

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT)
NO. 22-13979 IN THE NAME OF)
THE CITY OF DRIGGS)

**PRELIMINARY ORDER
REINSTATING A PERMIT**

This matter having come before the Idaho Department of Water Resources (“Department”) as a result of a late-filed proof of beneficial use, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On October 7, 2011, the Department issued Permit 22-13979, authorizing the diversion of 0.61 cfs from ground water for municipal use. Permit 22-13979 bore a priority date of September 1, 2010 and required proof of beneficial use to be filed on or before November 1, 2016. The permit included the following condition (“Condition 8”):

In connection with the proof of beneficial use submitted for this permit, the permit holder shall also submit a report showing the total annual volume, the maximum daily volume, and the maximum instantaneous rate of flow diverted from the point of diversion authorized for this permit during the development period. The report shall also show the maximum instantaneous rate of diversion, either measured or reasonably estimated by a qualified professional engineer, geologist, or certified water rights examiner, for the entire City of Driggs municipal water system. The report shall also describe and explain how water diverted under this permit provides an additional increment of beneficial use of water for the City of Driggs municipal water system as opposed to an alternative point of diversion for prior water rights already held and used by the City of Driggs for its municipal water system.

2. On August 31, 2016, the Department notified the permit holder that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the proof of beneficial use or request an extension of time.

3. On October 25, 2016, the City of Driggs filed its Statement of Completion (proof of beneficial use) and paid the appropriate filing fee. The proof of beneficial use did not contain any of the additional information required by Condition 8. The proof of beneficial use did not include any reference to any other water right files.

4. On November 18, 2016, the Department notified the City of Driggs that Permit 22-13979 had lapsed because the proof of beneficial use filed on October 25, 2016 was incomplete. Specifically, the permit holder failed to provide the information required by Condition 8. The Department also issued a refund of the filing fee.

5. On December 5, 2016, Kristin Moore from Rocky Mountain Environmental Associates Inc. ("RMEA"), consultant for the City of Driggs, notified the Department that the information required under Condition 8 had already been provided to the Department through the licensing process for water right 22-13589.

6. On October 5, 2016, RMEA filed a certified field exam for Permit 22-13589, describing the water use for the entire City of Driggs municipal water system. Moore contends that Department staff instructed her that additional information did not need to be filed for Permit 22-13979 because it was already present in the Department's file for water right 22-13589.

7. On December 12, 2016, the City of Driggs re-filed proof of beneficial use for Permit 22-13979 and paid the appropriate filing fee.

CONCLUSIONS OF LAW

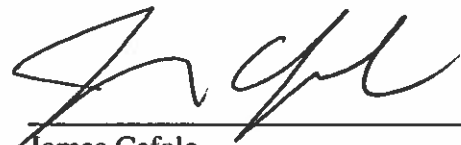
1. Section 42-218a, *Idaho Code*, provides that the Department may reinstate a permit upon a showing of reasonable cause by the permit holder within sixty days of the date of notice of lapsing.

2. The permit holder has provided a reasonable showing why this permit should be reinstated, by submitting an acceptable proof of beneficial use. Because of the miscommunication between the Department and the permit holder's consultant, the permit shall be reinstated based upon the original filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 22-13979 is **REINSTATED** with no advancement of priority date.

DATED this 19th day of December, 2016.



James Cefalo
Water Resource Program Manager

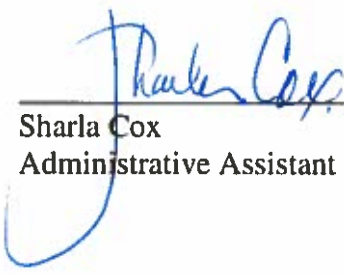
CERTIFICATE OF MAILING

I hereby certify that on the 19th day of December 2016, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER REINSTATING PERMIT, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:

**City of Driggs
PO Box 48
Driggs, ID 83422**

Courtesy Copy sent via regular US Mail to:

**Kristin Moore
Rocky Mountain Environmental Associates Inc.
482 Constitution Way, Suite 303
Idaho Falls, ID 83402**



Sharla Cox
Administrative Assistant

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.