



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

May 13, 2019

MIRANDA AND MATTHEW WELLS
166 N US HWY 91
BLACKFOOT ID 83221

**RE: Acknowledgement of Signed Consent Order and Agreement and Payment
to Resolve Case No. E2017-1255**

Dear Mr. and Mrs. Wells:

The Department of Water Resources (Department) has received the signed Consent Order and Agreement (COA) and payment. A copy of the agreement and a receipt of the payment are enclosed for your records. Note that term no. 4 of the COA requires that you contact the Department prior to irrigating the subject lands using surface water.

Thank you for your promptness and willingness to resolve the compliance issue of expanding your water right place of use. I commend you for facilitating a resolution for this case and for ensuring continued future compliance.

Sincerely,

A handwritten signature in blue ink that reads "Cherie Palmer". The signature is fluid and cursive, with a long, sweeping underline.

Cherie Palmer
Water Compliance Bureau

c: Amanda Fowler-IDWR, Eastern Region
Blake Jordan-Watermaster 120

Enclosures

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO
CONSENT ORDER AND AGREEMENT**

**RECEIVED
MAY 10 2019
DEPARTMENT OF
WATER RESOURCES**

In the matter of Notice of Violation ("NOV") No. E2017-1255 dated April 12, 2019, issued to Miranda and Matthew Wells ("Respondents")

BACKGROUND

- 1) County records show that William Sherman Whitten owns land described in the NOV, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Township 02 South, Range 36 East ("subject land") in Bingham County, Idaho.
- 2) Water right 27-7095 is appurtenant to 96 acres at and around the subject land and authorizes the diversion of ground water for irrigation purposes. Water right 27-12030 is also appurtenant to the subject land and authorizes the diversion of surface water to irrigate 151.6 acres at and around the subject land.
- 3) During an investigation, the Idaho Department of Water Resources ("Department") concluded that Respondent was using ground water exclusively to irrigate 104 acres at and around the subject land, in 2017. The Department concluded that Respondent irrigated 8 acres more than what ground water right 27-7095 authorizes.
- 4) On December 7, 2017, the Department sent a cease and desist notice to William Sherman Whitten.
- 5) On February 13, 2018, Respondents notified the Department that William Sherman Whitten is deceased and they are now responsible for the farm operations associated with the subject land. Respondents and the Department also discussed multiple solutions to attain compliance.
- 6) On November 9, 2018, the Department conducted a field inspection and found that the 8 acres remained irrigated without any authorization.
- 7) On April 11, 2019, Respondents contacted the Department and confirmed that the 8 acres were irrigated in 2018 without authorization.
- 8) On April 12, 2019, the Department issued a Notice of Violation ("NOV") to Respondents for irrigating 8 acres in 2018 without water right authorization.

APPLICABLE LAW

- 1) Idaho Code § 42-351(1) states that it is unlawful to divert water without having obtained a valid water right or to divert or use water not in conformance with a valid water right.
- 2) Idaho Code § 42-351(2) states that it is unlawful to divert or use water in violation of an order of the Department.
- 3) The Department, on behalf of the Director, may initiate an administrative enforcement action for designated violations of Title 42, Idaho Code pursuant to Idaho Code § 42-1701B.

- 4) Idaho Code § 42-1701B allows the Director to seek civil penalties and other redress pursuant to a NOV and to execute a consent order between the Department and the alleged violator.
- 5) For violations of Idaho Code § 42-351, the Department may seek civil penalties in the amount of \$300 annually for each acre irrigated without a valid water right or not in conformance with a water right.
- 6) Idaho Code § 42-1701B(4) authorizes the Department and the NOV recipient to enter into a consent order formalizing an agreement to remedy the violation and assure future compliance.

TERMS OF AGREEMENT AND ORDER

- 1) Respondents and the Department agree that telephonic communication on April 11, 2019, between staff and Respondents, represents a compliance conference concerning the NOV.
- 2) The Department and Respondents agree that 8 acres of the subject land described in the NOV were irrigated in 2018 without valid authorization.
- 3) Respondents agree to divert ground water pursuant to 27-7095 only in conformance with the elements and conditions of the water right.
- 4) Respondents further agree that if surface water is plumbed to irrigate the subject land, Respondents will contact the Department prior to the diversion of water so the Department may confirm that ground water is not irrigating the subject land.
- 5) The Department agrees to suspend \$1,120 of the total penalty if Respondent complies with the terms of this Consent Order. Respondents agree that if it fails to comply with the terms of this agreement established in the Consent Order, the suspended civil will become due and payable upon specific notification by the Department.
- 6) Respondent agrees to remit a penalty in the amount of \$1,280 no later than May 1, 2019.

Dated this 13th day of May, 2019
27th day of April, 2019

Cherie Palmer

CHERIE PALMER
Water Compliance Bureau

CONSENT

Respondent acknowledges in general the facts set forth herein and accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Dated this 27 day of APRIL, 2019

Matthew J. Wells

MATTHEW WELLS
Respondent

Miranda A Wells

MIRANDA WELLS
Respondent

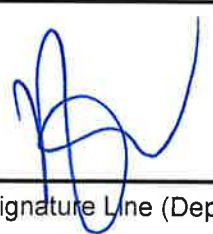
Idaho Department of Water Resources Receipt

Receipt ID: C106784

Payment Amount	\$1,280.00	Date Received	5/10/2019	Region	STATE
Payment Type	Check	Check Number	1044		
Payer	SHERMAN WHITTEN TRUST				
Comments	ENFORCEMENT PENALTY / NOTICE OF VIOLATION E2017-1255				

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$1,280.00	WATER RIGHTS PENALTY	55506	0229	22		1315



Signature Line (Department Representative)