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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO.)
02-7199E IN THE NAME OF)
EARL G. &/OR DONNA R. FOX)
_____)

ORDER OF REINSTATEMENT

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 as follows:

FINDINGS OF FACT

1. On January 7, 1986, the Department reinstated Permit No. 02-7199E in the name of Earl G. Fox and Donna R. Fox (permit holders) for the diversion and use of 0.08 cfs of water from the Snake River in the SW¼SW¼ of Section 14, Township 2 North, Range 4 West, B. M., for the irrigation of 4 acres.

2. On February 27, 1986, the Department returned two assignments of this permit to the permit holders because they did not include the addresses of the new property owners. The assignments of permits were to assign portions of Permit No. 02-7199E to Mr. James Hughey and Mr. Arthur F. Pollock, Jr.

3. On April 3, 1987, the Department sent an Examination Fee Notice to Earl G. Fox for Permit No. 02-7199E.

4. On May 5, 1988, Permit No. 02-7199E lapsed for failure of the permit holders to submit the required examination fee.

5. On November 30, 1988, Arthur F. Pollock, Jr. and Dulcie Pollock (claimants) filed a claim in the Snake River Basin Adjudication (SRBA) on a portion of Permit 02-7199E. They had not been informed that the permit had not been changed to their name or that the permit had lapsed for failure of the permit holder to submit an examination fee.

6. On October 12, 2005, Department staff corresponded with Arthur F. and Dulcie Pollock regarding the Notice of Claim to a Water Right submitted for lapsed Permit 02-7199E. The Department staff advised the claimants that the permit may be able to be reinstated if they would submit the required examination fee to the Department.

7. On October 17, 2005, the Department received the examination fee for the permit along with a late fee.

8. *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 made no attempt to contact James Hughey or Arthur F. Pollock, Jr. so that they could submit the examination fee to prevent the permit from lapsing.
2. The Department erred by not trying to contact the current property owners.
3. 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. 02-7199E is **REINSTATED** with no advance in priority.

Dated this 23rd day of November, 2005.



GARY SPACKMAN