

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

|                               |   |                            |
|-------------------------------|---|----------------------------|
| IN THE MATTER OF LAPSED       | ) |                            |
| PERMIT NO. 37-8850 IN THE     | ) | <b>REINSTATEMENT ORDER</b> |
| NAME OF SMR DEVELOPMENT, L.C. | ) |                            |
| _____                         | ) |                            |

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 1, 1995, the Department issued Permit No. 37-8850 to SMR Development, L.C. ("permit holder") authorizing the diversion of 0.16 cubic feet per second ("cfs") of ground water to be diverted for domestic use within the NE1/4SE1/4 of Section 14, Township 01 North, Range 13 East, B.M., Camas 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, 1996.
2. On August 31, 1996, 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").
3. On October 30, 1996, the Department received Proof of Beneficial Use from the permit holder and the appropriate license examination fee.
4. Upon further review of the proof, the Department found that the drilling permit for the well construction was issued for a single domestic use. The water right permit no. 37-8850 was issued for 39 homes within the Fairway Estates Subdivision, in Camas County. The drilling permit for the well construction did not match the use of the water right permit.
5. On November 18, 1996 the Department issued a letter to SMR Development, L.C., requesting that the drilling permit needed to be upgraded to permit the use of 39 homes. An additional fee of \$165.00 was requested for the upgrade and the permit holder was given 60 days to respond.
6. On March 17, 1997, the Department sent the permit holder a lapse notice, because the Department had not received the drilling permit upgrade fee.

7. On October 27, 2004, the permit holder submitted a second Proof of Beneficial Use with the required license examination fee and the drilling permit upgrade fee to the Department. Additionally, 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;

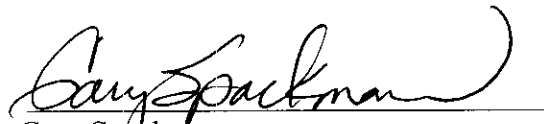
2. The permit holder has provided sufficient information and reasonable cause for the Department to reinstate the permit by submitting sufficient information to show that water was beneficially used during the authorized development period.

3. The Department should reinstate the permit with the priority advanced to the date that the second proof of beneficial use, license examination fee, and drilling permit upgrade fee were received.

### ORDER

IT IS HEREBY ORDERED, that Permit No. 37-8850 in the name of SMR Development, L.C. is **REINSTATED** with the priority advanced to **October 27, 2004**.

Dated this 2<sup>nd</sup> day of November, 2004.

  
Gary Speckman