

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT)	PRELIMINARY ORDER
NO. 63-12421 IN THE NAME OF)	RESCINDING AN ORDER VOIDING AN
JOHN W BAICY)	APPLICATION FOR PERMIT
_____)	

This matter having come before the Department of Water Resources (Department) as a petition to reinstate an application for permit to appropriate water, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On October 24, 1997, John W. Baicy (applicant) filed an application for permit (application) with the Department seeking the right to divert 3.0 cfs from groundwater for irrigation, stockwater and domestic purposes within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, of Section 19, T1N, R1E, B.M., Ada County.
2. On February 2, 1998, the Department sent the applicant a letter which explained that the processing of the application must be delayed pending completion of the comprehensive Treasure Valley ground water study.
3. On March 7, 2003, the Department received a letter from the applicant requesting approval of the application.
4. On March 18, 2003, the Department replied to the applicant by notifying him that an adequate mitigation plan would be necessary for continued processing of the application at that time. The Department addressed its letter to the applicants' new address, but the Department's database was not updated to reflect the change in address.
5. On July 31, 2008, the Department sent a letter to the applicant at the address on the application requesting his intent for processing the application for permit. A response was required within 30 days from the letter date.
6. On August 6, 2008, the request letter was returned to the Department by the United States Postal Service as undeliverable.
7. On August 26, 2008, the Department issued a preliminary order (order) voiding the permit on the premise that the applicant failed or refused to provide the Department the requested information and that the applicant cannot be contacted.

8. Idaho Code § 42-204 says, in pertinent part:

If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action.

9. On November 10, 2008, Department staff reviewed the application again. The updated address from the applicant's previous correspondence was discovered and the applicant was notified by telephone that the Department had voided his application.
10. On May 15, 2009, the Department sent a letter to the applicant at his new address notifying him that his application had been voided.
11. On May 29, 2009, the Department received the applicant's request that his application be reinstated.
12. Water Appropriation Rule 35.04.f (IDAPA 37.03.08.35.04.f.) says:

If the applicant's name or mailing address changes, the applicant shall in writing notify the department of the change.

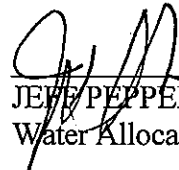
CONCLUSIONS OF LAW

1. Idaho Code § 42-204 requires the Department to correspond with the applicant concerning a defective application.
2. Pursuant to Water Appropriation Rules 35.04.f (IDAPA 37.03.08.35.04.f.) the applicant must notify the Department of an address change in writing.
3. The applicant provided a new mailing address to the Department in writing prior to the Department requesting additional information about the application.
4. After the March 18, 2003 letter from the Department to him, the applicant had a reasonable expectation that the Department would continue to correspond with him at the new mailing address he provided.
5. As a result of a failure to update the applicant's contact information, the applicant was not notified of the Department's request for additional information about the application.
6. The applicant wants to proceed with the diversion and use of water proposed in the application.
7. The Department should rescind the order voiding the application for permit and should reinstate the application for permit.

ORDER

IT IS HEREBY ORDERED that the order voiding Application for Permit No. 63-12421 is **RESCINDED** and that the application for permit is **REINSTATED**.

Dated this 3rd day of June, 2009.



JEFF PEPPERSACK, Bureau Chief
Water Allocation Bureau