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

FOR OFFICE USE ONLY

Amt. of Fee \$ 50.00
Receipt No. N032274
Received By CB
Date Received 11/8/16

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.

1. Permit No. 95-12245 Telephone No. 208-819-1258
2. Name of Permit Holder(s) Pasquale and Karen Mastantuono
3. Mailing Address 5391 E Shoreline Dr City Post Falls State Id Zip 83854 Email Karenmastantuono@gmail.com
4. Source of Water Groundwater If **GROUND WATER** (well), Date Drilled mo. Feb / yr. 2007
Well Driller United Pump Drilling Permit Number 845390
5. Extent of use(s) completed as authorized by the water right permit:
Domestic (No. of households) 1 Stockwater (No. and type of stock) 4 head mix stock
Irrigation (No. of acres) 5 Other _____
6. Total rate of diversion or storage volume for which proof is submitted .10 cfs OR _____ acre-feet.
7. 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 ☒

8. 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.
9. Person to contact to accompany the Department representative during field examination of the water system.
Name Karen Mastantuono Telephone Number 208-819-1258
Mailing Address 5391 E Shoreline Dr City Post Falls
State Id Zip 83854 Email Karenmastantuono@gmail.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 Karen A. Mastantuono Date Nov 8, 2016
(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. 95-12245 IN THE NAME OF	)	
PASQUALE MASTANTUONO AND	)	PRELIMINARY ORDER
KAREN MASTANTUONO	)	REINSTATING A PERMIT
_____	)	

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

FINDINGS OF FACT

1. On July 9, 2010, the Department issued Permit No. 95-12245 ("permit") 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 July 1, 2010.
2. On November 5, 2010, the Department issued an order correcting the permit by changing the proof of beneficial use due date to July 1, 2015.
3. 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 16, 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 November 8, 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 July 1, 2015 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 November 8, 2016.

7. The Department should reinstate Permit No. 95-12245 with no change in the priority date.

ORDER

IT IS HEREBY ORDERED that Permit No. 95-12445 is reinstated with no advance of the original priority date.

Dated this 18th day of November, 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

November 21, 2016

PASQUALE MASTANTUONO
AND KAREN MASTANTUONO
5391 E SHORELINE DR
POST FALLS ID 83854

RE: Amendment of Permit and Proof Acknowledgement Letter for Water Right 95-12245

Dear Permit Holders:

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 legal process requires the Department to issue an order whenever any corrections or changes are made to the water right file to ensure you are made aware of any changes or corrections that have been made to your water right file.

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.

The Department of Water Resources is also reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit. The examiner who verified your water use reported that certain elements of the permit have been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

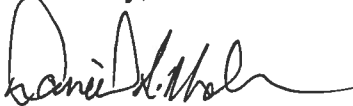
When you filed this application for permit, you only listed the place to be irrigated as being in the SW ¼ of the SW ¼ of Section 23, and the permit was issued with this legal description of the lands your intended to develop for irrigation. During the licensing process, I discovered that you developed approximately 0.1 acres of irrigation on the portion of your property that is located in the SE ¼ of the SW ¼ of Section 23. I checked with the county records, and found the subdivision plat for your property and confirmed that a portion of your property is in the SE ¼ of the SW ¼ of Section 23. In order to continue to irrigate the 0.1 acres of ground located in the SE ¼ of the SW ¼ of section 23 with this water right, you will need to sign the enclosed amendment and return the amendment with the \$100.00 processing fee. I have enclosed a map showing the ground that I could verify as being irrigated on your property, and the Kootenai County Subdivision Plat Map that shows you own property in both the SW ¼ of the SW ¼ and the SE ¼ of the SW ¼ of Section 23

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the \$100.00 filing fee by December 5, 2016. If the amendment form is not received by December 5, 2016, then the license could be issued for an amount less than what was developed.

This letter provides two functions. The first function was to reinstate the permit due the late filing of proof, and the second function was to request an amendment of the permit. No action on your part is necessary for the reinstatement of the permit, unless you disagree with the order. If you disagree with the order, the explanatory information sheet accompanying the order will give you the needed information to file the needed petition for reconsideration. You will need to submit the amendment of permit and the associated by December 5, 2016, or the license for this permit could be issued for only the acres irrigated in the legal descriptions described in the permit.

Please don't hesitate to contact me if you have any questions, or need a better explanation of the information included in this letter.

Sincerely,



Daniel A. Nelson
Analyst 3
Water Right Section
Idaho Department of Water Resources
Telephone # (208) 287-4856
Email – dan.nelson@idwr.idaho.gov



Field Exam Map -- Permit 95-12245

This is the 2015 aerial image of the place of use. The yellow border shows the land found irrigated. The yellow dot shows the point of diversion based on the GPS downloaded point supplied by the well driller and confirmed during the 8/18/2008 well inspection. The permit describes all of the land to be irrigated in the SW1/4 of the SW1/4 of Section 23, but there is a small portion that was found to be irrigated in the SE 1/4 of the SW1/4 of Section 23. I found 1.0 acre irrigated in the SW1/4 of the SW1/4 and 0.1 acre irrigated in the SE1/4 of the SW1/4 for a total of 1.1 acres. An amendment is required if we are to include the 0.1 acres irrigated in the SE1/4 of the SW1/4 of Section 23. I did not include any irrigation around the home, since it doesn't appear to have been irrigated and there is an overlapping domestic adjudication claim that could cover the yard irrigation if needed.

Permit 95-12245

CERTIFICATE OF SERVICE

I hereby certify that on **November 21, 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. **95-12245**

PASQUALE MASTANTUONO
5391 E SHORELINE DR
POST FALLS ID 83854

KAREN MASTANTUONO
5391 E SHORELINE DR
POST FALLS ID 83854

A handwritten signature in black ink, reading "Darla Block", written over a horizontal line.

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.