

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

IN THE MATTER OF LAPSED PERMIT	)	REINSTATEMENT
NO. 94-7395 IN THE NAME OF	)	ORDER
FRANK B. FRUTCHEY	)	
_____	)	

This matter having come before the Idaho Department of Water Resources ("Department"), the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On August 24, 2004, the Department issued Permit No. 94-7395 in the name of Frank B. Frutchev ("permit holder"). This permit authorized the diversion of 3.62 cubic feet per second ("cfs") of surface water for the irrigation of 206 acres and stockwater use in Lot 4 (NENW), Lot 5 (NWNW), Lot 6 (SWNW), Lot 7 (SENW) of Section 6, Township 48 North, Range 1 East; Lot 1 (NENE), Lot 2 (NWNE), Lot 8 (SENE), Lot 3 (NENW) of Section 1, Township 48 North, Range 1 West; and Lot 1 (SWSW) and SESW of Section 36, Township 49 North, Range 1 West all within Kootenai 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 September 1, 2009.
2. On June 30, 2009, the Department notified the permit holder that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit either proof of beneficial use or request an extension of time. The notice was mailed to the address on record, 14246 S Tamarack Ridge Rd., Cataldo, ID 83810.
3. The Department issued the permit holder a lapse notice on September 14, 2009, because it had not received an acceptable proof statement or extension request.
4. On November 20, 2009, the Department received proof of beneficial use with a request for reinstatement of the permit, and provided evidence of the application of the beneficial use of water during the authorized development period of the permit.

CONCLUSIONS OF LAW

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

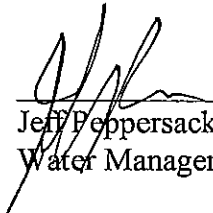
That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time 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 November 20, 2009, and evidence that beneficial use of the water occurred during the period when the permit was active. The Department should reinstate permit no. 94-7395 with the priority advanced to November 20, 2009.

ORDER

IT IS HEREBY ORDERED, that Permit No. 94-7395, in the name of Frank B. Frutchey is **REINSTATED**, with the priority advanced to November 20, 2009.

Dated this 29th day of January, 2010.



Jeff Peppersack, Acting Administrator
Water Management Division