

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

IN THE MATTER OF PERMIT NO. 47-17656	)	PRELIMINARY ORDER
IN THE NAME OF PRG FARMS LP	)	REINSTATING A PERMIT
C/O PAUL GREEN	)	
	)	

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 August 18, 2016, the Department issued Permit No. 47-17656 ("Permit") in the name of Canyon Springs LLC c/o Thomas Ziegler ("Original Owner") authorizing the diversion of 7.0 cubic feet per second and 617.0 acre feet of surface water for diversion to storage, recreation, wildlife, aesthetic, aesthetic storage, recreation storage, and wildlife storage uses in the Government Lot 9 (SW¼NW¼) of Section 17 of Township 09 South, Range 16 East, and the Government Lot 14 (SE¼NE¼) of Section 18 of Township 09 South, Range 16 East, B.M., Twin Falls County. A condition of permit approval required the Original Owner to submit proof of beneficial use of water to the Department on or before September 1, 2021.
2. On April 19, 2018, the Department received an *Assignment of Permit to Change Ownership of a Permit* assigning the Permit from Canyon Springs LLC c/o Thomas Ziegler to PRG Farms LP c/o Paul Green ("Permit Holder").
3. On June 30, 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 September 1, 2021, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
5. On September 9, 2021, the Department notified the Permit Holder the Permit lapsed because no Proof or Extension Request had been received.
6. On October 13, 2021, the Permit Holder 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 Holder has shown reasonable cause why this Permit should be reinstated. The Permit should be reinstated based upon the October 13, 2021, filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 47-17656 is **REINSTATED** and the Permit's priority date is advanced to April 22, 2016.

DATED this 11th day of November, 2021.



Shelley W. Keen, Chief
Water Allocation Bureau

RECEIVED

OCT 13 2021

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 \$ 250
Receipt No. C111132
Received By KW
Date Received 10.13.21

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.

- Permit No. 47-17656 Telephone No. 559-289-7550
- Name of Permit Holder(s) PRG Farms, LP C/O Paul Green
- Mailing Address 7594 Conejo Ave City Selma
State CA Zip 93662 Email prgfarms@gmail.com
- Source of Water Spring(s) If **GROUND WATER** (well), Date Drilled mo. NA / yr. NA
Well Driller NA Drilling Permit Number NA
- Extent of use(s) completed as authorized by the water right permit:
Domestic (No. of households) NA Stockwater (No. and type of stock) NA
Irrigation (No. of acres) NA Other Storage, Recreation, Wildlife, and Aesthetic
- Total rate of diversion or storage volume for which proof is submitted 7 cfs OR 617 Str. acre-feet.
- 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.
No. _____ Completed? Yes ☐ No ☐
- Fee Enclosed \$ 250 or not applicable ☐. See fee schedule on page 2 of the instructions.
Proof statements filed without an appropriate fee, will be considered incomplete.
- Person to contact to accompany the Department representative during field examination of the water system.
Name Connor Green Telephone Number 208-731-3032
Mailing Address 2250 River Road City Filer
State ID Zip 83328 Email cgreenhunter@gmail.com

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 Paul Green Date 10/12/21
(Include your title, if on behalf of company or organization)



Governor Brad Little

Director Gary Spackman

November 16, 2021

PRG FARMS LP
C/O PAUL GREEN
7594 E CONEJO AVE
SELMA CA 93662-9438

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 47-17656

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 22, 2016**, 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 Southern Region Office of the Department located in Twin Falls at (208) 736-3033.

Sincerely,

Debbi Judd
Technical Records Specialist

Enclosures

c: FARM CREDIT WEST PCA

CERTIFICATE OF SERVICE

I hereby certify that on **November 16, 2021** 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. **47-17656**

**PRG FARMS LP
C/O PAUL GREEN
7594 E CONEJO AVE
SELMA CA 93662-9438**

**FARM CREDIT WEST PCA
940 W EL MONTE WAY
DINUBA CA 93618-9170**



**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.

Boise Office
1101 W. River St.
Suite 110
Boise, Idaho 83702
Tel. (208) 629-7447

Challis Office
1301 E. Main Ave.
P.O. Box 36
Challis, Idaho 83226
Tel. (208) 879-4488

Twin Falls Office
213 Canyon Crest Drive
Suite 200
Twin Falls, Idaho 83301
Tel. (208) 969-9585

Fax (all offices)
(208) 629-7559



SAWTOOTH LAW OFFICES, PLLC

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OCT 13 2021

DEPARTMENT OF
WATER RESOURCES

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Matthew A. Sturzen

Katie L. Vandenberg-Van Vliet

James R. Bennetts (retired)

Attorneys licensed in Idaho
** Also licensed in Washington*
*** Also licensed in Oregon*

Wednesday, October 13, 2021

Angela Hansen, Manager
Water Rights Section
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Lapse Notice—Permit No. 47-17656

Dear Ms. Hansen:

I write you on behalf of PRG Farms, LP, owner of Water Right Permit No. 47-17656 ("Permit"), in response to the Lapse Notice issued by the Department regarding the same dated September 9, 2021. Enclosed, please find the executed beneficial use Statement of Completion signed by Paul Green, as well as the corresponding filing fee. PRG Farms, LP requests reinstatement of the Permit pursuant to Idaho Code Section 42-218a(2) accordingly.

PRG Farms submits "reasonable cause" exists in favor of reinstating the Permit under the statute because it failed to fully understand that proof of beneficial use was necessary because water diversion and use under the Permit was not "new"; rather it understood from the prior Permit owner that the Permit was filed to "grandfather" long-existing uses of the water (*i.e.*, diversion and use of the water for the purposes of use stated in the permit had been occurring for decades—no new construction of diversion works, conveyance facilities or ponds was necessary). In other words, the Permit was secured to true-up actual, on the ground use versus that existing on paper.

In short, and as explained in the Permit backfile, the Permit is a place of use and purpose of use extension of decreed water right no. 47-04294 ("Decree"). The Permit source ("Springs") is the same as the Decree, sharing the same diversion points and conveyance infrastructure, and the Permit further works within the same Decree-based diversion rate (7.0 cfs). The Permit simply added two additional ponds to the northwest of the Decree ponds (and northwest of the original Decree place of use). This said, the ponds are not "new." The larger pond has existed for approximately 45 years, and the smaller was constructed in approximately 1994. *See Narrative*

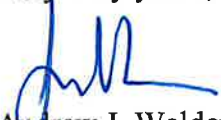
www.sawtoothlaw.com

and Mitigation Plan for Permit Application; Canyon Springs, LLC (Brockway Engineering, LLC; Mar. 11, 2016); *see also*, Additional Information in Support of Application (Brockway Engineering, LLC; May 18, 2016). Spring water under the Decree has long flowed through all of the ponds, but the Permit added a storage component for purposes of keeping the ponds full. *Id.* The Permit further added aesthetic and wildlife uses (flow-based and storage-based) beyond the fish propagation, stockwater, irrigation, and recreational uses covered in the Decree.

Because no additional “development” work needed be done, constructed, or installed to accomplish end diversion and use under the Permit (notwithstanding Permit Condition of Approval No. 1’s reference to a development deadline of September 1, 2021), PRG Farms, LP did not fully appreciate the need to, nonetheless, document the development and use that has been ongoing for many years prior to September 1, 2021. Regardless, PRG Farms, LP does so now consistent with the Department’s Lapse Notice and Idaho Code Section 42-218a. PRG Farms, LP also understands that pursuant to Section 42-218a(2), the original Permit priority date (March 11, 2016) will be advanced by the number of days as counted between the Permit Development deadline (September 1, 2021) and the date of the Department’s receipt of this letter and corresponding Statement of Completion filing fee (a priority date advancement of approximately 45 days).

If you have any questions regarding this matter, please feel free to contact me at 208-629-7447.

Very truly yours,


Andrew J. Waldera

AJW/dll
Enclosure