

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 37-21384)	
IN THE NAME OF LAWRENCE L. CALKINS)	FINAL ORDER REINSTATING
AND/OR SANDRA L. CALKINS)	A LAPSED PERMIT
_____)	

This matter having come before the Department of Water Resources (Department) as the result of an investigation by the Department to determine the extent of beneficial use of water in connection with a permit, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On November 19, 2004, Lawrence L. Calkins and/or Sandra L. Calkins (permit holders) applied to the Department for a permit to appropriate 0.12 cubic feet per second from ground water within Government Lot 4 (SW¼SW¼), Section 19, Township 4 South, Range 20 East, B. M., for domestic use in three homes.

2. On February 15, 2005, the Department approved the application as Permit No. 37-21384 (permit).

3. Approval condition no. 1 on the permit said:

Proof of application of water to beneficial use shall be submitted on or before February 01, 2010.

4. Approval condition no. 5 on the permit said:

Prior to any diversion and use of water under this water right, the right holder shall (1) provide evidence of participation in a mitigation plan, approved by the director, and administered by a ground water district or other recognized organization, or (2) provide individual mitigation approved by the director.

5. Approval condition no. 6 on the permit said:

Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.

6. On February 2, 2010, the permit lapsed because the permit holders did not submit the required proof of beneficial use.

7. On February 10, 2010, the Department sent the permit holders a lapse notice by certified mail.

8. On February 18, 2010, the Department received a *Statement of Completion for Submitting Proof of Beneficial Use* and the required examination fee for the permit.

9. The Department has not received evidence that the permit holders have complied with the mitigation requirement set forth in approval condition no. 5 of the permit.

10. On April 13, 2010, the Department sent the permit holders a letter requesting evidence that they have complied with the mitigation requirement set forth in approval condition no. 5 of the permit. The Department sent the letter to the permit holders' address of record in Richfield, Idaho. On April 21, 2010, the Department sent a copy of the same letter to the permit holders' alternate address in Waldport, Oregon.

11. Idaho Code § 42-218 states, 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 applicant at the address of record by regular mail provided:

1. That 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

12. Idaho Code § 42-219(8) states:

In the event that the Department shall find that the applicant has not fully complied with the law and conditions of the permit, it may issue a license for that portion of use which is in accordance with the permit, or may refuse issuance of a license and void the permit.

13. On June 3, 2010, the Department issued a preliminary order voiding the permit because the permit holders have not complied with the conditions of the permit. Specifically, the permit holders have not provided evidence of participation in a mitigation plan, approved by the director and administered by a ground water district or other recognized organization, or provided individual mitigation approved by the director.

14. The purpose of the permit's mitigation requirement is to mitigate for the depletion of water caused by the lawn and garden component of the domestic use. The in-house or culinary component of the domestic use is not consumptive and, by itself, would not be subject to

the mitigation requirement.

15. On June 15, 2010, the permit holders petitioned for reconsideration of the preliminary order voiding the permit.

16. The Department did not act on the petition for reconsideration within 21 days, and on July 7, 2010, the preliminary order became a final order of the Department.

17. Rule 760 of the Department's Rules of Procedure (IDAPA 37.01.01.760) says, in pertinent part:

The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it.

CONCLUSIONS OF LAW

1. Section 42-218a, *Idaho Code*, provides that the Department may reinstate a permit upon a showing of reasonable cause by the permit holder within sixty days of the date of notice of lapsing.

2. The permit holder has provided a reasonable showing why the permit should be reinstated, by submitting an acceptable proof of beneficial use. The permit shall be reinstated based upon the February 18, 2010, filing date.

3. The permit holders have not complied with the conditions of the permit because they have not provided evidence of participation in a mitigation plan, approved by the director and administered by a ground water district or other recognized organization, or provided individual mitigation approved by the director.

4. Mitigation is not required for the in-house, culinary component of the domestic use authorized by the permit.

5. Idaho Code § 42-219(8) authorizes the Department to issue a water right license for the portion of a permit that is in accordance with the permit, including conditions of approval.

6. The in-house, culinary component of the domestic use authorized by the permit does not violate the mitigation requirement of the permit.

7. The Department should rescind the order voiding the permit and reinstate the permit to the extent that the development of water in connection with the permit complies with the conditions of the permit.

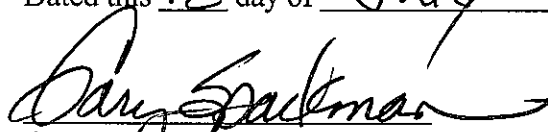
ORDER

IT IS, THEREFORE, HEREBY ORDERED that the order voiding the permit is **RESCINDED**.

IT IS FURTHER HEREBY ORDERED that the permit is **REINSTATED** for in-house domestic use only.

IT IS FURTHER HEREBY ORDERED that the permit's priority date is **ADVANCED** to December 6, 2004.

Dated this 12th day of July, 2010.


GARY SPACKMAN
Interim Director

CERTIFICATE OF SERVICE

I hereby certify that on **July 13, 2010** I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER (Final Order Reinstating A Lapsed Permit)** to the person(s) listed below:

RE: Water Permit No. 37-21384

**LAWRENCE L CALKINS
SANDRA L CALKINS
6970 SW PACIFIC COAST HWY
WALDPORT, OR 97394-9135**

A handwritten signature in black ink, reading "Darla Block". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

**Darla Block
Technical Records Specialist**