

## ADMINISTRATOR'S MEMORANDUM

(SUPERSEDES MISCELLANEOUS NO. 12 DATED SEPTEMBER 16, 2003)

### Miscellaneous Memorandum #12

**TO: Idaho Department of Water Resources Staff, Water District Watermasters, and Water Measurement District Hydrographers**

**FROM: Mat Weaver, Deputy Director**



**DATE: October 20, 2020**

**RE: ENTRY UPON PRIVATE LAND FOR INSPECTIONS, INVESTIGATIONS, SURVEYS, AND OTHER DUTIES REQUIRED OR AUTHORIZED BY LAW**

**This memorandum does not apply to Tribal land or US Military installations or land. Entry upon such land may only occur under specific authorization by the respective land-owning authorities.**

#### Introduction

The Idaho Department of Water Resources (IDWR) manages various programs that require entry upon private land to conduct inspections, make investigations, collect data, and administer the delivery of water. This memorandum (memo) contains guidelines and requirements for individuals who must enter private land in the performance of their official duties. Individuals (collectively referenced as staff) authorized by statute to make *reasonable* entry upon any lands in the state for the purposes noted above are:

- the director and/or employees of IDWR;
- any watermaster and any watermaster's assistant appointed by IDWR pursuant to Title 42, Chapter 6, Idaho Code; and
- any hydrographer and any hydrographer's assistant appointed by IDWR pursuant to Title 42, Chapter 7, Idaho Code.

This memo emphasizes safety and respectful communication between staff and Idaho's private landowners. Although not required by statute, giving advance notice, or obtaining permission from a landowner, or their agent prior to entering private land are practices that promote staff safety and good public relations.

Private landowners are becoming increasingly sensitive to trespassing, particularly during hunting season. Staff should not assume that all landowners are aware of (or agree with) the statutory exemptions referenced in this memo. Some familiarity with Idaho trespass laws can help staff understand these sensitivities from the landowner's perspective. Staff can review current trespass

laws (Title 18, Chapter 70, Idaho Code) at the Legislative Services website. Following the guidelines and requirements below can help staff avoid unnecessary conflict with landowners.

## **Private Land Entry Guidelines and Requirements**

### *Guidelines*

- Assume land is private unless confirmed otherwise.
- Make a reasonable effort to provide advance notice or obtain permission from the owner or agent prior to entering private land.
- Invite the owner or agent to be present during beneficial use field examinations or other inspections.
- Strive to build trusting relationships with owners and agents by exercising good judgment, thorough communication, and respect.
- Wear Hi-Visibility outer clothing such as vests, hats or jackets. Variations of yellow, green, or a similar color (e.g., chartreuse) is preferred over hunter orange.

### *Requirements*

- Only enter private land in the performance of your official duties.
- Follow field safety guidelines adopted by IDWR. The current guidelines are located here: <http://wenet/files/library/Field-Safety-Guidelines.pdf>.
- Accommodate any specific conditions of entry expressed by the owner or agent.
- Carry and display appropriate identification including IDWR business cards or an IDWR issued photo ID badge.
- Avoid confrontation with owners or agents.
- Refrain from asserting legal authority to enter private land.
- Do not enter or disturb any residence, building, vehicle, equipment, or other personal property without permission or invitation from the owner or agent. Staff may access structures, covers, or sheds that house pumping or water diversion equipment if part of their work duties.
- Use existing roads for access unless otherwise allowed by the owner or agent.
- Do not turn on or off, adjust, or modify any pumping, diversion, measurement or other privately owned equipment. *Only appointed watermasters and watermaster assistants may regulate, adjust, close, and lock headgates and controlling works.*
- Leave things as you found them: close all gates, doors or covers you open, and return any other protective equipment or insulation to the original position.
- Respectfully comply with any requests from the property owner or agent to leave their private property.
- Consult IDWR management if an owner or agent refuses access to private property to determine next steps when access is necessary to conduct or complete IDWR business.

## **Investigations Associated with Unauthorized Activities**

If there is a need to enter private land prior to contacting the owner or agent, staff must discuss

and coordinate such entry with IDWR management. Thorough in-house or remote investigation is a good strategy to reduce the need to enter private land without owner or agent permission. Staff entering private land to investigate unauthorized activities should adhere to the requirements noted above.

### **Routine Site Visits and Inspections**

For the following reasons, staff routinely enter private land with or without advance notice or permission when:

- collecting information about points of diversion or places of use;
- measuring water or collecting measurement data;
- accessing wells, pumps, or required flow meters not housed in a building;
- conducting inspections associated with the construction, modification or decommissioning of wells; and
- conducting inspections associated with stream channel alterations or dredge mining activities.

Staff are not required to make additional contact with the owner or agent to continue existing, routine monitoring programs when prior arrangements are in place. Staff conducting routine site visits and inspections should adhere to the requirements noted above.

### **Area Specific Inspections or Inventories**

Staff should give written notice prior to conducting inventories, or similar activities in newly created or proposed administrative areas, such as water districts or water measurement districts where multiple staff will support such effort. Notify affected landowners by regular mail and/or a press release noting: a) the purpose and scope of the work; b) the timeframe and dates the work will occur; c) a sufficient description or map identifying the geographic location of the work; and d) relevant contact information for IDWR staff or management involved with the project.

### **Additional Considerations**

#### *Plant and animal disease*

Staff should be aware of risks associated with spreading animal disease (such as hoof and mouth disease) and plant diseases (such as late blight). Proper sanitization of equipment, boots, and clothing may be necessary in areas where an outbreak has occurred. Do not enter feedlots, milking barns, or row crop fields without concurrence from the owner.

### **Statutory References**

The laws referenced below shelter staff from trespass citation or prosecution only when acting in their official capacity carrying out the duties imposed by law.

Idaho Code § 42-1701(5) states “[t]he director and/or employees of the department of water resources may make reasonable entry upon any lands in the state for the purpose of making investigations and surveys, or for other purposes necessary to carry out the duties imposed by

law.”

Idaho Code § 42-709(3) authorizes water measurement district hydrographers and their assistants to “make reasonable entry upon any lands in the state for the purpose of making water measurements or in direct support of making water measurements.”

Idaho Code § 42-237a(d) authorizes the director in administering and enforcing the provisions of the Ground Water Act to “go upon all lands, both public and private, for the purpose of inspecting wells, pumps, casings, pipes, and fittings, including wells used or claimed to be used for domestic purposes.”

Idaho Code § 42-1410(2) authorizes the director and other employees of the department while investigating a claim in a general adjudication “to go upon all lands, both public and private, for the purpose of investigating the uses of water from any water source.”