

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

IN THE MATTER OF PERMIT	)	
NO. 96-9503 IN THE NAME OF	)	PRELIMINARY ORDER
JANUSZ DMOWSKI	)	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 July 24, 2012, the Department issued Permit No. 96-9503 ("Permit") in the names of Amanda Louise Boger and Robert Michael Boger with the condition that proof of construction of works and application of water to beneficial use ("proof of beneficial use" or "proof") be submitted to the Department on or before August 1, 2013. The permit bore the priority date of May 23, 2012.
2. On July 31, 2012, the Department received notice that the Bogers assigned the permit to Janusz Dmowski ("permit holder").
3. The Department did not mail a reminder notice to the permit holder sixty days prior to the August 1, 2013, proof due date.
4. On October 31, 2016, the Department notified the permit holder by certified mail that proof of beneficial use was due by January 1, 2017, and instructed the permit holder of the steps to be taken to submit the proof or a request for extension of time to submit proof.
5. Because January 1, 2017, was a legal holiday, the permit holder is allowed one extra day to submit proof. On January 2, 2017, the Permit lapsed since the Department had not received an acceptable proof of beneficial use statement or request for extension of time to submit proof.
6. On January 6, 2017, the Department mailed a lapse notice to the permit holder.
7. On January 9, 2017, the permit holder filed a proof of beneficial use statement with the appropriate license examination fee.

APPLICABLE STATUTES

Idaho Code § 42-204 states, pertinent part:

Sixty (60) days before the date set for the completion of the appropriation of

water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date

Idaho Code § 42-218a states, in pertinent 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, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail

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

Within sixty (60) days after such notice of lapsing the department may, upon 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.

Idaho Code § 42-218a(3) states:

The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

CONCLUSIONS OF LAW

1. The Department erred by failing to comply with the 60-day notice requirement of Idaho Code § 42-204.
2. The Permit lapsed pursuant to Idaho Code § 42-218a when proof of beneficial use was not submitted by the August 1, 2013, deadline established by the Permit.
3. The permit holder has provided a reasonable showing why the Permit should be reinstated by submitting acceptable proof of beneficial use on January 9, 2017.
4. The Department should reinstate the Permit pursuant to Idaho Code § 42-218a(1).
5. Pursuant to Idaho Code § 42-218a(3), the Department should not advance the Permit's priority date for the time from August 1, 2013, to January 2, 2017.
6. Pursuant to Idaho Code § 42-218a(1), the Department should advance the Permit's priority date seven days for the time from January 2, 2017, to January 9, 2017.

ORDER

IT IS HEREBY ORDERED that Permit No. 96-9503 is **REINSTATED** with an advance in priority to May 30, 2012.

Dated this 23rd day of January, 2017.



Shelley Keen, Manager
Water Rights Section