

FINDINGS OF FACT

1. On August 25, 2015, the Department issued the above-captioned permit ("permit") in the name of Ben L. Shorts and/or Debra A. Shorts ("permit holders"), with two conditions of approval that state:

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 the watermaster suitable control of the diversion.

Prior to Diversion of water under this right, the right holder shall provide a means acceptable to the Department to measure the amount of water entering the reservoir and the amount of water released from the reservoir.

2. On September 15, 2016, the Department received a letter from the watermaster of Water District No. 65, Ron Shurtleff, recommending waiving the requirements to install a lockable control device as well as a measuring device. He further recommends that the Department reserve the right to reinstate the requirements in the event that they become necessary in the future.

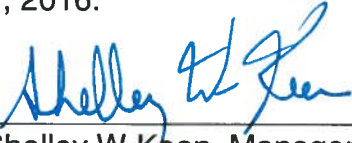
1. Beneficial Use Examination Rule 35.02.d. (IDAPA 37.03.02.35.02.d.) provides for the waiver of a measuring device requirement by the Department.
2. Installation of a measuring device and lockable controlling device is not necessary for administration of the diversion of water by the permit holder of Permit No. 65-23612 at this time, but it may be necessary in the future.

ORDER

IT IS HEREBY ORDERED that conditions of approval nos. 3 and 4 on Permit No. 65-23612 are **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 28th day of September, 2016.



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

September 28, 2016

BEN L SHORTS
DEBRA A SHORTS
669 MIDDLEFORK RD
GARDEN VALLEY ID 83622

RE: Permit No. 65-23612

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:

After 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) 287-4947.

Sincerely,

Shelley Keen
Water Rights Section Manager

Enclosure(s)

c: WATER DISTRICT #65

CERTIFICATE OF SERVICE

I hereby certify that on **September 29, 2016** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**ORDER MODIFYING MEASURING DEVICE AND LOCKABLE DEVICE REQUIREMENTS**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **65-23612**

**BEN L SHORTS
669 MIDDLEFORK RD
GARDEN VALLEY ID 83622**

**DEBRA A SHORTS
669 MIDDLEFORK RD
GARDEN VALLEY ID 83622**

**WATER DISTRICT #65
RON SHURTLEFF
102 N MAIN
PAYETTE ID 83661**

A handwritten signature in black ink, reading "Darla Block", written over a horizontal line.

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.

Payette River Basin, State of Idaho
State, Water District No. 65

Watermaster,
Ron Shurtleff

102 N. Main
Payette, ID 83661

Phone: 208-642-4465
Fax: 208-642-1042
E-mail: wd65@srvinet.com

September 9, 2016

RECEIVED

Western Region
Idaho Department of Water Resources
2735 Airport Road
Boise, Id 83705

SEP 19 2016
DEPARTMENT OF
WATER RESOURCES

RECEIVED
SEP 15 2016
WATER RESOURCES
WESTERN REGION

Attn. Darla Block

Re: Measuring and locking device waiver for Permit No. 65-23612

Dear Mr. Block

I have visited the stockwater pond located at T10N, R04E, Sec. 23 NWSW on the property owned by Debra and Ben Shorts. This was in regard to the standard condition to install a lockable controlling device and a measuring device for compliance of the Statement of Completion. The unnamed stream that is a source of water for the stockwater pond is an intermittent stream. The stream dries up early in the season, ahead of the time when it might contribute positive natural flow to the Middle Fork, Payette River.

I would recommend waving the requirement to install a lockable control device as well as a measuring device because of these findings. I might recommend reserving the right to reinstate these requirements at a later date in the event that it might become necessary to administer water rights on the unnamed stream.

If you have any questions please do not hesitate to contact me at 208-642-4465.

Sincerely,


Ron Shurtleff

Cc: Debra and Ben Shorts
669 Middle Fork Road
Garden Valley, ID 83622