

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 35-14139)	ORDER GRANTING PETITION
IN THE NAME OF IDAHO FALLS)	TO REMOVE MEASURING
<u>SCHOOL DISTRICT # 91</u>)	DEVICE REQUIREMENT

This matter having come before the Department of Water Resources ("Department") as a written petition to remove a measuring device condition, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On May 20, 2011, Idaho Falls School District # 91 filed Application 35-14139, seeking a permit to divert 1.34 cfs from ground water for a closed loop heating/cooling system to be installed at Eagle Rock Junior High School. The application was filed by Keith Wilson, a consultant with Rocky Mountain Environmental Associates, on behalf of the school district.
2. The Department issued Permit 35-14139 on June 28, 2011. The permit included a condition requiring a measuring device be installed prior to any diversion of water under the permit. The permit also included a condition requiring installation of data logging equipment upon specific notice from the Department.
3. On September 18, 2014, the Department received a petition from Keith Wilson at Rocky Mountain Environmental Associates asking that the measuring device condition be removed from Permit 35-14139.
4. In 2012, Idaho Falls School District # 91 obtained four other permits to divert ground water for heating and cooling purposes (25-14378, 25-14387, 25-14388, 35-14283). These permits are nearly identical to Permit 35-14139 and cover the water use associated with the heating/cooling systems installed at various schools within the district. None of the other four permits held by the district require installation of a measuring device prior to diversion.
5. Because the heating/cooling systems are closed loop and non-consumptive, there is no apparent need for a measuring device at this time. The watermaster for Water District 120, which encompasses the school district, has given his consent to have the measuring device condition removed from Permit 35-14139.

CONCLUSIONS OF LAW

1. Rule 35.02.d of the Department's Beneficial Use Examination Rules (IDAPA 37.03.02) provides for the waiver of a measuring device requirement by the Department.

2. Although the permit is currently located within Water District 120, the permit is not actively being administered by the watermaster. The watermaster does not require a measuring device on the authorized point of diversion at this time.
3. The Department should remove the measuring device condition, thus making the permit conditions consistent with other similar permits issued to Idaho Falls School District # 91 for the same diversion rates and beneficial uses.

ORDER

IT IS HEREBY ORDERED that Conditions 3 and 4 listed on Permit 35-14139 relating to measuring devices and data loggers are waived. The Department and watermaster retain the authority to require the installation of measuring devices and data loggers if such devices are required in the future for proper administration of the water right.

Dated this 19th day of September, 2014.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of September 2014, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER GRANTING PETITION TO REMOVE MEASURING DEVICE CONDITION to the person(s) listed below:


Sharla Cox
Administrative Assistant

Idaho Falls School District # 91
c/o Dana Wood, Director of Operations
690 John Adams Parkway
Idaho Falls, ID 83401

Keith Wilson
Rocky Mountain Environmental Associates
482 Constitution
Idaho Falls, ID 83402

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.