

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

IN THE MATTER OF PERMIT)
NO. 63-11116 IN THE NAME OF)
TERRY R HENRICKSON AND)
KATHY F HENRICKSON)
_____)

**PRELIMINARY ORDER
REINSTATING A PERMIT**

This matter having come before the Idaho Department of Water Resources ("Department") as a request to reinstate a permit, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On June 11, 1990, the Department approved water right permit 63-11116 ("permit") in the name of Terry R. Henrickson and Kathy F. Henrickson ("permit holders"). The permit authorized diversion of 1.42 cubic feet per second (cfs) of ground water for irrigation of 71 acres. A condition of permit approval required the permit holder to submit proof of beneficial use of water ("proof") to the Department on or before July 1, 1991.
2. On April 30, 1991, the Department notified the permit holders by certified mail that proof of beneficial use was due by July 1, 1991, and instructed the permit holders of the steps to be taken to submit either proof of beneficial use or request an extension of time.
3. On May 29, 1991, the Department received a proof statement in response to the Department's April 30, 1991, notification that proof was due in connection with permit 63-11116.
4. On June 6, 1991, the Department returned the proof statement to the permit holders because the permit holders had indicated that the proof was for water right license 63-8279.
5. On June 24, 1991, Terry Henrickson met with Department staff to file a transfer application in connection with water rights 63-8430, 63-8279, and 63-9353. In a memorandum from Department staff member Steve Lester dated August 8, 1991, Steve wrote that the purpose of the transfer was to reflect conditions that made permit 63-11116 unnecessary.
6. On July 5, 1991, permit 63-11116 lapsed since the Department had not received an acceptable proof of beneficial use statement or request for extension of time.
7. On July 31, 1991, as evidenced by Steve Lester's August 8, 1991, memorandum,

Mr. Henrickson met with Mr. Lester and decided to withdraw the transfer application filed in connection with water rights 63-8430, 63-8279, and 63-9353. In addition, Mr. Henrickson decided to submit proof and seek reinstatement of permit 63-11116. The August 8, 1991 memo states that a proof statement in connection with 63-11116 was submitted along with a \$100.00 examination fee. The permit holders paid \$50.00 of the total \$100.00 filing fee on July 31, 1991, as identified under receipt no. W013545. The remaining \$50.00 was paid by applying funds paid under receipt no. C020979 for the withdrawn transfer. However, the permit was never reinstated.

8. On January 3, 2014, Terry Henrickson met with Department staff and requested permit 63-11116 be reinstated. Department staff were unable to find a copy of the proof statement referenced in Steve Lester's August 8, 1991, memorandum. However, the Department was able to verify that examination fees of \$100.00 were paid on July 31, 1991 and were identified as payment in connection with proof of beneficial use for permit 63-11116. Mr. Henrickson asserts that the permit should have been reinstated on July 31, 1991, when he submitted proof of beneficial use and filing fees in connection with the permit.

9. On January 7, 2014, the Department received a replacement proof of beneficial use statement in connection with permit 63-11116. Proof was submitted for 39 acres of irrigation and 0.78 cfs, which is consistent with Steve Lester's August 8, 1991 memorandum.

10. Item 12 of application for permit 63-11116 states that the application is for additional acres not covered by water rights 63-8279 and 63-9356 and that "The system exists". A 1976 well log matching one point of diversion location identified on permit 63-11116 and matching the point of diversion location on water rights 63-8279 and 63-9356, provides sufficient evidence that beneficial use was established within the authorized development period in connection with the permit.

CONCLUSIONS OF LAW

1. Section 42-218a, Idaho Code, provides 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 permit holder at the address of record by regular mail.

(1) 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.

2. Steve Lester's August 8, 1991, memorandum stating that a proof statement was

filed on July 31, 1991, supported by receipts W013545 and C020979 identifying payment for proof of beneficial use for permit 63-11116, verifies that permit holders submitted proof within 60 days of permit 63-11116 lapsing.

3. The permit holder submitted proof 30 days after proof was due. Permit 63-11116 should have been reinstated with the priority date advanced 30 days to March 2, 1990.

4. The permit holders submitted a replacement proof of beneficial use statement on January 7, 2014.

5. Section 42-218a, Idaho code, provides:

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

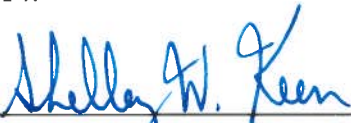
6. The Department erred by not reinstating permit 63-11116 in 1991. Because of the Department error, the priority date should not be advanced more than the 30 days that the proof was originally late.

7. The Department should reinstate permit 63-11116 and advance its priority date to March 2, 1990.

ORDER

IT IS HEREBY ORDERED that Permit No. 63-11116 is **REINSTATED** with the priority date advanced to March 2, 1990.

DATED this 27th day of January, 2014.



Shelley W. Keen, Manager
Water Rights Section