

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

IN THE MATTER OF LAPSED PERMIT)
NO. 37-8388 IN THE NAME OF THE)
SDRTR, LLC.)
_____)

REINSTATEMENT ORDER

This matter having come before the Idaho Department of Water Resources ("Department") as a Petition to Reinstate Lapsed Water Right Permit No. 37-8388, the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On February 3, 1989, the Department approved Permit No. 37-8388 ("permit") to Bruce Gilbert ("Gilbert") authorizing the diversion of 2.00 cubic feet per second ("cfs") of water from Warfield Hot Springs within the SWNWNW, Sec. 31, Township 04 North, Range 17 East, Blaine County, B.M., to be used for heating, recreational, and domestic uses with priority date of August 25, 1988. A condition of permit approval required the permit holder to submit proof of beneficial use of water ("proof") to the Department on or before March 1, 1992.

2. On December 31, 1991, by certified mail, the Department notified Gilbert that proof was due and provided instruction for the steps to be taken to submit the proof or an extension of time ("extension") request.

3. On February 18, 1992, Gilbert requested an extension for the permit. The extension was granted and the proof deadline was extended to March 1, 1997 based on governmental delay.

4. On December 31, 1996, by certified mail, the Department notified Gilbert that proof was due and provided instruction for the steps to be taken to submit the proof or an extension request.

5. On February 28, 1997, Gilbert requested an extension for the permit. An attachment to the extension request indicated that "...excavation and construction of the diversion works was commenced and a device for the purpose of measuring flow and temperature of the water has been set in place." The extension was granted and the proof deadline was extended to March 1, 2001 based on governmental delay.

6. On May 25, 2000, James P. Speck, attorney, filed an Assignment of Permit with the Department on behalf of his client, Steven D. Reuther ("Reuther"). The permit was assigned from

Bruce and Ellen Gilbert to Reuther.

7. On December 31, 2000, the Department sent, by certified mail, a notice to Reuther that proof was due and provided instruction for the steps to be taken to submit the proof or an extension request.

8. On February 12, 2001, James P. Speck requested an extension for the permit on behalf of Reuther. An attachment to the extension request indicated that "[o]nce the plans were approved by Blaine County and the building permit issued in October, 2000, construction commenced immediately and has continued through the winter. The use of geothermal surface water for heating purposes has significantly expedited the construction process during these winter months." The extension was granted and the proof deadline was extended to March 1, 2006 based on due diligence.

9. On December 31, 2005, the Department sent, by certified mail, a notice to Reuther that proof was due and provided instruction of the steps to be taken to submit the proof or an extension request. The notice was returned to the Department as undeliverable. The Department did not provide notice to Reuther's attorney.

10. On March 10, 2006, the Department sent Reuther a lapse notice since the Department had not received an acceptable proof statement or extension request. The notice was returned to the Department as undeliverable. The Department did not provide notice to Reuther's attorney.

11. On May 16, 2008, James P. Speck filed an Assignment of Permit with the Department on behalf of his client, SDRTR, LLC. The permit was assigned from Reuther to SDRTR, LLC ("permit holder").

12. On May 16, 2008, James P. Speck filed a Petition to Reinstate Lapsed Water Right Permit No. 37-8388 ("petition") on behalf of the permit holder. The petition seeks reinstatement of the permit with no advancement in the priority date because the Department failed to properly notify Reuther or his attorney that proof was due and that the permit had lapsed. The petition included information demonstrating that water was used as authorized by the permit prior to the date that proof was due in 2006. The information included 1) a copy of correspondence in 2005 from Travis L. Thompson, attorney, regarding concerns arising from the installation and operation of Reuther's hot water system and, 2) an Affidavit of David Rosser, a building contractor, indicating that, "[a]mong the residential improvements is a hot water system using water from Warfield Hot Springs to heat the home, melt snow from the driveway and fill a hot tub. That system was fully constructed and in operation by June, 2004."

13. On July 7, 2008, James P. Speck filed a proof statement and a Beneficial Use Field Report ("field report") on behalf of the permit holder. The field report indicated that 0.45 cfs was developed under the permit for heating and recreation use.

CONCLUSIONS OF LAW

1. Section 42-218a.2, Idaho Code, provides as follows:

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;

2. Section 42-218a(3), Idaho Code, provides that the Department may reinstate a permit without advancing the permit's original priority date upon a showing of error or mistake of the Department.

3. The Department failed to adequately notify Reuther that proof was due and that the permit had lapsed because the Department did not provide copies of the notices to Reuther's attorney.

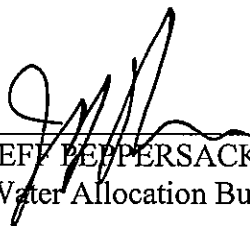
4. The permit holder has provided sufficient information and reasonable cause for the Department to reinstate the permit.

5. The Department should reinstate the permit without advancing the priority date.

ORDER

IT IS HEREBY ORDERED that Permit No. 37-8388 in the name of SDRTR, LLC is **REINSTATED** with no advance of the August 25, 1988 priority date.

Dated this 14th day of July, 2008.



JEFF PEPPERSACK, Chief
Water Allocation Bureau

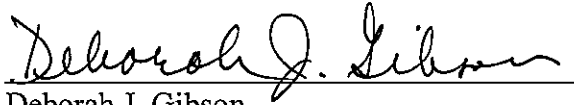
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2008, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Reinstatement Order and Explanatory Information sheet for a Preliminary Order when a hearing was not held.

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