

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

IN THE MATTER OF PERMIT NO. 95-17654	)	PRELIMINARY ORDER
IN THE NAME OF DARYL RICKARD	)	REINSTATING A PERMIT
AND WILLIAM HALL	)	
_____	)	

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 February 7, 2019, the Department issued Permit No. 95-17654 ("Permit") in the name of Daryl Rickard and William Hall ("Permit Holders") authorizing the diversion of 0.04 cubic feet per second of water from Spirit Lake for domestic use in Government Lot 1 (NE¼NE¼) and the NE¼NE¼, of Section 24 of Township 53 North, Range 05 West, B.M., Kootenai County. A condition of permit approval required the Permit Holders to submit proof of beneficial use of water to the Department on or before February 1, 2022. The Permit's priority date is October 2, 2018.
2. On February 11, 2022, the Department notified the Permit Holders by certified mail that proof of beneficial use was due and instructed the Permit Holders of the steps for submitting a *Statement of Completion for Submitting Proof of Beneficial Use* ("Proof") or a *Request for Extension of Time* ("Extension Request"). The notice provided a proof due date 60 days from the date of the notice, which was April 12, 2022.
3. Prior to the Proof due date, Department did not notify the Permit Holders that Proof was due.
4. On April 12, 2022, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
5. On April 13, 2022, the Department notified the Permit Holders the Permit lapsed because no Proof or Extension Request had been received.
6. On May 2, 2022, the Permit Holders filed an acceptable Proof.

CONCLUSIONS OF LAW

Idaho Code § 42-204(3) states, in pertinent part:

Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the permit holder by certified mail at the permit holder's address of record of the date for such completion, which said notice shall advise the permit holder of the necessity of submitting a statement of completion showing proof of beneficial use or a request for an extension of time on or before said date.

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.

Idaho Code § 42-218a(4) states:

The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

ANALYSIS

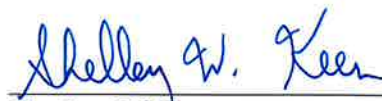
The Department erred by not complying with the 60-day advance Proof due notice requirement in Idaho Code § 42-204(3). The Department sent the Permit Holders the required Proof due notice on February 11, 2022, ten days after Proof was due. To rectify the error, the Department's Proof due notice granted the Permit Holders an additional 60 days from February 11, 2022, to submit Proof. The Permit Holders did not file Proof within the additional 60-day window granted by the Department, and the Permit lapsed pursuant to Idaho Code § 42-218a(1). The Permit Holders filed Proof 20 days after the permit lapsed. Idaho Code § 42-218a(2) requires advancing the priority date of a permit when Proof is submitted after the permit has lapsed. The Department should advance the Permit's priority date 20 days.

By submitting an acceptable Proof, the Permit Holders have shown reasonable cause why the Department should reinstate the Permit. The Department should advance the Permit's priority date 20 days to October 22, 2018.

ORDER

IT IS HEREBY ORDERED that Permit No. 95-17654 is **REINSTATED** and with its priority date advanced to October 22, 2018.

DATED this 3rd day of June, 2022.



Shelley W. Keen, Chief
Water Allocation Bureau

RECEIVED

MAY 02 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 \$ 50.00Receipt No. CN2664Received By SPDate Received 5/2/22

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. 95-17654 Name of Permit Holder(s) Darrell Rickard / William Hall
 Telephone No. 208-964-3675 Email dartmrms@gmail.com
 Mailing Address 7508 W Lund St. City Rathdrum State ID Zip 83858
 2. Source of Water Spirit Lake If Ground Water (well), Date Drilled mo. — / yr. —
 Drilling Permit/Tag No. N/A Drilling Company's Name N/A

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

Domestic (No. households) 1 Irrigation (No. acres) — Stockwater (No. and stock type) —
 Other —

4. Total diversion rate or volume (storage only) for which proof is submitted .04 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.)

Con-aire Controlled Water Tank w/ Pump

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 <u>—</u> |
| ☐ | ☐ | 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: Darrell Rickard Telephone No. 208-964-3675 Email dartmrms@gmail.com
 Mailing Address 7508 W Lund St. City Rathdrum State ID Zip 83858

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.

Darrell Rickard
 SIGNATURE OF PERMIT HOLDER*

Darrell Rickard, Owner
 PRINTED NAME AND TITLE

4/19-22
 DATE

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



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

June 9, 2022

WILLIAM HALL
DARYL RICKARD
7508 W LUND ST
RATHDRUM ID 83858

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 95-17654

Dear Permit Holders:

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 **October 22, 2018**, 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

c: KELLY HALL – *via email*

CERTIFICATE OF SERVICE

I hereby certify that on **June 9, 2022** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER REINSTATING A PERMIT**) to the persons listed below:

RE: Preliminary Order in the Matter of Permit No. **95-17654**

**WILLIAM HALL
DARYL RICKARD
7508 W LUND ST
RATHDRUM ID 83858**

**KELLY HALL – *via email*
78533 BENT CANYON CT
BERMUDA DUNES CA 92203**



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.