

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

IN THE MATTER OF PERMIT NO. 02-7157C)
IN THE NAME OF MUD FLAT CANAL)
COMPANY)
_____)

**PRELIMINARY ORDER
CORRECTING PRIORITY**

This matter having come before the Department of Water Resources (Department) as a result of review of Permit No. 02-7157C (permit) for the issuance of a license, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On April 20, 1977, the Department approved Application for Permit No. 02-7157C to appropriate water with a date of priority of August 7, 1974.
2. On April 8, 1982, the Department approved a request for an extension of time (extension request) in which to submit proof of beneficial use (proof).
3. On January 31, 1987, the Department notified the permit holder by certified mail that proof was due and informed the permit holder of the steps to be taken to submit the proof or a request for an extension of time in which to submit the proof.
4. On April 13, 1987, the Department sent the permit holder a lapse notice, since the permit holder had not submitted either an acceptable proof or extension request.
5. On June 18, 1987, the permit holder submitted a completed extension request to the Department. In addition, the permit holder submitted evidence to show that water has been applied to a portion of the permitted use during the authorized development period.
6. On July 23, 1987, the Department rejected the extension request because an extension had previously been granted and the Department recommended the permit holder submit proof for the development that had been completed.
7. On October 1, 1987, the permit holder submitted proof for 372 acres of irrigation.
8. The proof was 78 days late after the Department allowed receipt of the rejected extension request as date proof was submitted.
9. On November 25, 1987, the Department issued an order reinstating the permit and changing the priority to May 24, 1974, which was before the date the application was filed.

10. 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;

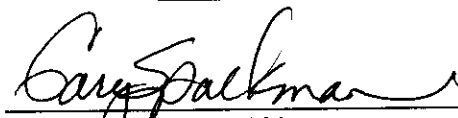
CONCLUSIONS OF LAW

1. Section 42-218a(2), *Idaho Code*, requires the Department to advance the priority to a date later in time than the original priority date when proof is late.
2. The order dated November 25, 1987, incorrectly changed the priority of the permit to May 24, 1974 instead of October 24, 1974.
3. The Department should correct the date of priority for the permit.

ORDER

IT IS HEREBY ORDERED that the date of priority of Permit No. 02-7157C is corrected to be **October 24, 1974**.

Dated this 22nd day of November 2005.



GARY SPACKMAN