

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

IN THE MATTER OF LAPSED PERMIT	)	
NO. 37-08169 IN THE NAME OF	)	REINSTATEMENT ORDER
BIG WOOD CANAL COMPANY	)	
_____	)	

This matter having come before the Department of Water Resources ("Department") as a lapsed permit to appropriate water, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On March 18, 1985, the Department issued Permit No. 37-08169 ("permit") to Big Wood Canal Company ("permit holder") for the diversion of 232 cubic feet per second of water from the Little Wood River from a point within Section 32, Township 05 South, Range 16 East, B.M., for the generation of power. The permit required the permit holder to submit proof of beneficial use ("proof") to the Department on or before April 1, 1986.

2. On March 5, 1986, the permit holder submitted proof of beneficial use.

3. House Bill 671 was enacted by the Idaho Legislature on April 4, 1986. The legislation amended Section 42-217, Idaho Code, to require license examination fees to be submitted with a proof statement, or in the alternative, to require submittal of a completed field examination report prepared by a certified water right examiner. In addition, the legislation provided for a license examination fee to be submitted for permits where proof of beneficial use had been submitted but a license examination had not been completed. The enacted legislation states in pertinent part as follows:

Such written proof as may be required to be submitted by such user shall be upon forms furnished by the department of water resources and shall include fees as provided in subsection K of section 42-221, Idaho Code, or a field examination report prepared by a certified water right examiner.

Upon receipt of such proof and the fee as required in section 42-221, Idaho Code, by the department of water resources the department shall examine...

* * *

Holders of permits who have submitted proof of beneficial use but have not had their project examined for beneficial use shall submit the fee required in section 42-221,

Idaho code, within sixty (60) days of notification by the director of the department of water resources that a license examination fee is required. Failure to submit the fee in the time allowed shall be cause for the director to advance the date of priority of the permit one (1) day for each day that the fee is late; provided that if the fee is not fully paid within one (1) year of the time it is due, the director of the department of water resources may consider the proof of beneficial use for the permit to be incomplete and lapse the permit, as provided in section 42-218a, Idaho Code.

4. 055.01.b. Beneficial Use Examination Rule (IDAPA 37.03.02 055.01.b.) states, Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water examiner within one (1) year of the sixty-first (61st) day after notification by the director that the submittal is due is cause for the director to reject the proof of beneficial use and lapse the permit.

5. On August 11, 1987, the Department mailed an Examination Fee Notice to the permit holder. The notice informed the permit holder of the options for compliance with section 42-217, Idaho Code, and required a statement of intent be submitted within sixty (60) days. The notice also specified that either the exam fee or the completed examination report would be due within one year or the permit would lapse.

6. On October 8, 1987, the permit holder submitted a statement of intent to have the exam conducted by a certified examiner. Thomas K. Schafer was retained to conduct the field examination and prepare a Beneficial Use Field Report for Permit 37-8169.

7. On December 21, 1988, the Department sent the permit holder a lapse notice because the department had not received an acceptable field examination report.

8. On February 21, 1989, the Beneficial Use Field Report was submitted by Thomas K. Schaefer to the Department. The examiner submitted evidence showing that water had been applied to the authorized beneficial use during the development period and explained why the Beneficial Use Field Report was not timely submitted (low water conditions).

CONCLUSIONS OF LAW

1. An examination fee or a Beneficial Use Field Report prepared by a certified water right examiner was required for the permit.

2. The Department properly notified the permit holder of the license examination requirements by mailing notice to the permit holder.

3. Section 42-218a, Idaho Code, provides in pertinent part as follows:

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:

* * *

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;

4. The proof submitted by the permit holder was incomplete and the permit lapsed pursuant to Section 42-217, Idaho Code, Beneficial Use Rule 55.01.b and Section 42-218a, Idaho Code for failure to submit either the license examination fee or an acceptable field examination report within one year of the due date.

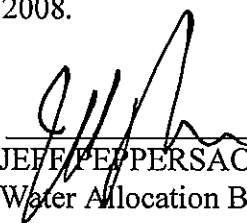
5. The permit holder has provided sufficient information in the form of a Beneficial Use Field Report that water was beneficially used during the authorized development period and provided reasonable cause for the Department to reinstate the permit.

6. The Department should reinstate the permit with an advance in priority date based on the day that the Beneficial Use Field Report was received.

ORDER

IT IS HEREBY ORDERED, that Permit No. 37-08169 in the name of Big Wood Canal Company is **REINSTATED** with the priority date advanced to February 21, 1989.

Dated this 2nd day of September, 2008.



JEFF PEPPERSACK, Chief
Water Allocation Bureau