

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

IN THE MATTER OF LAPSED	)	
PERMIT NO. 65-13800 IN THE	)	REINSTATEMENT ORDER
NAME OF MOUNTAIN	)	
SHADOWS HOMEOWNERS ASSN., LLC	)	
_____	)	

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 November 17, 1998, the Department issued Permit No. 65-13800 to Larry Hellhake (“permit holder”) authorizing the diversion of 0.24 cubic feet per second (“cfs”) of ground water to be diverted for Domestic use in the NENE, SWNW, NESW, and NWSW, of Section 16, Township 09 North, Range 04 East, B.M., Boise County. A condition of permit approval required the permit holder to submit proof of beneficial use of water (“proof”) to the Department on or before November 1, 2002.

2. On September 14, 1999, the permit holder filed an Assignment of Permit with the Department assigning all his right, title and interest in permit no. 65-13800 to the Board of Directors of Mountain Shadows Homeowners Association, LLC.

3. On August 30, 2002, the Department notified the permit holder that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the proof or a Request for Extension of Time (“extension request”).

4. On November 5, 2002, the Department sent the permit holder a lapse notice, since the Department had not received an acceptable proof or extension request.

5. On September 8, 2005 Proof of Beneficial Use with the required license examination fee was filed with the Department. The permit holder submitted evidence to show that water has been applied to the authorized beneficial use during the development period and has shown sufficient cause why the beneficial use was not timely 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 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 and the license examination fee were received.

ORDER

IT IS HEREBY ORDERED, that Permit No. 65-13800 in the name of the Mountain Shadows Homeowners Association, LLC is **REINSTATED** with the priority advanced to **September 8, 2005**.

Dated this 17th day of October, 2005.



Gary Spackman