

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 78297 IN THE)
NAME OF DAVID R. MEAD)
)
_____)

**PRELIMINARY ORDER REJECTING
APPLICATION FOR TRANSFER**

This matter having come before the Department of Water Resources (Department) as a result of an application to transfer water rights, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On October 31, 2002, David R. Mead applied to the Department for authorization to add a second authorized diversion point to water right 71-7126 in Blaine County. The transfer application was designated as transfer no. 70239 by the Department, which was later changed to transfer no. 78297.
2. On January 21, 2003, the application was protested by the USDA Forest Service. The protest indicated that the proposed development was located on Forest Service land and had not been authorized by the USDA Forest Service. Examination of the application file reveals that there has been no apparent action by the Forest Service or the applicant to resolve the protest.
3. On May 20, 2020, the Department mailed David R. Mead a letter indicating that no action regarding the application had occurred in over 17 years. The Department included a "Withdrawal of Application for Transfer of Water Right(s)" form for the applicant to sign and return in order for the Department to remove the application from its records.
4. On June 26, 2020, the Department mailed David R. Mead another letter indicating that the applicant does not have the legal authority/permission to add the second authorized diversion point to water right 71-7126 because authorization had not been obtained from the USDA Forest Service. In the letter, the Department informed David R. Mead that if he did not respond to the request within 30 days, the Department would reject his transfer application.
5. The Department has not received a response from David R. Mead to the requests for action in regards to transfer application no. 78297.

6. Idaho Code §42-222 says, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.

CONCLUSIONS OF LAW

1. Without the authorization/permission to add the second authorized diversion point to water right 71-7126 from the USDA Forest Service, requested from David R. Mead, the Department cannot ascertain that the applicant has the authority to file the application.

2. The Department should reject transfer application no. 78297.

ORDER

IT IS HEREBY ORDERED that transfer application no. 78297 in the name of David R. Mead is **REJECTED** without prejudice.

Dated this 31ST day of July, 2020.



COREY SKINNER
Southern Region Manager

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, 2020, true and correct copies of the documents described below, were served by placing a copy of the same with the United States Postal Service, postage prepaid, and properly addressed to the following:

**Documents: Preliminary Order Rejecting Application for Transfer No. 78297
Explanatory Information Sheet**

DAVID R MEAD *Certified Mail*
2045 HILLCREST DR
TWIN FALLS ID 83301-5350

USDA FOREST SERVICE (protestant)
1805 HWY 16, RM 5
EMMETT ID 83617-9076



Denise Maline
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION • 650 ADDISON AVE W STE 500 • TWIN FALLS ID 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037

Website: www.idwr.idaho.gov • Email: southerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

July 31, 2020

DAVID R MEAD
2045 HILLCREST DR
TWIN FALLS ID 83301-5350

Re: Preliminary Order in the matter of Application for Transfer No(s). 78297

Dear Applicant(s):

The accompanying order 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 unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed yellow information sheet.

If you have any questions regarding this matter, please contact our office at 208-736-3033. Additional information is also available on our website, www.idwr.idaho.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Corey Skinner'.

Corey Skinner
Southern Region Manager

Enclosures

c: USDA Forest Service, protestant

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.



State of Idaho

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION • 650 ADDISON AVE W STE 500 • TWIN FALLS ID 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037

Website: www.idwr.idaho.gov • Email: southerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

June 26, 2020

David R. Mead
2045 Hillcrest Drive
Twin Falls, ID 83301

Dear Mr. Mead:

Recently the Idaho Department of Water Resources (IDWR) attempted to contact you relating to a water right transfer application, # 78297, filed in your name. The application was filed with IDWR on October 31, 2002, and proposes to add a second authorized diversion point to water right 71-7126. This particular water right allows for the diversion of water from an unnamed stream tributary to Vat Creek for domestic use(s) associated with a cabin located on Lot 27 in the Valley View Cabin area in Blaine County, north of Alturas Lake.

The application was protested in January of 2003 by the USDA Forest Service. Their protest indicated that the proposed development was located on Forest Service land and had not been authorized by the USDA Forest Service. Examination of the file indicates that there has been no apparent action by you or the USDA Forest Service to resolve this matter.

It appears that you do not have legal authority/permission to add the second authorized diversion point to water right 71-7126 due to not having authorization from the USDA Forest Service. As currently filed, IDWR cannot ascertain that you have the authority to file the application. **IDWR will hold further processing of your application for 30 days in order for you to submit information indicating your authority to add the second authorized diversion point on USDA Forest Service land. After that time, if nothing is received, IDWR will issue a preliminary order to reject the application.**

If you have any questions, or if I can be of any further assistance, feel free to contact me at your convenience.

Sincerely,

Corey Skinner, PE
Southern Region Manager



State of Idaho

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

May 20, 2020

David R Mead
2045 Hillcrest Drive
Twin Falls, ID 83301

Dear Mr. Mead:

Examination of Idaho Department of Water Resources (IDWR) records indicates that we have an active water right transfer application, # 78297, filed in your name. The application was filed with IDWR on October 31, 2002 and proposes to add a second authorized diversion point to water right 71-7126. This particular water right allows for the diversion of water from an unnamed stream tributary to Vat Creek for domestic use(s) associated with a cabin located on Lot 27 in the Valley View Cabin area in Blaine County, north of Alturas Lake. The application proposes adding an additional point of diversion downstream of the authorized point of diversion at a location closer to the cabin site.

The application was protested in January of 2003 by the USDA Forest Service. Their protest indicated that the proposed development was located on Forest Service land and had not been authorized by the USDA Forest Service. Examination of the file indicates that there has been no action by you or the USDA Forest Service to resolve this matter.

It appears that there may no longer be an interest in pursuing this application since no action has occurred in over 17 years. I have enclosed a "Withdrawal of Application for Transfer of Water Right(s)" form for your possible use. Dating and signing the form and returning it to our office (envelope enclosed) would allow IDWR to remove the application from our records.

If you have any questions, feel free to contact me (208)736-3033 at your convenience.

Sincerely,

Corey Skinner, PE
IDWR Southern Region Manager

Enclosure