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DEPARTMENT OF
WATER RESOURCES

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Attorney for Hultz Farms, Petitioner

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

In the Matter of Permit No. 63-8682)
)
_____)

PETITION TO REINSTATE PERMIT

Hultz Farms, by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, petitions, states and alleges as follows:

Parties and Jurisdiction

1. Hultz Farms, (hereinafter "Petitioner") is an assumed business name for Hultz Properties, Inc.
2. Petitioner owns that certain real property in Canyon County associated with the place of use/point of diversion for Permit No. 63-8682 (the "Property").
3. Petitioner is successor in interest to Permit No. 63-8682.
4. The Idaho Department of Water Resources (hereinafter "IDWR") has jurisdiction over this proceeding pursuant to *Idaho Code* §§ 42-217 and 42-218a and IDAPA 37.01.01.

Factual Allegations

5. On or about April 11, 1977, Harold M. Hultz, President, for Hultz Farms, Inc. (the “permitholder”) submitted an Application for Permit to Appropriate the Public Waters of the State of Idaho (the “Application”) with the Idaho Department of Water Resources. The Application identified the source as ground water, with the location of the point of diversion in the SW1/4NE1/4 of Section 25, Township 5 North, Range 4 West, B.M., Canyon County, Idaho and requested approval for 5.1 cubic feet per second (“cfs”) to irrigate 255 acres in Section 25, Township 5 North, Range 4 West.

6. On June 17, 1977, then IDWR Deputy Director, Kenneth Dunn, approved the Application and approved Water Right Permit No. 63-8682 (the “Permit”). The approval indicated that beneficial use of the water was to be completed on or before June 1, 1982.

7. In accordance with the statutes in effect at the time, the IDWR proof of beneficial use postcard was submitted on or about April 16, 1982.

8. By letter dated December 7, 1982, IDWR acknowledged receipt of the proof of beneficial use statement and informed the permitholder that, “Before a license can be issued, a field examination must be made by a representative of this Department. A field examiner will contact you to arrange to examine your system.”

9. On or about April 1, 1984, Harold M. Hultz passed away

10. Apparently, House Bill 671, enacted by the 1986 Idaho Legislature, instituted a new requirement that IDWR receive payment of a fee before conducting the field examination for licensing.

11. Effective about June 30, 1987, IDWR lapsed Permit No. 63-8682 for failure to submit the newly required examination fee.

12. Any subsequent attempts to inquire with IDWR personnel about possible reinstatement of Permit No. 63-8682 were denied.

13. Attached hereto and submitted herewith is a check payable to the Idaho Department of Water Resources in the amount of \$225.00 for the license examination fee. Additional documents to substantiate the requested relief will be filed shortly.

Claim for Relief 1
Error/Mistake

14. The allegations above are incorporated by reference.

15. Since the effective date of the new license examination fee statutory requirement postdated submission of the Proof of Beneficial Use postcard, IDWR had no valid legal authority to require payment of a license examination fee for the Permit.

16. Because at the time the IDWR issued its Order of Cancellation there was no statutory authority to require the payment of the examination fee, the Permit was improperly lapsed and should be reinstated with the original priority pursuant to Idaho Code § 42-218a(3).

17. Any attempts to inquire with IDWR personnel about possible reinstatement of Permit No. 63-8682 were incorrectly denied.

Claim for Relief 2
Reasonable Cause for Permit Reinstatement

18. The allegations above are incorporated by reference.

19. Beneficial use occurred during the authorized period.

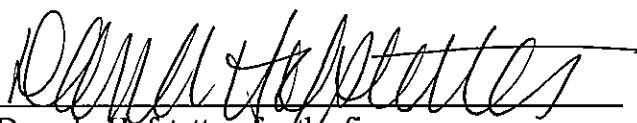
20. There is reasonable cause for late submission of the examination fee.

21. The Permit should be reinstated pursuant to Idaho Code § 42-218a(2).

WHEREFORE, Petitioner requests reinstatement of the Permit with the original priority date of April 11, 1977, or, in the alternative, with the priority date advanced for each day that the license fee is late.

DATED this 4th day of February, 2010.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Hultz Farms

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2010, I caused the original (with attachment) of the foregoing PETITION TO REINSTATE PERMIT to be served by the method(s) indicated on the following:

Original to:

Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax


DANA L. HOFSTETTER

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