



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

January 15, 2010

Idaho Water Resource Board
P.O. Box 83720
Boise, ID 83720 0098

RE: Permit No.96-9395

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

The date shown under condition no. 7 of the Preliminary Order is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

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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) 762-2800.

Sincerely,



Keith E. Franklin

Sr. Water Resources Agent

Enclosure(s)

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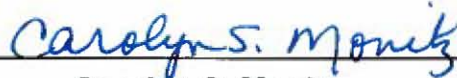
CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2010 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

96-9395

**Idaho Water Resource Board
P.O. Box 83720
Boise, ID 83720 0098**



**Carolyn S. Monitz
Technical Records Clerk**

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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.

IN THE MATTER OF APPLICATION FOR)
 PERMIT NO. 96-9395 IN THE NAME OF)
 THE IDAHO WATER RESOURCE BOARD TO) PRELIMINARY ORDER
 ESTABLISH A MINIMUM LAKE LEVEL IN)
 COCOLALLA LAKE)

5. The mean sea level elevation of the proposed lake level was determined by use of Global Positioning survey equipment; however some uncertainty exists as to the accuracy of the data.

6. The lake level elevation sought corresponds to a height of 4.24 feet on a staff gage located on a bridge at the northern end of the lake.

7. The highest recorded level of Cocolalla Lake was 2211.53 feet msl on March 14, 2007.

8. Outflow from the lake ceases at a lake stage of 2207.53 feet msl or 0.24 feet below the requested minimum lake level.

9. There are 34 recorded water right filings, with diversion rates totaling 1.62 cubic feet per second, on Cocolalla Lake that are prior in time to 96-9395.

10. Cocolalla Lake is listed by the Idaho Department of Environmental Quality as an impaired water body. Maintenance of a minimum lake level will help prevent further deterioration of water quality in the lake.

11. The Idaho Department of Fish and Game has made extensive plantings of numerous species of fish in Cocolalla Lake in the past 40 years.

12. Public access to the lake is provided for at a boat launch and campground located on the north-eastern corner of the lake.

13. The bed of Cocolalla Lake is owned by the State of Idaho.

CONCLUSIONS OF LAW

1. Section 42-1501, Idaho Code, provides that the preservation of stream flows or lake levels for aesthetics water quality and/or recreational purposes when made pursuant to chapter 15, title 42, Idaho Code, is in the public interest and is declared to be a beneficial use of such water.

2. Section 42-1502, Idaho Code defines minimum stream flow as follows:

(f) "Minimum stream flow" means the minimum flow of water in cubic feet per second of time or minimum lake level in feet above mean sea level required to protect the fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of a stream in the public interest;

(emphasis added)

3. Section 42-1503, Idaho Code, sets forth the criteria to be considered by the Department in reviewing an application for minimum lake level:

... Upon the conclusion of the hearings and completion of any investigation conducted by the director, he shall enter his findings, in writing, approving the application in whole, or in part, or upon conditions or rejecting said application. Approval of any such

application must be based upon a finding that such appropriation of minimum stream flow:

- (a) will not interfere with any vested water right, permit, or water right application with priority of right dated earlier than the date of receipt in the office of the director of a complete application for appropriation of minimum stream flow filed under the provisions of this act;
 - (b) is in the public, as opposed to the private, interest;
 - (c) is necessary for the preservation of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of the stream;
 - (d) is the minimum flow or lake level and not the ideal or most desirable flow or lake level; and
 - (e) is capable of being maintained as evidenced by records of stream flows and water levels and the existing and future establishment of necessary gaging stations and bench marks.
4. Any right to be acquired under this application is for in-lake non-consumptive use and is subject to all vested water rights, permits or water right applications having dates of priority earlier than July 21, 2008.
5. The proposed minimum lake level appropriation is necessary to preserve aesthetics, water quality and recreational uses in Cocolalla Lake.
6. The minimum lake level is in the interest of the public as opposed to the private interest.
7. A minimum lake level of 2207.77 feet above sea level from January 1 through December 31 is a true minimum lake level, and is not the optimum level for full preservation of aesthetics water quality and recreational uses.
8. The proposed minimum lake level appears to be capable of being maintained. The department should require the permit holder to monitor water level during the period of the permit to further substantiate that the minimum lake level is capable of being maintained.
9. A limited amount of additional use for domestic and stockwater purposes within the Cocolalla basin is anticipated and should not be prevented by the establishment of a minimum lake level. Such uses will not adversely affect the public values for which the minimum lake level is sought.

ORDER

IT IS HEREBY ORDERED that application for permit no. 96-9395 is APPROVED establishing a minimum lake level for Cocolalla Lake of 2207.77 feet above sea level. The application is approved subject to the following conditions:

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