

RECEIVED

APR 24 2008

DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter, ISB #3867
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

Attorney for Susan D. Miner, Petitioner

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of Permit No. 63-8149)
)
)
_____)

Case No. _____

PETITION TO REINSTATE PERMIT

Susan D. Miner, by and through her counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, petitions, states and alleges as follows:

Parties and Jurisdiction

1. Susan D. Miner, (hereinafter "Petitioner") resides in Ada County, Idaho.
2. Petitioner owns that certain real property comprising approximately 25 acres in Ada County upon which she resides (the "Property"), more particularly described in Exhibit A hereto, which is incorporated herein as if set forth in full.
3. The point of diversion and place of use for Permit No. 63-8149 are located on Petitioner's Property.

4. The Idaho Department of Water Resources (hereinafter "IDWR") has jurisdiction over this proceeding pursuant to *Idaho Code* §§ 42-217 and 42-218a and IDAPA 37.01.01.

Factual Allegations

5. On June 17, 1975, Lloyd Campbell (the "permitholder") submitted an Application for Permit to appropriate the Public Waters of the State of Idaho (the "Application") with the Idaho Department of Water Resources. The Application identified the source as Currant Creek, tributary to Dry Creek, with the location of the point of diversion in the NW1/4NW1/4 of Section 32, Township 5 North, Range 2 East, B.M., Ada County, Idaho and requested approval for 0.34 cubic feet per second ("cfs") to irrigate 17 acres in the NW1/4NW1/4 of Section 32, Township 5 North, Range 2 East.

6. On July 22, 1975, then IDWR Director, Keith Higginson, approved the Application and approved Water Right Permit No. 63-8149 (the "Permit"). The approval indicated that beneficial use of the water was to be completed on or before July 1, 1980.

7. In accordance with the statutes in effect at the time, the IDWR proof of beneficial use postcard was submitted by Lloyd Campbell on June 17, 1980.

8. By letter dated June 26, 1980 sent to the address on the Permit Application which was different from the address on the Proof of Beneficial Use postcard, IDWR acknowledged receipt of the proof of beneficial use statement and informed Mr. Campbell that, "Before a license can be issued, a field examination must be made by a representative of this Department. A field examiner will contact you to arrange to examine your system."

9. Apparently, House Bill 671 enacted by the 1986 Idaho Legislature instituted a new requirement that IDWR receive payment of a fee before conducting the field examination for licensing.

10. On April 17, 1986, IDWR sent Mr. Campbell by certified mail, at the address indicated in his Proof of Beneficial use postcard, a letter explaining the new fee requirement. The letter also stated that "Failure to submit the fee or the completed field examination report within a year will be cause to consider the proof of beneficial use to be incomplete and to lapse the permit." The letter was returned to IDWR and never delivered to Mr. Campbell, apparently because of an expired forwarding order with the U.S. Postal Service.

11. On September 4, 1986, IDWR again sent Mr. Campbell at the address listed in the Proof of Beneficial Use postcard, a letter reminder of the new fee requirement. This letter also was returned to IDWR as undeliverable due to the expired forwarding order.

12. On October 27, 1987, IDWR sent Mr. Campbell at another address, not previously documented in the IDWR Permit file - Rt. 1, Boise, Idaho 83703, a letter stating *inter alia*, "Should we not hear from an interested party within sixty (60) days of the date of this letter, action will be initiated to remove the permit from the Department files." This address apparently was provided to IDWR by the County Assessor's Office as the location of the place of use for the water right. However, there was no home or mailbox on the property at the time and, indeed, no way for the permitholder to receive mail at that address.

13. On April 22, 1988, IDWR issued another letter to Mr. Campbell at the Route 1 address, stating that Permit No. 63-8149 had lapsed for the failure to submit either the license examination fee or an acceptable field examination report.

14. By Warranty Deed dated June 25, 1993 Gregory F. Miner and Susan D. Miner took title to the Property from the permitholder “together with all appurtenances.”

15. By Quitclaim Deed dated November 21, 2000 Gregory F. Miner quitclaimed his interest in the Property “together with their appurtenances” to Susan D. Miner.

16. Petitioner Susan D. Miner is the current owner of the Property.

Claim for Relief 1
Error/Mistake

17. The allegations above are incorporated by reference.

18. Since the effective date of the new license examination fee statutory requirement postdated submission of the Proof of Beneficial Use postcard, IDWR had no valid legal authority to require payment of a license examination fee for the Permit.

19. There is no indication in the IDWR file that Mr. Campbell received notification of the new license examination fee and pursuant to Idaho Code 42-217, the Permit should not have been lapsed.

20. The Permit Lapse Notice was not sent to Mr. Campbell’s address of record in the IDWR Permit file as required by Idaho Code 42-218a.

21. Because at the time the IDWR issued its Order of Cancellation there was no statutory authority to require the payment of the examination fee, because Mr. Campbell likely did not receive the required notice of the examination fee, and because the Lapse Notice was not sent to Mr. Campbell’s address of record, the Permit was improperly lapsed and should be reinstated with the original priority pursuant to Idaho Code § 42-218a(3).

Claim for Relief 2
Reasonable Cause for Permit Reinstatement

22. The allegations above are incorporated by reference.
23. Beneficial use occurred during the authorized period.
24. There is reasonable cause for late submission of the examination fee.
25. The Permit should be reinstated pursuant to Idaho Code § 42-218a(2).

WHEREFORE, Susan D. Miner requests reinstatement of the Permit with the original priority date of June 17, 1975, or, in the alternative, with the priority date advanced for each day that the license fee is late.

DATED this 24th day of April, 2008.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Susan D. Miner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of April, 2008, I caused a true copy of the foregoing PETITION TO REINSTATE PERMIT to be served by the method(s) indicated on the following:

Original to:

David R. Tuthill, Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
 U.S. Mail Fed Ex Hand Fax

Copy to:

Gary Spackman
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
 U.S. Mail Fed Ex Hand Fax

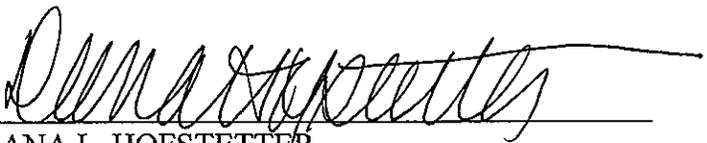

DANA L. HOFSTETTER

EXHIBIT A

PARCEL 1

A tract of land situate in the Northeast quarter of Section 31, Township 5 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at a 5/8-inch iron pin marking the northeast corner of said Section 31; thence North 88°51'32" West a distance of 1,350.59 feet to a brass cap marking the East 1/16 corner of said Section, the REAL POINT OF BEGINNING; thence South 88°51'32" East a distance of 1,250.59 feet to a found 5/8-inch iron pin; thence South 01°01'10" West a distance of 300.00 feet to a found 5/8-inch iron pin; thence North 88°51'32" West a distance of 1,250.06 feet to a point the 1/16 line; thence North 00°55'06" East a distance of 300.00 feet to the REAL POINT OF BEGINNING.

PARCEL 2

A tract of land situate in the Northwest quarter of Section 32 and the Northeast quarter of Section 31, Township 5 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at the Section corner common to Sections 29, 30, 31, and 32, T5N, R2E, B.M., Ada County, Idaho and the real point of beginning; thence S 89° 43' 25" E 1313.25 feet along the section line to a point; thence S 0° 13' 46" E 690.00 feet along the sixteenth line to a point on the south side of Currant Creek; thence N 74° 20' 43" W 1470.55 feet to a point on the south side of Currant Creek; thence North 300.00 feet parallel to the east side of section 31 to a point; thence S 89° 43' 38" E 100.00 feet along the section line to a point, the real point of beginning. Said parcel containing 16.07 acres, more or less.