

RECEIVED

DEC 12 2016

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.	C102770
Received By	AK
Date Received	12/12/16

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. 95-10781 Telephone No. 602 432-3953
- Name of Permit Holder(s) MICHAEL HICKLE DONNA HICKLE
- Mailing Address 10409 W. LYNX TRAIL City COEUR D'ALENE
State ID Zip 83814 Email MIKE@LYNXTRAILFARM.COM
- Source of Water WELL If **GROUND WATER** (well), Date Drilled mo. 7 / yr. 2005
Well Driller H2O WELL SERVICE Drilling Permit Number 834698
- 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) 4 Other _____
- Total rate of diversion or storage volume for which proof is submitted 0.12 cfs OR _____ 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 \$ 50.00 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 MICHAEL HICKLE Telephone Number 602 432-3953
Mailing Address 10409 W LYNX TRAIL City COEUR D'ALENE
State ID Zip 83814 Email MIKE@LYNXTRAILFARM.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 [Signature] Date 12-8-16
(Include your title, if on behalf of company or organization)

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

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

IN THE MATTER OF PERMIT	)	
NO. 95-10781 IN THE NAME OF	)	PRELIMINARY ORDER
MICHAEL HICKLE AND/OR	)	REINSTATING A PERMIT
DONNA HICKLE	)	
_____	)	

This matter having come before the Idaho Department of Water Resources (“Department”), the Department finds, concludes and orders:

FINDINGS OF FACT

1. On November 5, 2009, the Department issued Permit No. 95-10781 (“permit”) in the names of Michael Hickle and/or Donna Hickle with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted to the Department on or before November 1, 2012. The permit bore the priority date of July 7, 2009.
2. The Department inadvertently failed to mail a notice to the permit holder sixty (60) days prior to the proof due date, as required pursuant to Section 42-204, Idaho Code.
4. On October 31, 2016, the Department notified the permit holder by certified mail that proof of beneficial use was due by January 1, 2017, and instructed the permit holder of the steps to be taken to submit the proof or a Request for Extension of Time (“extension request”).
5. On December 12, 2016, the permit holder filed a Statement of Completion for submitting proof of beneficial use (“proof”) with the appropriate license examination fee.

CONCLUSIONS OF LAW

1. Section 42-204, Idaho Code, provides as follows:

Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date;

2. Section 42-218a, Idaho Code, provides in pertinent part, as follows:

A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail . . .

3. Section 42-218a (3), Idaho Code, provides as follows:

The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

4. The permit lapsed when proof of beneficial use was not submitted by the November 1, 2012 deadline.

5. The Department erred by failing to comply with the 60-day notice provision of Section 42-204, Idaho Code, and by failing to send notice of the permit lapsing pursuant to Section 42-218a, Idaho Code.

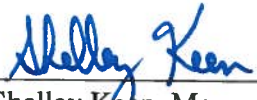
6. The permit holder has provided a reasonable showing why the permit should be reinstated by submitting acceptable proof of beneficial use on December 12, 2016.

7. The Department should reinstate Permit No. 95-10781 with no change in the priority date.

ORDER

IT IS HEREBY ORDERED that Permit No. 95-10781 is reinstated with no advance of the original priority date.

Dated this 19th day of December, 2016.



Shelley Keen, Manager
Water Rights Section



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

December 19, 2016

MICHAEL HICKLE
DONNA HICKLE
10409 W LYNX TRAIL
COEUR D ALENE ID 83814

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 95-10781

Dear Permit Holder(s):

The Department acknowledges receipt of the Proof of Beneficial Use form ("proof") and license examination fee for the above-referenced water right permit. Enclosed is an order that reinstates this permit since proof and the license examination fee were submitted after the proof deadline. Please note that the priority date has not been advanced, since the Department failed to mail notice that proof was due as required by Idaho Code §42-204.

The next step in the process of developing a water right is for the Department to conduct a field examination to determine and confirm the use being made of the water according to the conditions of the permit.

Please be advised that Section 42-248, Idaho Code, requires you or the owner of this water right to maintain current ownership and address records on file with the Department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any Department office or at the Department's website at www.idwr.idaho.gov.

If you have any questions concerning the field examination, please contact the Northern Region Office of the Department located in Coeur d'Alene at (208) 762-2800.

Sincerely,

Darla Block
Technical Records Specialist

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on **December 20, 2016** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER REINSTATING A PERMIT**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **95-10781**

**MICHAEL HICKLE
10409 W LYNX TRAIL
COEUR D ALENE ID 83814**

**DONNA HICKLE
10409 W LYNX TRAIL
COEUR D ALENE ID 83814**



**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.

MEMORANDUM

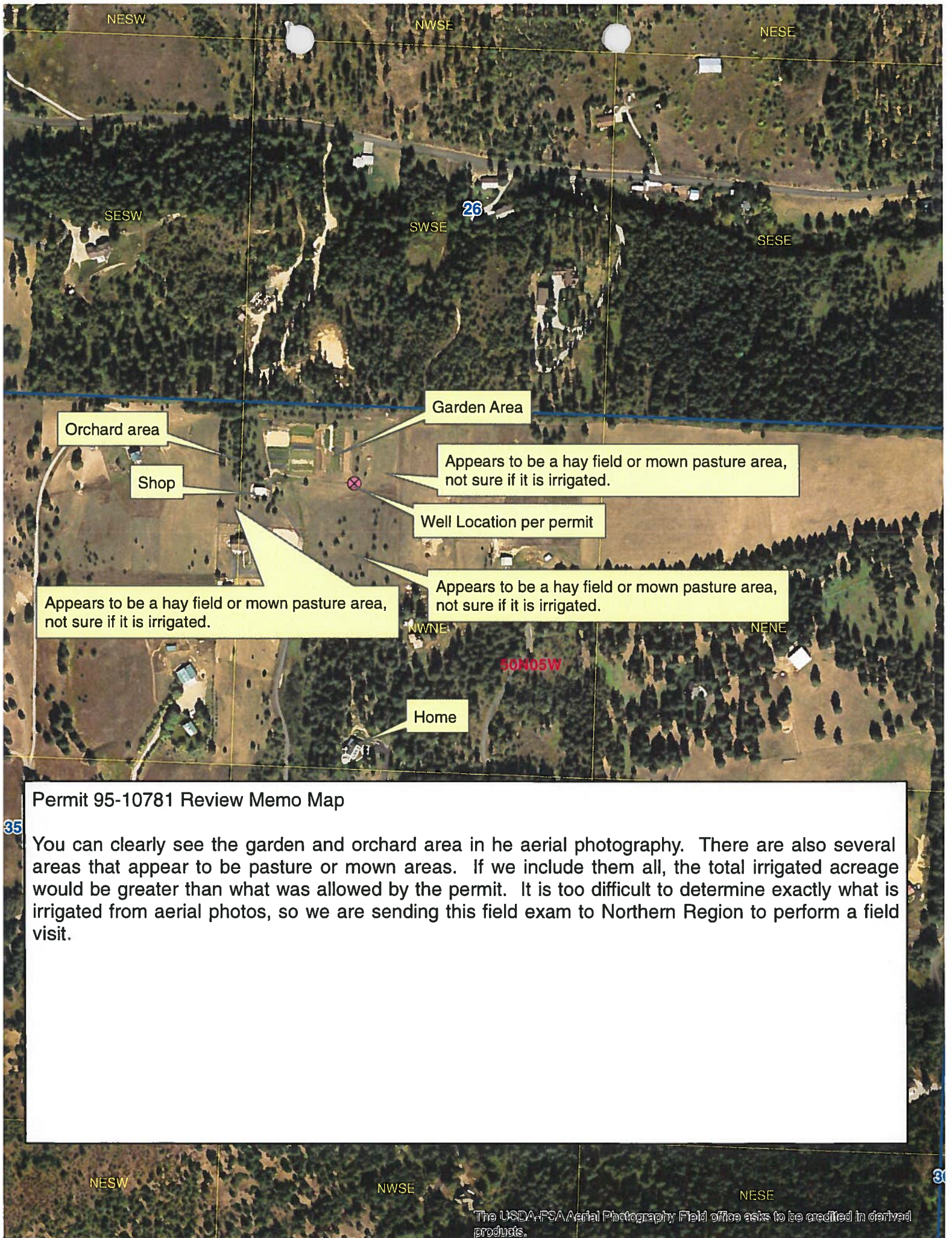
TO: Water Right Permit File 95-10781

FROM: Daniel A. Nelson

DATE: December 19, 2016

SUBJECT: Field Examination Required

Water right permit 95-10781 was held for an in-house field examination and an order to re-instate the permit. It was difficult to determine the extent of irrigation. There is no doubt about the irrigation of the orchard and the garden areas. There also appears to be two fenced in areas just south of the orchard and the shop and a small fenced in area just south and east of the garden area. There also appears to be a ditch or channel that could supply water to these areas. There is another area that looks like it could be irrigated closer to the tree line south of the place of use marked on the map, but it appears to be on slightly higher ground and there doesn't appear to be any sprinklers on this ground. It is very difficult to determine the place of use for this permit. Therefore, administrative staff felt it would be best if an agent performed a field examination for this property. There is no way to tell exactly how this system was designed with aerial photography or exactly what ground is being irrigated.



Permit 95-10781 Review Memo Map

You can clearly see the garden and orchard area in the aerial photography. There are also several areas that appear to be pasture or mown areas. If we include them all, the total irrigated acreage would be greater than what was allowed by the permit. It is too difficult to determine exactly what is irrigated from aerial photos, so we are sending this field exam to Northern Region to perform a field visit.