



State of Idaho
DEPARTMENT OF WATER RESOURCES

322 E Front St, Ste. 648 • PO Box 83720 • Boise ID 83720 • www.idwr.idaho.gov
P: (208) 287-4800 • F: (208) 287-6700 • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

February 20, 2020

«Current_Owner»
«StreetAddress»
«City» «StateCode» «PostalCode»

Re: Order Denying Petitions for Reconsideration of the Preliminary Order Amending Measuring Device Installation Dates

Dear Water User:

The Idaho Department of Water Resources (“IDWR”) has issued the enclosed *Order Denying Petitions for Reconsideration* (“Order”) of the *Preliminary Order Amending Measuring Device Installation Dates* (“Preliminary Order”) In the Matter of Requiring Measuring Devices for Ground Water Diversions in the Malad Valley Water Measurement District. Any party may file written exceptions to any part of the Preliminary Order as explained in the enclosed information sheet.

This letter and a copy of the attached Order has been sent to all persons who signed petitions for reconsideration of the Preliminary Order.

Respectfully,

A handwritten signature in black ink, appearing to read 'Tim Luke', is written over a white background.

Tim Luke
Water Compliance Bureau Chief

C: IDWR Eastern Region

Encl.: *Order Denying Petition for Reconsideration*
Explanatory Information to Accompany an Order Denying Petition for Reconsideration

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF REQUIRING)	
MEASURING DEVICES FOR GROUND)	ORDER DENYING PETITIONS
WATER DIVERSIONS IN THE MALAD)	FOR RECONSIDERATION
VALLEY WATER MEASUREMENT)	
<u>DISTRICT</u>)	

This matter comes before the Idaho Department of Water Resources ("Department" or "IDWR") as petitions for reconsideration of the Department's *Preliminary Order Amending Measuring Device Installation Dates* ("Preliminary Order") related to the docket titled In the Matter of Requiring Measuring Devices for Ground Water Diversions in the Malad Valley Water Measurement District. The Preliminary Order, served by mail on January 24, 2020, extends the deadlines for installing measuring devices on ground water wells in the Malad Valley from 2021 to 2022. *Preliminary Order* at 2.

The Department received a petition for reconsideration signed by nine affected water users from the Malad Valley Water Measurement District ("MVWMD") on February 6, 2018. The Department received three additional petitions on February 7, 2020, each identical to the petition received on February 6, and signed by a total of 22 affected MVWMD water users. The various identical petitions for reconsideration will be referred to as "the Petitions" in this order. The parties filing petitions for reconsideration will be collectively referred to as "the Petitioners" in this order.

The Petitioners ask the Department to postpone the measuring device deadline established in the Preliminary Order to 2030 to allow time for area ground water users "to compile more data and assist and work with IDWR in supplying more wells for IDWR to measure." *Petitions* at 1 et seq. The Petitioners further ask the Department to allow area ground water users in 2030 "to vote and decide if the majority of users would like to install the meters and/or measuring devices, or if the work [the users have] done will suffice in enough data to protect [their] water." *Id.*

Postponement of Measuring Device Deadline from 2022 to 2030

The Petitioners ask to extend the deadline stated in the Preliminary Order to install measuring devices on wells from 2022 to 2030 so that ground water users can compile more data and supply more wells for the Department to measure. *Id.* However, the Petitioners fail to explain the type of data they will compile over the next ten years. It appears Petitioners propose only the additional collection of ground water level data from an expanded well monitoring network. The Petitioners' interest in working with the Department to supply additional wells for an expanded monitoring network is both necessary and admirable. However, limiting data collection in the Malad Valley to an expanded network of ground water level monitoring wells is inconsistent with management strategies established by the *Final Malad Valley Ground Water Management Plan* ("Management Plan"). *See Order Approving Ground Water Management Plan*, In the Matter of

Management of Ground Water Within the Malad Valley Ground Water Management Area (Nov. 3, 2017).

One of the stated goals of the Management Plan is to “increase the hydrologic data set for the Malad Valley, through the monitoring of ground water levels, stream flows, and annual diversion volumes. *Management Plan* at 3. Further, the Management Plan states, in pertinent part:

The absence of reliable diversion data for Malad Valley makes it difficult to know whether annual ground water diversion volumes exceed annual recharge rates for the regional aquifer. In order to understand the hydrology of the basin, all water uses in the basin must be identified and quantified. Further, water users must install adequate measuring devices to track the annual diversion volumes.

Management Plan at 8.

The Management Plan further states:

The Temporary Moratorium, issued by the Department on November 4, 2015, should be reissued as a new five-year temporary moratorium to allow for the collection of additional data. The extension of the temporary moratorium is based on the good faith efforts of the water users in the Malad Valley. The data collected will be used to determine whether the temporary moratorium should be extended beyond five years.

Id.

Limiting data collection in the Malad Valley to an expanded network of ground water level monitoring wells is also inconsistent with the Department’s *Order Extending the Temporary Moratorium, In the Matter of the Malad Valley Ground Water Management Area* (Nov. 3, 2017) (“Moratorium Order”). Specifically, the Moratorium Order requires “that before this moratorium expires, the Department shall review *all available data* ... to evaluate the benefits and need for continuation of the moratorium” (emphasis added). *Moratorium Order* at 2.

Limiting the collection of hydrologic data to only ground water level measurements ignores other components of the basin water budget, including ground water use, and would result in a deficient water budget that would prevent a full understanding of basin hydrology. Ground water level data alone will not be adequate to determine whether ground water withdrawals exceed average annual recharge rates for the aquifer and determine whether the Department should extend the temporary moratorium in future years.

Request to Determine Need for Measuring Devices by Popular Vote

The Petitioners request a majority, or popular, vote at the end of their proposed ten year measuring device extension period to decide whether they will want to install measuring devices at that time. The Petionters’ request is not within a public water users authority to determine.

Idaho Code § 42-701(1) states, in pertinent part:

The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. . . . Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device . . . for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water.

Idaho Code § 42-233b states, in pertinent part:

The director may require all water right holders within a designated water management area to report withdrawals of ground water and other necessary information for the purpose of assisting him in determining available ground water supplies and their usage.

According to Idaho Code §§ 42-233b and 42-701(1), the Director has exclusive authority to require water users to install and maintain measuring devices from wells to assist in determining water use and the amount of ground water supply within a ground water management area. Idaho law does not currently include a mechanism for water users to decide whether they want to install measuring devices through a popular vote or general election ballot item. The Petitioners' request for a future vote is not a legally recognized action under Idaho law.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the petitions for reconsideration filed in this matter on February 6 and February 7, 2020, are DENIED.

Dated this 19 day of February, 2020.




MAT WEAVER
Deputy Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February 2020, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho and www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

Documents served: **In the Matter of Requiring Measuring Devices for Ground Water Diversions in the Malad Valley Water Measurement District: Order Denying Petitions for Reconsideration**



Sarah Shaul
Technical Records Specialist
Idaho Department of Water Resources

EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief in support of the party's position on any issue in the proceeding with the Director. Otherwise, the preliminary order will become a final order of the agency.

If any party files an exception and/or brief, opposing parties shall have fourteen (14) days to respond to the exception and/or brief. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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 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.

ALDER, JEFF; ALDER, LOGAN
2154 S OLD HIGHWAY 191
MALAD CITY ID 83252-6564

BLAISDELL, BRETT R
685 N 5400 W
MALAD ID 83252

BLAISDELL, DEAN
5440 W 1000 N
MALAD ID 83252

BLAISDELL, DEAN
2652 SOUTH 2400 WEST
MALAD ID 83252

BLAISDELL, JOHN B
2652 SOUTH 2400 WEST
MALAD CITY ID 83252

BLAISDELL, RON T
3849 W 1000 N
MALAD ID 83252

BRIGGS, LOYD W
410 N 2100 W
MALAD CITY ID 83252

DANIELS, TOD F
610 N 500 W
MALAD ID 83252

HANNUM, OLIN
8001 S OLD HWY 191
MALAD ID 83252

JENSEN, ANTON
99 N 4400 W
MALAD CITY ID 83252-2100

JOE ANN JENKINS TRUST
2121 S 5400 W
MALAD ID 83252

JOHN, MARK D
415 N 3100 W
MALAD CITY ID 83252

JONES, DAVID P
5705 S OLD HWY 191
MALAD ID 83252

JONES, EDWARD RAY
2161 S 1100 W
MALAD ID 83252

JONES, TERREL W
3161 S 1100 W
MALAD ID 83252

KEETCH, CHET
3450 W 2800 N
MALAD CITY ID 83252-6683

MC CLELLAN, MARLA
1331 N 2100 W
MALAD CITY ID 83252

MOON, RODNEY K
2252 W HWY 38
MALAD CITY ID 83252

NIELSEN, ELDEN D
930 W SAMARIA LN
MALAD CITY ID 83252

NIELSEN, KIRK; SHAW, JACLYN
2112 W CENTER
MALAD CITY ID 83252-6610

PAUL HUBBARD FARMS LLC
789 W HWY 38
MALAD ID 83252

POTTER RANCHES
C/O BRYAN POTTER
3899 S 1100 W
MALAD ID 83252

POTTER, BRANCE
3300 S 1100 W
MALAD CITY ID 83252

ROSE, BRETT A
3400 W 2800 N
MALAD ID 83252

TALBOT, DAVID D
1444 N 3400 W
MALAD ID 83252

THORPE, DOUGLAS
785 S 5400 W
MALAD ID 83252

TUBBS, AUSTIN
5830 W 2500 N
MALAD CITY ID 83252

VAN BEBBER, BRIAN
1592 N 3400 W
MALAD CITY ID 83252-6521

VAN BEBBER, RICHARD JASON
3740 S OLD HIGHWAY 191
MALAD CITY ID 83252-6565

WEEKS, BILL
1800 N 3400 W
MALAD ID 83252

WILLSON, DERIC
30 W 90 S
MALAD ID 83252