

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LAPSED PERMIT	)	
NO. 15-7079 IN THE NAME OF	)	PRELIMINARY ORDER
BILL OR JALYN WEEKS	)	REINSTATING PERMIT
_____	)	

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

FINDINGS OF FACT

1. On September 15, 1981, the Department issued Permit No. 15-7079 in the name of Grant Weeks. Permit 15-7079 authorized the diversion of 1.32 cfs of ground water for the irrigation of 60 acres in the W½ of the NE¼ and the E½ of the NW¼ of Section 13, T14S, R35E in Oneida County. The permit included a condition requiring the permit holder to submit proof of beneficial use of water to the Department on or before September 01, 1986.
2. On June 30, 1986, 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 or request an extension of time. The notice was mailed to the address of record for Grant Weeks (Rt. 1, Box 160B, Malad, ID 83252).
3. Proof of beneficial use was never filed by Grant Weeks. On September 13, 1986, the Department issued the permit holder a lapse notice because the Department had not received an acceptable proof statement or extension request by the proof due date.
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 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).

Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received.

5. On November 17, 2014, the Department received a request to reinstate permit 15-7079 along with a beneficial use field report prepared by a certified water right examiner, a statement of reasonable cause for filing a late proof of beneficial use, the required reinstatement fee, an assignment of permit from Grant Weeks to Bill or Jalyn Weeks, and the required assignment of permit fee.

6. The request to reinstate Permit 15-7079 states that Grant Weeks was suffering from significant physical injuries at the time the proof of beneficial use was due and failed to file the proof.

CONCLUSIONS OF LAW

1. The permit holder has provided a reasonable showing why the permit should be reinstated, by submitting an acceptable proof of beneficial use statement on November 14, 2014, and sufficient evidence that beneficial use of the water occurred during the period when the permit was active.

2. The Department should reinstate permit no. 15-7079 with the priority advanced to November 17, 2014, the date that proof of beneficial use was received by the Department.

ORDER

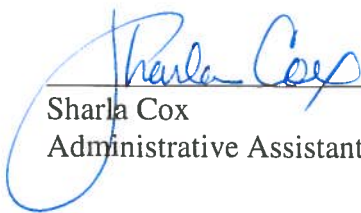
IT IS HEREBY ORDERED, that Permit No. 15-7079, in the name of Bill or Jalyn Weeks, is **REINSTATED**, with the priority advanced to November 17, 2014.

Dated this 3rd day of December, 2014.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of December 2014, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER REINSTATING PERMIT to the person(s) listed below:



Sharla Cox
Administrative Assistant

RE: Preliminary Order Reinstating Permit

U.S. Mail

Bill and Jalyn Weeks
1800 N 3400 W
Malad ID 83252

Preliminary Order Reinstating Permit

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.