

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

IN THE MATTER OF PERMIT	)	
NO. 94-7560 IN THE NAME OF	)	PRELIMINARY ORDER
DONALD MAC DONALD AND	)	REINSTATING A PERMIT
RICK YOST	)	
_____	)	

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

FINDINGS OF FACT

1. On February 13, 2014, the Department issued Permit No. 94-7560 (“permit”) in the names of Donald MacDonald and Rich Yost 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 February 1, 2015. The permit bore the priority date of April 26, 2010.
2. The Department inadvertently failed to mail a notice to the permit holder sixty (60) days prior to the proof due date, as required pursuant to Section 42-204, Idaho Code.
4. On November 9, 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 (“extension request”).
5. On November 28, 2016, the permit holder filed a Statement of Completion for submitting proof of beneficial use (“proof”) with the appropriate license examination fee.

CONCLUSIONS OF LAW

1. Section 42-204, Idaho Code, provides as follows:

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;

2. Section 42-218a, Idaho Code, provides in pertinent part, as follows:

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 . . .

3. Section 42-218a (3), Idaho Code, provides as follows:

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

4. The permit lapsed when proof of beneficial use was not submitted by the July 1, 2015 deadline.

5. The Department erred by failing to comply with the 60-day notice provision of Section 42-204, Idaho Code, and by failing to send notice of the permit lapsing pursuant to Section 42-218a, Idaho Code.

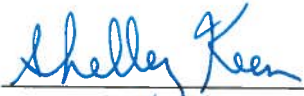
6. The permit holder has provided a reasonable showing why the permit should be reinstated by submitting acceptable proof of beneficial use on November 8, 2016.

7. The Department should reinstate Permit No. 94-7560 with no change in the priority date.

ORDER

IT IS HEREBY ORDERED that Permit No. 94-7560 is reinstated with no advance of the original priority date.

Dated this 7th day of December, 2016.



Shelley Keen, Manager
Water Rights Section