

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

IN THE MATTER OF PERMIT NO. 78-12404 IN THE NAME OF DENNIS DE BILL AND KAYLA ADAMS 	)))))	ORDER MODIFYING MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS REQUIREMENTS
---	-----------------------	---

This matter having come before the Idaho Department of Water Resources ("Department") as a request to modify a measuring device and lockable controlling works requirement, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On May 31, 2013, the Department issued the above-captioned permit ("permit") in the name of Dennis De Bill and Kayla Adams ("permit holders"), with a condition of approval that states:

Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

2. On October 26, 2017, the Department received the permit holders' request to waive the measuring device portion of the requirements at this time.

3. The authorized point of diversion of the permit in (SENW), Township 21N, Range 1E, B.M., Idaho County from the Little Salmon River is not located within an active water district or other administrative area where water measurement is currently required for water rights administration.

CONCLUSIONS OF LAW

1. Beneficial Use Examination Rule 35.02.d. (IDAPA 37.03.02.35.02.d.) provides for the waiver of a measuring device requirement by the Department.

2. Installation of a measuring device by the permit holders of Permit No. 78-12404 is not necessary for administration of the diversion of water at this time, but it may be necessary in the future.

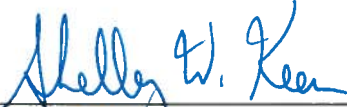
ORDER

IT IS HEREBY ORDERED that condition of approval no. 5 on Permit No. 78-12404 is **MODIFIED** as follows:

Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.

After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

DATED this 1st day of November, 2017.



Shelley W Keen, Manager
Water Rights Section



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

November 01, 2017

KAYLA ADAMS
DENNIS DE BILL
5198 HWY 95
NEW MEADOWS ID 83654

RE: Permit No. 78-12404 - Order Modifying Measuring Device and Lockable Controlling Works Condition

Dear Permit Holders:

I have enclosed an order modifying the measuring device and lockable controlling works requirements in connection with this permit.

The preliminary order can and will become a final order without further action of the Department unless a party files an exception and/or brief or requests a hearing as further described in the enclosed information sheet.

If you have any questions, please call me at (208) 287-4945.

Sincerely,

A handwritten signature in blue ink that reads "Darla Block".

Darla Block
Technical Records Specialist

Enclosure(s)

CERTIFICATE OF SERVICE

06 (DAB)
I hereby certify that on **November 02, 2017** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**ORDER MODIFYING MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS REQUIREMENTS**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **78-12404**

**KAYLA ADAMS
5198 HWY 95
NEW MEADOWS ID 83654**

**DENNIS DE BILL
5198 HWY 95
NEW MEADOWS ID 83654**



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.

Idaho Department Water Resources
PO Box 83720
Boise, ID 83720

RECEIVED
OCT 26 2017
DEPARTMENT OF
WATER RESOURCES

October 24, 2017

RE: Permit No. 78-12404

ATTN: Darla Block, Technical Records Specialist

Regarding Condition No. 5 for obtaining a water permit, in August of 2017 I spoke to Dan Nelson regarding the need for a measuring device. I explained the size of my water pump doesn't allow for more than the allotted CFS per my water right when it is fully opened. The system does not allow for a control valve. In addition, the size of the fuel tank only allows for approximately 75 minutes of use, therefore it cannot be accidentally left on to exceed our use permit.

I am asking for a waiver regarding Condition No. 5 for this permit.

Sincerely,



Dennis DeBill
(208) 628-3151



Kayla Adams