



State of Idaho

DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

February 23, 2007

ROBERT L HARRIS
HOLDEN KIDWELL HAHN & CRAPO
1000 RIVERWALK DR STE 200
PO BOX 50130
IDAHO FALLS ID 83405

RE: LAPSED PERMIT NO. 22-7814

Dear Mr. Harris:

The department acknowledges receipt on January 29, 2007, of a Proof of Beneficial Use and license examination fee, an Assignment of Permit and its filing fee, and various documents evidencing construction of a development titled the Valley Centre Subdivision. The department's records reflect that it did not receive either a Proof of Beneficial Use ("proof") or a Request for Extension of Time for filing proof on or before October 1, 2005, therefore this permit lapsed and was of no force nor effect.

At the time you filed proof, you requested that the permit be reinstated and began providing documents as evidence for reinstatement purposes. The documents you have submitted provide evidence that a well was drilled and a pump installed, and that some buildings were built and occupied beginning in 2000, however the evidence you provided are unclear as to the extent of diversion and beneficial use of the water and/or extent of completion of the water delivery system.

Section 42-218a, *Idaho Code*, requires "...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..." The extent of beneficial use developed under a municipal use is measured by the rate diverted and applied to municipal purposes within the authorized development period. Since a municipal use is allowed to enlarge in volume based on growth in the service area, rate is generally the only limitation applied to the right as long as water is diverted for municipal purposes within a growing service area. Without clear evidence of the rate diverted and beneficially used during the authorized development period, the permit cannot be reinstated.

In contrast, a permit authorizing domestic use within a subdivision is licensed with volume and place-of-use limitations. The department has a long-standing practice of licensing domestic water use for stubbed-in lots in subdivisions. Under the "stub-in" practice, the department issues water right licenses for domestic purposes in subdivisions if the water diversion and distribution systems are in place but the water has not yet been put to beneficial use on all the building lots. The department's "stub-in" practice recognizes that the sale of

subdivision lots can take longer than the number of years the department can authorize for completion of a water appropriation project. A developer may go to considerable expense and effort to construct a water distribution system to lots that may not sell for a number of years. By issuing a water right license for domestic uses that have been stubbed-in, the department avoids large numbers of individual filings as the lots are sold. The department's "stub-in" practice is applied to each home that would individually qualify as a domestic use. In addition to evidence of the developed water diversion and distribution system, the stub-in policy only requires proof of pumping capacity installed during the authorized development period up to the amount permitted. The disadvantage to a license issued for domestic use is that the right could not be acquired by a municipal provider for use within a larger service area without a transfer filed to change the water right under Section 42-222, *Idaho Code*.

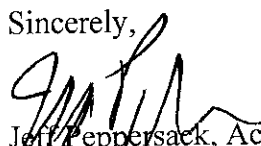
One alternative to the requirement for proof of the rate diverted and beneficially used during the authorized development period would be evidence of the actual "stubbed-in" lots in the subdivision and evidence of the installed capacity of the pumping system. The evidence must show the development and capacity installed prior to the proof due date of the permit. Under this alternative, the department could still issue a license for municipal use; however, the use would also be limited to the volume that would be developed similar to a domestic use as described above under the subdivision "stub-in" policy.

According to your letter dated February 19, 2007, a set of "As Built" drawings of the development are not available and were not filed with the DEQ as they requested in a letter dated July 17, 2000, to Randy Burnside. I suggest you obtain a notarized statement or affidavit from Carlin Feisthamel, DEQ Water Quality Engineer, which verifies the status of the water system during his involvement in 2000 to 2005. It would be most helpful if he would provide a sketch of the subdivision showing how the water system was installed and which lots were connected as built. In addition, information confirming the installed pumping system capacity for the period ending October 1, 2005 will also be required.

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 department's criteria, an order will be issued reinstating your permit and establishing a new priority date. Therefore, the department will hold the proof of beneficial use for **30 days** to provide you the opportunity to submit the required evidence.

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

Sincerely,



Jeff Peppersack, Acting Chief
Water Allocation Bureau

Cc: Kari Marie Campos, Beard, St. Clair

sent by mail 2/23/07