

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

IN THE MATTER OF LAPSED PERMIT	)	REINSTATEMENT
NO. 11-7051 IN THE NAME OF	)	ORDER
CHARLES LEE NELSON	)	
_____	)	

This matter having come before the Idaho Department of Water Resources ("Department"), the Department finds, concludes and orders:

FINDINGS OF FACT

1. On February 13, 1974, the Department issued permit no. 11-7051 ("permit") in the name of J. Weston Martineau. The permit authorized the diversion of 1.38 cubic feet per second ("cfs") of ground water for domestic use in two homes and for irrigation of 65 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, Township 13 South, Range 44 East, B.M., Bear Lake County. A condition of permit approval required the permit holder to submit proof of beneficial use of water ("proof") to the Department on or before March 1, 1979.
2. On August 6, 1974, the Department conducted a licensing field exam for permit no. 11-7025, which is diverted out of the same well that was proposed to be the point of diversion for permit no. 11-7051. The field examiner verified development of the domestic use permitted under permit no. 11-7051 as well 10 acres of irrigation in addition to those permitted under permit no. 11-7025.
3. Of the 10 acres found in addition to that permitted under permit no. 11-7025, only 4 acres are identified as falling within the permitted place of use for permit no. 11-7051.
4. On January 6, 1975, the Department informed J. Weston Martineau that the additional 10 irrigated acres found during the August 6, 1974 field examination could not be licensed in connection with permit no. 11-7025, but would be included when a license was issued for permit no. 11-7051.
5. On January 27, 1975, the Department issued license no. 11-7025.
6. On August 29, 1977, J. Weston Martineau assigned permit no. 11-7051 to Charles Lee Nelson ("permit holder").
7. On December 29, 1978, the Department notified the permit holder that proof of beneficial use for permit no. 11-7051 was due and instructed the permit holder of the steps to be taken to either submit proof of beneficial use or request an extension of time.

8. On March 20, 1979, the Department issued the permit holder a lapse notice for the permit because it had not received an acceptable proof statement or extension request.
9. On August 18, 2010 the Department received proof of beneficial use with a request for reinstatement of the permit. The permit holder subsequently provided evidence of the diversion and beneficial use of water during the authorized development period for the permit.
10. On October 1, 2010, the Department requested additional information to document the extent of beneficial use for irrigation purposes developed during the authorized development period for the permit.
11. On October 29, 2010, the Department received evidence that the permit holder irrigated 49 acres in addition to the 10 unlicensed acres of irrigation described in the August 6, 1974 licensing field exam for permit no. 11-7025. This totals to 59 acres developed during the authorized development period for permit no. 11-7051 that are in addition to that already authorized under water right no. 11-7025.

CONCLUSIONS OF LAW

1. Section 42-218a.2, Idaho Code, provides as follows:

That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. 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 day that proof of beneficial use was received;

2. The permit holder has provided a reasonable showing why the permit should be reinstated, by submitting acceptable proof of beneficial use on August 18, 2010, and evidence that beneficial use of the water occurred during the period when the permit was active. The Department should reinstate permit no. 11-7051 with the priority advanced to August 18, 2010.
3. Permit no. 11-7051 should be reinstated for domestic use for 2 homes and irrigation of 59 acres.
4. The place of use developed during the authorized development period for permit no 11-7051, is not entirely within the permitted place of use for permit no. 11-7051. Permit no. 11-7051 will need to be amended before a license could be issued for the full 59 developed acres found.
5. Permit no. 11-7051 should be reinstated with a diversion rate of 0.08 cfs for domestic

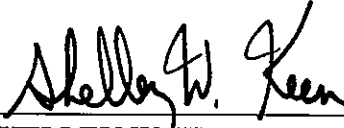
purposes, and 1.18 cfs for irrigation purposes, with a total diversion rate of 1.26 cfs.

ORDER

IT IS HEREBY ORDERED, that permit no. 11-7051, in the name of Charles Lee Nelson is **REINSTATED**, with the priority advanced to August 18, 2010.

IT IS HERBY FURTHER ORDERED, that the permitted diversion rate for irrigation purposes is changed to 1.18 cfs, and that the permitted irrigated place of use is changed to 59 acres.

Dated this 14th day of January, 2011.



SHELLEY W. KEEN, Manager
Water Rights Section