

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

|                             |   |                          |
|-----------------------------|---|--------------------------|
| IN THE MATTER OF PERMIT     | ) | <b>PRELIMINARY ORDER</b> |
| NO. 65-22903 IN THE NAME OF | ) | <b>VOIDING PERMIT</b>    |
| IRENE HULTGREN              | ) |                          |
| _____                       | ) |                          |

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:

**FINDINGS OF FACT**

1. On January 21, 2005, the Department issued Permit No. 65-22903 (permit) authorizing Irene Hultgren (permit holder) to develop a right to divert 0.10 cfs from the Middle Fork of the Payette River for stockwater purposes and the irrigation of 6 acres within Boise County. The permitted place of use is within water district no. 65, Payette River. Condition of approval #4 of the permit states that:

Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.

2. On November 23, 2005, the Department received the Proof of Beneficial Use statement (proof) for the permit.
3. On October 31, 2006, the Department conducted an examination to verify the beneficial use developed in accordance with the permit. The field examiner found that a lockable device had not been installed as required by condition of approval #4 and reported that the permit holder requested a deferral of the lockable device installation.
4. On January 7, 2011, the Department sent a letter to the watermaster for water district no. 65 (watermaster) that said the Department would grant the deferment of the installation of the lockable device unless the watermaster notified the Department otherwise.
5. On January 19, 2011, the Department received a letter from the watermaster. In the letter, the watermaster said that he is opposed to the removal of the device requirement because, "The water rights will be under control of the watermaster and included in the water accounting system of the Payette River."

6. On January 25, 2011, the Department sent a letter to the permit holder that gave her sixty (60) days to respond to the Department that she has complied with condition of approval #4.
7. To date the Department has not received a response from the permit holder.
8. Section 42-219, *Idaho Code*, 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.

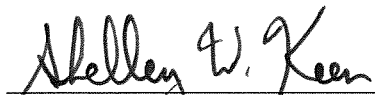
### CONCLUSIONS OF LAW

1. The provisions of Section 42-219, *Idaho Code*, authorize the Director of the Department of Water Resources to void permits for which the applicant has not fully complied with the law and the conditions of the permit.
2. The permit holder has not complied with the permit requirement that she install a lockable device enabling the watermaster to control the diversion of water in connection with the permit.
3. A license should not be issued on this permit and the permit should be voided pursuant to Section 42-219, *Idaho Code*.

### ORDER

IT IS HEREBY ORDERED that Permit No. 65-22903 is **VOIDED** and issuance of a license is **REFUSED** under Section 42-219, *Idaho Code*.

Dated this 11<sup>th</sup> day of May, 2011.

  
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Shelley W. Keen, Manager  
Water Right Permits Section