

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

IN THE MATTER OF PERMIT)
NO. 47-17100 IN THE NAME OF)
E MC LEROY JR AND)
LU ALICE MC LEROY)
_____)

**REINSTATEMENT
ORDER**

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 December 15, 2003, the Department issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted to the Department on or before March 1, 2004.
2. On June 30, 2009, the Department notified the permit holder by certified mail that proof of beneficial use was due by September 1, 2009 and instructed the permit holder of the steps to be taken to submit the proof or a Request for Extension of Time ("extension request").
3. On August 20, 2009, the permit holder filed a Statement of Completion for submitting proof of beneficial use ("proof") with the appropriate license examination fee.

CONCLUSIONS OF LAW

Section 42-204, Idaho Code, provides as follows:

Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date;

The Department inadvertently did not mail a notice to the permit holder sixty (60) days prior to the proof due date, as required pursuant to Idaho Code, Section 42-204. The department did catch the oversight and did send a proof due notice on June 30, 2009 and gave the permit holder until September 1, 2009 to submit proof of beneficial use.

The permit did lapse when proof of beneficial use was not submitted by the March 1, 2004 deadline.

The Department should reinstate the permit, based on a Department error. Reinstatement can be approved according to Idaho Code, Section 42-218a(1) and (3), which provides that the Department may reinstate a permit based upon a showing of reasonable cause and without advancing the permit's original priority date upon a showing of a Department error.

The permit holder has provided a reasonable showing why the permit should be reinstated, by submitting acceptable proof of beneficial use on August 20, 2009. The Department should reinstate permit no. 47-17100 with no change in the priority date.

ORDER

IT IS HEREBY ORDERED that Permit No. 47-17100 is reinstated with no advance of the original priority date.

DATED this 24th day of August, 2009.



JEFF PEPPERSACK, Chief
Water Allocation Bureau