

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT)
NO. 78-12138 IN THE NAME OF)
DOUGLAS MASTALER)
_____)

**ORDER REINSTATING PERMIT
AND MODIFYING CONDITION OF
APPROVAL**

This matter having come before the Department of Water Resources (Department) as a petition to reinstate a permit to appropriate water, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On December 26, 2001, the Department issued Permit No. 78-12138 (permit) in the name of Douglas Mastaler (permit holder) authorizing the development of a right to store up to 0.5 acre feet from an unnamed stream within the SE¼SE¼NE¼, Section 2, Township 18N, Range 2E, B. M., Adams County for aesthetic and wildlife storage. The Department approved the permit with the following measuring device condition:

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.

2. On October 31, 2004, the Department notified the permit holder by certified mail that Proof of Beneficial Use (proof) was due and requested that either a proof form or a Request for Extension of time (extension) application be submitted by January 1, 2005.

3. On December 21, 2004, the permit holder submitted an extension form requesting an extension until January 1, 2008. On January 13, 2005, the Department granted the request based on evidence of due diligence.

4. On October 31, 2007, the Department notified the permit holder by certified mail that proof was due and requested that either a proof form or an extension application be submitted by January 1, 2008.

5. On January 8, 2008, the Department sent the permit holder a lapse notice by certified mail.

6. On February 29, 2008, the Department received the permit holder's proof form with a written request asking the Department to waive the measuring device condition "due to the dispersed nature of the inflow to the pond" and "this pond is filled by an unnamed stream (ditch) and runoff through the meadow thus there is no single collection point that can be measured."

7. On April 8, 2008, the watermaster of Water District #78C informed the Department that a measuring device is not needed to regulate the storage of water in connection with this permit at this time.

CONCLUSIONS OF LAW

1. Section 42-218a, *Idaho Code*, provides that the Department may reinstate a permit upon a showing of reasonable cause by the permit holder within 60 days of the date of notice of lapsing with the priority date advanced a time equal to the number of days that the proof was received by the Department.
2. The permit holder has provided a reasonable showing why the permit should be reinstated by submitting an acceptable Proof of Beneficial Use.
3. The Department should to waive the measuring device(s) requirement and retain jurisdiction to require the installation of a staff gage in the future or other measuring device in the future.
4. The Department should reinstate permit 78-12138 with a priority date of July 22, 2001.

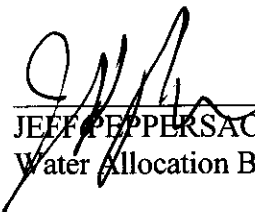
ORDER

IT IS, HEREBY ORDERED that the condition of approval requiring the installation of a measuring device for Permit 78-12138 is **MODIFIED** as follows:

Upon specific notification by the Department, in the future, the right holder shall permanently install and maintain a staff gage to provide a means to measure the reservoir level on a constant basis and/or lockable controlling works on the outlet from the reservoir.

IT IS, FURTHER HEREBY ORDERED that Permit No. 78-12138 is **REINSTATED** with the date of priority advanced to July 22, 2001.

Dated this 14th day of April, 2008.



JEFF PEPPERSACK, Bureau Chief
Water Allocation Bureau