



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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February 2, 2012

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

GEORGE R SOULIER
JERI L SOULIER
1840 E FORK RD
WEISER, ID 83672-5572

PERMIT CONDITION MODIFICATION NOTICE

RE: Permit No. 67-14610

Dear Permit Holder(s):

Enclosed is an order removing the measuring device and lockable controlling works requirements which modifies permit condition nos. 4 and 5 to read:

"Upon specific notification by the department, 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."

"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."

Basis for modification of permit condition nos. 4 and 5 comes from a letter the department received on October 5, 2011, requesting a modification of permit condition nos. 4 and 5.

Also, 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 208-287-4945.

Sincerely,

A handwritten signature in black ink that reads "Darla Block". The signature is fluid and cursive, with the first name "Darla" and last name "Block" clearly distinguishable.

Darla Block
Technical Records Specialist

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2012 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: WATER RIGHT PERMIT NO. 67-14610

**GEORGE R SOULIER
JERI L SOULIER
1840 E FORK RD
WEISER, ID 83672-5572**

A handwritten signature in black ink, reading "Darla Block", written in a cursive style. The signature is positioned above 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.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	ORDER MODIFYING MEASURING
NO. 67-14610 IN THE NAME OF GEORGE	)	DEVICE AND LOCKABLE
R. AND/OR JERI L. SOULIER	)	CONTROLLING WORKS
_____	)	REQUIREMENT

This matter having come before the 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 October 17, 2005, the Department issued Permit 67-14610 (permit) to George R. and/or Jeri L. Soulier (permit holders).

2. Approval condition no. 4 of the permit reads:

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.

3. Approval condition no. 5 of the permit reads:

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.

4. On September 14, 2011, the Department received a proof of beneficial use statement submitted by the permit holder. Item no. 7 on the proof statement incorrectly indicated that installation of a measuring device and lockable controlling works was not a requirement of the permit.

5. On September 15, 2011, the Department acknowledged receipt of proof of beneficial use, and notified the permit holder of conditions of approval no. 4 and 5 and that a waiver from the requirements could be requested. The Department also stated that watermaster approval would be a requirement to consider a waiver.

6. On October 5, 2011, the watermaster of water district no. 67 contacted the Department by e-mail. She stated that the permit holders had been advised to contact her about waiving the requirement for installation of a measuring device and lockable controlling works. After meeting with the permit holders and examining the diversion works, she did not feel that a measuring device or lockable controlling works was necessary at this time, but that they may in the future. She recommended modifying conditions no. 4 and 5 to reflect the possible future need for installation of a measuring device and lockable controlling works.

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. The permit holders have requested a waiver from the requirement for installation of a measuring device and lockable controlling works by making the request through the watermaster of water district no. 67.
3. Installation of a measuring device and lockable controlling works is not necessary for administration of the diversion of water by the holder of permit 67-14610 at this time, but it may be necessary in the future.

ORDER

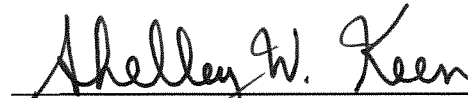
IT IS, THEREFORE, HEREBY ORDERED that approval condition of approval no. 4 on permit no. 67-14610 is **MODIFIED** as follows:

Upon specific notification by the department, 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.

IT IS, FURTHER, HEREBY ORDERED that approval condition of approval no. 5 on permit no. 67-14610 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 1st day of February, 2012.



Shelley W. Keen, Manager
Water Rights Section