BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 96-13262 IN THE NAME OF STEPHAN KUSTER & NANCY KUSTER	)))	**PRELIMINARY ORDER** **REINSTATING A PERMIT**

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

FINDINGS OF FACT

1. On May 26, 2023, the Department issued Permit No. 96-13262 ("Permit") in the name of Stephan & Nancy Kuster ("Permit Holder") authorizing the diversion of 0.04 cubic feet per second from Lake Pend Oreille for domestic use in Government Lot 4 (NW¼SW¼) of Section 25, Township 57 North, Range 02 West, B.M., Bonner County. A condition of permit approval required the Permit Holder to submit proof of beneficial use of water to the Department on or before June 1, 2024.

2. On March 29, 2024, the Department notified the Permit Holder by certified mail that proof of beneficial use was due and instructed the Permit Holder of the steps to be taken to submit a Statement of Completion for Submitting Proof of Beneficial Use ("Proof"), or a Request for Extension of Time ("Extension Request").

3. On June 1, 2024, the Permit lapsed because the Department had not received an acceptable Proof or Extension Request.

4. On June 3, 2024, the Department received a Proof without the required examination fee of $50.00.

5. On June 10, 2024, the Permit Holder filed the required examination fee for the Proof.

CONCLUSIONS OF LAW

Idaho Code § 42-218a(1) states, in relevant part:

> A permit upon which the proof of beneficial use…, has not been submitted, or a request for extension of time has not been received on or before the date set for such proof or incremental statement, shall lapse and be of no further force nor effect… . Notice of said lapsing shall be sent by the department to the permit holder at the address of record by regular mail.

Idaho Code § 42-218a(2) states, in relevant part:

> Within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

By submitting an acceptable Proof, the Permit Holder has shown reasonable cause why the Permit should be reinstated. The Permit should be reinstated based upon the June 10, 2024 filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 96-13262 is **REINSTATED** and the Permit's priority date is advanced to October 6, 2022.

DATED this 30th day of January, 2025.

Phill Hummer, Manager
Water Rights Section

CERTIFICATE OF SERVICE

I hereby certify that on **January 31, 2025** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER **(PRELIMINARY ORDER REINSTATING A PERMIT)** to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **96-13262**

STEPHAN KUSTER
2390 BOTTLE BAY RD
SAGLE ID 83860-8898

NANCY KUSTER
2390 BOTTLE BAY RD
SAGLE ID 83860-8898

Jean Hersley

Jean Hersley
Technical Records Specialist II

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.