

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 63-11336 IN THE NAME)
OF MARTELL FARMS INC.)
_____)

**ORDER GRANTING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right license, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On September 27, 1990, the Department of Water Resources issued Permit No. 63-11336 (permit) to Letha M. Martell (permit holder) authorizing appropriation of 3.20 cubic feet per second from groundwater to be used for irrigation purposes within the W½NE¼, N1/2SE¼, Section 12, Township 3 North, Range 4 West, B.M., Canyon County.
2. On February 13, 1995, the Department received an Assignment of Permit, assigning the permit to Martell Farms, Inc.
3. On September 29, 1995, the Department received Proof of Beneficial Use for the permit.
4. On December 1, 2011, the Department conducted a field examination and found that the permit holder had developed one of the points of diversion at a different legal description than authorized by the permit.
5. On January 9, 2012, the Department sent notice to the permit holder stating that the permit has to be amended before the Department can issue a water right license including the point of diversion developed at a different legal description than authorized by the permit. An Application for Amendment form was enclosed with the notice.
6. On January 24, 2012, the Department sent a second notice to the permit holder stating that the permit has to be amended before the Department can issue a water right license.
7. The Department did not receive the Application for Amendment of the permit by February 9, 2012.
8. The provisions of Section 42-219, *Idaho Code*, authorize the Department to issue a license

for the portion of the water use that is in accordance with the permit.

9. On February 9, 2012, the Department mailed the right holder a preliminary order (order) granting Water Right License No. 63-11336 (license) in the name of the right holder.
10. On February 13, 2012, the right holder filed the Amendment of Permit with the Department in connection with the order. The right holder also submitted a notice of Change in Address with the Department since she had not received the correspondence sent by the Department.

CONCLUSIONS OF LAW

1. Section 67-5243(3), *Idaho Code*, provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

2. The petition was filed with fourteen days of the service date of the order.
3. The Department should conditionally grant the petition for reconsideration of the order pursuant to Section 67-5243(3), *Idaho Code*, to give the right holder an opportunity to submit the Application for Amendment of the permit.

ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to Section 67-5243(3), *Idaho Code*, to allow the right holder to submit the Application for Amendment of the permit and cause the Department to issue an Amended License of Right 63-11336 that contains both points of diversion identified by the field examiner.

Dated this 17 day of February, 2012.



John Westra
Western Regional Manager