

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

IN THE MATTER OF LAPSED PERMIT	)	PRELIMINARY ORDER
NO. 63-32601 IN THE NAME OF	)	REINSTATING A PERMIT
THE ORCHARDS AT EAGLE LLC	)	
	)	

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 16, 2016

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

Re: Preliminary Order in the matter of Permit No. 63-32601

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the Department. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,


Rachel Neely for:

Nick Miller
Western Regional Manager

Enclosures

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

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

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.