

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

IN THE MATTER OF PERMIT NO. 95-10749	)	PRELIMINARY ORDER
IN THE NAME OF JOHN WHEELER	)	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 November 5, 2009, the Department issued the above-captioned permit in the name of John Wheeler 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 November 1, 2014. The permit bore the priority date of July 1, 2009.
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.
3. On October 31, 2016, 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 proof of beneficial use or a Request for Extension of Time ("extension request").
4. On November 23, 2016, the permit holder filed a proof of beneficial use statement 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 November 1, 2014 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.

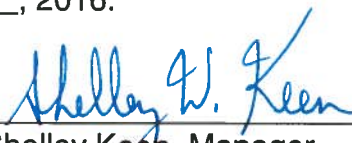
6. The permit holder has provided a reasonable showing why the permit should be reinstated by submitting acceptable proof of beneficial use on November 23, 2016.

7. The Department should reinstate permit no. 95-10749 with no change in the priority date.

ORDER

IT IS HEREBY ORDERED that Permit No. 95-10749 is reinstated with no advance of the original priority date.

Dated this 1st day of December, 2016.



Shelley Keen, Manager
Water Rights Section