

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

IN THE MATTER OF PERMIT NO. 65-22945	)	PRELIMINARY ORDER
IN THE NAME OF BLACKHAWK ON THE	)	REINSTATING A PERMIT
RIVER, LLC	)	
_____	)	

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

FINDINGS OF FACT

1. On August 22, 2005, the Department issued Permit No. 65-22945 ("Permit") in the name of Sage SGI, LLC authorizing the diversion of 5.00 cubic feet per second of water from ground water for domestic use for 250 homes, irrigation of 142 acres, and fire protection in the W $\frac{1}{2}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 1, the S $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 2, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, the W $\frac{1}{2}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, Township 17 North, Range 2 East; the E $\frac{1}{2}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 25, Government Lot 2 (N $\frac{1}{2}$ NE $\frac{1}{4}$) and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 36, Township 18 North, Range 2 East; and Government Lot 4 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) and Government Lot 11 (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 30, and Government Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 31, Township 18 North, Range 3 East, B.M., Valley County. A condition of permit approval required Sage SGI, LLC to submit proof of beneficial use of water to the Department on or before August 1, 2010.
2. On May 28, 2010, the Department notified Sage SGI, LLC by certified mail that proof of beneficial use was due and instructed Sage SGI, LLC 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 August 1, 2010, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
4. On August 6, 2010, the Department received an Extension Request from Sage SGI, LLC, which was subsequently approved and the date to submit Proof was extended to August 1, 2015.
5. On May 29, 2015, the Department notified Sage SGI, LLC by certified mail that Proof was due and instructed the Permit Holder of the steps to be taken to submit Proof or an Extension Request.
6. On August 1, 2015, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.
7. On August 7, 2015, the Department sent Sage SGI, LLC notice that the Permit had lapsed because no Proof or Extension Request had been received.

8. On July 30, 2019, the Department received an assignment of permit that assigned the Permit to Blackhawk on the River, LLC (“Permit Holder”). The Department also received Proof, a request to reinstate the permit, the \$250.00 reinstatement fee, and a field report from a certified water right examiner. The Permit Holder stated in the request for reinstatement that on October 1, 2013, the United States Security and Exchange Commission commenced an investigation against several defendants including the manager of Sage SGI, LLC. In April of 2017, the United States Security and Exchange Commission filed a complaint against several individuals and entities affiliated with Sage SGI, LLC. In May of 2017, the parties to the complaint entered into a consent and judgement agreement, which installed an Independent Manager to take over and manage the continuing operations of the affected assets, including this Permit. The Independent Manager stated it has taken some time to work through the information associated with the consent and judgement agreement, and requested that the permit be reinstated based on the above reasons.

CONCLUSIONS OF LAW

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

Idaho Code § 42-218a.(2) states, in pertinent part:

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 a 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.

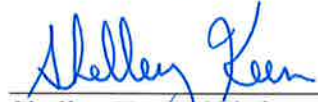
(c) A reinstatement fee of two hundred fifty dollars (\$250).

The Permit Holder has provided a reasonable showing why this permit should be reinstated by submitting an acceptable Proof, Field Report, Statement of Reasonable Cause, and the reinstatement fee. The permit should be reinstated based upon the July 30, 2019, filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 65-22945 is **REINSTATED** and the permit's priority date is advanced to July 30, 2019.

DATED this 23rd day of October, 2019.



Shelley Keen, Chief
Water Allocation Bureau



BRAD LITTLE
Governor

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

October 24, 2019

BLACKHAWK ON THE RIVER LLC
PO BOX 10117
BOISE ID 83707-4117

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 65-22945

Dear Permit Holder(s):

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 30, 2019**, as provided in section 42-218a(2), Idaho Code.

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.

Sincerely,

Jean Hersley
Technical Records Specialist II

Enclosure(s)

SPF Water Engineering LLC

CERTIFICATE OF SERVICE

I hereby certify that on **October 24, 2019** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER REINSTATING A PERMIT**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **65-22945**

**BLACKHAWK ON THE RIVER LLC
PO BOX 10117
BOISE ID 83707-4117**

**TERRY SCANLAN
C/O SPF WATER ENGINEERING LLC
300 E MALLARD DR STE 350
BOISE ID 83706**



**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.