

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

IN THE MATTER OF LAPSED PERMIT	)	
NO. 57-7593D IN THE NAME OF	)	REINSTATEMENT ORDER
RON KITCHELL AND/OR	)	
SANDY KITCHELL	)	
_____	)	

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 December 12, 1994, the Department issued Permit no. 57-7593 in the names of Allan Lindner, Debra Lindner, Charles S. Hightower, and Vicky L. Hightower ("permit holders"). This permit authorized the diversion of 0.71 cubic feet per second ("cfs") of ground water to be diverted for domestic use for 6 households and irrigation for 30 acres in the NE1/4SE1/4 and SE1/4SE1/4 of Section 9, Township 02 South, Range 02 West, B.M., Owyhee 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 December 1, 1999.

2. On May 13, 1999, the department received an Assignment of Permit signed by the permit holders, individually, assigning permit no. 57-7593, in its entirety, to Eagle View Estates Homeowners Association No. 3.

3. On July 29, 1999, the department received an Assignment of Permit signed by Debra S. Lindner, on behalf of the Eagle View Estates Homeowners Association (No. 3), assigning a portion of permit no. 57-7593 to Charles S. and Vicky L. Hightower ("Hightowers"), with the place of use identified as being within Lot 10, Block 1 of "Eagle View Estates Subdivision." The portion of the permit in the name of the Hightowers was identified as no. 57-7593B, and the remaining portion of the permit in the name of the Eagle View Estates Homeowners Association No. 3 was then identified as 57-7593A.

4. On September 30, 1999, the Department notified the permit holders for 57-7593A and 57-7593B that proof of beneficial use was due and instructed the permit holders of the steps to be taken to submit the proof(s) or Request(s) for Extension of Time ("extension request").

5. On December 8, 1999, the Department approved two extension requests for permit nos. 57-7593A and 57-7593B, extending the proof deadlines for portion A to December 1, 2003, and portion B to December 1, 2001.

6. On January 14, 2000, the department received an Assignment of Permit in the name of the Eagle View Estates Homeowners Association (No. 3), for Permit No. 57-7593A to assign a portion of the permit to Ron and Sandy Kitchell (the "Kitchells") identifying the place of use to be within Lot 9, Block 1. The newly assigned portion of the permit was identified as 57-7593D, and the remaining portion of the permit in the name of Eagle View Estates Homeowners Association No. 3 was identified as 57-7593C.

7. On September 30, 2003, the Department notified the permit holders that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the proof or an extension request.

8. On April 1, 2004, the Department sent the Kitchells' (no. 57-7593D) a lapse notice because the department had not received an acceptable proof of beneficial use statement or extension of time request from these permit holders.

9. On September 14, 2005, the department received a Proof of Beneficial Use form filed on behalf of the Kitchells with evidence of development and use of permit no. 57-7593D from Darin Reinertson and/or Hannah Reinertson (the "Reinertsons"). The Reinertsons purchased the Kitchells' property in February of 2005, after the property had gone through foreclosure. The Reinertsons provided the department evidence of proof of beneficial use that 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 holder has provided sufficient information and reasonable cause for the Department to reinstate the permit by submitting sufficient information to show that water was beneficially used during the authorized development period.

3. The Department should reinstate the permit with the priority advanced to the date that Proof of Beneficial Use was received.

ORDER

IT IS HEREBY ORDERED, that Permit No. 57-7593D shall be **REINSTATED** in the name of Ron Kitchell and/or Sandy Kitchell with the priority advanced to **September 14, 2005**.

Dated this 25th day of January, 2006.


Gary Spackman

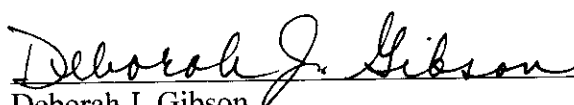
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2006, a true and correct copy of the foregoing documents described below were served on the following as noted:

Document(s) Served: Reinstatement Order
Explanatory Information to Accompany a Preliminary Order without a hearing.

DARIN REINERTSON
HANNAH REINERTSON
15442 WAR EAGLE RD
MURPHY ID 83650

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail


Deborah J. Gibson
Administrative Assistant