

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 61-7731	)	ORDER GRANTING A PETITION
IN THE NAME OF ELMORE COUNTY	)	FOR RECONSIDERATION;
BOARD OF COUNTY COMMISSIONERS	)	AMENDED PRELIMINARY ORDER
	)	REINSTATING A LAPSED PERMIT

This matter having come before the Idaho Department of Water Resources ("Department") as a petition for reconsideration of an order to reinstate a lapsed permit, the Department finds, concludes, and orders as follows:

RECONSIDERATION

On June 12, 2017, the Department received a *Request to Reinstate a Permit Lapsed more than Sixty Days* ("Request") from the Elmore County Board of County Commissioners ("Elmore County") for Permit No. 61-7731 ("Permit"). On December 26, 2017, the Department mailed Elmore County an order titled *Preliminary Order Reinstating a Permit* ("Preliminary Order"). To comply with Rule 730.02 of the Department's Rules of Procedure (IDAPA 37.01.01.730.02), the Department also enclosed an information sheet describing the options for petitioning for reconsideration or otherwise appealing the Preliminary Order. The Department did not, however, enclose a certificate of service as required by Rule 303 of the Department's Rules of Procedure (IDAPA 37.01.01.303).

When the Department mailed the Preliminary Order to Elmore County, the Department included a cover letter ("Letter"). In the Letter, the Department explained that it was reinstating the permit. The Department also suggested that Elmore County may want to seek an amendment to the Permit pursuant to Idaho Code § 42-211.

On January 8, 2018, the Department received Elmore County's *Request to Continue to Conduct Informal Proceedings/ Alternative Petition for Reconsideration of Preliminary Order Reinstating Permit* ("Petition"). Elmore County took issue not with the Preliminary Order, but with the Letter. In the Petition, Elmore County states:

Elmore County does not understand why the IDWR issued the Letter with the Order. Elmore County has been proceeding with the IDWR in an informal manner under the Rules and has not indicated any desire to have the IDWR convert these informal proceedings into formal proceedings under it Rules

Instead of formal proceedings which have arguably been triggered by the Order, Elmore County prefers to continue with informal proceeding with the IDWR

In fact, the order is defective because it fails to contain the mandatory language specified in Rule 703.02 [sic]. Consequently, IDWR should rescind the Order and continue to conduct this matter under the Rules for informal proceedings

However, if the IDWR declines to adopt this simple solution, Elmore County petitions for reconsideration of the Letter, to the extent that it is interconnected with the Order.

After reviewing the Petition, the Department finds that by filing the Request, Elmore County sought a formal decision regarding the reinstatement of the Permit. The Preliminary Order addresses Elmore County's request for a formal decision on reinstatement. By enclosing the information sheet, the Department complied with the requirements of Rule 730.02 of the Rules of Procedure. However, the Preliminary Order was defective because it did not contain the required certificate of service.

The Department did not intend the Letter to be part of the Preliminary Order. Rather, the Department intended the Letter to open informal discussions regarding the water right license that may be issued in connection with the Permit. The Department sees, however, how the Letter could have been interpreted as augmenting the Preliminary Order.

To address the Petition, the Department will issue an *Amended Preliminary Order Reinstating a Lapsed Permit* ("Amended Order") with essentially the same Findings of Fact and Conclusions of Law as the Preliminary Order.¹ When mailing the Amended Order, the Department will enclose a certificate of service to comply with Rule 303 of the Rules of Procedure and an information sheet to comply with Rule 730.02 of the Rules of Procedure. The Department will not include a cover letter because the Department does not intend to intertwine the reinstatement of the Permit with its intent to continue informal discussions with Elmore County regarding the issuance of a water right license in connection with the Permit.

AMENDED PRELIMINARY ORDER REINSTATING A LAPSED PERMIT

The following is the Department's amended preliminary order in the matter of Application for Permit No. 61-7731 in the name of Elmore County Board of County Commissioners.

FINDINGS OF FACT

1. On May 22, 1998, the Department issued the Permit to the Mountain Home Groundwater Advisory Committee ("MHGWAC") with the condition that proof of construction of works and application of water to beneficial use ("proof of beneficial use") be submitted to the Department on or before June 1, 2003. The Permit bore the priority date of March 26, 1997.
2. On March 31, 2003, the Department notified the MHGWAC by certified mail that proof of beneficial use was due and instructed the MHGWAC of the steps to be taken to submit proof of beneficial use or a request for extension of time ("extension request").
3. On May 21, 2003, the MHGWAC filed an extension request. The Department extended the proof of beneficial use deadline to June 1, 2008.

¹ Some Findings of Fact were updated to use the abbreviated names and titles established in the Reconsideration section of this order. See Finding of Fact no. 11 for the only additional change.

4. On March 31, 2008, the Department notified the MHGWAC by certified mail that proof of beneficial use was due and instructed the MHGWAC of the steps to be taken to submit proof of beneficial use or an extension request.
5. On June 1, 2008, the Permit lapsed since the Department had not received an acceptable proof of beneficial use statement or extension request form.
6. On June 9, 2008, the Department notified the MHGWAC that the Permit had lapsed.
7. On June 12, 2017, the Department received the following items from Elmore County: the Request, a *Beneficial Use Field Report* prepared by a certified water right examiner ("CWRE"), a *Statement of Completion for Submitting Proof of Beneficial Use*, a statement of reasonable cause for filing a late proof of beneficial use, and a reinstatement fee of \$250.
8. The CWRE reported in the *Beneficial Use Field Report* that the MHGWAC beneficially used water pursuant to the Permit prior to June 1, 2008.
9. On June 28, 2017, the Department sent Elmore County a letter stating that the Permit was still in the name of MHGWAC and that an assignment of permit or ownership change notice would be needed to demonstrate Elmore County's interest in the Permit.
10. On July 31, 2017, the Department received a *Notice of Change in Water Right Ownership* ("Ownership Notice") from Elmore County.
11. On October, 18, 2017, Department staff contacted Elmore County by email to inform it that an assignment of permit rather than the Ownership Notice would be required to change the ownership of the Permit into the name of the Elmore County.
12. On November 28, 2017, MHGWAC assigned its interest in the Permit to Elmore County.

CONCLUSIONS OF LAW

1. Idaho Code § 42-218a.2 states as follows:

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 a 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.

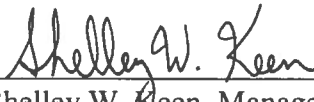
- (b) A statement of reasonable cause for filing a late proof of beneficial use.
- (c) A reinstatement fee of two hundred fifty dollars (\$250).
- 2. Elmore County has met the requirements of Idaho Code § 42-218a.2 for reinstating the Permit.
- 3. The Permit should be reinstated in the name of Elmore County Board of County Commissioners with its priority date advanced to June 12, 2017.

ORDER

IT IS HEREBY ORDERED that Elmore County's petition for reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that the Permit is **REINSTATED** with an advance in priority to June 12, 2017.

Dated this 24th day of January, 2018.



Shelley W. Keen, Manager
Water Rights Section