

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

IN THE MATTER OF PERMIT NO. 65-23934)
IN THE NAME OF DAVID J RATHBUN)
AND/OR ALANA W RATHBUN)
_____)

**PRELIMINARY ORDER
REINSTATING A PERMIT**

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 December 29, 2020, the Department issued Permit No. 65-23934 ("Permit") in the name of David J. Rathbun and/or Alana W. Rathbun ("Permit Holders") authorizing the diversion of 0.03 cubic feet of surface water for irrigation use in the SW¼NE¼ of Section 23 of Township 10 North, Range 04 East, B.M., Boise County. A condition of permit approval required the Permit Holders to submit proof of beneficial use of water to the Department on or before January 1, 2022.
2. On October 29, 2021, the Department notified the Permit Holders by certified mail that proof of beneficial use was due and instructed the Permit Holders 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 January 1, 2022, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
4. On January 7, 2022, the Department notified the Permit Holders the Permit lapsed because no Proof or Extension Request had been received.
5. On January 10, 2022, the Permit Holders filed a Proof that was unacceptable because it did not include the required license examination fee.
6. On February 11, 2022, the Permit Holders filed an acceptable Proof.

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:

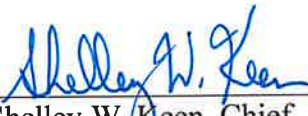
Within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

By submitting an acceptable Proof, the Permit Holders have shown reasonable cause why this Permit should be reinstated. The Permit should be reinstated based upon the February 11, 2022 filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 65-23934 is **REINSTATED** and the Permit's priority date is advanced to May 27, 2020.

DATED this 22nd day of February, 2022.



Shelley W. Keen, Chief
Water Allocation Bureau

RECEIVED

JAN 10 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. 0711913Received By EmDate Received 2/11/2022

The Idaho Department of Water Resources considers this form a statement by the permit holder(s) that development of a water right has been **completed** and that water has been applied to beneficial use 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.** Please refer to the instructions and fee schedule for this form. If ownership of the permit has changed, contact any Department office or visit the Department's website at idwr.idaho.gov for an Assignment of Permit form. If you wish to relinquish your permit because you have not established the authorized use of the water and are not applying for an extension, please notify the Department in writing.

1. Permit No. 65-23934 Telephone No. 818-216-4821
2. Name of Permit Holder(s) DAVID RATHBUN ALANA RATHBUN
3. Mailing Address 18 APPLEWOOD DR. City GARDEN VALLEY
State ID Zip 83622 Email MR.RATHBUN@EARTHLINK.NET
4. Source of Water LIGHTNING CREEK If **GROUND WATER** (well), Date Drilled mo. ____ / yr. ____
Well Driller MIDDLE FORK PAYETTE RIVER Drilling Permit Number ____

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

Domestic (No. of households) ____ Stockwater (No. and type of stock) ____

Irrigation (No. of acres) 2.05 Other ____

6. Total rate of diversion or storage volume for which proof is submitted
- 0.03
- cfs OR ____ acre-feet.

7. Compliance with a measuring device requirement, lockable controlling device requirement, and/or other conditions of permit:
-
- Refer to the approval conditions on your permit and respond accordingly.

The Department will not issue a license if permit conditions are not met.

Measuring Device	Is a measuring device required?	Yes ☐	No ☒
	If yes, has the measuring device been installed?	Yes ☐	No ☐
Lockable Controlling Device	Is a lockable device required to control the diversion?	Yes ☒	No ☐
	If yes, has the lockable device been installed?	Yes ☒	No ☐
Fish Screen	Is a fish screen required?	Yes ☐	No ☒
	If yes, has the fish screen been installed?	Yes ☐	No ☐

Other Conditions of Permit

Do the approval conditions on your permit require you to submit additional information in connection with your proof of beneficial use? If yes, list the conditions below and attach documents with the required information.

____ Completed? Yes ☒ No ☐

8. Fee Enclosed \$ ____ or not applicable
- ☐
- . See fee schedule on page 2 of the instructions.

Proof statements filed without an appropriate fee, will be considered incomplete.

9. Person to contact to accompany the Department representative during field examination of the water system.

Name DAVID RATHBUN Telephone Number 818-216-4821

Mailing Address 18 APPLEWOOD DR. City GARDEN VALLEY

State ID Zip 83622 Email RATHBUN@EARTHLINK.NET

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 a beneficial use. I understand that any undeveloped portion of the permit is relinquished to the State of Idaho.

Signature of Permit Holder [Signature]
(Include your title, if on behalf of company or organization)Date 12-31-2021

Mail to: Idaho Department of Water Resources, PO Box 83720, Boise, ID 83720-0098



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
February 25, 2022

Director Gary Spackman

DAVID J RATHBUN
ALANA W RATHBUN
18 APPLE WOOD DR
GARDEN VALLEY ID 83622

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 65-23934

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 **May 27, 2020**, 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 the field examination, please contact the State Office of the Department located in Boise at (208) 287-4800.

Sincerely,

Debbi Judd
Technical Records Specialist

Enclosures

c: MICHAEL RATHBUN – *via email*

CERTIFICATE OF SERVICE

I hereby certify that on **February 25, 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. **65-23934**

**DAVID J RATHBUN
ALANA W RATHBUN
18 APPLE WOOD DR
GARDEN VALLEY ID 83622**

**MICHAEL RATHBUN – *via email*
27614 MORNING GLORY PL
CASTAIC CA 91384-3755**



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.