



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

April 12, 2019

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

CERTIFIED MAIL

**RE: Notice of Violation No. E2017-1255
Order to Cease and Desist Unauthorized Diversion**

Dear Mr. and Mrs. Wells:

The purpose of this letter is to notify you that a violation of State Law is hereby attributed to you by the Idaho Department of Water Resources ("Department"). This Notice of Violation ("NOV") is issued pursuant to Idaho Code § 42-1701B. The violation is associated with the unauthorized diversion and use of ground water to irrigate 8 acres of your property located in 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.

The violation of Title 42, Idaho Code attributed to you is listed below:

- 1) Idaho Code § 42-351(1) – Diversion and use of water without a valid water right.

As authorized by Idaho Code § 42-351, and in accordance with Idaho Code § 42-1701B, the Department requires the following immediate redress and payment of civil penalties associated with the violations:

- 1) Cease and desist the irrigation of 8 acres not covered by a valid ground water right at the subject property.
- 2) Pay a civil penalty of \$2,400 for the unauthorized irrigation of 8 acres in 2018 (\$300/acre/year).

The enclosed Consent Order and Agreement ("COA") includes the details of this NOV and mutually agreed to items that were discussed between Matthew Wells and the Department on April 11, 2019. Please read the COA carefully as there are deadlines and specific requirements to achieve compliance. If you agree with the terms of the COA, sign it and return it to the Department with a payment of \$1,280 (reduced from a maximum civil penalty of \$2,400) by **May 1, 2019**. Upon returning the signed COA, paying the penalty of \$1,280 and performing the Terms of Agreement and Order in the COA the Department will consider this matter resolved.

Alternatively, any objections you may have to the provisions of this NOV may be presented at a compliance conference. A compliance conference must be requested within **14 days** of receiving this notice. The recipient of an NOV will be provided an opportunity to address the alleged violation and present a plan to assure future compliance. Any agreement reached between the Department and the recipient of the NOV must be formalized through a Consent Order and Agreement.

The Department looks forward to your cooperation in this matter. Please contact me directly at (208) 287-4944 if you have questions concerning this matter.

Respectfully,



Cherie Palmer
Water Compliance Bureau

c: Blake Jordan- Water Master, Water District 120
Amanda Fowler-Water Resource Agent, IDWR Eastern

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

CONSENT ORDER AND AGREEMENT

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, SW¼NE¼ and NW¼SE¼ 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 _____ day of _____, 2019

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 _____ day of _____, 2019

MATTHEW WELLS
Respondent

MIRANDA WELLS
Respondent