

MEMORANDUM

Date: April 1, 2003

To: WR Permit File No. 37-7460

From: Jeff Peppersack

Re: Priority Date for Reinstatement of Permit

This permit lapsed in 1980 and was reinstated in 1981 with an extension of time to submit proof to be due in 1984. The permit lapsed again in 1984 for a second failure to submit timely proof or an extension. In 2002 the permit holder petitioned to reinstate the permit and provided the appropriate documentation and exam fee for reinstatement. The permit holder also requested reinstatement of the original priority date. The department reinstated the permit with the priority date advanced to 2002 as required by statute. The decision was appealed in late 2002 to district court, and the court issued an order granting a joint stipulation for remand back to the department for the taking of additional evidence and decision to be filed with the court.

Jo Beeman, attorney for the permit holder, submitted a letter to the department outlining the basis for appeal of the department's decision. The permit holder maintains that they did not receive Swan Falls settlement information in 1985 because the department failed to grant them a full 5-year extension, as requested, in 1981. The argument here appears to be that if the department had granted a 5-year extension, the permit would have been valid at the time the Swan Falls letters were mailed to permit holders and then the permit holder would have responded with appropriate proof or been subject to review under Section 42-203D, *Idaho Code*. Jo Beeman's letter suggests that the department may have intended to extend the proof due date to 1985 and, if so, the department mistakenly shorted the permit holder's request. The permit holder asks that the mistake be corrected to provide for the earlier priority (1976) under the reinstatement of permit.

Review of the file did not reveal the reason for the decision to grant the original request for extension of time to 1984 instead of 5 years; however, the time period is discretionary and the order granting the extension was not appealed. In addition, the cover letter mailed with the order granting the extension clearly allowed for a means to request an additional extension of time, if necessary. A proof due notice was mailed to the permit holder in 1983 with further direction regarding additional requests for extension of time. A lapse notice was mailed to the permit holder in 1984 with similar direction regarding additional requests for extension of time. The permit holder was given ample opportunity to request additional time as the permit lapsed.

Jo Beeman's letter points to a similar permit (37-7465) that requested a 5-year extension of time to submit proof during the same time period as Permit 37-7460. The 5-year extension was granted for that permit. Review of the file did not reveal the reason for the

decision to grant the time as requested. This does not change the conclusion that the permit holder for 37-7460 was given ample opportunity to request additional time as the permit lapsed. It is interesting to note that the permit holder for 37-7465 received the Swan Falls letter on September 1, 1985, but did not request another extension of time until after the department mailed a proof due notice dated October 31, 1985.