

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

IN THE MATTER OF PERMIT)
NO. 65-13533 IN THE NAME OF)
MARY JO OR STEVE SEMELS)
_____)

**PRELIMINARY ORDER
VOIDING PERMIT**

This matter having come before the Department of Water Resources (Department) as a result of an examination by Department staff to determine the extent of beneficial use of water, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On July 28, 1994, Kathleen M. Vaughn and Alan Duane Vaughn applied to the Department for a permit to appropriate 0.38 cfs of water from a spring tributary to the Middle Fork Payette River within the SW¼SW¼ of Section 16, Township 09 North, Range 04 East, B.M., for irrigation and domestic purposes in Boise County.
2. On October 21, 1994, the Department approved the application as permit no. 65-13533 (permit) with the deadline to submit a proof of beneficial use statement set as November 01, 1996.
3. On November 08, 1996, the Department sent a lapse notice to Kathleen M. Vaughan and Alan Duane Vaughan.
4. On November 13, 1996, the Department received a request for an extension of time to submit the proof of beneficial use statement. The request was granted and the deadline was extended to November 01, 2000.
5. On October 31, 2000, the Department received the proof of beneficial use statement for the permit.
6. On November 16, 2000, the Department received an assignment of permit form and the permit owner was changed to Mary Jo or Steve Semels.
7. On June 30, 2017, Department staff sent a notice that a field examination of the diversion works is required to verify that the system was constructed in accordance with the permit. The notice was returned on July 10, 2017 marked undeliverable.
8. On January 12, 2018, the Department sent a notice of intent to void. The notice specified that the Department would take action to void the permit if a reply was not made within thirty (30) days. A response has not been received.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 states, in pertinent part:

In the event that the department shall find that the applicant has not fully complied with the law and the conditions of the permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit.
2. The provisions of Idaho Code § 42-219 authorize the Department to void permits for which the permit holder has not fully complied with the law and the conditions of the permit.
3. The permit holder has not responded to requests to schedule a field examination.
4. Examination of the diversion works is necessary to verify that the beneficial use of water developed is in accordance with the law. When a permit holder does not make the site of a proposed appropriation of water available for examination, the Department must conclude that the permit holder does not intend to establish a water right and shall be deemed to have abandoned all rights under their permit.
5. The Department should void the permit pursuant to Idaho Code § 42-219.

ORDER

IT IS HEREBY ORDERED that issuance of a license is **REFUSED** and Permit No. 65-13533 is **VOIDED**.

Dated this 4th day of April, 2018.



Nick Miller
Manager, IDWR Western Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 4, 2018

MARY JO SEMELS
STEVE SEMELS
PO BOX 675
GARDEN VALLEY ID 83622

Re: Preliminary Order in the matter of Water Right Permit No. 65-13533

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the Department. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,

Rachel Neely for:

Nick Miller
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2018, true and correct copies of the foregoing **PRELIMINARY ORDER** were served by placing a copy of the same with the United States Postal Service certified mail, with return receipt requested, postage prepaid, and properly addressed to the following:

RE: 65-13533

MARY JO SEMELS
STEVE SEMELS
PO BOX 675
GARDEN VALLEY ID 83622



Rachel Neely
Administrative Assistant

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.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 12, 2018

COPY

MARY JO & STEVE SEMELS
PO BOX 675
GARDEN VALLEY, ID 83622

Notice of Intent to Void Permit

RE: Water Appropriation Permit 65-13533

Dear Mary Jo and Steve Semels:

In 1994 IDWR issued permit 65-13533 authorizing Mary Jo and Steve Semels to develop a right to divert **0.380 cfs** from **SPRINGS** tributary to **MIDDLE FORK PAYETTE RIVER** for **IRRIGATION & DOMESTIC** purposes in Section 16, Township 9 North, Range 4 East. Boise County tax lot data shows that you may own the place of use property associated with Permit 65-13533 and thus hold claim to said permit. An attempt by mail to schedule a field exam with you was made June 30 & September 21, 2017, however no response was received.

The final step in the water appropriation process is the issuance of a Water Right License. By issuing a license, IDWR recognizes that you have met the requirements for establishing a water right. If you have not developed an actual beneficial use of water within the development period authorized by your permit, no water right has been established, and no license can be issued. Once the development period authorized by your permit expires, this permit cannot be retained to cover future development of the resource.

If a beneficial use of water under the permit was not developed or if developed, but subsequently abandoned, a license cannot be issued. The permit will become void if beneficial use under the permit was not developed or was developed, but is now abandoned. If you are currently making beneficial use of this permit, have interest in retaining this permit and getting it licensed in your ownership please contact me at your earliest convenience. If I do not receive a response from you within thirty days, I will take action to void permit 65-13533 under the provision of Section 42-219(6) of the Idaho Code.

If you agree that no beneficial use of water occurred under permit 65-13533, or you have no interest in retaining said permit, you can shorten the voiding process by completing the enclosed relinquishment form and returning it to IDWR.

If you have any questions, please contact me at 208-334-2190.

Respectfully,

Justin Shearer
Water Resource Agent

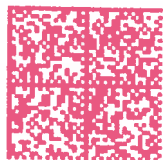
Enclosure: Relinquishment Form

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705-5082

RETURN SERVICE REQUESTED

Letter Date: 6/30/17
RE: Field Exam Request
Resent letter 9/21/17 to:
PO Box 675
Garden Valley, ID 83632

PRESORTED
FIRST CLASS



U.S. POSTAGE PITNEY BOWES
ZIP 83702 \$ 000.37³
02 1W
0001393358 JUL 03 2017

RECEIVED

JUL 10 2017

WATER RESOURCES
WESTERN REGION

EXCELSIOR
83705-5082

NIXIE 841 DE 1300 0007/05/17
RETURN TO SENDER
NO MAIL UNABLE TO FORWARD
EC: 83705508235
*3014-01067-04-18



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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 30, 2017

MARY JO SEMELS
STEVE SEMELS
836 BANKS-LOMAN
GARDEN VALLEY, ID 83622

COPY

RE: Scheduling Field Exam for Water Right Permit No. 65-13533

Dear Permit Holder:

We are planning to conduct water right examinations in the vicinity of the above-referenced permit **this season**. An examination is needed to verify the water use in order to issue a water right license.

The above-referenced permit authorizes **0.380 CFS** from a **SPRING** tributary to **MIDDLE FORK PAYETTE RIVER** for **IRRIGATION & DOMESTIC** use. **If you have developed a beneficial use and still own the place of use property, please contact me at your earliest convenience to schedule an examination.**

If you did not develop a beneficial use of water under the permit during the beneficial use period, a license cannot be issued and the permit should be relinquished. If that use was developed, but have ceased using the water and you currently carry no interest in it, please relinquish the permit by submitting the enclosed Relinquishment of Permit form (no fee required).

If you did develop a beneficial use of water under the permit, but you no longer own the place of use property identified in the permit, please submit the enclosed Assignment of Permit form with the applicable \$25 processing fee.

Please contact me within the next thirty (30) days at (208) 334-2190 to either schedule an examination or submit a relinquishment or assignment form. If you no longer own the place of use property and/or do not respond to this letter, the department will work with the current property owner to issue a license or void the permit.

Sincerely,

Justin Shearer
Water Resource Agent

Enclosures: Relinquishment of Permit form
Assignment of Permit form
Water Permit Report and Map