

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	
NO. 23-11237 IN THE NAME OF	)	PRELIMINARY ORDER
<u>STEPHEN E. MARTIN</u>	)	VOIDING PERMIT

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

FINDINGS OF FACT

1. On July 11, 2003, Stephen E. Martin filed an application with the Department, seeking a permit to divert 2.00 acre-feet from ground water for a recreation/aesthetic pond on property in Swan Valley, Idaho. The pond was to be filled initially with ground water seepage, but would then be maintained by pumping ground water from a sand point well near the Snake River.

2. The application was approved and permit no. 23-11237 was issued by the Department on October 28, 2003, authorizing Mr. Martin to develop the water right. Permit 23-11237 included the following condition of approval:

As mitigation for the use of water under this right, each year the right holder shall rent 2.0 acre-feet from the Snake River Rental Pool or shall otherwise provide a source of water adequate to offset the depletion of water caused by this water use. Water shall not be diverted under this right if mitigation is not provided.

3. According to aerial photography available to the Department, the pond was constructed at some point prior to 2004 and has been kept full since that time. The Department conducted a field examination of Permit 23-11237 on June 14, 2012. The field examiner confirmed the existence of the pond and the sand point ground water well.

4. As part of the licensing review process, the Department must confirm that all of the conditions of the permit have been satisfied. The field examiner contacted Water District 01 to see if Mr. Martin had rented water each year through the Water District 01 Rental Pool as required by the permit. Rental pool records show that Mr. Martin rented water only once, on July 11, 2003, and has not rented water from the rental pool since then.

5. There is no evidence in the Department's records that Mr. Martin has provided any other source or supply of mitigation water to offset the depletion associated with his pond.

6. Mr. Martin has not complied with the condition requiring annual mitigation for the pond authorized under permit no. 23-11237. No diversion should have occurred after 2003 under permit no. 23-11237 until the mitigation condition listed above was satisfied.

CONCLUSIONS OF LAW

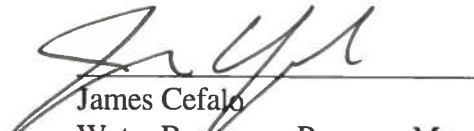
1. Idaho Code § 42-219 states: "In the event that the department shall find that the applicant has not fully complied with the law and the conditions of the permit, it may . . . refuse issuance of a license and void the permit."

2. Mr. Martin has not complied with the mitigation condition of permit 23-11237. Mitigation is necessary to ensure that senior water rights are not impacted by the diversion of water under permit 23-11237. Therefore, the Department should void the permit pursuant to Idaho Code § 42-219.

ORDER

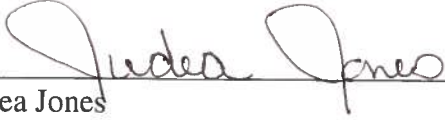
IT IS HEREBY ORDERED that issuance of a license is **REFUSED** and permit no. 23-11237 is **VOIDED**.

Dated this 31st day of January, 2013.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 31st day of January 2013, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER VOIDING PERMIT, U.S. Mail – Certified, to the person(s) listed below:



Judea Jones
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER VOIDING PERMIT (23-11237)

**Stephen E. Martin
425 South Holmes Avenue
Idaho Falls, ID 83401**

Courtesy copy sent via regular mail to current property owner:

**GST Exempt Sheltered Trust
PO Box 277
Swan Valley, ID 83449**