

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

IN THE MATTER OF PERMIT NO. 22-14375)
IN THE NAME OF THH LLC)
_____)

**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 July 27, 2020, the Department issued Permit No. 22-14375 ("Permit") in the name of Love Family Ventures LLC ("Love"), authorizing the diversion of 0.02 cubic feet per second of ground water for stockwater use in the SW¼ SW¼ of Section 20, Township 3 North, Range 46 East, B.M., Teton County. A condition of permit approval required Love to submit proof of beneficial use of water to the Department on or before August 1, 2021.
2. On November 16, 2020, the Department received an Assignment of Permit from Love to THH LLC ("Permit Holder").
3. On May 28, 2021, the Department notified the Permit Holder by certified mail that proof of beneficial use was due and instructed the Permit Holder 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").
4. On August 1, 2021, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
5. On August 5, 2021, the Department notified the Permit Holder the Permit lapsed because no Proof or Extension Request had been received.
6. On January 3, 2022, the Department received from the Permit Holder a *Request to Reinstate a Permit Lapsed more than Sixty Days* ("Reinstatement Request"), a *Beneficial Use Field Report* ("Field Report") prepared by a certified water right examiner ("CWRE"), Proof, a statement of reasonable cause for filing a late Proof, and a reinstatement fee of \$250.
7. The Permit Holder's attorney stated in the Reinstatement Request that the lapse notice had been misplaced and the Permit Holder's attorney only discovered recently that Proof was not submitted.
8. The CWRE stated in the Field Report that the Permit Holder historically used the system prior to 1988 and confirmed use from 1988 to 2016. Aerial imagery confirms stockwater use as of June 27, 2020.

CONCLUSIONS OF LAW

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

(1) 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.

(3) In connection with a proof of beneficial use statement submitted more than sixty (60) days after such notice of lapsing, the director shall require all of the following items to be submitted to the department:

(a) A report prepared by a certified water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved. The report shall be on the form or forms specified by the director and shall provide the information specified in section 42-217, Idaho Code, for confirming beneficial use and such other information as may be required by the director.

(b) A statement of reasonable cause for filing a late proof of beneficial use.

(c) A reinstatement fee of two hundred fifty dollars (\$250).

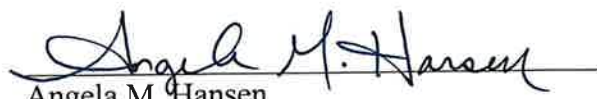
Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day the proof of beneficial use was received.

The Permit Holder has provided a reasonable showing why the Permit should be reinstated by submitting an acceptable Proof, Field Report, Reinstatement Request, and reinstatement fee. The Permit should be reinstated based upon the January 3, 2022 filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 22-14375 is **REINSTATED** and the Permit's priority date is advanced to January 3, 2022.

DATED this 22nd day of February, 2022.


Angela M. Hansen
Water Rights Section Manager



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 23, 2022

Director Gary Spackman

THH LLC
PO BOX 11803
JACKSON WY 83002-1803

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 22-14375

Dear Permit Holder:

The Department acknowledges receipt of the proof of beneficial use form ("proof"), beneficial use field report, a statement of reasonable cause for filing a late proof, and reinstatement fee of \$250.00 submitted for the above referenced water right permit. The next step in the process is for the Department to review the file for issuance of water right license.

Enclosed is a preliminary order that reinstates this permit since proof was submitted more than 60 days after the date of the lapse notice. Please note that the priority date for this permit has been advanced to **January 2, 2022**, pursuant to Idaho Code § 42-218a(2).

The reinstatement order is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date of the preliminary order as described in the attached information sheet.

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: ROBERT L HARRIS – *via email*

CERTIFICATE OF SERVICE

I hereby certify that on **February 23, 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. **22-14375**

THH LLC
PO BOX 11803
JACKSON WY 83002-1803

ROBERT L HARRIS – *via email*
PO BOX 50130
IDAHO FALLS ID 83405-0130
rharris@holdenlegal.com



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.