

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE**

**STATE OF IDAHO**

|                                     |   |                                    |
|-------------------------------------|---|------------------------------------|
| IN THE MATTER OF PERMIT NO. 94-7548 | ) | <b>ORDER GRANTING PETITION</b>     |
| IN THE NAME OF RATHDRUM             | ) | <b>FOR RECONSIDERATION AND</b>     |
| MOUNTAIN, LLC                       | ) | <b>WITHDRAWING THE PRELIMINARY</b> |
| _____                               | ) | <b>ORDER</b>                       |

This matter having come before the Department of Water Resources (Department) as a petition to reconsider a preliminary order voiding a permit, the Department finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. On May 27, 2016, the Department issued a preliminary order (order) voiding permit no. 94-7548 (permit) in the name of Rathdrum Mountain LLC (permit holder).

2. On June 9, 2016, the Department served notice to the permit holder that it had issued the order.

3. The Department issued the order because the Department's field examiner reported that he received no responses to multiple attempts to schedule a field exam to establish a beneficial use of water in connection with the permit.

4. On June 23, 2016, Idaho Feed and Cattle Company, LLC (petitioner) filed a petition for reconsideration (petition) with the Department in connection with the order. In the petition, the petitioner asserted that they are the current land owner of the place of use served by the permit. They also stated that John Brewster, Sr., who signed for the certified mailing of the second field exam notice, was suffering from dementia at the time and passed away soon afterwards. The petitioner stated that they are preparing an *Assignment of Permit* to acquire the permit from the permit holder.

5. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) states in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

6. The Department conducted a field exam on July 8, 2016 to determine whether beneficial use had been established in accordance with the permit. The examiner documented beneficial use for domestic and stockwater purposes, but did not find evidence of irrigation in accordance with the permit.

### CONCLUSIONS OF LAW

1. The petition was filed timely.
2. The petitioner established a reasonable explanation for the failure to respond to a request for scheduling a field exam.
3. Beneficial use has been established in accordance with the permit for stockwater and domestic purposes and pursuant to Rule 35 of the Department's Beneficial Use Examination Rules. There was no evidence that beneficial use has been established for the irrigation component of the permit.
4. The Department should grant the petition for reconsideration of the order pursuant to Rule 730.02.a. of the Department's Rules of Procedure.
5. The Department should withdraw the preliminary order voiding the permit.

### ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to Rule 730.02.a. of the Department's Rules of Procedure.

IT IS FURTHER ORDERED that the **PRELIMINARY ORDER VOIDING PERMIT** is **WITHDRAWN**.

Dated this 14<sup>th</sup> day of July, 2016.

  
\_\_\_\_\_  
Morgan Case  
Northern Regional Manager

### CERTIFICATE OF SERVICE

I hereby certify that I have this 14<sup>th</sup> day of July, 2016, served true and correct copies of the documents described below by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

RATHDRUM MOUNTAIN LLC  
18634 W QUAIL LN  
POST FALLS, ID 83854

ARTHUR B. MACOMBER  
GEORGE M. MACOMBER  
MACOMBER LAW, PLLC  
1900 NORTHWEST BLVD, STE 110  
COEUR D ALENE, ID 83814  
*Attorneys for Idaho Feed and Cattle Company, LLC*



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**Dianne L. Ball**  
**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.



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

Northern Region • 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815-7763  
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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

July 14, 2016

RATHDRUM MOUNTAIN LLC  
18634 QUAIL LN  
POST FALLS, ID 83854

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1900 NORTHWEST BLVD, STE 110  
COEUR D ALENE, ID 83814  
*Attorneys for Idaho Feed and Cattle  
Company LLC*

Re: Permit No. 94-7548 Petition for Reconsideration

Dear Permit Holder and Petitioner:

The accompanying order is an Order Granting Petition for Reconsideration and Withdrawing the Preliminary Order issued by the Department pursuant to Idaho Code § 67-5243. 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 208.762.2800.

Sincerely,

Morgan Case

Enclosures