

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

IN THE MATTER OF PERMIT NO. 63-31658	)	
IN THE NAME OF CAPITAL DEVELOPMENT	)	PRELIMINARY ORDER
INC	)	VOIDING PERMIT
_____	)	

This matter having come before the Idaho Department of Water Resources (IDWR) as a result of an investigation by IDWR to determine the extent of beneficial use of water, IDWR finds, concludes and orders:

FINDINGS OF FACT

1. On January 30, 2003, Capital Development, Inc., (Capital) applied to IDWR for an application for permit to appropriate 0.37 cubic feet per second to divert ground water for domestic use in the Baldwin Park Subdivision. The domestic use was irrigation associated with residences in the subdivision.
2. IDWR approved the application on June 23, 2003.
3. Capital filed proof of beneficial use for the permit on July 16, 2003.
4. IDWR personnel visited the place of use on May 21, 2013, to verify beneficial use developed under the permit in order to issue a water right license. There was no evidence of the permitted beneficial use.

CONCLUSIONS OF LAW

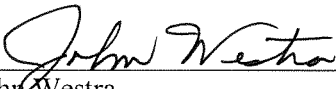
1. Idaho Code § 42-219(8) states:

In the event that the Department shall find that the applicant has not fully complied with the law and the conditions of the permit, it may issue a license for that portion of use which is in accordance with the permit, or may refuse issuance of a license and void the permit.
2. Development of the water as listed on the permit was a condition of the permit, and compliance with the condition was required prior to perfection of a water right.
3. The permit holder did not comply with the condition of the permit and also did not relinquish the permit.
4. A license should not be issued for this permit, and the permit should be voided pursuant to Idaho Code § 42-219(8).

ORDER

IT IS HEREBY ORDERED that issuance of a license is **REFUSED** and Permit No. 63-31658 is **VOIDED**.

Dated this 18th day of September, 2013



John Westra
Manager, Western Regional Office

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of SEPTEMBER, 2013, I mailed a true and correct copy of the foregoing Preliminary Order to the persons listed below:

CAPITAL DEVELOPMENT, INC.
6200 N MEEKER PLACE
BOISE, ID 83713

BALDWIN PARK NEIGHBORHOOD ASSN INC
C/O MIKE MADSEN -MGM MANAGEMENT LLC
660 WATERTOWER STE 100
MERIDIAN, ID 83642



Rachel Sommer
Administrative Specialist I



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 19, 2013

CAPITAL DEVELOPMENT INC
6200 N MEEKER PL
BOISE ID 83713

Re: Preliminary Order in the matter of Permit No. 63-31658

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the Department. It can and will become a final order without further action of the department unless a 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 208-334-2190.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Sumner". Below the signature, the word "for:" is written in a smaller, simpler script.

John Westra, Manager
Western Regional Office

Enclosures

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.