

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

IN THE MATTER OF PERMIT	)	
NO. 95-12245 IN THE NAME OF	)	
PASQUALE MASTANTUONO AND	)	PRELIMINARY ORDER
KAREN MASTANTUONO	)	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 9, 2010, the Department issued Permit No. 95-12245 ("permit") 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 July 1, 2010.
2. On November 5, 2010, the Department issued an order correcting the permit by changing the proof of beneficial use due date to July 1, 2015.
3. 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 October 16, 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 8, 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. 95-12245 with no change in the priority date.

ORDER

IT IS HEREBY ORDERED that Permit No. 95-12445 is reinstated with no advance of the original priority date.

Dated this 18th day of November, 2016.



Shelley Keen, Manager
Water Rights Section