

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

IN THE MATTER OF	)	ORDER GRANTING PETITION
PERMIT NO. 65-23573	)	FOR RECONSIDERATION; AMENDED
IN THE NAME OF	)	PRELIMINARY ORDER REINSTATING A
ALLAN MAKI	)	LAPSED PERMIT AND GRANTING AN
_____	)	EXTENSION OF TIME

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider the denial of a request for extension of time and reinstate a lapsed permit, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On July 1, 2014, the Department issued permit no. 65-23573 ("Permit") in the name of Allan Maki ("Permit Holder") authorizing the diversion of 0.04 cubic feet per second (cfs) of ground water for domestic use in Government Lot 7 (NE¼SW¼) of Section 23, Township 7 North, Range 2 East, B.M., Boise County. A condition of permit approval required the permit holder to submit proof of beneficial use of water to the Department on or before July 1, 2019.
2. On June 18, 2019, the Permit Holder filed a request for extension of time to submit proof of beneficial use ("Extension Request").
3. On July 29, 2019, the Department issued a preliminary order ("Order") denying the Extension Request because the Permit Holder had not demonstrated good cause for an extension, as required by Idaho Code § 42-204(6). The Department mailed a copy of the Order to the Permit Holder on August 2, 2019, with a notice that the Permit had lapsed. The Permit had lapsed pursuant to Idaho Code § 42-218a because the Department had not received an acceptable proof of beneficial use or an acceptable request for extension of time on or before the due date of July 1, 2019.
4. On August 16, 2019, the Permit Holder submitted a petition for reconsideration ("Petition") of the Order. The Petition requests that the Department reconsider the denial of the Extension Request and that the Department determine that good cause for an extension of the time to submit proof of beneficial use has been established. The Petition explains that during the development period the Permit Holder "has used the well water for domestic use... This includes bathing, cooking and drinking." Furthermore, the Petition includes photographs of the hose supplying the domestic use and the stake lines marking the location for the construction of the proposed domestic water line.

CONCLUSIONS OF LAW

1. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) authorizes a party to petition the Department to reconsider a preliminary order, 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.

2. Idaho Code § 42-218a(1) provides in pertinent part that:

Within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

3. The additional information submitted with the Petition demonstrates good cause for an extension of time to submit proof of beneficial use, as required by Idaho Code § 42-204(6).
4. The additional information submitted with the Petition is sufficient reasonable cause to reinstate the Permit pursuant to Idaho Code § 42-218a(1).
5. The Department should reconsider the Order.
6. The Department should reinstate the Permit with an advancement of priority date to March 22, 2014.
7. The Department should grant the Extension Request.

ORDER

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

IT IS FURTHER ORDERED that the Permit is **REINSTATED** with its priority date advanced to March 22, 2014.

IT IS FURTHER ORDERED that the Request for Extension is **GRANTED**, and the time within which to submit proof of beneficial use is extended to July 1, 2024.

Dated this 5th day of September, 2019.



Shelley W. Keen, Chief
Water Allocation Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 11, 2019

ALLAN MAKI
7776 PIERCE PARK
BOISE ID 83714

RE: Preliminary Order in the matter of Permit No. 65-23573

Dear Permit Holders:

The accompanying order is an **"amended preliminary order"** issued by the department pursuant to Rule 730 of the department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action of the department unless any party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-287-4947.

Sincerely,

A handwritten signature in blue ink that reads "Shelley W. Keen".

Shelley W. Keen, Chief
Water Allocation Bureau

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on **September 13, 2019** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (ORDER GRANTING PETITION FOR RECONSIDERATION; AMENDED PRELIMINARY ORDER REINSTATING A LAPSED PERMIT AND GRANTING AN EXTENSION OF TIME) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **65-23573**

ALLAN MAKI
7776 PIERCE PARK
BOISE ID 83714



Darla Block
Technical Records Specialist

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.

DEPARTMENT OF
WATER RESOURCES

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, I hand-delivered the original Petition for Reconsideration to an Idaho Department of Water Resources Representative, located at Idaho Water Center, 322 E. Front Street, Boise Idaho.

A handwritten signature in black ink, appearing to read "Allan Maki", written over a horizontal line.

Allan Maki



WEIGH STATION 1 MILE North of Horseshoe Bend

HWY 55

NORTH →

not to scale

HANSON CIRCLE

WELL LOCATION →



Jim & Pauline
GRANT

← FUTURE TRENCH and STUB-OUT

Allan Maki
Place

→ EXISTING stub-out

LOCATION WHERE TOP. UP TRAILER
COLEMAN CIRCLE WAS PARKED.



VACANT LOT WITH
WATER LINE LOCATION



STUB OUT +
VACANT
LOT



VACANT LOT WITH BUILDING CORNERS
AND WATER LINE STAKES.