

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

IN THE MATTER OF PERMIT)
NO. 02-7113 IN THE NAME)
OF WILLIAM R. & VICTORIA R.)
WOLFE)

**PRELIMINARY ORDER
CORRECTING PRIORITY**

This matter having come before the Department of Water Resources ("Department") as a result of review of Permit No. 02-7113 ("permit") for the issuance of a license, the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On February 26, 1973, the Department received Application for Permit No. 02-7113 to appropriate water, along with the required filing fee, from Burghardt Company.
2. On April 9, 1973, the Department approved the permit with a priority date of February 26, 1973.
3. On March 10, 1978 and October 15, 1982, the Department issued approved extensions of time to submit proof of beneficial use of water under this permit.
4. On December 22, 1987, the Department received an assignment of the permit from Burghardt Company to James F. Hisel Jr. and Wanda L. Hisel.
5. On April 1, 1988, Permit 02-7113 lapsed for failure of the permit holders to submit proof of beneficial use.
6. On June 28, 1988, James F. Hisel Jr. and Wanda L. Hisel submitted proof of beneficial use of water in the amount of 5.44 cfs for the irrigation of 272 acres.
7. On September 28, 1988, the Department reinstated Permit 02-7113 and advanced the date of priority to May 21, 1973.
8. On January 29, 1992, the permit holders amended the proof of beneficial use that had been submitted. The amended proof was submitted to increase the amount of water diverted to 6.6 cfs for the irrigation of 330 acres
9. On February 7, 1992, the Department ordered that the proof for Permit No. 02-7113 be amended to show a total rate of 6.6 cfs and advanced the priority date to December 28, 1976, for submittal of the additional examination fee under the amended proof of beneficial use.
10. On June 26, 1997, the Department conducted a field examination of the permit

and determined that the system could provide an amount of 6.47 cfs and identified the irrigation of 227 acres of land.

11. On June 16, 1998, the Department received an assignment of the permit assigning the permit to William R. and Victoria R. Wolfe.

12. On May 12, 2004, the permit holders submitted a request to withdraw the amended proof submitted in January of 1992 and reinstate the priority date of May 21, 1973, determined when the original proof of beneficial use was submitted.

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 order dated February 7, 1992, that advanced the priority of the permit to December 28, 1976, could be revoked if permit holders request to reinstate original proof submittal is accepted.

3. The amended proof of beneficial use was submitted to obtain additional water for acres under irrigation; no additional acres were developed and the original proof would provide one inch per acre for the lands found irrigated at the time of the field examination.

4. The Department should issue an order rescinding amended proof of beneficial use and reinstating original proof of beneficial use submittal.

ORDER

IT IS THEREFORE HEREBY ORDERED that the original proof of beneficial use be accepted and the date of priority of Permit No. 02-7113 is reinstated to **May 21, 1973**.

Dated this 9th day of March, 2007.



JEFF PEPPERSACK
Acting Chief, Water Allocation Bureau