



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

October 24, 2012

WILLIAM F BARDEN
KATHLEEN E BARDEN
624 SHEPHERD RD
SAINT MARIES, ID 83861

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 91-7363

Dear Permit Holder(s):

The department acknowledges receipt of the Proof of Beneficial Use form ("proof") and the 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 for the permit has been advanced to May 29, 2011, as provided in Section 42-218a(2), Idaho Code.

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.

Be advised that Section 42-248, Idaho Code, requires you as the owner of water rights to maintain current ownership and address records on file with the department. For your information, forms to file a change of ownership of a water right, or a change in the address of the water right owner are available from any department office, or from the department's website at: www.idwr.idaho.gov

If you have any questions concerning the field examination, please contact the Northern Regional Office of the department in Coeur d'Alene, Idaho at 208-762-2800.

Sincerely,

Dana Block

Technical Records Specialist

Enclosure(s)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **October 24, 2012**, 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: Water Permit No. **91-7363**

**WILLIAM F BARDEN
KATHLEEN E BARDEN
624 SHEPHERD RD
SAINT MARIES, ID 83861**

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.

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

IN THE MATTER OF PERMIT	)	
NO. 91-7363 IN THE NAMES OF	)	
WILLIAM F BARDEN AND/OR	)	PRELIMINARY ORDER
KATHLEEN E BARDEN	)	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 September 08, 2011, the Department issued the above-captioned permit in the names of William F Barden and/or Kathleen E Barden, 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 September 01, 2012. The permit bore the priority date of May17, 2011.
2. On June 29, 2012, the Department notified the permit holder that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the proof or a Request for Extension of Time (“extension request”).
3. On September 01, 2012, the permit lapsed since the Department had not received an acceptable proof of beneficial use statement or request for extension of time.
4. On September 13, 2012, the permit holder filed a Statement of Completion for submitting proof of beneficial use.

CONCLUSIONS OF LAW

Section 42-218a, *Idaho Code*, provides that the Department may reinstate a permit upon a showing of reasonable cause by the permit holder within sixty days of the date of notice of lapsing.

The permit holder has provided a reasonable showing why this permit should be reinstated, by submitting an acceptable proof of beneficial use. The permit shall be reinstated based upon the September 13, 2012 filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 91-7363 is **REINSTATED** and the permit's priority date is advanced to May 29, 2011.

DATED this 23rd day of October, 2012.



Jeff Peppersack, Chief
Water Allocation Bureau

RECEIVED

SEP 13 2012

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 \$: 50.00
Receipt No. 0095985
Receipt By: [Signature]
Date Received: 9-13-12

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, please contact any Department office or visit the Department's website at: www.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.: 91-07363 Telephone No.: 208-245-35652. Name of Permit Holder(s): William F. Barden3. Mailing Address: 624 Shepherd Rd City: St. MariesState: ID Zip: 83861 Email: _____4. Source of Water: St. Joe River If **GROUND WATER** (well), Date Drilled: mo. _____ / yr. _____

Well Driller: _____ Drilling Permit Number: _____

5. 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): 1 Other: _____6. Total rate of diversion or storage volume for which proof is submitted: 0.03 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 ☐**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 See fee schedule on back of the instructions for filing proof of beneficial use.
Proofs 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: William Barden Telephone Number: 208-245-3565Mailing Address: 624 Shepherd Rd City: St. MariesState: ID Zip: 83861 Email: _____

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: 8-17-12
(Include your title, if on behalf of company or organization)

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