

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

IN THE MATTER OF PERMIT NO. 55-13970)
IN THE NAME OF)
IDAHO DEPARTMENT OF LANDS)
_____)

**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 September 16, 2019, the Department issued Permit No. 55-13970 (“Permit”) in the name of Idaho Department of Lands (“Permit Holder”) authorizing the diversion of 0.03 cubic feet per second (cfs) of surface water for stockwater use in the NE¼NE¼ of Section 25, Township 07 South, Range 05 West, B.M., Owyhee County. A condition of permit approval required the Permit Holder to submit proof of beneficial use of water to the Department on or before September 1, 2020.
2. On June 30, 2020, 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”).
3. On September 1, 2020, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
4. On September 8, 2020, the Department notified the Permit Holder the Permit lapsed because no Proof or Extension Request had been received.
5. On October 9, 2020, the Permit Holder filed an incomplete Proof.
6. On October 21, 2020, 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 the Permit should be reinstated. The Permit should be reinstated based upon the October 21, 2020 filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 55-13970 is **REINSTATED** and the Permit's priority date is advanced to July 11, 2019.

DATED this 18th day of February, 2021.


Angela M. Grimm
Water Rights Section Manager

OCT 21 2020

STATEMENT OF COMPLETION
FOR SUBMITTING PROOF OF BENEFICIAL USE

DEPARTMENT OF
WATER RESOURCES
of Water Resources

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.

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.

Yes ☐ No ☐

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.

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.

- Email zfoster@idl.idaho.gov

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.

Robert S. Pietrus, Jr. AREA Mgr
(Include your title, if on behalf of company or organization)

Date 10/7/2020



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

GARY SPACKMAN
Director

February 19, 2021

IDAHO DEPARTMENT OF LANDS
8355 W STATE ST
BOISE ID 83714

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 55-13970

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 **July 09, 2019**, 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 Western Region Office of the Department located in Boise at (208) 334-2190.

Sincerely,

Debbi Judd

Technical Records Specialist

Enclosures

c: DAVID A MACKENZIE – *via email*

CERTIFICATE OF SERVICE

I hereby certify that on **February 19, 2021** 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. **55-13970**

**IDAHO DEPARTMENT OF LANDS
8355 W STATE ST
BOISE ID 83714**

**DAVID A MACKENZIE – *via email*
PO BOX 165
JORDAN VALLEY OR 97910-0165**



**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.

SOUTHWEST
SUPERVISORY AREA
8355 W. State Street
Boise, ID 83714
Phone (208) 334-3488
Fax (208) 853-6372



STATE BOARD OF LAND COMMISSIONERS
Brad Little, Governor
Lawrence E. Denney, Secretary of State
Lawrence G. Wasden, Attorney General
Brandon D. Woolf, State Controller
Sherri Ybarra, Sup't of Public Instruction

10/15/2020

RECEIVED

OCT 21 2020

DEPARTMENT OF
WATER RESOURCES

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

Re: Water Right Proof 55-13970

Dear Debbi Judd:

Enclosed please find the subject proof.

Idaho Department of Lands wishes to pay for the water right proof via interagency funds transfer. IDL requests that Idaho Department of Water Resources initiate the interagency billing process for this \$50.00 fee.

Please contact Wade Kimball in IDL's fiscal staff office for the proof fee payment process. Wade's contact information is:

Wade Kimball
Idaho Department of Lands
wkimball@idl.idaho.gov
208-334-0200 x 0224

For questions regarding the water right proof, please contact Dean Johnson at 208-334-3488, djohnson@idl.idaho.gov. Thank you.

Sincerely,



Bob Pietras
Southwest Area Manager

Enc.\1: Water Right Statement of Completion

RECEIVED

OCT 09 2020

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 \$ _____
Receipt No. _____
Received By KM
Date Received 10.9.2020

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. 55-13970 Telephone No. 208-334-3488
- Name of Permit Holder(s) Idaho Department of Lands
- Mailing Address 8355 West State Street City Boise
State ID Zip 83714 Email djohnson@idl.idaho.gov
- Source of Water spring If **GROUND WATER** (well), Date Drilled mo. _____ / yr. _____
Well Driller _____ Drilling Permit Number _____
- 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) _____ Other _____
- Total rate of diversion or storage volume for which proof is submitted .03 cfs **OR** _____ 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.

Completed? Yes ☒ No ☐

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

Name Zack Foster Telephone Number 208-334-3488
Mailing Address 8355 West State Street City Boise
State ID Zip 83687 Email zfoster@idl.idaho.gov

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 Robert A. Pietras Jr. AREA Mgr. Date 10/7/2020
(Include your title, if on behalf of company or organization)

RECEIVED

OCT 05 2020

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 \$ _____
Receipt No. _____
Received By Ku
Date Received 10-5-2020

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. 55-13979 Telephone No. 208-334-3488
- Name of Permit Holder(s) Idaho Department of Lands
- Mailing Address 8355 West State Street City Boise
State ID Zip 83714 Email zfoster@idl.idaho.gov
- Source of Water spring If **GROUND WATER** (well), Date Drilled mo. _____ / yr. _____
Well Driller _____ Drilling Permit Number _____
- Extent of use(s) completed **as authorized by the water right permit**:
Domestic (No. of households) _____ Stockwater (No. and type of stock) 125 cow/calf
Irrigation (No. of acres) _____ Other _____
- Total rate of diversion or storage volume for which proof is submitted .03 cfs OR _____ 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.

Completed? Yes ☒ No ☐

- 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.
- Person to contact to accompany the Department representative during field examination of the water system.
Name Zack Foster Telephone Number 208-334-3488
Mailing Address 8355 West State Street City Boise
State ID Zip 83687 Email zfoster@idl.idaho.gov

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 Robert A. Pita Date 10/1/2020
(Include your title, if on behalf of company or organization)

Dean G Johnson

From: Judd, Debbi <Debbi.Judd@idwr.idaho.gov>
Sent: Wednesday, October 7, 2020 2:14 PM
To: Dean G Johnson
Subject: RE: 55-13979

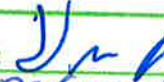
Hi Dean,

I also just noticed that the license exam fee was not submitted with the proof. The fee is \$50 and the proof is considered received once the original form and fee are received.

Thanks,
Debbi

From: Dean G Johnson [mailto:DGJohnson@idl.idaho.gov]
Sent: Wednesday, October 7, 2020 12:55 PM
To: Judd, Debbi <Debbi.Judd@idwr.idaho.gov>
Subject: RE: 55-13979 WATER RIGHT #

55-13970

Approved: 				Inv Date: 10/15/20
Vendors: 820000952-DW				Inv #: 55-13979
Description: 55-13970 H ₂ O RIGHT EXAM FEE				
SUBOBJ	PCA	TC	AMT	PROJ/PH
5999	42600	230	50.00	

Debbi

Attached is the updated water right form for water right 55-13970.

From: Judd, Debbi <Debbi.Judd@idwr.idaho.gov>
Sent: Wednesday, October 7, 2020 8:02 AM
To: Dean G Johnson <DGJohnson@idl.idaho.gov>
Subject: RE: 55-13979

Dean,

Yes, please resubmit the form. Attached is the form we received for your reference.

Thanks,
Debbi

From: Dean G Johnson [mailto:DGJohnson@idl.idaho.gov]
Sent: Wednesday, October 7, 2020 7:31 AM
To: Judd, Debbi <Debbi.Judd@idwr.idaho.gov>
Subject: RE: 55-13979

Debbi

It should be 55-13970. Do you want me to resubmit the form?

From: Judd, Debbi <Debbi.Judd@idwr.idaho.gov>
Sent: Tuesday, October 6, 2020 3:52 PM

To: Dean G Johnson <DGJohnson@idl.idaho.gov>
Subject: 55-13979

Good afternoon,

The Department received a Statement of Completion (proof) for 55-13979. This water right number is for a claim owned by Boulder Creek Ranch LLC. I'm wondering if the water right number is incorrect or if this is something that should go to our adjudication section as it doesn't seem to apply to a water permit. Please let me know.

I'm sending you this email as I just got an out of office reply from Zack Foster directing me to you.

Thanks,
Debbi

Debbi Judd
Technical Records Specialist
debbi.judd@idwr.idaho.gov

Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise, ID 83720-0098
208-287-4920
www.idwr.idaho.gov