



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 24, 2013

UPPER COLUMBIA CORPORATION
PO BOX 19039
SPOKANE WA 99219-9039

RE: Order Approving Petition to Reinstate Lapsed Permit No. 95-9502

Dear Upper Columbia Corporation,

I have enclosed an order approving your petition to reinstate a lapsed permit in connection with lapsed permit no. 95-9502. The preliminary order can and will become a final order without further action of the department unless a party files an exception and/or brief as further described in the enclosed information sheet.

If you have any questions, please call me at (208) 287-4916.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Saxton", is written over a horizontal line.

For Craig Saxton
Water Rights Supervisor
craig.saxton@idwr.idaho.gov

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on **December 26, 2013** I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (Preliminary Order Approving Petition To Reinstate Lapsed Permit)** to the person(s) listed below:

RE: PERMIT NO. 95-9502

**UPPER COLUMBIA CORPORATION
PO BOX 19039
SPOKANE WA 99219-9039**

A handwritten signature in black ink, reading "Darla Block", written over a horizontal line.

Darla Block
Technical Records Specialist

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.

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

IN THE MATTER OF PERMIT	)	PRELIMINARY ORDER
NO. 95-9502 IN THE NAME OF	)	APPROVING PETITION TO
UPPER COLUMBIA CORPORATION	)	REINSTATE LAPSED PERMIT
<u>OF SEVENTH DAY ADVENTISTS</u>	)	

This matter having come before the Idaho Department of Water Resources (Department) as a Petition to Reinstate a Lapsed Permit, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On August 11, 2008, the Department issued permit no. 95-9502 (permit) to Upper Columbia Corporation of Seventh Day Adventists (permit holder) authorizing the diversion of 0.20 cubic feet per second (cfs) of ground water for domestic use in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, Township 51 North, Range 3 West, B.M., Kootenai County. A condition of approval on the permit required the permit holder to submit proof of beneficial use of water (proof) to the Department on or before August 1, 2013.

2. On May 31, 2013, the Department notified the permit holder by mail that proof was due for the permit and informed the permit holder of the steps to submit the proof or a request for extension of time (notice). The Department sent the notice to the permit holder's last known address by certified mail.

3. On August 7, 2013, the Department sent the permit holder a lapse notice by certified mail, which notified the permit holder that the permit had lapsed and was of no further force nor effect. The lapse notice was sent to the same address as the May 31, 2013 notice.

4. On November 22, 2013, the Department received a *Request to Reinstate a Permit Lapsed more than Sixty Days* with the required \$250 filing fee. The request included a *Beneficial Use Field Report* completed by a certified water right examiner, an Application for Amendment of a Permit, and a transmittal cover sheet from Quantum Engineering.

5. Idaho Code § 42-218a(2) in pertinent part states:

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 the 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.
- (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 date that proof of beneficial use was received.

6. The examiner confirmed that water is diverted from the ground water sources (wells numbers 3 and 4), in connection with permit no. 95-9502 for domestic use (to supply water to staff homes, dormitories, duplexes, camp buildings, shop, office, cabin, and barn) in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, Township 51 North, Range 3 West, B.M., Kootenai County, at a diversion rate of 0.06 cfs.

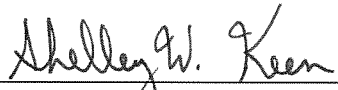
CONCLUSIONS OF LAW

1. The provisions of Idaho Code § 42-218a(2) require the permit holder to submit sufficient evidence that clearly establishes the extent of beneficial use during the authorized development period.
2. The permit holder provided evidence that water had been diverted and beneficially used prior to the date set for proof.
3. The Department should approve the request for reinstatement pursuant to Idaho Code § 42-218a(2).

ORDER

IT IS HEREBY ORDERED that the request to reinstate permit no. 95-9502 is **APPROVED**.

Dated this 24th day of December, 2013.



Shelley W. Keen, Manager
Water Rights Section