

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-33707

Priority: October 19, 2012

Maximum Diversion Rate: 0.10 CFS
Maximum Diversion Volume: 22.8 AF

It is hereby certified that CHARLES MADENFORD FAMILY TRUST
3605 N POLLARD LN
STAR ID 83669 has complied with the terms and conditions of the permit,
issued pursuant to Application for Permit dated October 19, 2012; and has submitted Proof of Beneficial
Use on October 19, 2012. An examination confirms water is diverted from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
DIVERSION TO STORAGE	01/01 to 12/31	0.10 CFS	
AESTHETIC STORAGE	01/01 to 12/31		22.8 AF
RECREATION STORAGE	01/01 to 12/31		22.8 AF
WILDLIFE STORAGE	01/01 to 12/31		22.8 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW1/4SW1/4 Sec. 33, Twp 05N, Rge 01W, B.M. ADA County

PLACE OF USE: AESTHETIC STORAGE, RECREATION STORAGE and WILDLIFE STORAGE

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
05N	01W	33																	X

CONDITIONS OF APPROVAL

1. 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.
2. Right 63-33707 authorizes the diversion of an annual total of 22.8 acre-feet to be used for the initial filling of the pond and for the replacement of evaporation losses.
3. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.

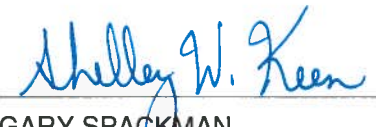
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-33707

4. The following rights are diverted through point(s) of diversion described above: 63-33707, 63-33667 and 63-33605.
5. Rights 63-33707, 63-33667, and 63-33605 when combined shall not exceed a total diversion rate of 0.10 cfs.
6. Point of diversion is located within Lot 1, Blk. 1, Manteca Subdivision.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 1st day of May, 2015.



for GARY SPACKMAN
Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT)	PRELIMINARY ORDER
NO. 63-33707 IN THE NAME OF)	GRANTING A PETITION FOR
CHARLES MADENFORD)	RECONSIDERATION, AND
FAMILY TRUST)	RESCINDING AN ORDER VOIDING A PERMIT
_____)	

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider an order voiding a permit to appropriate water, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On October 19, 2012, Charles Madenford Family Trust ("permit holder") applied to the Department for a permit to appropriate 26 acre-feet of ground water, diverted at 0.25 cubic feet per second from within the NW¼SW¼, Section 33, Township 5 North, Range 1 West, B. M., for aesthetic storage, recreation storage, and wildlife storage purposes in Ada County ("application"). The application states that the water storage facility ("pond") had already been constructed and filled.
2. Also on October 19, 2012, the Department received a Proof of Beneficial Use statement for the anticipated permit.
3. On May 29, 2013, the Department approved the application as Permit No. 63-33707 ("permit").
4. On August 8, 2013, the Department sent a letter acknowledging receipt of the Proof of Beneficial Use statement.
5. On February 20, 2015, Department staff conducted a field examination to verify the beneficial use of water established in accordance with the permit. The field examiner reported that the permit holder had constructed the proposed storage facility, but that it was dry at the time the permit holder submitted proof of beneficial use. The field examiner also reported that the permit holder has relied on water delivered by Farmers Union Ditch Company to fill the storage facility in the past. Therefore, the field examiner could not confirm that the proposed beneficial use of ground water was established during the authorized development period of the permit.
6. On April 1, 2015, the Department issued a Preliminary Order Voiding Permit 63-33707

("order") because the examination conducted on February 20, 2015, had failed to confirm that water had been diverted from the authorized source and put to beneficial use.

7. Also on April 1, 2015, the Department mailed a true and correct copy of the order to the address-of-record for the permit holder.
8. On April 3, 2015, the Department received a letter from the permit holder requesting a 5-year extension of time to develop the beneficial use of ground water authorized by the permit. The permit holder did not withdraw the Proof of Beneficial Use statement and the required application fee did not accompany the request for extension of time.
9. On April 10, 2015 the Department received a petition for reconsideration of the April 1, 2015, order and another request for a 5-year extension of time to establish the permitted beneficial use. The permit holder did not withdraw the Proof of Beneficial Use statement and the required application fee did not accompany the request for an extension of time.
10. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) states in pertinent part 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.

11. On April 22, 2015, the Department received a letter signed by Chad Gillis. The letter was submitted in support of the permit holder's petition for reconsideration. Mr. Gillis witnessed the development and use of the pond when the previous owner owned the place-of-use. Mr. Gillis' letter summarized his experience with the pond, the diversion system and the source of water diverted to fill it. His statements provide evidence that there was a ground water-sourced development of the beneficial use prior to the date that the permit holder submitted proof for the permit.
12. An examination of additional Department records shows that in 2003, Department staff reported the previous owner of the place-of-use had used ground water to fill the pond. A beneficial use of ground water was likely developed prior to issuance of the permit and was discontinued prior to the field examination. In his requests for additional time, the permit holder stated that he had not filled the pond with ground water at the time of the field examination because the pond liner needed repairing.

CONCLUSIONS OF LAW

1. The petition for reconsideration was submitted timely.
2. Idaho Code § 42-219 (1) states in pertinent part as follows:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose it was originally intended, the department shall issue to such user or users a license confirming such use.

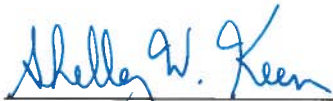
3. The Department has confirmed that a beneficial use of ground water was established in connection with the permit prior to the date that the permit holder submitted proof of beneficial use.
4. The Department should grant the petition for reconsideration and rescind the order voiding the permit.
5. The Department should reject the requests for additional time to develop the water use proposed in the permit.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration is **GRANTED** and the order voiding Permit No. 63-33707 is **RESCINDED**.

IT IS FURTHER ORDERED that the requests for additional time to complete development of the permit are **REJECTED**.

Dated this 1st day of May, 2015.



Shelley W. Keen, Manager
Water Rights Permits 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

May 5, 2015

CHARLES MADENFORD FAMILY TRUST
3605 N POLLARD LN
STAR ID 83669

RE: License No. 63-33707

**Issuance of a License & an Order Granting a Petition for Reconsideration, and
Rescinding an Order Voiding a Permit**

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The license and order granting a petition for reconsideration, and rescinding an order voiding a permit are both PRELIMINARY ORDERS issued by the Department pursuant to section 67-5243, Idaho Code. They can and will become final orders without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4951.

Sincerely,

Pamela Skaggs

Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2015, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDERS (Approved License) (Preliminary Order Granting a Petition for Reconsideration, and Rescinding an Order Voiding a Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

63-33707

**CHARLES MADENFORD FAMILY TRUST
3605 N POLLARD LN
STAR ID 83669**



**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.

MEMORANDUM

Date: May 01, 2015
To: Water Right File 63-33707
From: medl
Re: Beneficial use

An investigation by department staff in 2002 and 2003 found unauthorized use of surface and/or ground water to fill the pond. These findings resulted in an agreement which required the owner to seek authorization to fill the pond.

Beneficial storage use was developed before the permit was issued.

MEMORANDUM

TO: GARY SPACKMAN

FROM: DANIEL A. NELSON

DATE: 1/29/03

SUBJECT: DENNIS LOOSLI COMPLAINT

I received a telephone call from Shawn Davis that Dennis Loosli was filling his pond. I checked with Glenn Saxton and found that Mr. Loosli has not leased any water from the water bank. I also checked our records and could not find any records showing that Mr. Loosli has filed for a water right.

On 1/29/2003, I went to Mr. Davis's property and looked over the fence at Mr. Loosli's pond. From that distance it did appear that the pond was full (see enclosed pictures). I could not see from my vantage point whether or not the pond was being filled. However, it did look like the pond was up to the boat ramp or at least $\frac{1}{2}$ to $\frac{3}{4}$ full.

I took a picture on the ditch for delivery of Farmers Union Canal Company water, which was empty. The only way the pond could be filled is from Mr. Loosli's well. I did not enter Mr. Loosli's property, so I could not tell if Mr. Loosli had adhered to the conditions of the settlement agreement signed 9/4/2002.

PHOTOGRAPHER AND DATE OF PHOTOS DANIEL A NELSON 1/29/2003

FILE NUMBER Loosli Complaint



PHOTOGRAPHER AND DATE OF PHOTOS DANIEL A NELSON 1/29/2003

FILE NUMBER Dennis Loosli complaint



PHOTOGRAPHER AND DATE OF PHOTOS DANIEL A NELSON 1/29/2003

FILE NUMBER Loosli complaint



MEMORANDUM

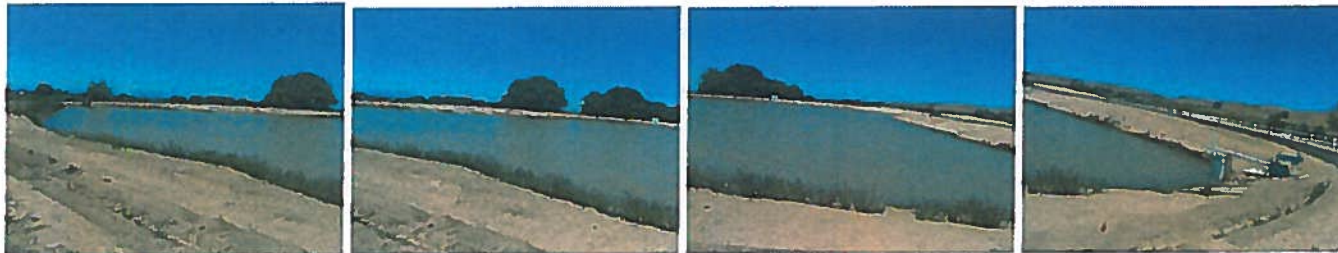
TO: FIELD VISIT

FROM: DANIEL A. NELSON

DATE: 7/1/02

SUBJECT: LOOSLI COMPLAINT

I received a call from one of the neighbors on Friday, 6/28/2002, stating that Mr. Loosli was refilling the pond. I visited the place of use and discovered that the pond was full again. No water was being put into the pond during my field visit, so I could not tell if the water in the pond came from the well or the canal water. I called Mr. Loosli upon my return to the office and he told me that he purchased a 10 Hp pump for his well and had used the well to fill the pond. I cannot dispute Mr. Loosli's claim that the pond was filled with the well. Therefore, I recommend we continue on the same course that we have already been pursuing. The following pictures show the pond is full and the power meters have current KWH shown on them to allow us to double check this in the future.





RECEIVED

APR 22 2015

DEPARTMENT OF
WATER RESOURCES

Gary A. Madenford
3605 N. Pollard Ln.
Star, Idaho 83669

April 21, 2015

Mr. Shelley W. Keen
Water Resource Section Manager
Idaho Department of Water Resources
322 E. Front St., P.O. Box 83720
Boise, Idaho 83720-0098

Re: Letter of Support for Petition for Reconsideration & Extension for Permit
63-33707

Dear Mr. Keen,

After we spoke last week, I contacted Chad Gillis regarding the pond being filled with ground water from the well. He was adamant that ground water was used to fill the pond and to keep it full. Chad asked me to write the letter with the information that he gave me, then he would sign it. I did that, then began calling him for a signature, but got no answer. I then went to his house a few times, but no one answered. I left a copy of the letter with a self addressed, stamped envelope in his mail box (with other mail). In case he is out of town, I wanted to send you a copy of the letter for your information (see the attached letter).

You are welcome to call Chad at (208) 283-9911 and verify the information, in case he is unable to get the letter to you on time.

Sincerely Yours,



Gary A. Madenford

Chad Gillis
474 Hullen Place
Star, Idaho 83669

April 20, 2015

Mr. Shelley W. Keen
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83720

RE: The Pond at 3605 N. Pollard Ln, Star, Idaho, Was Previously Filled With Ground Water.

Dear Mr. Keen,

I grew up at 3405 N. Pollard Ln, Star, Idaho, next door to 3605 N. Pollard Ln., now owned by Gary Madenford. I was living there when the previous owner, Dennis Loosli, built the pond. He filled it and kept it full with groundwater, from a pipe that came from the well, through the shop, then into the pond. The pond was fairly clear and when I dove into the deep end I could see half way across it.

I worked for Dennis on many of his projects and was very familiar with the property. Dennis had a security camera mounted on the two story shop that overlooked the pond. He could access this camera with his cell phone. When he was gone on one of his 5 to 6 week trips in his motorhome he would monitor the pond through the camera. When the water level would start to go down, he would call me and ask me to go into the shop to open the valves to run more water from the well into the pond to keep it full.

Dennis did install a pipe to run his irrigation water into the pond to irrigate with, but it never did work very well. It was just easier to fill the pond and keep it full with ground water, it also made for a much nicer pond.

If you have any questions, you are welcome to call me at (208) 283-9911.

Sincerely ,

Chad Gillis

RECEIVED
APR 22 2015
DEPARTMENT OF
WATER RESOURCES

Chad Gillis
474 Hullen Place
Star, Idaho 83669

April 20, 2015

Mr. Shelley W. Keen
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83720

RE: The Pond at 3605 N. Pollard Ln, Star, Idaho, Was Previously Filled With Ground Water.

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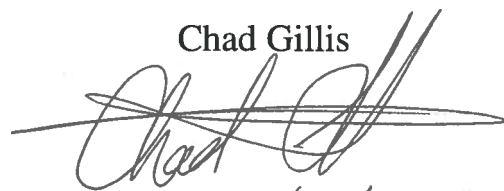
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Dennis did install a pipe to run his irrigation water into the pond to irrigate with, but it never did work very well. It was just easier to fill the pond and keep it full with ground water, it also made for a much nicer pond.

If you have any questions, you are welcome to call me at (208) 283-9911.

Sincerely ,

Chad Gillis



4/20/15

MEMORANDUM

DATE: April 15, 2015

TO: Water Right File 63-33707

FROM: Shelley W. Keen *SWK*

RE: Phone call from Gary Madenford

This afternoon Gary Madenford called in connection with voided permit 63-33707. We discussed additional information he might be able to provide to show beneficial use of ground water in connection with the permit. Mr. Madenford intends to submit information to show that ground water was used to fill the proposed reservoir prior to his occupancy of the place of use. I explained that IDWR must have the information in the next few days to meet our requirement of disposing of his petition for reconsideration within 21 days.

APR 13 2015

DEPARTMENT OF
WATER RESOURCES

The Charles Madenford Family Trust
C/O Gary A. Madenford, Trustee
3605 N. Pollard Ln.
Star, Idaho 83669

April 10, 2015

Ms. Shelley W. Keen
Water Resource Section Manager
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83702

Re: Petition for Reconsideration & Request for 5 Year Extension for Permit
63-33707

Ms. Keen,

This is a Petition for Reconsideration and a request for a 5 year extension for
Permit 63-33707.

To give you a brief background, I purchased this property from the bank after it set vacant for two years during which time it had been severely vandalized. I then acquired a permit to fill the pond not knowing about the extensive damage that was done to the underground pipes that served it, or to the degree of degradation that happened to the bentonite that lined the pond. I then ran into extreme difficulty first in getting water to the pond, then it attempting to get the pond to hold water. The pipes serving the pond from the well had to be repaired and the pipes transferring our irrigation water into the pond from the Farmers Union Ditch Company we later discovered were concreted shut. The property is designed to be irrigated from the pond. Once these pipes were repaired and opened in the summer of 2014, about 55 acre feet of water was then diverted into the pond. It was then that I discovered that the bentonite in the bottom of the pond had been compromised and that the pond would not hold water.

In the fall of 2014, I requested that the NRCS came out and advise me on how to treat and reseal the pond, which they did. The bentonite dealer in Nyssa, Oregon was also contacted and they gave their advice. In order to repair the bentonite seal, the pond has to be dried, all the vegetation killed and burned off, the bottom

rototilled, additional bentonite placed in the weak points, then the whole bottom and sides compacted, prior to water being added. The late season of the year made it was impossible to dry the pond and conduct the necessary repairs before winter.

As spring approached, I had a qualified contractor review the site and he indicated that he had the equipment and knowledge to repair the pond if I did the preliminary work of drying it, killing the existing vegetation and rototilling the existing bentonite. I then began this work. The pond is now dry, the vegetation was sprayed and in a few weeks it will be dry enough to burn, which we will do, then I'll start rototilling the bentonite. When that is done, I will bring in the contractor to repair the weak spots in the bottom of the pond and compact it, so we can start adding water.

I will proceed with all diligence in making the repairs and filling the pond in order to perfect this water right and have it go to license, but please understand there may still be other unforeseen problems that may give us further delays, as I have so abundantly discovered could happen.

It has not through any lack of diligence on my part that it is taking longer than expected to repair the pond. Progress has been made as problems have been found, repairs made, and weather has permitted.

I respectfully request that you grant this Petition for Reconsideration and provide us with an extension, so we have the time needed to complete this work according to IDWR's specifications and perfect water right 63-33707.

Sincerely Yours,

A handwritten signature in blue ink, reading "Gary A. Madenford". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gary A. Madenford, Trustee
The Charles Madenford Family Trust

MEMORANDUM

DATE: April 9, 2015

TO: Water Right File 63-33707

FROM: Shelley W. Keen *SWK*

RE: Left a message for Gary A. Madenford

Today at 1:00 p.m. I left a voicemail message at (208) 830-9911 asking Gary A. Madenford to call me to discuss the letter he submitted to IDWR about Permit 63-33707. The letter is dated April 1, 2015, and it appears to have been submitted without knowledge of the preliminary order issued by IDWR on April 1, 2015, in connection with the permit.

In my message, I indicated that I did not see evidence that a beneficial use of ground water had been established in connection with the permit. I also stated that I would like to discuss the need for a water right to cover the use of water delivered by Farmers Union Ditch Co. to fill the reservoir on Mr. Madenford's land.

RECEIVED

APR 03 2015

DEPARTMENT OF
WATER RESOURCES

The Charles Madenford Family Trust
C/O Gary A. Madenford, Trustee
3605 N. Pollard Ln.
Star, Idaho 83669

April 1, 2015

Mr. Patrick Kelly
Water Resource Agent
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83702

Re: Request for 5 Year Extension for Permit 63-33707

Dear Mr. Kelley,

This is a request for a 5 year extension for Permit 63-33707.

As you are aware, we ran into extreme difficulty in trying to fill the pond during 2014. The pipes serving the pond from the well had to be repaired and the pipes transferring our irrigation water into the pond from the Farmers Union Ditch Company were concreted shut. The property is designed to be irrigated from the pond. Once these pipes were repaired and opened in 2014, about 55 acre feet of water was then diverted into the pond. It was then discovered that the bentonite in the bottom of the pond had been compromised and would not hold water.

The NRCS then came out and advised us on how to treat and reseal the pond. The bentonite dealer in Nyssa, Oregon was also contacted and they gave their advice. In order to repair the bentonite seal, the pond has to be dried, all the vegetation killed and burned off, the bottom rototilled, additional bentonite placed in the weak points, then the whole bottom and sides compacted, prior to water being added.

Now that spring is approaching, a qualified contractor was brought to the site last week and he gave his opinion for repairing the pond. We will proceed with all diligence in making the repairs and filling the pond in order to perfect this water right and have it go to license, but please understand there may still be other unforeseen problems that may give us further delays.

It is not through any lack of diligence on my part that it is taking longer than expected to repair the pond. Progress has been made as problems have been found, repairs made, and weather has permitted.

I respectfully request that you grant the extension and give us the time needed to complete this work and perfect water right 63-33707.

Sincerely Yours,

A handwritten signature in blue ink that reads "Gary A. Madenford". The signature is written in a cursive style with a large, stylized initial "G".

Gary A. Madenford, Trustee
The Charles Madenford Family Trust



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

April 1, 2015

CHARLES MADENFORD FAMILY TRUST
3605 N POLLARD LN
STAR ID 83669

RE: Permit No. 63-33707

Dear Permit Holder(s):

The accompanying order is a "**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,

Shelley W. Keen
Water Rights Section Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 02, 2015 I mailed a true and correct copy, certified, postage prepaid, of the foregoing **(PRELIMINARY ORDER VOIDING PERMIT)** to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **63-33707**

**CHARLES MADENFORD FAMILY TRUST
3605 N POLLARD LN
STAR ID 83669**

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.



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 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

February 27, 2015

CHARLES MADENFORD TRUST
C/O GARY MADENFORD
3605 N POLLARD LN
STAR ID 83669

Notice of Intent to Void Permit

RE: Water Appropriation Permit 63-33707

Dear Permit Holder:

On October 19, 2012 IDWR received an application for permit to divert 0.25 cfs from groundwater for diversion to storage, and 26 acre-feet for aesthetic storage, recreation storage and wildlife storage in Section 33, Township 5 North, Range 1 West. Proof of Beneficial Use was received with the Application for Permit indicating you had completed your development and put the water to beneficial use. However, on February 20, 2015 a field exam found no evidence that water had actually been used for the purposes described in your permit during the development stage. Therefore, I can not verify that a beneficial use of water has been developed in accordance with your permit.

The final step in the water appropriation process is the issuance of a Water Right License. By issuing a license, IDWR recognizes that you have met the requirements for establishing a water right. If you have not developed an actual beneficial use of water within the development period authorized by your permit, however, no water right has been established, and no license can be issued. Once the development period authorized by your permit expires, your permit cannot be retained to cover future development of the resource.

If you believe a water right license should be issued to you, please supply information to demonstrate that you established a beneficial use of water by May 29, 2013, in accordance with 63-33707. If I do not receive the requested information from you within thirty days, I will take action to void your permit under the provision of Section 42-219(6) of the Idaho Code.

CHARLES MADENFORD TRUST

February 27, 2015

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If you agree that no beneficial use of water occurred under permit 63-33707, you can shorten the voiding process by completing the enclosed relinquishment form and returning it to IDWR.

If you have any questions, please contact me at 208-287-4933.

Respectfully,

Patrick Kelly
Water Resource Agent
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83702
d: 208.287.4933
f: 208.287.6700
patrick.kelly@idwr.idaho.gov

Enclosure: Relinquishment of Permit Form