

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT)
NO. 37-8388 IN THE NAME OF)
SDRTR, LLC)

**ORDER ADVANCING
THE DATE OF PRIORITY**

This matter having come before the Department of Water Resources (Department) as a result of a record review, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On February 3, 1989, the Department approved Permit No. 37-8388 (permit) authorizing the diversion of 2.00 cubic feet per second (cfs) of water from Warfield Hot springs within the SWNWNW, Sec. 31, Township 04 North, Range 17 East, Blaine County, B.M., to be used for heating, recreational, and domestic uses with a priority date of August 25, 1988.
2. On May 25, 2000, James P. Speck, attorney, filed an Assignment of Permit with the Department on behalf of his client, Steven D. Reuther.
3. On December 31, 2005, the department sent by certified mail, a notice to Reuther that proof was due and provided instruction of the steps to be taken to submit the proof or an extension request. The notice was returned to the Department as undeliverable. The Department did not provide notice to Steven D. Reuther's attorney.
4. On May 16, 2008, James P. Speck filed an Assignment of Permit with the Department on behalf of his client, SDRTR, LLC and a Petition to Reinstate Lapsed Water Right Permit No. 37-8388. The petition sought reinstatement on the basis that the Department had failed to adequately notify the permit holder that proof was due and that the permit had lapsed.
5. On July 7, 2008, James P. Speck filed a proof statement and a Beneficial Use Field Report (field report) on behalf of the permit holder. The field report indicated that 0.45 cfs was developed under the permit for heating and recreation use. The permit holder provided sufficient information and reasonable cause for the Department to reinstate the permit.
6. On July 14, 2008, the Department issued an Order for Reinstatement of Permit No. 37-8388 with no advance of the August 25, 1988 priority date.
7. On July 25, 2008 Lisa Vierling (petitioner) filed a Petition Requesting Hearing on the Reinstatement Order.
8. On January 20, 2011, the Department received Notice of Withdrawal of Petition signed by the

attorney for the petitioner.

9. While reviewing the permit in February 2011, to determine if a water right license should be issued in connection with the permit, the Department found additional information was required of the field examiner in order to confirm the beneficial use of water established in connection with the permit. On March 4, 2011, the Department sent the field examiner a detailed request for additional information confirming beneficial use of water in the permit. The request was sent electronically and via the postal service with a 30-day deadline. The additional information was due to the Department on April 4, 2011.
10. On April 18, 2011, the Department received the required additional information from the field examiner.
11. The Department did not receive timely, the information requested from the field examiner.

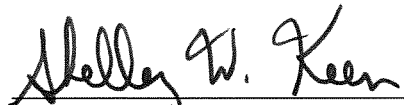
CONCLUSIONS OF LAW

1. Beneficial Use Examination Rules 35.02.c. (IDAPA 37.03.02.035.02.c) states:
If the director determines that a field report is acceptable but that additional information is needed to clarify the field report, he will notify the certified water right examiner in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the department's request is cause for the director to take action to cancel the permit.
2. The provisions of Beneficial Use Examination Rule 35.02.c authorize the Director of the Department to advance the priority date of a permit for which the field examiner has not timely submitted required information.
3. The examiner did not comply with Beneficial Use Examination Rule 35.02.c. because he did not submit required information within the time specified nor did he ask for a time extension.
4. The examiner submitted the required information 14 days after it was due.
5. The Department should advance the priority of the permit 14 days pursuant to Beneficial Use Examination Rule 35.02.c.

ORDER

IT IS HEREBY ORDERED that the priority date of Permit No. 37-8388 is **ADVANCED** to September 9, 1988.

Dated this 22nd day of July, 2011.



SHELLEY W. KEEN
Manager, Water Rights Section