resources (“IDWR”) issued Permit to Appropriate Water No. 63-32573 (“Permit”) to the City of Eagle (“City”). The Permit authorizes the City to appropriate 23.18 cfs of ground water for reasonably anticipated future needs (“RAFN”) within the City’s municipal service area.
2. Approval condition no. 4 of the Permit indicates that the planning horizon for the City’s RAFN ends on March 9, 2042, thirty years from the permit approved date.
3. Approval condition no. 1 of the Permit requires the City to submit proof of beneficial use by March 9, 2017. On November 28, 2016, IDWR extended the proof due date for the Permit to March 9, 2027.
4. Condition nos. 11 and 12 of the Permit require the City to submit certain information to IDWR with the City’s proof of beneficial use.
5. On March 17, 2020, Idaho Governor Brad Little signed Senate Bill 1316 into law. Senate Bill 1316 became effective on July 1, 2020.
6. Senate Bill 1316 modified Idaho Code § 42-204(4) to state the following:

For permits held by municipal providers for reasonably anticipated future needs, the permit development period shall correspond to the planning horizon authorized by the permit, which may not be extended. During the permit development period, the municipal provider shall periodically submit to the department incremental statements of completion showing proof of beneficial use consistent with the provisions of section 42-217, Idaho Code. Each such incremental statement shall document the extent of application of water to beneficial use during the most recent reporting interval. Each incremental statement shall be prepared by a certified water rights examiner, unless the permit holder is not asserting any additional increment of beneficial use during that reporting interval. The department shall set and may later adjust the duration of any reporting interval for any permit, which shall be made a condition of the permit, to any duration not shorter than five (5) years . . . .

For reasonably anticipated future needs permits existing on July 1, 2020, the department shall have one (1) year from July 1, 2020, either to issue a license, where proof already has been submitted, or to modify the permit to conform to

the provisions of this section by establishing future reporting intervals for periodic proof statements, by establishing the date for the final proof statement corresponding with the end of the planning horizon authorized by the existing permit, and by updating approval conditions to clarify whether information that must be submitted with proof of beneficial use is due at each reporting interval or only with the final proof statement.

7. Senate Bill 1316 modified Idaho Code § 42-217(1)(d) to remove the requirement that a municipal provider submit a revised estimate of the reasonably anticipated future needs, a revised description of the current service area, and a revised planning horizon, together with appropriate supporting documentation when submitting proof of beneficial use. Idaho Code § 42-217(1)(d) now states that a municipal provider shall include “a description of the current service area” with a proof of beneficial use statement.
8. The City has not submitted proof of beneficial use for the Permit.

### CONCLUSIONS OF LAW

1. Consistent with Idaho Code § 42-204(4), IDWR should modify the date for the final proof statement for the Permit to correspond with the end of the RAFN planning horizon: March 9, 2042. To accomplish this change to the proof due date, IDWR should modify condition no. 1 of the Permit and remove condition no. 10 of the Permit.
2. For permits authorizing RAFN, IDWR has discretion to set and adjust reporting intervals of not less than five years for incremental statements of completion to be submitted to IDWR. For the Permit, IDWR requires one incremental statement of completion shall be submitted on or before March 9, 2027.
3. To be consistent with the changes to Idaho Code §§ 42-204 and 42-217, IDWR should also remove condition no.12 from the Permit and modify condition no. 11 of the Permit

### ORDER

IT IS HEREBY ORDERED that condition no. 1 of the Permit is **MODIFIED** as follows:

Proof of application of water to beneficial use shall be submitted on or before March 9, 2042.

IT IS FURTHER HEREBY ORDERED that the following requirement is **ADDED** as condition no. 17 of the Permit:


On or before March 9, 2027, the right holder shall submit to the Department an incremental statement of completion, consistent with the requirements of Idaho Code §§ 42-204 and 42-217.

IT IS FURTHER HEREBY ORDERED that condition nos. 10 and 12 of the Permit are **REMOVED**.

IT IS FURTHER HEREBY ORDERED that condition no. 11 of the Permit is **MODIFIED** as follows:

When submitting an incremental statement of completion or proof of beneficial use statement for this permit, the permit holder shall also submit a Beneficial Use Field Report prepared by a certified water right examiner and shall include a description of the permit holder's current service area. The report must clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the reporting interval for an incremental statement of completion, or the planning horizon for final proof. The report shall be on the form or forms specified by the director and shall provide the information specified in Idaho Code § 42-217 and the Department's Beneficial Use Examination Rules (IDAPA 37.03.02) for confirming beneficial use and such other information as may be required by the Director. An incremental statement of completion or proof of beneficial use shall be deemed incomplete and returned to the permit holder if the proof of beneficial use statement is not accompanied by this report unless the permit holder is not asserting any additional increment of beneficial use during the reporting interval.

Signed this 14<sup>th</sup> day of April, 2021.

  
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Manuel Rauhut  
Engineer, Technical 1

## 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.

## **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.



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: [idwr.idaho.gov](http://idwr.idaho.gov) • Email: [idwrinfo@idwr.idaho.gov](mailto:idwrinfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

April 14, 2021

CITY OF Eagle  
660 E CIVIC LN  
EAGLE ID 83616

RE: Permit No. 63-32573

Dear Permit Holder(s):

Enclosed is a Preliminary Order Modifying Conditions of Approval ("Order") in connection with the above referenced permit. As described in the Order, the Department modified the conditions of your permit to align with the 2020 Senate Bill 1316, which modified Idaho Codes § 42-217(1)(d) and 42-204. The modifications to Idaho Code extended the time to submit proof of beneficial use to the end of the planning horizon and reduced the information that must be submitted with the proof of beneficial use statement for Reasonably Anticipated Future Needs ("RAFN") water right permits. Specifically, the modification to Idaho Code removed the requirement that a municipal provider submit a revised estimate of the reasonably anticipated future needs and a revised planning horizon, together with appropriate supporting documentation.

In the case of the referenced permit, the Department extended the final proof due date from March 9, 2027 to the end of the RAFN planning horizon, which is March 9, 2042. For permits authorizing RAFN, the Department has discretion to set and adjust reporting intervals of not less than five years for incremental statements of completion to be submitted to IDWR. For the Permit, IDWR requires one incremental statement of completion shall be submitted on or before March 9, 2027. Consistent with the changes to Idaho Code § 42-204 (4) the proof statements must be accompanied by a beneficial use field report prepared by a certified water right examiner.

If you have any questions concerning the enclosed order, please contact me at (208) 287-4846.

Sincerely,

A handwritten signature in black ink, appearing to read 'Manjuel Rauhut', is written over the word 'Sincerely,'.

Manjuel Rauhut

Engineer, Technical 1

Enclosure(s)