

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

IN THE MATTER OF PERMIT NO. 63-33508)	PRELIMINARY ORDER
IN THE NAME OF)	REINSTATING A PERMIT AND
G.O. INVESTMENTS IDAHO, LLC)	APPROVING REQUEST FOR
_____)	EXTENSION OF TIME

This matter having come before the Idaho Department of Water Resources ("Department"), the Department finds, concludes and orders:

FINDINGS OF FACT

1. On August 28, 2014, the Department issued Permit No. 63-33508 ("Permit") authorizing G.O. Investments Idaho, LLC ("Permit Holder") to divert 6.0 cubic feet per second of water from an unnamed drain tributary to the Boise River for wildlife, wildlife storage, and diversion to storage purposes in Government Lot 5 (SW¹/₄SW¹/₄) of Section 22 and Government Lot 4 (NW¹/₄NW¹/₄) of Section 27, Township 05 North, Range 05 West, B.M., Canyon County. The Permit lists the Permit Holder's address as 26358 Sand Rd, Parma, ID, 83660. 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, 2019.
2. On June 28, 2019, the Department notified the Permit Holder by certified mail that proof of beneficial use was due ("Proof Due Notice") and instructed the Permit Holder to submit a *Statement of Completion for Submitting Proof of Beneficial Use* ("Proof"), or a *Request for Extension of Time* ("Extension Request"). The Department sent the Proof Due Notice to the Permit Holder at 26496 Deb Ln, Parma, ID, 83660.
3. On September 1, 2019, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
4. On September 11, 2019, the Department notified the Permit Holder the permit had lapsed ("Lapse Notice"). The Department sent the Lapse Notice to the Permit Holder at 26496 Deb Ln, Parma, ID, 83660.
5. On October 17, 2019, the Department received a copy of an Extension Request from the Permit Holder and a request to keep the original priority date due to the Proof Due Notice and Lapse Notice ("Notices") being sent to an address that was not currently effective for the Permit Holder. The Permit Holder stated the currently effective address is 26358 Sand Rd, Parma, ID, 83660.
6. On October 25, 2019, the Department sent the Permit Holder a letter requesting the original Extension Request.
7. The Department received the original Extension Request on November 1, 2019.

APPLICABLE STATUTES

Idaho Code § 42-204 states, in pertinent part:

Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date....

- (4) The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of two (2) or more cubic feet per second or the development or cultivation of one hundred (100) or more acres of land may be extended by the director of the department of water resources upon application by the permittee for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of subsection (1) of this section, provided the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

Idaho Code § 42-218a 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, 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.

- (1) 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....
- (3) The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

CONCLUSIONS OF LAW

1. Idaho Code § 42-204 requires IDWR to send the Proof Due Notice to the Permit Holder's address of record, which was the address stated on the Permit. The Department erred by sending the Proof Due Notice to a different address. The Department erred again when it did not send the Lapse Notice to the Permit Holder's address of record as directed in Idaho Code § 42-218a.
2. By submitting an acceptable Extension Request, the Permit Holder provided a reasonable showing why this permit should be reinstated. The Department should not advance the Permit's priority

Preliminary Order Reinstating a Permit and Approving Request for Extension of Time

date, because the Department erred by sending both the Proof Due Notice and the Lapse Notice to the incorrect address.

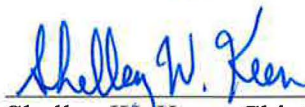
3. The Department has reviewed the explanation for delay and concludes the reason for delay meets the requirements for approval of the Extension Request as provided by Idaho Code § 42-204.

ORDER

IT IS HEREBY ORDERED that Permit No. 63-33507 is **REINSTATED** and the Permit's priority date will remain May 11, 2011.

IT IS FURTHER ORDERED that the Extension Request is **APPROVED**, and the time within which to submit proof of beneficial use is extended to September 1, 2024.

DATED this 17th day of January, 2020.



Shelley W. Keen, Chief
Water Allocation Bureau



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

BRAD LITTLE
Governor

GARY SPACKMAN
Director

January 17, 2020

G O INVESTMENTS IDAHO LLC
C/O JERRY JACKSON
1201 S KIMBALL AVE
CALDWELL ID 83605-4626

REQUEST FOR EXTENSION OF TIME LETTER

RE: Permit No. 63-33507 & 63-33508

Dear Permit Holder(s):

Enclosed are copies of the Preliminary Order Reinstating a Permit and Approving Request for Extension of Time for the above referenced permits which extends the proof due date to **September 01, 2024**.

The department granted these extension based on evidence of good cause. It is important that you work diligently toward the completion of the project during the development period allowed, according to Section 42-204(6), Idaho Code.

These preliminary orders also reinstate the permits. The priority date of these permits will remain **May 11, 2011**.

The extension 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 as described in the enclosed information sheet.

Please be advised that Section 42-248, Idaho Code, 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,

Jean Hersley
Technical Records Specialist II

Enclosure(s)

c: DANA L HOFSTETTER
AXA EQUITABLE LIFE INSURANCE CO

CERTIFICATE OF SERVICE

I hereby certify that on **January 17, 2020** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER REINSTATING A PERMIT AND APPROVING REQUEST FOR EXTENSION OF TIME**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **63-33507 & 63-33508**

**DANA L HOFSTETTER
HAWLEY TROXELL ENNIS & HAWLEY
877 MAIN ST STE 1000
PO BOX 1617
BOISE ID 83701-1617**

**G O INVESTMENTS IDAHO LLC
C/O JERRY JACKSON
1201 S KIMBALL AVE
CALDWELL ID 83605-4626**

**AXA EQUITABLE LIFE INSURANCE CO
C/O AXA EQUITABLE AGRIFINANCE LLC
6300 C STREET SW
CEDAR RAPIDS IA 52499-0001**



Jean Hersley
Technical Records Specialist II

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.