

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LAPSED	)	
PERMIT NO. 69-11500 IN THE	)	REINSTATEMENT ORDER
NAME OF ROCKING M CATTLE CO.	)	
AND MAGNESS RACING VENTURES, INC.	)	
_____	)	

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 May 17, 2004, the Department issued Permit No. 69-11500 in the name of Rocking M Cattle Co. ("permit holder") authorizing the diversion of 0.02 cubic feet per second ("cfs") of surface water referred to as a Spring tributary to Sinks for Stockwater and Wildlife use in the NW1/4, Section 1, Township 13 North, Range 07 West, B.M., Washington County. A condition of permit approval required the permit holders to submit proof of beneficial use of water ("proof") to the Department on or before May 1, 2005.

2. On February 28, 2005, the Department notified the permit holder that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the proof of beneficial use or an extension of time request.

3. On March 22, 2005 the Department received an extension request from the permit holder. The department granted the extension and extended the proof deadline to May 1, 2006.

4. On February 28, 2006, the Department notified the permit holders that proof of beneficial use was due and instructed the permit holders of the steps to be taken to submit the proof of beneficial use or an extension of time request.

5. On March 8, 2006, the Department sent the permit holders a lapse notice since the department had not received an acceptable proof of beneficial use statement or extension of time request.

6. On March 17, 2006 the Department received an Assignment of Permit that added Magness Racing Ventures, Inc. as a second permit holder with 77.2% interest in the water right.

7. On May 5, 2008, the Department received a Proof of Beneficial Use form filed with evidence of the development of the permit, and a letter explaining the reason for filing proof late. Evidence provided to the Department contained documentation that reflects construction of the structure during the active period of the permit, as proof that beneficial use of the water occurred during the period when the permit was active.

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. The permit holders have provided sufficient information and reasonable cause for the Department to reinstate the permit.

3. The Department should reinstate permit no. 69-11500 with the priority advanced to the date that the proof of beneficial use was received.

ORDER

IT IS HEREBY ORDERED, that Permit No. 69-11500, in the names of Rocking M Cattle Co. and Magness Racing Ventures, Inc. is **REINSTATED**, with the priority advanced to **May 5, 2008**.

Dated this 14th day of May, 2008.



Jeff Peppersack, Bureau Chief
Water Allocation Bureau