

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO.)
37-8814 IN THE NAME OF FOUR)
BROTHERS DAIRY INC)
_____)

**PRELIMINARY ORDER
CORRECTING ORDER
OF REINSTATEMENT**

This matter having come before the Department of Water Resources (Department) as a result of the reinstatement of Permit No. 37-8814, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On June 29, 1983, Delbert Kohtz submitted Application for Permit No. 36-8220A to the Department. The Department approved the application on September 21, 1990, authorizing the irrigation of 323 acres. Delbert Kohtz assigned 0.1 cfs of the permit to Four Brothers Dairy Inc. This portion of the permit was recognized as Permit No. 37-8220F and later renumbered to Permit No. 37-8814.
2. Permit No. 37-8814 carried a condition requiring proof of beneficial use to be submitted on or before October 1, 1993.
3. On July 31, 1993, the Department notified the holder of Permit No. 37-8814 that proof of beneficial use was due.
4. The Department did not receive the required proof of beneficial use by the due date.
5. On October 6, 1993, the Department notified the holder of Permit No. 37-8814 that the permit had lapsed and was of no further force nor effect.
6. On October 12, 1993, the Department received acceptable proof of beneficial use from the holder of Permit No. 37-8814.
7. On November 30, 1993, the Department ordered that Permit No. 37-8814 be reinstated with an advance in priority date to July 10, 1993, pursuant to the provisions of Section 42-218a, Idaho Code. The reinstatement order advanced the priority date of the permit 10 years and 11 days.

CONCLUSIONS OF LAW

1. Idaho Code § 42-218a states in pertinent part:

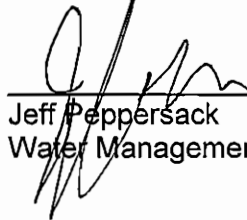
That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

2. The Order of Reinstatement should advance the priority date pursuant to the provisions of 42-218a, Idaho Code. The Department should have advanced the priority date of the permit only 11 days to July 10, 1983.
3. The Order of Reinstatement incorrectly advanced the priority date to July 10, 1993, instead of July 10, 1983.
4. The Department should correct the Order of Reinstatement to show the correct priority date in accordance with Idaho Code § 42-218a.

ORDER

IT IS THEREFORE HEREBY ORDERED that the priority date of Permit No. 37-8814 is **CORRECTED** to July 10, 1983.

Dated this 15th day of March, 2010.



Jeff Peppersack
Water Management Division