

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

IN THE MATTER OF PERMIT)
NO. 63-12202 IN THE NAME OF)
JOE CESTARO)
_____)

**PRELIMINARY ORDER
VOIDING PERMIT**

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

FINDINGS OF FACT

1. On April 17, 1995, Linda Stauss applied to the Department to appropriate 0.20 cubic feet per second of water from an unnamed drain tributary to the Boise River. The proposed point of diversion was within Government Lot 2 (NW¼SE¼) of Section 23, Township 4 North, Range 1 East, in Ada County. The unnamed drain diversion was to be used for aesthetic purposes.
2. On June 14, 1995, the Department approved the application as Permit 63-12202 (permit).
3. On May 29, 1996, the Department received a Proof of Beneficial Use statement for the permit.
4. On June 28, 1996, Linda Strauss assigned her right, title, and interest in the permit to Joe Cestaro ("permit holder").
5. On August 21, 1996, the Department conducted an examination to verify the beneficial use of water developed in accordance with the permit. The field examiner confirmed that the permit holder had diverted and used water for aesthetic purposes. However, the field examiner also reported that the permit holder did not install a lockable device on the diversion as required by condition no. 4 of the permit.
6. On March 19, 2012, the Department sent the permit holder a Notice of Intent to Void Permit ("Notice"). In the Notice, the Department gave the permit holder thirty days to submit documentation that he had complied with the lockable device condition or to petition the Department for removal of the condition. The Department sent a copy of the Notice to Keith S. Albi, who the Department identified as a possible owner of the place of use for the permitted water use.
7. On April 3, 2012, the Department received a Notice of Change in Water Right Ownership for the permit from Keith S. Albi and Lisa Albi ("Albis"). The Albis submitted a warranty deed as

evidence of their ownership of the place of use for the permit. The Department has not processed the Albis' Notice of Change in Water Right Ownership because a permit to appropriate water is personal property that must be assigned from one owner to another. The Notice of Change in Water Right Ownership may be processed if the Department issues a water right license for the permitted water use. Water right licenses are real property appurtenant to the land where the water is used.

8. To date, the Department has not received any information from the permit holder or from the Albis to show compliance with the lockable device requirement, nor have the permit holder or the Albis asked the Department to waive the requirement.
9. Idaho Code § 42-219 (8) states:

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 use which is in accordance with the permit, or may refuse issuance of a license and void the permit.

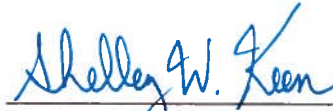
CONCLUSIONS OF LAW

1. The provisions of Idaho Code § 42-219(8) authorize the Director of the Department to void permits for which the applicant has not fully complied with the law and the conditions of the permit.
2. Investigation by the Department revealed that the permit holder has not complied with the conditions of the permit because he has not installed a lockable controlling works on the diverting works.
3. The Department should void the permit pursuant to Idaho Code § 42-219(8).

ORDER

IT IS HEREBY ORDERED that Permit No. 63-12202 is **VOIDED** and issuance of a license is **REFUSED**.

Dated this 22nd day of November, 2016.



Shelley W. Keen, Manager
Water Rights Section