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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO.)
27-07088 IN THE NAME OF)
BRYCE J. AND MARY W. FIELDING)
_____)

**ORDER ADVANCING THE
DATE OF PRIORITY**

This matter having come before the Department of Water Resources (Department) as a result of the payment of an examination fee, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On May 23, 1977, Don M. &/or Lorna Esplin applied to the Department for a permit to appropriate 10.14 cubic feet per second from ground water to irrigate 507 acres in Bingham County, Idaho.
2. On July 29, 1977, the Department approved the application submitted by Don M. &/or Lorna Esplin as Permit No. 27-07088 (permit). As a condition of the approval, the Department required the permit holders to submit proof of construction of works and application of water to beneficial use on or before July 1, 1982.
3. On July 2, 1982, the permit lapsed because the permit holder had not submitted proof of beneficial use within the required time.
4. On August 3, 1982, the Department received a proof of beneficial use statement for the permit from Don M. Esplin.
5. On September 10, 1982, the Department issued an order reinstating the permit and advancing the priority date of the permit to June 25, 1977.
6. On April 17, 1986, the Department mailed Don M. and Lorna Esplin a notice that within 60 days they must submit to the Department an examination fee or a notice that a certified water right examiner had been retained to conduct an examination of the development accomplished in connection with the permit. The notice also informed Don M. and Lorna Esplin that failure to submit the required fee or information within 60 days would result in advancement of the priority date of the permit and that failure to submit the fee or a completed field report within one year would result in lapsing of the permit.
7. On December 29, 1986, the Department received a field examination fee from Don M. Esplin.

8. On November 3, 1998, the Department received an assignment of the permit to Bryce J. and Mary W. Fielding.

9. Idaho Code § 42-217 says, in pertinent part:

Holders of permits who have submitted proof of beneficial use but have not had their project examined for beneficial use shall submit the fee required in section 42-221, Idaho Code, within sixty (60) days of notification by the director of the department of water resources that a license examination fee is required. Failure to submit the fee in the time allowed shall be cause for the director to advance the date of priority of the permit one (1) day for each day that the fee is late; provided that if the fee is not fully paid within one (1) year of the time it is due, the director of the department of water resources may consider the proof of beneficial use for the permit to be incomplete and lapse the permit, as provided in section 42-218a, Idaho Code.

CONCLUSIONS OF LAW

1. The examination fee for the permit was submitted 74 days late.
2. The Department should advance the priority date for the permit 74 days to September 7, 1977.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the priority date of Permit No. 27-07088 is advanced to September 7, 1977.

DATED this 8th day of June, 2004.

for *Shelley G. Keen*
GARY SPACKMAN