

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 95-8976)
IN THE NAME OF NEBELS ADDITION) **FINAL ORDER REINSTATING A**
WATER & SEWER ASSN) **PERMIT AND MODIFYING A**
_____) **LICENSE**

This matter having come before the Department of Water Resources (Department) as a modification of an order on presiding officer's own motion, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On August 21, 1998, the Department issued permit No. 95-8976 in the name of Nebels Addition Water & Sewer Assn.

2. IDWR was notified of the permit holders new address on October 18, 2001, by letter from the permit holder.

3. On May 31, 2003, the Department notified the permit holder that proof of beneficial use for the permit was due on or before August 1, 2003, and instructed the permit holder of the steps to be taken to submit either proof of beneficial use or request an extension of time to submit proof. The Department mailed the notice to the permit holder at the previous address on record, 1136 Bryden, Lewiston, Idaho 83501

4. The Department issued the permit holder a lapse notice on August 12, 2003, because it had not received an acceptable proof statement or extension request.

5. On February 20, 2009, the Department received the permit holder's proof of beneficial use statement 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 of the permit.

6. On June 16, 2009, the Department issued a reinstatement order for the permit, but the record does not contain a certificate of mailing or information explaining how that permit holder could have appealed or otherwise responded to the order.

7. The Department's reinstatement order advanced the priority date for the permit from October 14, 1997, to February 20, 2009.

8. On July 21, 2009, the Department issued a water right license for the beneficial use of water established in accordance with the permit.

9. On August 17, 2009, the Department received a letter for the right holder seeking reissuance of the license with the original priority date of the permit. The right holder asserts in the letter that the department was in error by not updating its address records and by not sending the "proof due" notice to the new address.

10. Idaho Code § 42-218A, section 3 states:

The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

11. The Departments Rules of Procedure (IDAPA 37.01.01.760) states:

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. 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. The Department erred by not updating the permit holder's address timely.

2. The Department erred by not informing the permit holder of how to contest the reinstatement order.

3. Department's Rules of Procedure (IDAPA 37.01.01.760) allow the director to modify or amend a final order before the end of the appeal period by withdrawing the earlier final order and substituting a new final order for it.

4. Because the Department erred on the reinstatement order, its subject matter should be re-addressed.

5. The Department should reinstate the permit with the original priority date of October 14, 1997.

6. The Department should reissue the license with the corrected priority date.

ORDER

IT IS HEREBY ORDERED that permit 95-8976, in the name of Nebels Addition Water & Sewer Assn. is **REINSTATED** with the original permitted priority date of October 14, 1997.

IT IS FURTHER HEREBY ORDERED that license 95-8976 is **ISSUED** with the permitted priority of October 14, 1997, as set forth in the Amended Water Right License issued on this date in conjunction with this order. .

Dated this 26th day of August, 2009.

A handwritten signature in cursive script, appearing to read "Gary Spackman", written over a horizontal line.

Gary Spackman,
Interim Director