

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

IN THE MATTER OF PERMIT NO. 95-17306	)	PRELIMINARY ORDER
IN THE NAME OF	)	REINSTATING A PERMIT
DONALD MITCHELL ASCHINGER	)	
_____	)	

This matter having come before the Idaho Department of Water Resources (“Department”), the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On June 9, 2017, the Department issued Permit No. 95-17306 (“Permit”) in the name of Donald N. Aschinger (“Original Owner”) authorizing the diversion of 3.7 acre feet of surface water for wildlife storage, stockwater storage, recreation storage, and fire protection storage uses in the NW¼NE¼ of Section 15 of Township 46 North, Range 04 West, B.M., Benewah County. A condition of permit approval required the Original Owner to submit proof of beneficial use of water to the Department on or before June 1, 2018.
2. On March 30, 2018, the Department notified the Original Owner by certified mail that proof of beneficial use was due and instructed the Original Owner of the steps to be taken to submit a *Statement of Completion for Submitting Proof of Beneficial Use* (“Proof”), or a *Request for Extension of Time* (“Extension Request”).
3. On May 31, 2018, the Original Owner filed an Extension Request for an additional five years to submit proof of beneficial use for the Permit. The Department approved this Extension Request based on reasonable diligence and good cause. The approved Extension Request established a new proof of beneficial use due date of June 1, 2022.
4. On June 1, 2022, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
5. On June 8, 2022, the Department notified the Original Owner the Permit lapsed because no Proof or Extension Request had been received.
6. On June 22, 2022, Donald Mitchell Aschinger filed an acceptable Proof on behalf of the Original Owner.
7. On July 18, 2022, the Department received an *Assignment of Permit to Change Ownership of a Permit* assigning the Permit from Donald N. Aschinger to Donald Mitchell Aschinger (“Permit Holder”).

CONCLUSIONS OF LAW

Idaho Code § 42-218a(1) states, in pertinent part:

A permit upon which the proof of beneficial use..., has not been submitted, or a request for extension of time has not been received on or before the date set for such proof or incremental statement, shall lapse and be of no further force nor effect... . Notice of said lapsing shall be sent by the department to the permit holder at the address of record by regular mail.

Idaho Code § 42-218a(2) states, in pertinent part:

Within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

By submitting an acceptable Proof, the Permit Holder has shown reasonable cause why this Permit should be reinstated. The Permit should be reinstated based upon the June 22, 2022 filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 95-17306 is **REINSTATED** and the Permit's priority date is advanced to May 19, 2017.

DATED this 2nd day of August, 2022.



Shelley W. Keen, Chief
Water Allocation Bureau

RECEIVED

JUL 18 2022

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

ASSIGNMENT OF PERMIT

To change the ownership of a permit

\$25 fee per permit

Received by

Receipt amt. \$

Receipt no.

Date _____

I, Donald N. Aschinger, hereby assign to Donald Mitchell Aschinger
Current owner(s) New owner(s)
of, 125 Greenway St, Fredericksburg, VA 22405 540-621-5120
New owner's address including city, state and ZIP Phone

All my right, title, and interest in and to Permit No(s): 95-170306 to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to Permit Number(s):

_____, to appropriate the public waters of the State of Idaho.

Describe in detail the portion of the permit assigned, listing the number of acres in each 40 acre subdivision, point of diversion location, and amount of the water in cubic feet per second.

Does the new permit holder own the property at the:

Point of diversion? ☒ Yes ☐ No

Place of use? ☒ Yes ☐ No

If no, describe the arrangement enabling the new owner to access the point of diversion and/or the place of use:

Dated this 11 day of June, 2022

Permit holder	Title (if applicable)	Permit holder	Title (if applicable)

State of ~~Idaho~~ VIRGINIA)

County of STAFFORD

On this 13 day of July, 2022, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he/she/they executed the same.

SEAL

Notary Public

My commission expires: DEC 31, 2025

NARCISA PADLAN ADKINS
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES DEC. 31, 2025
COMMISSION # 7746903

JUN 22 2022

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
STATEMENT OF COMPLETION
FOR SUBMITTING PROOF OF BENEFICIAL USE**FOR OFFICE USE ONLY**
Amt. of Fee \$ 50.00
Receipt No. C113147
Received By KA
Date Received 6.22.22

The Idaho Department of Water Resources (Department) considers this form a statement that the permit holder(s) applied water to beneficial use and completed development of a water right to the extent described below. **This form must be accompanied by an examination fee, when necessary, or by a completed Beneficial Use Field Report prepared by a certified water right examiner (CWRE).** Please refer to the instructions and fee schedule for this form. If ownership of the permit has changed, complete an Assignment of Permit form. If you wish to relinquish your permit because you have not established the authorized water use and are not applying for an extension, please notify the Department in writing.

1. Permit No. 95-17306 Name of Permit Holder(s) Donald Mitchell Aschinger
Telephone No. 540-621-5120 Email aschingerdm@gmail.com
Mailing Address 125 Greenway St City Fredericksburg State VA Zip 22405

2. Source of Water Spring fed pond If Ground Water (well), Date Drilled mo. ____ / yr. ____

Drilling Permit/Tag No. ____ Drilling Company's Name ____

3. Extent of use(s) completed as authorized by the water right permit:

Domestic (No. households) ____ Irrigation (No. acres) ____ Stockwater (No. and stock type) Up to 5 cows

Other ____

4. Total diversion rate or volume (storage only) for which proof is submitted ____ cfs OR ____ af
If the total developed water use is 5 acres of irrigation or less, is stockwater storage of 14.6 acre-feet or less, or has a diversion rate of less than 0.24 cfs, attach a map of the place of use and point of diversion and photographs showing beneficial use.

5. Describe the diversion and delivery system from the water source to the use (pump, lift, irrigation method, etc.)
The pond is spring fed.

6. Permit condition compliance. Refer to the permit approval conditions and check all the items required, then check "Yes" or "No" to indicate whether the required items were established, submitted, and/or installed:

Required? Yes No (If "Yes", attach required data, evidence of compliance, or evidence of installation)

- | | | |
|--------------------------|-------------------------------------|---|
| ☐ | ☒ | Ground water level data, pumping information, or other diversion data |
| ☐ | ☒ | Mitigation plan |
| ☐ | ☒ | Lockable controlling works |
| ☐ | ☒ | Measuring device |
| ☐ | ☒ | Fish screen |
| ☐ | ☒ | Other requirements of the water right permit ____ |
| ☐ | ☒ | Reasonably Anticipated Future Needs ("RAFN") Municipal use |

If RAFN Municipal use, additional increment of beneficial use developed? ☐ Yes (attach CWRE report) ☐ No

7. Fee Enclosed \$ \$50.00 or ☐ CWRE field report attached or ☐ No fee required
See fee schedule on page 3 of the instructions. Proof statements filed without an appropriate fee are incomplete.

8. Person to contact to accompany a Department representative during the field examination of the water system:

Name: D. Mitchell Aschinger Telephone No. 540-621-5120 Email aschingerdm@gmail.com
Mailing Address 125 Greenway St City Fredericksburg State VA Zip 22405

The information given on this form is my true statement of the extent to which the above numbered permit has been developed and water has been diverted and applied to beneficial use. I understand that any undeveloped portion of the permit is relinquished to the State of Idaho.

[Signature] Donald Mitchell Aschinger 6-1-22
SIGNATURE OF PERMIT HOLDER* PRINTED NAME AND TITLE DATE

*Attach power of attorney if completing on behalf of permit holder.



RECEIVED

JUN 22 2022

DEPARTMENT OF
WATER RESOURCES

Filed: 07/15/2021 10:53:48 MT
First Judicial District, Benewah County
Deanna Bramblett, Clerk of the Court
By: Deputy Clerk - Weaver, Sheena

Rebecca R. Eyman
COYLE & EYMAN ELDER LAW
P.O. Box 1888
Coeur d'Alene, ID 83816-1888
Telephone: (208) 765-3595
Facsimile: (208) 765-0515
Email: rebecca@cwelp.com
Service email: fax@cwelp.com

ISB No. 10353

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

IN THE MATTER OF THE GUARDIANSHIP
AND/OR CONSERVATORSHIP OF

Case No. CV05-21-0243

Donald Nolan Aschinger
An incapacitated/protected person

LETTERS OF CO-GUARDIANSHIP
AND CO-CONSERVATORSHIP

Merry Christie Aschinger and Donald Mitchell Aschinger were duly appointed co-guardians and qualified as co-guardians of the above- named Incapacitated person by the court.

Merry Christie Aschinger and Donald Mitchell Aschinger were duly appointed and qualified as co-conservators of the above- named protected person by the court.

These letters are issued to evidence the appointment, qualification, and authority of the said co-guardians and co-conservators.

Either co-guardian or co-conservator has the authority to exercise the authority of a guardian or conservator independently of the other.

CLERK'S CERTIFICATE OF DELIVERY

I hereby certify that on 7/15/2021 9:54:03 AM, a true and correct copy of the foregoing document was: ☒ mailed by first class mail, postage prepaid; ☒ emailed, ☐ faxed, ☐ hand delivered to:

ATTORNEY FOR PETITIONERS

Rebecca R. Eyman
Coyle & Eyman Elder Law
Service email: fax@cwelp.com

ADULT CHILDREN OF PROTECTED PERSON

Heather Elizabeth Aschinger
315 S Union St, Apt 412
Kokomo, IN 46901

Vincent Patrick Aschinger
47532 ICC PO Box 70010
Boise, ID 83707

ATTORNEY FOR PROTECTED PERSON

Corey Smith
Cusack Law Office
Service email: corey@mcusacklaw.com

CLERK OF THE DISTRICT COURT

By: SW
Deputy Clerk

STATE OF IDAHO } ss
COUNTY OF BENEWAH }

This is to certify that the foregoing is a true copy of the original now on file or record in the office.

DATED

7/15/2021 9:59:34 AM

Deanna Bramblett, Clerk of the District

By: Sharon Weaver
Deputy





IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098

Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

August 5, 2022

DONALD MITCHELL ASCHINGER
125 GREENWAY ST
FREDERICKSBURG VA 22405-2739

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 95-17306

Dear Permit Holder:

The Department acknowledges receipt of the Proof of Beneficial Use form ("proof") and license examination fee for the above-referenced water right permit. Enclosed is an order that reinstates this permit since proof and the license examination fee were submitted after the proof deadline. Please note that the priority date for this permit has been advanced to **May 19, 2017**, pursuant to Idaho Code § 42-218a(2).

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.

Please be advised that Idaho Code § 42-248, requires you or the owner of this water right to maintain current ownership and address records on file with the Department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any Department office or at the Department's website at www.idwr.idaho.gov.

If you have any questions concerning this permit, please contact the State Office of the Department located in Boise at (208) 287-4800.

Sincerely,

Debbi Judd

Technical Records Specialist

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on **August 5, 2022** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER REINSTATING A PERMIT**) to the person listed below:

RE: Preliminary Order in the Matter of Permit No. **95-17306**

DONALD MITCHELL ASCHINGER
125 GREENWAY ST
FREDERICKSBURG VA 22405-2739



Debbi Judd

Technical Records Specialist

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(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 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.

Jun 1, 2022

Idaho Department of Water Resources
322 E Front St., Suite 648
Bosie Idaho 83720

RECEIVED

JUN 22 2022

DEPARTMENT OF
WATER RESOURCES

D. Mitchell Aschinger
125 Greenway St.
Fredericksburg, VA 224054

RE: Permit No. 95-17306

Ms. Judd

I spoke with Michelle on the phone today. She asked me to provide you with this letter explaining my situation, a Statement of Completion form, an Assignment of Permit form to transfer ownership from my father to me, and my Conservatorship letter for my Dad from the court.

Background: Last year, I purchased my parent's property at 134 Agte Rd, Plummer, Idaho, to fund their care at Pinehurst Senior Living Facility. Initially, we planned to sell the property, but my wife and I decided to keep it for now. The property (see photo) is 20 acres with a ranch-style house, a barn, a carport, and a chicken coop. It has a small spring-fed pond and a well. The well is shared with our neighbor. The pond is spring-fed, and My father had requested a permit to use the pond for cows and possibly fish. He didn't make any improvements to the pond or use it for stock. If we buy cows someday, I would like to license the pond for stock water. We have no intention of putting fish in the pond.

Additionally, my father has dementia, and I am his conservator. I've enclosed a copy of the conservator's letter. Per the Idaho Law on Conservatorship: 15-5-424. POWERS OF CONSERVATOR IN ADMINISTRATION I'm authorized to sign on his behalf.

Please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Mitchell Aschinger', with a long horizontal flourish extending to the right.

D. Mitchell Aschinger