

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT TO)
APPROPRIATE WATER NO. 47-7991)
IN THE NAME OF CRYSTAL SPRINGS) **ORDER OF REINSTATEMENT**
HYDROELECTRIC L.P.)

This matter having come before the Department of Water Resources (Department) as a proof of beneficial use of water, the Department Finds, Concludes, and Orders:

FINDINGS OF FACT

1. On November 3, 1986 the Department issued Permit to Appropriate Water No. 47-7991 (permit) to Crystal Springs Hydroelectric Co, for the diversion and use of 40 cfs of water from Cedar Draw Creek in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, Township 09 South, Range 15 East, B. M., for the generation of power.
2. Through a series of assignments, Crystal Springs Hydroelectric, L.P. is the current permit holder.
3. Approval condition 1.b. of the permit says:

Proof of construction of works and application of water to beneficial use shall be submitted on or before November 1, 1991.
4. Idaho Code § 42-218a says, in pertinent part:

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.
5. On February 2, 1987, the permit holder submitted a proof of beneficial use statement for the permit and Permit 47-7768. In connection with the proof of beneficial use statement, the permit holder submitted a Beneficial Use Field Report prepared by a certified water right examiner. The examiner stated in the field report that the permit holder had diverted and beneficially used water in connection with Permit 47-7768, but that although the diversion and distribution system was in place for Permit 47-7991, the permit holder had not yet beneficially used water in connection with Permit 47-7991.
6. The Department did not inform the permit holder that the proof of beneficial use statement and Beneficial Use Field Report submitted on February 2, 1987, were inadequate to confirm that water had been beneficially used in connection with the permit and that additional time remained to submit adequate proof of beneficial use.

7. The Department did not notify the permit holder that proof of beneficial use would be due on November 1, 1991, as directed in Idaho Code § 42-204.
8. On November 2, 1991, the permit lapsed for failure of the permit holder to submit proof of beneficial use within the time indicated on the permit.
9. Idaho Code § 42-218a.2. says, in pertinent part:

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;

10. On April 2, 2008, the Department received the permit holder's proof of beneficial use statement and additional information that, when read with the Beneficial Use Field Report submitted in 1987, show that the permit holder began diverting and using water in connection with the permit in 1988, prior to the date that proof of beneficial use was due.
11. Idaho Code § 42-218a.3. says, in pertinent part:

The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

CONCLUSIONS OF LAW

1. The Department erred by not informing the permit holder that the proof of beneficial use and Beneficial Use Field Report submitted in 1987 were inadequate to confirm beneficial use for the permit.
2. The Department further erred by failing to notify the permit holder 60 days before proof of beneficial use was due on November 1, 1991.
3. Department error is sufficient reasonable cause for the permit holder having filed a late proof of beneficial use.
4. The permit should be reinstated with no advance in priority in accordance with the provisions of Idaho Code § 42-218a.3.

ORDER

IT IS HEREBY ORDERED that Permit to Appropriate Water No. 47-7991 is **REINSTATED** with no advance in priority.

Dated this 7th day of April, 2008.



JEFF PEPPERSACK, Chief
Water Allocation Bureau