



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

March 13, 2009

ROBERT L HARRIS
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS ID 83405-0130

RE: LAPSED PERMIT NO. 25-7583

Dear Mr. Harris:

Your letter to Director Tuthill dated February 13, 2009 requesting reinstatement of the referenced lapsed permit was forwarded to me for response. My review of this matter has determined that the Idaho Department of Water Resources ("Department") did receive a proof of beneficial use statement with the appropriate \$100.00 for the license examination fee from the permit holder, Melvin Fielding. As you know, evidence of the developed uses was required to reinstate the permit because the proof was filed after 60-days from the date of the lapse notice. The evidence requested is according to Idaho Code Section 42-218a, which provides:

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 extension of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing or 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;

Mr. Fielding did provide the Department with a response letter explaining the reason the proof was filed late. However no documentation was provided that evidenced the development and use of the permit and the file was eventually destroyed.

Your understanding of the Department's policy regarding stub-in practices for domestic use is accurate. However, the stub-in practice does not apply to irrigation use unless the use is associated with each home up to ½ acre per home. Ideally, submittal of as-built plans documenting the completion date of the project and evidence indicating the completed capacity of the pumping system would be included to prove the extent of stubbed-in development. This type of evidence must support the number and location of domestic units served. Irrigation exceeding ½ acre per home, and for common areas would need separate evidence of development demonstrating the number and location of acres irrigated and those connected to the groundwater source.

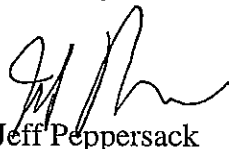
It is most important that the evidence provide the extent of development and use at the time the permit was active, April 18, 1991 through April 1, 1994. If sufficient evidence can be provided to the Department and the permit reinstated, a water right license can only be issued for use that was developed during the authorized development period. Additional development would require a new application for permit or transfer of an existing water right to cover the uses.

If the permit is reinstated, the ownership of the permit of personal property may be in question, unless appropriate change of ownership can be submitted prior to licensing. Because the original permit holder is deceased, ownership may have passed to other interested parties. Ideally, an assignment from the beneficiary of Melvin Fielding's estate would provide evidence of ownership for the home owners' association. Otherwise, without ownership change documentation, any license issued would become appurtenant to individual lot owners.

Please be aware that this permit has **lapsed** and is of no force nor effect unless it is reinstated. Upon receipt of sufficient evidence that meets the statutory criteria, IDWR may reinstate the permit and issue an order establishing a new priority date. I will retain your letter for **30-days** to allow you time to provide me with acceptable evidence for the Department's consideration.

If you have any questions regarding reinstatement of this permit, please contact me at (208) 287-4948.

Sincerely,



Jeff Peppersack
Bureau Chief
Water Allocation Bureau

Encl.