



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

April 14, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

DOUGLAS MASTALER
332 RIDGE DR
MC CALL ID 83638

PROOF ACKNOWLEDGEMENT LETTER

RE: PERMIT NO. 78-12138

Dear Mr. Mastaler:

The accompanying order is a "preliminary order" issued by the Department pursuant to §67-5243, *Idaho Code*. 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.

The Department acknowledges receipt of the Proof of Beneficial form (proof), the license examination fee, and the request for waiver of the measuring device requirement for the above-referenced water right permit. The enclosed preliminary order reinstates the permit and advances the priority of the permit because the proof and the license examination fee were submitted after the proof deadline as provided in §42-218a(2), *Idaho Code*.

Secondly, the preliminary order grants the waiver/deferral of the measuring device requirement. However, it may be required at some point in the future that you install and maintain a staff gage as a means to measure the reservoir level on a constant basis.

It is the Department's understanding that your pond sits "on stream" and water flows naturally into your pond filling it in the spring time. This is acceptable, but later in the year, as the run-off diminishes, the Department needs to make sure the pond is not re-filling to replenish evaporation and seepage losses when water is needed by downstream water users senior in priority.

The next step in the process of developing a water right is for the Department to conduct a field examination to determine and confirm the use being made of the water according to the conditions of the permit.

Be advised that §42-248, *Idaho Code*, requires you as the owner of a water right to maintain current ownership and address records on file with the Department. For your information, forms to file a change of ownership of a water right, or a change in the address of the water right owner are available from any Department office or from the Department's website: www.idwr.idaho.gov.

If you have any questions, about the field examination, please contact either the Western Regional Office or me at (208) 287-4944.

Sincerely,

A handwritten signature in black ink, appearing to read "Cherie Padilla". The signature is fluid and cursive, with the first name "Cherie" written in a larger, more prominent script than the last name "Padilla".

Cherie Padilla, Water Resource Agent
Water Allocation Bureau

Enclosures

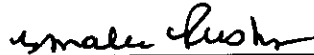
CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2008 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER to the person listed below:

RE: PERMIT NO.

78-12138

**DOUGLAS MASTALER
3352 RIDGE DR
MC CALL ID 83638**

A handwritten signature in cursive script, appearing to read "Emalee Rushing", is written above a horizontal line.

**Emalee Rushing
Office Services Supervisor**

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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 issuance 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.