

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	PRELIMINARY ORDER
NO. 13-7576 IN THE NAME OF	)	APPROVING PETITION TO
ROBERT TIMMONS AND	)	REINSTATE LAPSED PERMIT
<u>LOU CLAYTON</u>	)	

This matter having come before the Idaho Department of Water Resources (Department) as a Petition to Reinstate a Lapsed Permit, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On December 17, 1999, the Department issued permit no. 13-7576 (permit) to Robert Timmons or Lou Clayton (permit holders) authorizing the diversion of 0.80 cubic feet per second (cfs) of water from Maple Grove Hot Springs for commercial use (for hot tubs and pools) in the SW¼NE¼ of Section 7, Township 13 South, Range 41 East, B.M., Franklin County. A condition of approval on the permit required the permit holders to submit proof of beneficial use of water (proof) to the Department on or before January 1, 2005.

2. On October 31, 2004, the Department notified the permit holders by mail that proof was due for the permit and informed the permit holders of the steps to submit the proof or a request for extension of time (notice). The Department sent the notice to the permit holder's last known address. The United States Postal Service returned the notice to the Department as undeliverable.

3. On January 5, 2005, the Department sent the permit holders a lapse notice by certified mail, which notified the permit holders that the permit had lapsed and was of no further force nor effect. The lapse notice was sent to the same address as the October 31, 2004 notice.

4. On December 13, 2012, the Department received a Request to Reinstate a Permit Lapsed more than Sixty Days with the required \$250 filing fee. The request included a letter from Barbara J. Senter and Robert W. Timmons explaining that there was a partial change in ownership and changes in address, with mail not being forwarded. Accompanying the letter was a completed Proof of Beneficial Use statement, a Beneficial Use Field Report completed by a certified water right examiner (examiner), warranty deeds, a decree of divorce, and an Assignment of Permit form with the required \$25 filing fee.

5. The examiner confirmed that water was diverted from Maple Grove Hot Springs under permit no. 13-7576 for commercial use for hot tubs and a pool at a diversion rate of 0.80 cfs. The examiner reports that the point of diversion for the Maple Grove Hot Springs source is located within the SW¼NE¼ of Section 7, Township 13 South, Range 41 East, B.M., Franklin County.

6. The examiner attached a map to his report that designates the location of each component involved within the distribution system from the point of diversion, through the place of use, to the discharge return to the reservoir.

7. On December 18, 2012, the Department received additional information from the permit holder confirming commercial use, with the first pool being built on the property around 1913. This information was documented in the journal of the original homesteader's daughter. The Department also received a picture of the pool, dated 1927, published in a book written by Wendell Smith in reference to the location.

1 The beneficial use is "commercial" use, even though the examiner wrote "recreation."

8. Idaho Code § 42-218a(2) in pertinent part states:

In connection with a proof of beneficial use statement submitted more than sixty (60) days after such notice of lapsing, the director shall require all of the following items to be submitted to the department:

(a) A report prepared by a certified water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved.

(b) A statement of reasonable cause for filing a late proof of beneficial use.

(c) A reinstatement fee of two hundred fifty dollars (\$250).

Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the date that proof of beneficial use was received.

CONCLUSIONS OF LAW

1. The provisions of Idaho Code § 42-218a(2) require the permit holder to submit sufficient evidence that clearly establishes the extent of beneficial use during the authorized development period.

2. The examiner provided evidence that water had been diverted and beneficially used, for commercial purposes during the authorized development period for the permit.

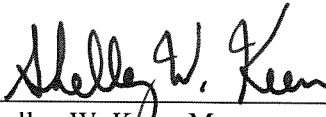
3. The Department should approve the request for reinstatement pursuant to Idaho Code § 42-218a(2).

4. Barbara J. Senter and Robert W. Timmons own permit no. 13-7576.

ORDER

IT IS FURTHER HEREBY ORDERED that permit no. 13-7576 is REINSTATED with the priority date advanced to December 13, 2012.

Dated this 4th day of February, 2013.



Shelley W. Keen, Manager
Water Rights Section