

IN THE MATTER OF PERMIT NO. 95-17271) **PRELIMINARY ORDER**
IN THE NAME OF) **REINSTATING A PERMIT**
BROWNING ESTATES WATER ASSN)
_____)

FINDINGS OF FACT

1. On March 29, 2017, the Department issued Permit No. 95-17271 (“Permit”) in the name of Big Sky Capital Inc. (“Original Owner”) authorizing the diversion of 0.06 cubic feet per second of ground water for domestic use in the NW¼NE¼ of Section 25 of Township 53 North, Range 04 West, B.M., Kootenai County. A condition of permit approval required the Original Owner to submit proof of beneficial use of water to the Department on or before April 1, 2022.
2. On January 31, 2022, 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 April 1, 2022, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
4. On April 7, 2022, the Department notified the Original Owner the Permit lapsed because no Proof or Extension Request had been received.
5. On May 11, 2022, the Original Owner filed an acceptable Proof.
6. On May 11, 2022, the Department received an *Assignment of Permit to Change Ownership of a Permit* assigning the Permit from Big Sky Capital Inc. to Browning Estates Water Assn. (“Permit Holder”).

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

Preliminary Order Reinstating a Permit – Page 1 of 2

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

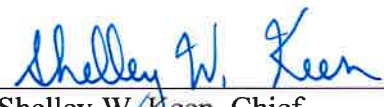
Within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

By submitting an acceptable Proof, the Original Owner has shown reasonable cause why this Permit should be reinstated. The Permit should be reinstated based upon the May 11, 2022 filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 95-17271 is **REINSTATED** and the Permit's priority date is advanced to April 3, 2017.

DATED this 2nd day of June, 2022.



Shelley W. Keen, Chief
Water Allocation Bureau

RECEIVED

MAY 11 2022

IDWR/NORTH

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
STATEMENT OF COMPLETION
FOR SUBMITTING PROOF OF BENEFICIAL USE

RECEIVED
MAY 10 2022
DEPARTMENT OF
WATER RESOURCES

FOR OFFICE USE ONLY

Amt. of Fee \$ 500
Receipt No. N039550
Received By NS
Date Received 5-11-22

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. 95-17271 Name of Permit Holder(s) Big Sky Capital, Inc.
Telephone No. 208 772-9646 Email leon@bigskyidaho.com
Mailing Address 10063 Navion Dr City Hayden State ID Zip 83835
2. Source of Water Groundwater If Ground Water (well), Date Drilled mo. ____ / yr. ____
Drilling Permit/Tag No. 73396 Drilling Company's Name Keefe Drilling
3. Extent of use(s) completed as authorized by the water right permit:
Domestic (No. households) 2 Irrigation (No. acres) ____ Stockwater (No. and stock type) ____
Other ____
4. Total diversion rate or volume (storage only) for which proof is submitted 0.06 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.)
ground water well - serves 2 homes

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 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: Shane Nale Telephone No. 956 330 1111 Email shane-nalew@yaho.com
Mailing Address 1004 E Seasons Rd City Athol State ID Zip 83801

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 OF PERMIT HOLDER*

PRINTED NAME AND TITLE

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 3, 2022

BROWNING ESTATES WATER ASSN
PO BOX 1132
ATHOL ID 83801

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 95-17271

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 **April 03, 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 **June 3, 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. **95-17271**

**BROWNING ESTATES WATER ASSN
PO BOX 1132
ATHOL ID 83801**



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.