

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LAPSED PERMIT)
NO. 15-07187 IN THE NAME OF)
BLAINE PRICE)
_____)

**PRELIMINARY ORDER
REINSTATING A PERMIT**

This matter having come before the Idaho Department of Water Resources ("Department"), the Department finds, concludes and orders:

FINDINGS OF FACT

1. On August 4, 2000, the Department issued Permit No. 15-07187 in the name of Blaine Price (right holder). The Department issued permit 15-07187 with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted to the Department on or before August 1, 2003.

2. On May 31, 2003, the Department notified the right holder by certified mail that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the proof of beneficial use.

3. On August 12, 2003, the Department sent the right holder a lapse notice because the Department had not received an acceptable proof of beneficial use statement or request for extension of time to submit proof of beneficial use.

4. On October 10, 2003, the Department received a Request for Extension of Time from the right holder. The request was granted, the priority date advanced to August 6, 2000, and the right holder was required to submit proof of beneficial use by August 1, 2008.

5. On May 31, 2008, the Department notified the right holder by certified mail that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the proof of beneficial use.

6. On August 1, 2008, the Department received a completed proof of beneficial use statement from the right holder, accompanied by a \$25 fee.

7. On August 25, 2008, the Department notified the right holder that an additional fee for a field examination was required before proof of beneficial use would be considered complete.

8. On August 6, 2009, the Department sent the right holder a lapse notice because it had not received the additional fee.

9. On June 3, 2010, the Department received a completed Proof of Beneficial Use statement with a check for the additional fee.

10. On June 9, 2010, the Department received the well driller's report, an account statement from Rocky Mountain Power dated September 20, 2007; five receipts for payment from Pacific Mountain Power/Rocky Mountain Power, dated between July 6, 2008, and August 4, 2009; and three undated pictures, one of the pump housing on the well and two of the irrigation apparatus at work on the property.

11. In the June 9, 2010, mailing the Department received a statement of the right holder citing health issues as the reason for delay in filing acceptable proof.

12. On June 11, 2010, the Department notified the right holder of the need for additional documentation to provide evidence of beneficial use during the time the permit was active (between August 4, 2000, and August 1, 2008) for the permit to be reinstated.

13. On July 12, 2010, the Department received three invoices from the right holder: one from Vollmer Well Drilling LLC dated June 5, 2001; one from Layne Pumps, Inc., dated July 26, 2001; one from Dyke's Electric, Inc., dated July 25, 2001; and one from RJay's Mobile Welding dated July 9, 2001.

14. Section 42-218a.2, Idaho Code provides as follows:

That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. 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;

CONCLUSIONS OF LAW

1. The permit holder provided sufficient information to show that water was beneficially used during the authorized development period in accordance with the permit.

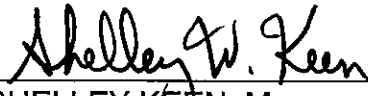
2. The permit holder demonstrated reasonable cause for filing late proof of beneficial use.

3. The Department should reinstate the permit with the priority date advanced to the date that proof of beneficial use was received.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 15-07187 is **REINSTATED** with an advance in priority to **June 3, 2010**.

DATED this 9th day of August, 2010.



SHELLEY KEEN, Manager
Water Rights Section

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.