

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

|                             |   |                                  |
|-----------------------------|---|----------------------------------|
| IN THE MATTER OF PERMIT     | ) | <b>ORDER MODIFYING MEASURING</b> |
| NO. 63-34148 IN THE NAME OF | ) | <b>DEVICE AND LOCKABLE</b>       |
| MIKE SKOGSBERG AND/OR       | ) | <b>CONTROLLING WORKS</b>         |
| DIAMOND S FARMS LLC         | ) | <b>REQUIREMENT</b>               |
| _____                       | ) |                                  |

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

**FINDINGS OF FACT**

1. On May 18, 2016, the Department issued the above-captioned permit ("permit") in the name of Mike Skogsberg and/or Diamond S Farms LLC ("permit holder"), 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 February 16, 2017, the Department received a letter from the permit holder requesting a waiver of permit condition no.4.

3. On March 22, 2017, the Department received an email from the watermaster of Water District No. 63. In his email, the watermaster recommended the Department waive the condition for now, but it may be required in the future to prevent administrative problems.

**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.

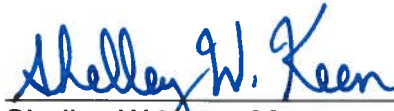
2. Installation of a measuring device and lockable controlling works is not necessary for administration of the diversion of water by the permit holder of Permit No. 63-34148 at this time, but it may be necessary in the future.

## ORDER

IT IS HEREBY ORDERED that condition of approval no. 4 on Permit No. 63-34148 is **MODIFIED** as follows:

Upon specific notification by the Department, 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.

DATED this 11th day of April, 2017.



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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](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

April 14, 2017

MIKE SKOGSBERG  
DIAMOND S FARMS LLC  
23460 STAFFORD RD  
CALDWELL ID 83607

**RE: Permit No. 63-34148**

Dear Permit Holder(s):

Enclosed is an order modifying the measuring device and lockable device requirements stated on your water right permit. The permit condition now reads:

Upon specific notification by the Department, 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.

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

Sincerely,

Darla Block  
Technical Records Specialist

Enclosure(s)

c: WATER DISTRICT #63

## **CERTIFICATE OF SERVICE**

I hereby certify that on **April 14, 2017**, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**Order Modifying Measuring Device and Lockable Controlling Works Requirement**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **63-34148**

**MIKE SKOGSBERG  
DIAMOND S FARMS LLC  
23460 STAFFORD RD  
CALDWELL ID 83607**

**WATER DISTRICT #63  
REX BARRIE  
PO BOX 767  
STAR ID 83669-0767**



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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.

## Block, Darla

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**From:** Mike Skogsberg <skogsbergmike@gmail.com>  
**Sent:** Tuesday, April 11, 2017 7:25 AM  
**To:** Block, Darla  
**Subject:** Fwd: Measurement and control waiver - Permit

Darla, I have talked to Rex about the waiver. This was his answer back.

Sent from my iPad

Begin forwarded message:

**From:** "Rex Barrie" <[waterdistrict63@qwestoffice.net](mailto:waterdistrict63@qwestoffice.net)>  
**Date:** March 22, 2017 at 7:04:44 AM MDT  
**To:** "'Miller, Nick'" <[Nick.Miller@idwr.idaho.gov](mailto:Nick.Miller@idwr.idaho.gov)>, "'Mike Skogsberg'" <[skogsbergmike@gmail.com](mailto:skogsbergmike@gmail.com)>  
**Subject:** RE: Measurement and control waiver - Permit

Nick,

I made a site inspection of the diversion for Permit #63-34148 and have determined that a measuring device is not needed at this time. I would agree to waive the condition for now. However, it should be noted that it may be required in the future to prevent administrative problems.

Thank you,

Rex R. Barrie  
Boise River Watermaster

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**From:** Miller, Nick [<mailto:Nick.Miller@idwr.idaho.gov>]  
**Sent:** Monday, March 20, 2017 11:20 AM  
**To:** Mike Skogsberg  
**Cc:** Rex Barrie ([WATERDISTRICT63@QWESTOFFICE.NET](mailto:WATERDISTRICT63@QWESTOFFICE.NET))  
**Subject:** Measurement and control waiver - Permit

Mike,

I've attached a copy of your letter requesting a waiver from the measurement and control requirements on permit 63-34148. Before we can do anything with it, we need the watermaster's approval of the request. So, I'm copying Rex Barrie (the WD63 watermaster) on this email and ask that you and he correspond and see if he can send us something approving or denying the request.

Nick.

## Block, Darla

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**From:** Rex Barrie <waterdistrict63@qwestoffice.net>  
**Sent:** Friday, April 07, 2017 7:18 AM  
**To:** Block, Darla  
**Subject:** RE: Emailing: Letter Received by IDWR from permit holder of Permit #63-34148.pdf

I spoke to Nick Miller about this and told him I would agree to wave for now as long as the requirement is stated that at some time it may be required.

Rex R. Barrie  
Boise River Watermaster

-----Original Message-----

**From:** Block, Darla [mailto:Darla.Block@idwr.idaho.gov]  
**Sent:** Thursday, April 06, 2017 11:14 AM  
**To:** waterdistrict63@qwestoffice.net  
**Cc:** SKOGSBERGMIKE@GMAIL.COM  
**Subject:** Emailing: Letter Received by IDWR from permit holder of Permit #63-34148.pdf

April 6, 2017

Re: Attached Letter received from permit holder by Department of Water Resources

Dear Watermaster Rex Barrie:

The attached letter is requesting a waiver of a water right permit requirement to install a measuring device and lockable controlling works as part of the diverting works. The Department of Water Resources (Department) also requires agreement from you, the watermaster of Water District #63 that the requirements can be waived.

Please respond as soon as possible. The Department will have to hold off on processing the permit holders' proof of beneficial use form until I have received a response from you regarding this matter.

Sincerely,

Darla Block  
Technical Records Specialist  
Water Allocation Bureau  
Ph. #(208) 287-4945  
Darla.Block@idwr.idaho.gov

Your message is ready to be sent with the following file or link attachments:

Letter Request Waiver on Permit Condition #4.pdf