

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

IN THE MATTER OF PERMIT	)	ORDER MODIFYING MEASURING
NO. 65-23238 IN THE NAME OF	)	DEVICE AND LOCKABLE
VICTOR BERTAGNOLLI AND/OR	)	CONTROLLING WORKS
LOUISE BERTAGNOLLI	)	REQUIREMENTS

This matter having come before the Department of Water Resources (Department) as a request to remove a measuring device and lockable controlling works requirement, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On January 28, 2009, the Department issued the above-captioned ("Permit") in the name of Victor Bertagnolli and/or Louise Bertagnolli ("Permit Holders") with the condition that proof of construction of works and application of water to beneficial use be submitted to the Department on or before January 31, 2014. The permit bore the priority date of August 28, 2007.
2. On October 31, 2013, the Department notified the Permit Holders by certified mail that proof of beneficial use was due and instructed the permit holders of the steps to be taken to submit a *Statement of Completion for Submitting Proof of Beneficial Use* ("Proof"), or a *Request for Extension of Time* ("Extension Request").
3. On November 6, 2013, the Permit Holders filed an Extension Request with the Department. The Department approved this Extension Request based on due diligence and good cause. The approved Extension Request established a new proof of beneficial use due date of January 31, 2019.
4. On October 31, 2018, the Department notified the Permit Holders by certified mail that proof of beneficial use was due and instructed the permit holders of the steps to be taken to submit Proof or an Extension Request.
5. On December 12, 2018, the Department received a letter from Ron Shurtleff, Watermaster of Water District #65, recommending a waiver of the permit condition stating:

Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

The Watermaster stated, "I do not find it necessary to require a measuring device or a lockable control works at this time for water administration and recommend a waiver to these requirements."

6. On January 30, 2019, the Department received the Permit Holders' request to waive the measuring device and lockable controlling works requirement of the Permit.

**ORDER MODIFYING MEASURING DEVICE AND LOCKABLE
CONTROLLING WORKS REQUIREMENTS**

CONCLUSIONS OF LAW

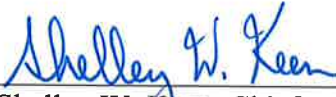
1. Beneficial Use Examination Rule 35.02.d. (IDAPA 37.03.02.35.02.d.) provides for the waiver of a lockable device requirement by the Department.
2. A measuring device and lockable controlling works is not presently needed for administration of the Permit, but a measuring device and lockable controlling works may be needed in the future.

ORDER

IT IS HEREBY ORDERED that the condition of approval requiring the right holder to install a measuring device and lockable controlling works for the above captioned Permit is **MODIFIED** as follows:

Upon specific notification by the Department, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

Dated this 26th day of February, 2019.



Shelley W. Keen, Chief
Water Allocation Bureau

RECEIVED

DEC 26 2018

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
STATEMENT OF COMPLETION
FOR SUBMITTING PROOF OF BENEFICIAL USE

FOR OFFICE USE ONLY	
Amt. of Fee \$	50
Receipt No.	C706049
Received By	AV
Date Received	12-26-18

The Idaho Department of Water Resources considers this form a statement by the permit holder(s) that development of a water right has been **completed** and that water has been applied to beneficial use to the extent described below. **This form must be accompanied by an examination fee, when necessary, or by a completed Beneficial Use Field Report prepared by a certified water right examiner.** Please refer to the instructions and fee schedule for this form. If ownership of the permit has changed, contact any Department office or visit the Department's website at idwr.idaho.gov for an *Assignment of Permit* form. If you wish to relinquish your permit because you have not established the authorized use of the water and are not applying for an extension, please notify the Department in writing.

- Permit No. 65-23238 Telephone No. 208-853 6036
- Name of Permit Holder(s) VICTOR & LOUISE BERTAGNOLLI
- Mailing Address 9364 W PEBBLE BROOK LN City GARDEN CITY
State ID Zip 83714 Email VICB@JSTMEB.COM
- Source of Water _____ If **GROUND WATER** (well), Date Drilled mo. _____ / yr. _____
Well Driller _____ Drilling Permit Number _____
- Extent of use(s) completed as authorized by the water right permit:
Domestic (No. of households) _____ Stockwater (No. and type of stock) _____
Irrigation (No. of acres) 2 Other _____
- Total rate of diversion or storage volume for which proof is submitted _____ cfs OR .03 acre-feet.
- Compliance with a measuring device requirement, lockable controlling device requirement, and/or other conditions of permit:
Refer to the approval conditions on your permit and respond accordingly.
The Department will not issue a license if permit conditions are not met.

Measuring Device	Is a measuring device required?	Yes ☐	No ☒
	If yes, has the measuring device been installed?	Yes ☐	No ☐
Lockable Controlling Device	Is a lockable device required to control the diversion?	Yes ☐	No ☒
	If yes, has the lockable device been installed?	Yes ☐	No ☐
Fish Screen	Is a fish screen required?	Yes ☐	No ☒
	If yes, has the fish screen been installed?	Yes ☐	No ☐

Other Conditions of Permit

Do the approval conditions on your permit require you to submit additional information in connection with your proof of beneficial use? If yes, list the conditions below and attach documents with the required information.

Completed? Yes ☐ No ☒

- Fee Enclosed \$ 50 or not applicable ☐. See fee schedule on page 2 of the instructions.
Proof statements filed without an appropriate fee, will be considered incomplete.
- Person to contact to accompany the Department representative during field examination of the water system.
Name Vic BERTAGNOLLI Telephone Number 208 631 3151
Mailing Address 9364 W PEBBLE BROOK LN City GARDEN CITY
State ID Zip 83714 Email VICB@JSTMEB.COM

The information given on this form is my true statement of the extent to which the above numbered permit has been developed and water has been diverted and applied to a beneficial use. I understand that any undeveloped portion of the permit is relinquished to the State of Idaho.

Signature of Permit Holder Vic Bertagnolli Date 12-18-18
(Include your title, if on behalf of company or organization)

Mail to: Idaho Department of Water Resources, PO Box 83720, Boise, ID 83720-0098

Irrigation Usage Permit #65-23238

Submitted 12/18/2018

Vic and Louise Bertagnolli

208 631 3151

Irrigation type: Impact sprinkler heads

Quantity: 25 sprinklers @ 3 GPM

Number of Irrigation days: 110 days @ 20 minutes per sprinkler

Pond Outlet Discharged

Spring: More than 3,600 GPH

Summer: More than 2,400 GPH

POND SIZE: 30' X 40' X 4' DEEP



POND SIZE APPROX: 30' X 40' X 4' DEEP



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

February 27, 2019

VICTOR BERTAGNOLLI
LOUISE BERTAGNOLLI
9364 W PEBBLEBROOK LN
BOISE ID 83714

RE: Permit No. 65-23238

Dear Permit Holder(s):

Enclosed is an order modifying the measuring device and lockable controlling works condition stated on your water right permit. The permit condition now reads:

Upon specific notification by the Department, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

If you have any questions, please contact me at (208) 287-4945.

Sincerely,

A handwritten signature in blue ink that reads "Darla Block".

Darla Block
Technical Records Specialist

Enclosure(s)

c: WATER DISTRICT #65

CERTIFICATE OF SERVICE

I hereby certify that on **February 28, 2019** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**ORDER MODIFYING MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS REQUIREMENTS**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **65-23238**

**VICTOR BERTAGNOLLI
9364 W PEBBLEBROOK LN
BOISE ID 83714**

**LOUISE BERTAGNOLLI
9364 W PEBBLEBROOK LN
BOISE ID 83714**

**WATER DISTRICT #65
RON SHURTLEFF
102 N MAIN ST
PAYETTE ID 83661**


Darla Block
Technical Records Specialist

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

RECEIVED
JAN 30 2019
DEPARTMENT OF
WATER RESOURCES

January 25, 2019

Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83720-0098

Attention Darla Block

Re: Request to waive condition requiring a measuring device and lockable control works, Water Right 65-23238

Dear Western Region Idaho Department of Water Resources,

I'm requesting a wavier to install a measuring device or a lockable control works at this time. If your need any further information please contact me a 208-631-3151.

Sincerely,

Vic Bertagnolli

Payette River Basin, State of Idaho
State, Water District No. 65

Watermaster,

102 N. Main

Ron Shurtleff

Payette, ID 83661

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DEC 12 2018

DEPT OF WATER RESOURCES

Phone: 208-642-4465

Fax: 208-642-1042

E-mail: wd65@srvinet.com

December 12, 2018

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Request to waive condition requiring a measuring device and lockable control works, Water Right 65-23238.

Dear Western Region, Idaho Department of Water Resources,

Mr. Bertagnolli contacted me in October regarding the condition to install an approved measuring device and lockable control works for Water Right No. 65-23238.

On November 20, 2018 I met with Mr. Bertagnolli on location to observe the conditions and to determine if it would be appropriate to waive the measuring and lockable device requirement.

I do not find it necessary to require a measuring device or a lockable control works at this time for water administration and recommend a waiver to these requirements. I did however determine a value to the water right owner to quantify the flow rates to the storage pond and the discharge from the pond. I believe future development in the area may impact these flow rates and the water right would be well served with documented inflow and outflow measurements.

Mr. Bertagnolli agreed with my suggestions and said he intends to install a V notch weir on both the inflow and the outflow of his storage pond.

If you need any further information please contact me at 208-642-4465

Sincerely,

Ron Shurtleff