

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

**IN THE MATTER OF LAPSED PERMIT
NO. 63-32601 IN THE NAME OF
THE ORCHARDS AT EAGLE LLC**

) **PRELIMINARY ORDER**
) **REINSTATING A PERMIT**
)
)

FINDINGS OF FACT

1. On December 1, 2008, the Department issued Permit No. 63-32601 in the name of The Orchards at Eagle LLC (permit holder). This permit authorized the diversion of 0.20 cubic feet per second (cfs) of ground water for diversion to storage use and 75.0 acre-feet (af) for aesthetic storage in Lot 1 (NENE) of Section 14, Township 04 North, Range 01 West, Ada County. A condition of permit approval required the permit holder to submit proof of beneficial use of water to the Department on or before December 01, 2013. The permit approval mailed to the address of record, 802 W Bannock Ste 801, Boise, Idaho 83702, was returned to the Department as undeliverable.
2. On September 30, 2013, 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 either proof of beneficial use statement or request an extension of time. The notice was mailed to the permit holder registered agent, Michael D Dixon at 900 Hearthstone Dr, Boise, Idaho 83702, based on information available from the Idaho Secretary of State business entity search. The notice was returned to the Department as undeliverable. The Department then sent the notice to OC Holdings Inc at 375 S Linder Rd, Eagle, Idaho 83616, based on Ada County Assessor's Office tax lot property ownership information. The notice was returned to the Department as undeliverable.
3. On December 5, 2013, the Department issued the permit holder a lapse notice because it had not received an acceptable proof of beneficial use statement or extension request. This notice was sent to the permit holder at the address of record, 802 W Bannock Ste 801, Boise, Idaho 83702 and was returned to the Department as undeliverable.
4. Idaho Code § 42-218a.2 provides 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).

5. On December 23, 2015, the Department received a beneficial use field report prepared by a certified water right examiner, the required proof of beneficial use statement, and the required reinstatement fee for Permit No. 63-32601. On December 30, 2015, the Department received a signed request to reinstate Permit No. 63-32601 along with a statement of reasonable cause for filing a late proof of beneficial use. These filings were submitted by the current property owner Bel Air Eagle LLC (property owner).

6. On February 29, 2016, the Department requested the permit holder provide an Assignment of Permit or information confirming any interest in and final disposition of Permit No. 63-32601.

7. As of June 14, 2016, the Department has not received a response from the permit holder.

CONCLUSIONS OF LAW

1. The property owner has provided a reasonable showing why the permit should be reinstated, by submitting an acceptable proof of beneficial use on December 23, 2015, and evidence that beneficial use of the water occurred during the period when the permit was active.

2. The Department should reinstate Permit No. 63-32601 with the priority advanced to the date that proof of beneficial use was received.

ORDER

IT IS HEREBY ORDERED, that Permit No. 63-32601, in the name of The Orchards at Eagle LLC is **REINSTATED**, with the priority advanced to December 23, 2015.

Dated this 16th day of June, 2016



Nick Miller
Manager, IDWR Western Region

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2016, I mailed
a true and correct copy of the foregoing Preliminary Order to the person(s) listed below:



Rachel Neely
Administrative Assistant

THE ORCHARDS AT EAGLE LLC
802 W BANNOCK STE 801
BOISE ID 83702

BEL AIR EAGLE LLC
2500 N DALLAS PKWY STE 424
PLANO TX 75093

SPF WATER ENGINEERING LLC
300 E MALLARD DR SUITE 350
BOISE ID 83706