

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO.)
63-12378 IN THE NAME OF)
CITY OF MERIDIAN)
_____)

REINSTATEMENT ORDER

The Idaho Department of Water Resources (Department) issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted to the Department on or before April 1, 1999.

The permit bore a priority date of February 18, 1997. The Department notified the permit holder on January 31, 1999, by certified mail that proof of beneficial use was due on April 1, 1999, and instructed the permit holder of the steps to be taken to submit the proof of beneficial use or an extension of time request.

The Department sent the permit holder a lapse notice on May 6, 1999, because the department had not received an acceptable proof of beneficial use statement or extension of time request.

On July 21, 1999, the Department granted a Request for Extension of Time based on due diligence that extended the filing of the proof of beneficial use for this permit to July 1, 2004.

The Department notified the permit holder on January 31, 2004, by certified mail that proof of beneficial use was due on April 1, 2004, and instructed the permit holder of the steps to be taken to submit the proof of beneficial use or an extension of time request.

The Department sent the permit holder a lapse notice on April 7, 2004, because it had not received an acceptable proof of beneficial use statement or extension of time.

During the first week of June 2004, Ed Squires (Squires), a consultant for the City of Meridian, called Gary Spackman (Spackman) of the Department, and inquired about the submittal of a beneficial use field examination for permit no. 63-12378 and its relationship to the filing of proof of beneficial use. Because the exact date of the conversation cannot be identified, the Department will assume that Spackman and Squires conversed on June 4, 2004. Spackman informed Squires that a beneficial use field examination conducted by a certified field examiner must be submitted with the proof of beneficial use.

On July 11, 2004, Squires submitted proof of beneficial use and a beneficial use field examination. The proof of beneficial use was signed by the city's Mayor in August 2002, long before proof of beneficial use was due.

Idaho Code § 42-218a describes the lapsing of permits to appropriate water:

A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail provided:

1. That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof;
2. 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.
3. The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

Permit no. 63-12378 lapsed on April 1, 2004. A lapse notice was mailed to the city on April 7, 2004. If the city had filed proof of beneficial use on or before June 7, 2004, permit no. 63-12378 would have lost one day of priority for every day proof of beneficial use was filed late. The city filed proof of beneficial use on June 11, 2004, four days after the deadline. Unless there is a showing of error or mistake of the department, the priority date of permit no. 63-12378 would be advanced to June 11, 2004.

Rule 55.01.a. and Rule 55.01.b. of the Department's Beneficial Use Examination Rules state:

- a. Failure to submit within sixty (60) days of notification by the director, either the license examination fee or a statement verifying that a non-department certified water right examiner has been retained to conduct the examination is

cause to advance the priority of the permit one (1) day for each day the submittal is late. The submittal is late beginning on the 61st day after notification by the director that submittal is due.

b. Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water examiner within one (1) year of the sixty-first (61st) day after notification by the director that the submittal is due is cause for the director to reject the proof of beneficial use and lapse the permit.

Gary Spackman of the Department misrepresented the requirements of submittal to Ed Squires. The proof of beneficial use already signed by the Mayor of the City of Meridian could have been submitted in advance of submittal of the beneficial use field exam. The preparation of the beneficial use examination took extra time to complete.

The Department misrepresentation qualifies as a mistake of the department.

The permit holder has provided a reasonable showing why the permit should be reinstated by submitting acceptable proof of beneficial use on June 11, 2004 with a completed Beneficial Use Field Report;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 63-12378 is **REINSTATED** with an advance in priority to **April 23, 1997**.

DATED this 2nd day of September, 2004.



Gary Spackman