Adamson, Jared

From: Dylan Lawrence <dylan@varinthomas.com>
Sent: Monday, March 25, 2024 3:16 PM
To: Adamson, Jared
Cc: mick@ysursalaw.com
Subject: Re: Permit 65-13627
Attachments: 2024-03-08 Valley Pump invoice.pdf; Photo.jpg

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Well, that was fast. I've attached here the invoice and photo Angie Heffner provided to me.

Dylan

Dylan Lawrence
242 N. 8th Street, Ste. 220
PO Box 1676 | Boise, ID 83701
(208) 345-6021
VarinThomas.com



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On Mon, Mar 25, 2024 at 2:40 PM Dylan Lawrence <dylan@varinthomas.com> wrote:

> OK, I will email Angie Heffner on that and get back to you.
>
> Dylan

Dylan Lawrence
242 N. 8th Street, Ste. 220
PO Box 1676 | Boise, ID 83701
(208) 345-6021
VarinThomas.com



RECEIVED
MAR 25 2024
WATER RESOURCES
WESTERN REGION

Valley Pump and Equipment Co. Inc.
Box 548
Emmett, ID 83617
208-365-2972
www.valleypump.biz

Invoice

Date	Invoice #
3/8/2024	41739

Bill To:

Volcanic Farms
C/O Don Heffner
4811 Mountour
Emmett, Idaho 83617

Job Site:

RECEIVED
MAR 25 2024
WATER RESOURCES
WESTERN REGION

Terms	P.O. No.	Rep
NET 10TH		rw

Qty	Description	Rate	Amount
1	ag3000-6f1bx01 mag 6" flow meter with data logger	2,836.05	2,836.05
1	103410-06 grounding ring kit 6" no gasket	329.70	329.70
1	104094-015 cable 50' power output 4pin ag30	210.00	210.00
1	rsp5w solar panel kit 5watt	683.55	683.55

Please pay amount due, in full, by the 10th of the month, unless prior arrangements have been made.

Note: Instead of raising our prices, your receipt when using a credit or debit card to pay your invoice will now include a 3% service fee to offset rising costs of electronic transactions.

A 1.5% finance charge per month will be assessed on accounts over 30 days past due.

At 60 days, a lien will be filed on your property until payment has been received in full, including all finance charges, filing fees and litigation fees if necessary.

Subtotal	$4,059.30
Sales Tax (0.0%)	$0.00
Total	$4,059.30
Payments/Credits	$0.00
Balance Due	$4,059.30

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On Mon, Mar 25, 2024 at 2:08 PM Adamson, Jared <Jared.Adamson@idwr.idaho.gov> wrote:

Dylan,

No worries, we aren't looking for a calibration just proof submitted that the flow meter has been installed at the diversion. No form, just a photo showing the installed flow meter and an invoice showing the installation was performed if Angie hired it done, or I can even make a site visit to take the photos myself if that is preferable.

Thanks,

Jared Adamson | Water Resource Agent, Sr.
Idaho Department of Water Resources
2735 W Airport Way, Boise ID 83705 | jared.adamson@idwr.idaho.gov | (208) 605-4627

From: Dylan Lawrence <dylan@varinthomas.com>
Sent: Monday, March 25, 2024 2:00 PM
To: Adamson, Jared <Jared.Adamson@idwr.idaho.gov>
Cc: mick@ysursalaw.com
Subject: Re: Permit 65-13627

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Jared,

Sorry if I missed something on this. As an attorney, I am rarely involved in measuring device installation issues, so if there is a form or a reporting requirement that I missed, please point me to the form and I can ask Angie Heffner to fill it out. Otherwise, my understanding is that a Seametrics AG3000 Flow Meter was installed prior to March 15. I understand from the Heffners that Payette River levels are too low right now for them to divert water, and they cannot calibrate the flow meter until their diversions start in a few weeks. I'll need to check with Angie Heffner regarding the requested documentation.

Dylan

Dylan Lawrence

242 N. 8th Street, Ste. 220
PO Box 1676 | Boise, ID 83701

(208) 345-6021
VarinThomas.com



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On Mon, Mar 25, 2024 at 1:34 PM Adamson, Jared <Jared.Adamson@idwr.idaho.gov> wrote:

> Good Afternoon Dylan Lawrence,

The Idaho Department of Water Resources has not yet received a confirmation concerning the installation of a measuring device for the diversion under Permit No. 65-13627. What is the status of the installation of the flow meter? The March 15 deadline has passed, and I wanted to give you and your client time to respond with a photo of the installation and a copy of an invoice of the installation work if applicable.

Please respond with the requested information by close of business Friday, March 29, 2024. If I have not received confirmation of the installed flow meter by that time, the Department will moved forward with the void order process. Please feel free to give me a call with any questions.

Respectfully,

Jared Adamson | Water Resource Agent, Sr.
Idaho Department of Water Resources
2735 W Airport Way, Boise ID 83705 | jared.adamson@idwr.idaho.gov | (208) 605-4627

From: mick@ysursalaw.com <mick@ysursalaw.com>
Sent: Tuesday, March 5, 2024 11:58 AM
To: 'Dylan Lawrence' <dylan@varinthomas.com>; Adamson, Jared <Jared.Adamson@idwr.idaho.gov>
Subject: RE: Permit 65-13627

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Dylan,

Great news – thank you for letting us know the measuring device status.

Adamson, Jared

From: mick@ysursalaw.com
Sent: Tuesday, March 5, 2024 11:58 AM
To: 'Dylan Lawrence'; Adamson, Jared
Subject: RE: Permit 65-13627

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Dylan,

Great news – thank you for letting us know the measuring device status.

Mick Ysursa, Esq., MBA
5598 N. Eagle Rd. #102
Boise, ID 83713
208.562.4107

From: Dylan Lawrence <dylan@varinthomas.com>
Sent: Monday, March 4, 2024 6:06 PM
To: Adamson, Jared <Jared.Adamson@idwr.idaho.gov>
Cc: mick@ysursalaw.com
Subject: Re: Permit 65-13627

Jared, Mick-

I might be able to provide an update on this. As I understand from Angie Heffner, the measuring device (a Seametrics AG3000 flow meter with solar panel) was ordered some time ago and will indeed be installed before March 15. They will then test the installation when they can safely restore their electrical and reinstall their pump, which is usually in mid/late April. But the measuring device itself will be installed by March 15.

Please let me know of any questions or concerns.

Thank you,
Dylan

Dylan Lawrence
242 N. 8th Street, Ste. 220
PO Box 1676 | Boise, ID 83701
(208) 345-6021
VarinThomas.com

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On Mon, Mar 4, 2024 at 9:24 AM Adamson, Jared <Jared.Adamson@idwr.idaho.gov> wrote:

Mick,

Thank you for the follow up. I will keep you posted on any decisions the Department makes moving forward.

Respectfully,

Jared Adamson | Water Resource Agent, Sr.
Idaho Department of Water Resources
2735 W Airport Way, Boise ID 83705 | jared.adamson@idwr.idaho.gov | (208) 605-4627

From: mick@ysursalaw.com <mick@ysursalaw.com>
Sent: Friday, March 1, 2024 4:46 PM
To: Adamson, Jared <Jared.Adamson@idwr.idaho.gov>
Cc: 'Dylan Lawrence' <dylan@varinthomas.com>
Subject: Permit 65-13627

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Jared,

Please find the attached letter as a follow-up to your 12/08/2023 letter regarding the Montour water permit.

I look forward to hearing from you.

Mick Ysursa, Esq., MBA

5598 N. Eagle Rd. #102

Boise, ID 83713

208.562.4107

YSURSA LAW, PLLC

5598 N. Eagle Rd., Ste 102
Boise, ID 83713

mick@ysursalaw.com
P: 208-562-4107
F: 208-562-4110

March 1, 2024

RECEIVED
MAR 01 2024
WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
c/o Jared Adamson: Water Resource Agent, Sr.
2735 W. Airport Way
Boise, ID 83705-5082
jared.adamson@idwr.idaho.gov

Re: 65-13627 Permit Measuring Device

Dear Mr. Adamson,

As you are aware, I represent Anthony Lynch & Harmony Satre at 5115 Montour Rd., Emmett, Idaho, 83617 and the Duarte Revocable Living Trust at 5113 Montour Rd., Emmett, Idaho, 83617 whose properties originally were covered by the water permit application 65-13627 filed in late 1995 with a Proof of Beneficial Use filed in the fall of 1996. My clients and I would like to follow-up on your December 8, 2023. That letter stated that a measuring device must be installed prior to the start of the irrigation season on March 15, 2024. If a device is not installed by that date, the permit risks being voided.

We understand that the original permit filers and adjacent landowners may have a plan of action to install a measuring device. Yet, we are unaware of that plan, its status, or the details despite requesting such information. Thus, it is important to note that my clients are prepared to facilitate the timely installation of the measuring device in any way possible and have offered to pay our pro rata share for those expenses. As stated, we have yet to hear an answer or indication as to the status of the measuring device. Therefore, we find it compelling to provide notice to the department of our intentions and stand prepared to comply with the March 15, 2024 deadline. Additionally, we have offered a couple different approaches to collaboratively resolve any ownership dispute. Again, we are waiting for indication from the original permit filers as to input.

My clients stand ready to resolve this issue. As we are in a difficult spot of not being able to ensure a measuring device is installed but are poised to provide resources needed to do so and secure the pertinent water license. Consequently, we propose that if a measuring device is not timely installed, we work with the department to assume the permit in lieu of a void order and install a measuring device for all properties in exchange for my clients' pro rata water rights and ownership split similar to that filed in December 2022.

We look forward to your input and an expeditious resolution.

Sincerely,

Mick Ysursa

Mick Ysursa, Esq., MBA
5598 N. Eagle Rd. #102
Boise, ID 83712

CC: Dylan Lawrence, Varin Thomas Law

Adamson, Jared

From: Adamson, Jared
Sent: Monday, December 11, 2023 10:43 AM
To: mick@ysursalaw.com
Subject: Reversal of Ownership and Split for Permit 65-13627
Attachments: Ownership Change Reversal Notice.pdf

Dear Mick Ysursa,

Please see the attached ownership change reversal notice for Permit No. 65-13627. Due to the ongoing dispute over water right ownership, the Department has decided to move forward with the reversal of the ownership change and splits that were processed in December 2022. This action is pursuant to Idaho Statute 42-248 (8) and is not a determination of ownership. The letter also puts the permit holder on notice, requiring a measuring device be installed prior to the start of the 2024 irrigation season. If a measuring device is not installed, the Department may void the permit.

Please feel free to give me a call with any questions.

Respectfully,

Jared Adamson | Water Resource Agent, Sr.
Idaho Department of Water Resources
2735 W Airport Way, Boise ID 83705 | jared.adamson@idwr.idaho.gov | (208) 605-4627

Adamson, Jared

From: Adamson, Jared
Sent: Monday, December 11, 2023 10:43 AM
To: Dylan
Subject: Reversal of Ownership and Split for Permit 65-13627
Attachments: Ownership Change Reversal Notice.pdf

Dear Dylan Lawrence,

Please see the attached ownership change reversal notice for Permit No. 65-13627. Due to the ongoing dispute over water right ownership, the Department has decided to move forward with the reversal of the ownership change and splits that were processed in December 2022. This action is pursuant to Idaho Statute 42-248 (8) and is not a determination of ownership. The letter also puts the permit holder on notice, requiring a measuring device be installed prior to the start of the 2024 irrigation season. If a measuring device is not installed, the Department may void the permit.

Please feel free to give me a call with any questions.

Respectfully,

Jared Adamson | Water Resource Agent, Sr.
Idaho Department of Water Resources
2735 W Airport Way, Boise ID 83705 | jared.adamson@idwr.idaho.gov | (208) 605-4627

IDAHO DEPARTMENT OF
WATER RESOURCES

Western Region • 2735 W Airport Way • Boise, ID 83705-5082
Phone: 208-334-2190 • Fax: 208-334-2348 • Email: westerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little **Director Mathew Weaver**

December 8, 2023

DONNA HEFFNER
C/O ANGIE HEFFNER
4811 MONTOUR RD
EMMETT, ID 83617

DUARTE REVOCABLE LIVING TRUST
26415 JOSEL DRIVE
SANTA CLARITA, CA 91387-5029

ANTHONY LYNCH & HARMONY SATRE
5115 MONTOUR ROAD
EMMETT, ID 83617-5011

Re: Reversal of Ownership and Split for Permit 65-13627

To Whom it May Concern:

In December 2022, the Idaho Department of Water Resources ("Department") received and processed two notices of change of ownership for permit to appropriate water permit number 65-13627. The notices resulted in the Department splitting the permit into three parts[1]. One portion remained in the name of Donald and Donna Heffner ("Heffner"), one part was created in the name of Harmony Satre and Anthony Lynch ("Lynch"), and one part was created in the name of Duarte Revocable Living Trust ("Duarte").

Recently, the Department has become aware that Heffner disputes the notices of ownership change and asserts that no change in ownership of the permit has occurred. Section 42-248 (8), Idaho Code states as follows:

> (8) Any action by the department updating the ownership of a water right in the department's records or returning the notice of change of ownership to the person filing the notice is not a determination of water right ownership, is not an administrative action subject to challenge under the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and is not subject to a request for hearing pursuant to section 42-1701A, Idaho Code. Water right ownership disputes arising from a notice of change of water right ownership under this section must be resolved either in a water rights adjudication or in an action to quiet title pursuant to section 6-401, Idaho Code.

Given that there is a dispute in ownership, the Department has reversed the changes it made to its records pursuant to the notices of change of ownership filed in December 2022. This reversal in the change of ownership records is not a determination of ownership.

Furthermore, the permit holder is required to install a measuring device before the permit can be licensed. The Department has given repeated notice of this requirement, and more than adequate time has been given for Heffner to install a measurement device since the first notice given in 1998. Since this time the Department has sent Heffner a notice requiring the installation of a measurement device on November 24, 2017, January 9, 2018, September 12, 2019, June 8, 2023, and finally the intent to void letter dated

[1] In December 2022, the notices were processed, and the notification was sent as if the water right license had been issued. This license had not been issued, so the Department's records were corrected in May 2023 to reflect a split in the permit, rather than a license.

October 16, 2023. Heffner responded to the intent to void letter asking for further time to install the flow meter, citing that the flow meter currently in possession is inadequate for installation and that a plan to purchase a new flow meter and to install the new flow meter is in place.

Given that the 2023 irrigation season has ended, a plan of action to install a flow meter is in place, and there is an ongoing dispute concerning ownership of the permit, the Department is not inclined to void the permit at this time. A measuring device will be required to be installed before the start of the 2024 irrigation season regardless of the status of ownership dispute. If a measuring device is not installed before the start of the 2024 irrigation season (3/15/2024) the Department may issue a void order. No further extensions of time will be allowed at this juncture.

Please call me at (208) 334-2190 with any questions.

Respectfully,

Jared Adamson
Water Resource Agent, Sr

Cc: Dylan B. Lawrence
Mick Ysursa

Attachments: 65-13627 Proof Report (Ownership Change Reversed)
65-13627 Map

IDAHO DEPARTMENT OF WATER RESOURCES **12/7/2023**

Proof Report

Water Permit 65-13627

Owner Type	**Name and Address**
Current Owner	DONALD D HEFFNER 4811 MONTOUR RD EMMETT, ID 83617 (208) 584-3383
Current Owner	DONNA HEFFNER 4811 MONTOUR RD EMMETT, ID 83617 (208) 584-3383

Priority Date: 7/20/1995
Status: Active

Source	**Tributary**
PAYETTE RIVER	SNAKE RIVER

Beneficial Use	**From**	**To**	**Diversion Rate**	**Volume**
IRRIGATION	3/15	11/15	1.200 CFS	
STOCKWATER	1/01	12/31	0.010 CFS	
		Total Diversion	1.200 CFS	

Source and Point(s) of Diversion:

PAYETTE RIVER L4(SWNE) Sec. 21, Twp 07N, Rge 01E, GEM County

Place Of Use:

STOCKWATER within GEM County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
07N	01E	16															X		
07N	01E	21		X	X L4														

IRRIGATION within GEM County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
07N	01E	16															16.0		16.0
07N	01E	21		30.0	14.0 L4														44.0

POU Total Acres: 60.0

Conditions of Approval:

1. 03A The rate of diversion of water for irrigation under this right and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each

		acre of land.
2.	005	Use of water under this right is subject to control by the watermaster of State Water District No. &DISTRICT.
3.		Stockwater use is for 100 cattle and 6 horses.
4.	028	After specific notification by the department, the right holder shall annually report the amount of water diverted to the department.
5.	004	The issuance of this right does not grant any right-of-way or easement across the land of another.
6.	01J	Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

Dates and Other Information:
Permit Proof Due Date: 11/1/1996
Permit Proof Made Date: 10/2/1996
Permit Approved Date: 10/23/1995
Field Exam Date: 8/7/1998
Owner Name Connector: AND
Water District Number: 65
Mitigation Plan: False

Combined Use Limits:
N/A

SubCase:
N/A

Water Supply Bank:

N/A

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

65-13627

This map depicts the IRRIGATION place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.

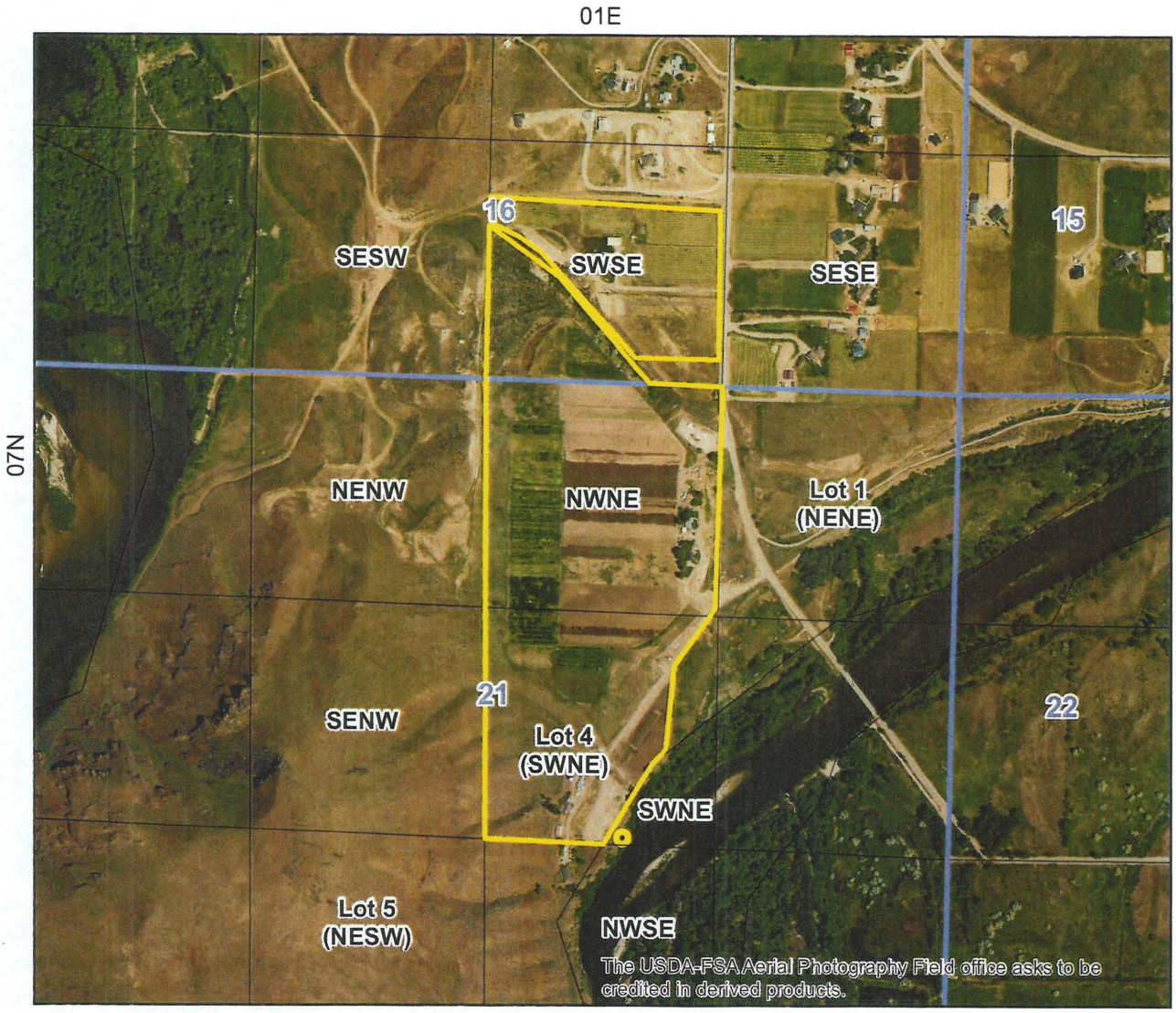


State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

65-13627

This map depicts the STOCKWATER place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



0 0.125 0.25 0.5 Miles

Place Of Use Boundary
Townships
PLS Sections
Quarter Quarters
Point of Diversion
State Outline

N

Adamson, Jared

From: Adamson, Jared
Sent: Friday, October 20, 2023 2:09 PM
To: PureMagma
Cc: dylan@varinthomas.com
Subject: RE: Water Permit 65-13627

Dear Angie:

Thank you for your response. I will make record that you have requested more time on the processing of the licensing for Water Permit 65-13627. My goal, and I believe the Department's goal, is to facilitate the licensing of the permit(s) in a timely manner and ensure that the conditions of approval are followed. I am happy to work with you and all parties involved to meet that end. Please keep the Department informed on the status of the installation of a measurement device. Feel free to contact me with any questions or concerns regarding measurement devices and the licensing of Water Permit No. 65-13627.

Respectfully,

Jared Adamson | Water Resource Agent, Sr.
Idaho Department of Water Resources
2735 W Airport Way, Boise ID 83705 | jared.adamson@idwr.idaho.gov | (208) 605-4627

From: PureMagma <puremagmaunlimited@gmail.com>
Sent: Friday, October 20, 2023 1:45 PM
To: Adamson, Jared <Jared.Adamson@idwr.idaho.gov>
Subject: Water Permit 65-13627

RECEIVED
OCT 20 2023
WATER RESOURCES

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Hi Jared,

Please allow this email response to serve as a request for more time to satisfy the IDWR requirement of the installation of a (flow meter) measuring device. There are ongoing legal matters surrounding the irrigation water system and permit 65-13627 that we are actively attempting to resolve (see 2023-09-26 ltr to Ysursa attached). This matter is the result of a "Declaration of Intent to create CC&R's" document which was created without my parents knowledge (as explained in the letter) where property owners, who were acting upon the belief that the CC&R document was genuine, filed "ownership claims" against my Mother's Water Permit 65-13627 that were wrongfully approved by IDWR in December 2022 (see 65-24198 & 65-24199). This issue is more fully explained in the attached letter which our attorney, Dylan Lawrence, recently wrote to opposing counsel Mick Ysursa as our response to a demand letter we'd received where landowners are attempting to enforce terms as set forth in the [nefarious] CC & R declaration" on behalf of his clients.

As I'm sure you can imagine, we were very caught off guard to learn of this document that my parents supposedly created in 2005 when they sold the land parcels. The parcels have been bought and sold repeatedly and apparently a realtor presented the document to both buyers as genuine--which caused them to take actions against us "as if " it were genuine and granted them rights they do not actually have. We have been forced to expend our resources debunking the "Declaration Document" as fabricated and unenforceable and are currently attempting to resolve all the matters surrounding permit 65-13626 which will include the return of the "slivers" of the permit being returned.

At this time we are planning to purchase another flow meter (the Sparling Tiger-Mag presented too many installation challenges and has also fallen out of favor with IDWR), but this construction will be a significant financial expense and, because my Mom had to file a Chapter 12 Bankruptcy in 2020--her financial resources that can be put towards the flow meter are limited by the Bankruptcy Court. She cannot afford to install the flow meter while simultaneously paying legal fees to first resolve legal matters surrounding "ownership" of the irrigation system and also the water right permit (which was exacerbated because IDWR wrongfully processed the "Ownership Change" filings in December 2022). However, once the responsibility of maintaining the irrigation system is legally reestablished and usage agreements along with financial responsibility are firmly put into place - it is our genuine intention to purchase and install the flow meter. I've personally taken an interest in the Seametrics iMAG 4700 because it has a very favorable "minimal straight pipe requirement" which would resolve the major issue we encountered when we attempted the installation of the Sparling Tiger MAG unit.

I am hopeful that this update will persuade you to allow us the additional time necessary to resolve the other issues that are plaguing the water permit ahead of getting the flow meter requirement resolved and am happy to refer you to our legal counsel Dylan Lawrence, 208.345.6021 if you have additional questions or concerns.

Sincerely,

Angie Heffner

VARIN THOMAS
ATTORNEYS AT LAW

DYLAN B. LAWRENCE
DYLAN@VARINTHOMAS.COM

242 N. 8TH STREET, SUITE 220
P.O. BOX 1676
BOISE, IDAHO 83701
P: 208.345.6021
F: 1.866.717.1758
VARINTHOMAS.COM

September 26, 2023

RECEIVED
OCT 20 2023
WATER RESOURCES
WESTERN REGION

VIA E-MAIL

Mick Ysursa
Ysursa Law, PLLC
5598 N. Eagle Rd., Ste. 102
Boise, ID 83713
mick@ysursalaw.com

Re: Response to Ysursa Law PLLC July 19, 2022 Letter
Harmony Satre-Lynch and Anthony Lynch

Dear Mick:

My firm represents Donna and Angie Heffner (collectively, the "Heffners"). They have asked me to respond to the letter dated July 19, 2022 that you sent to Donna Heffner on behalf of Harmony Satre-Lynch and Anthony Lynch. At the outset, I wish to thank you and your clients for having patience in this matter. My representation of the Heffners is relatively recent, and there is a lengthy history and many "moving parts" that required some immersion to get my understanding up to speed.

Based on your heavy reliance upon the 2005 Declaration of Intent to Develop Covenants, Conditions and Restrictions for Further Development and Initial Restrictions, I should inform you up front that Donna Heffner firmly asserts that neither she, nor her late husband Donald Heffner, ever contemplated or established CC&R's for the land parcels they sold in late 2005 and early 2006. Additionally, she is adamant that the signatures affixed on page 6 of Instrument 248041 are not genuine, and that this document was created and recorded without their knowledge or approval. Therefore, the Heffners are unwilling to deposit the payment checks referenced in your letter, because they do not want to legitimize an instrument that they otherwise believe is invalid and unenforceable.

In light of this position, and because your letter relies so heavily on this document, my initial undertaking was to conduct my own independent evaluation of the validity and enforceability of the 2005 Declaration. To be clear, I am not asking or expecting you to agree with every

statement that I make about that document. However, I believe reasonable minds would agree that the 2005 Declaration of Intent is problematic for multiple reasons.

First, the use of the word "intent" in that document calls its enforceability into question. Normally, enforceable CC&Rs are titled as "Declaration of Covenants, Conditions and Restrictions" and definitively state what those CC&Rs are. By contrast, the 2005 Declaration has the word "intent" in the title and then claims that it is "intended to put the purchasers [of] [*sic*] Parcels 1, 2, 3, 4A & 4B on notice" of things that may occur in the future. As you know, under the law, it is often the case that expressions of an intent to take some action in the future are not legally enforceable. Recognizing that there may be counterarguments to the contrary, these references to "intent" call the enforceability of the 2005 Declaration into question.

The second concern is how the Declaration of Intent imposes obligations on the "Developer" as the owner of the "Master Property" which is purported to be "specifically described in Exhibit A" and "...attached and incorporated by reference as if set forth in full at this point." However, the version of the Declaration that is recorded does not actually have an Exhibit A describing the Master Property. Instead, immediately after the signature pages, the agreement proceeds straight to Exhibits 1-4, B, and C, which are legal descriptions for Parcels 1, 2, 3, 4A, and 4B. Then, there is an irrigation easement on page 12 which is marked "Exhibit A" near the top center but also marked "Exhibit B" in the lower left corner. Finally, there is a record of survey.

Because the Heffners never intended for there to be any CC&R's, no survey specifically depicting a master property has ever been performed. The fact that the master property was not separately surveyed in conjunction with the survey that divided the other land parcels supports the Heffners' strong belief that the 2005 Declaration of Intent document was not created by them.

Without a valid legal description of the Master Property, it is doubtful any of the legal requirements described in your letter actually apply to the Heffners. "...[A] written instrument purporting to convey real property must contain a sufficient description of the property." *Garner v. Bartschi*, 80 P.ed 1031, 1036, 139 Idaho 430, (2003). The legal description "must adequately describe the property so that it is possible for someone to identify 'exactly' what property is being conveyed." *Callies v. O'Neal*, 216 P.3d 130, 137, 147 Idaho 841 (2009).

Third, the purported signatures of the owners of the Parcels (located on page 6 of the Declaration) are not notarized. The first page of the Declaration defines Donald and Donna Heffner as the "Developer" and Owner of the "Master Property," but there is no notary block for their signatures on page 6. This is important because Angie Heffner has compared the signatures on page 6 to other historical documents that are known to be her parents' authentic signatures, which are inconsistent with the signatures in the 2005 Declaration (which are also affixed to that

document in a strange location). I am not a handwriting expert and am not going to opine on that issue, but this lack of certification is yet another defect that calls the enforceability of the 2005 Declaration of Intent into question. *See generally* IDAHO CODE § 9-503 (requiring purported conveyance of interest in real property to be "subscribed by the party creating, granting, [or] assigning" such interest).

The fourth concern is the most alarming to the Heffners because it suggests that someone other than themselves presented different documents to various buyers in order to induce them to purchase lots. More specifically, there are visible discrepancies between the two notarized signature pages for the Kellers and the Rodriguezes, which were then incorporated into this one document before it was recorded in Gem County. Had the buyers of Parcels 1 & 3 been presented with the same "Covenants" document, the location of the signatures and notary blocks would likely be identical. However, they are not. The "covenants" were notarized only nine days apart, yet the body of the document causes the Kellers' notary block to spill onto a sixth page.

Moreover, directly underneath each of the Kellers' signatures are the words "Purchaser of ***Parcel*** 1" (emphasis added) repeated twice. By contrast, the Rodriguez signatures identifies them as, "Purchaser of ***Lot*** 3" (emphasis added), and the entire document (including signatures) ends on page 5. The Heffners believe these discrepancies indicate different sets of "CC&R" documents were presented to the buyers. This is consistent with their belief that there has never been an authentic, enforceable CC&R document. All the Heffners intended to include and convey with each parcel of land was access to irrigation water from their system, and they have done their best to act consistently with that intent.

On a related point, in December 2022, your clients and the owner of parcel 3 both filed a "Notice of Change In Water Right Ownership" with the Idaho Department of Water Resources (IDWR). We believe neither property owner was entitled to file those notices and that IDWR should not have processed them. At the time the Heffners first conveyed parcels 1 and 3 to third parties in 2005/2006, Water Permit No. 65-13627 was the personal property of the Heffners. No portion of that permit was ever offered or conveyed on the original warranty deed of those land parcels any more than their other personal property, such as the irrigation pipes, tractors, and farm equipment. Prior to the enactment of Idaho Code Section 55-616 in 2022, it was well established that water permits were considered personal property, and personal property does not typically pass to a grantee through an appurtenance clause. While Section 55-616 will apply to instruments executed after July 1, 2022, it cannot apply retroactively to prior conveyances.

It is also important to note the second condition on your clients' water permit, which specifically states that "[t]he issuance of this right does not grant any right-of-way or easement across the land of another." In other words, the mere fact that your clients have a water permit in their name

does not provide them with the legal right to utilize the Heffners' water system. "In Idaho, ditch rights and water rights are separate and independent from one another." *Zingiber Investment, LLC v. Hagerman Highway Dist.*, 249 P.3d 868, 873, 150 Idaho 675, 680 (2011).

As a practical matter, I have been involved in several matters over the years in which irrigation water rights have been "divvied up" to the individual lot owners within a subdivision. When individual lot owners receive all of their water from their own onsite wells, this approach makes sense. However, when water is provided through a centralized system, it becomes an administrative nightmare. For example:

- Every time lot ownership changes, the new owner is required by law to file a notice with, and pay a fee to, IDWR;
- When water rights are individually owned, undeveloped lots have a higher likelihood of having their water right forfeited for nonuse pursuant to Idaho Code Section 42-222 and the "partial forfeiture" doctrine, see generally *State v. Hagerman Water Right Owners*, 130 Idaho 727, 947 P.2d 400 (1997); IDAHO CODE § 42-223;
- Each lot owner is individually responsible for purchasing, installing, and operating their own measuring devices and totalizers to ensure compliance with Idaho water law and the terms of their water rights;
- Each lot owner is individually responsible for monitoring water right filings and administrative and judicial proceedings that may adversely affect them;
- Each lot owner is responsible for individually coordinating and paying the fees necessary to convert their temporary water permit into a fully perfected water right license; and
- For obvious reasons, governmental authorities such as the District Watermaster and IDWR prefer communicating directly with the owner and operator of the water system or an associated water right instead of all the individual water right owners using the same system.

In short, when irrigation water is provided through a centralized system, as a practical matter, it is far preferable for the associated water right to be owned solely by the one with responsibility for operating the system. It is administratively cleaner and provides more protection and certainty to the individual water users collectively.

This background helps explain the Heffners' proposed terms for resolution of all of these issues, which are:

1. Upon the Lynches and Duartes conveying their water permits back to the Heffners, the Heffners will create a nonprofit water association that will manage the irrigation system, and the Lynches, and Duartes can join the association to access irrigation water from the irrigation mainline system.

2. The Heffners would agree to adhere to either the same or similar language as Section 3 of the 2005 Declaration with respect to the nonprofit water association and would follow the same formula for allocating water to individual lot owners and for shared costs of operation and maintenance. Consistent with Item 1 above, ownership of the associated water right would remain with the Heffners. This will avoid each individual parcel owner having to install a flow meter and totalizer at their point of access pursuant to IDWR guidelines to track their actual water usage.

3. The association would agree to more specific language than what is currently in Section 3(a) describing the Heffners' responsibility for operating the irrigation system for the benefit of the individual property owners that are served by the system and what those responsibilities entail, including responsibility for converting the temporary water permit into a fully perfected water right license. On a related point, the Heffners and I strongly disagree with your assertion that the 2005 Declaration imposes a "fiduciary" duty on them, and it would be unusual for CC&Rs to do so. The vast majority of the Heffners' irrigation system services their orchards and commercial gardens. While they are willing to more expressly recognize your clients' rights than the 2005 Declaration purports to do, a fiduciary relationship makes no sense given the much larger quantity of water utilized by the Heffners for their own business purposes.

4. The parties would replace the 2005 Declaration with a valid, enforceable instrument reflecting the above terms and clarifying other ambiguities within that document.

Please review these proposed terms with your clients and let me know if they are acceptable. If so, I can prepare a draft of a document to replace the 2005 Declaration of Intent.

Thank you for your attention to this matter.

Sincerely,

VARIN THOMAS



Dylan B. Lawrence

IDAHO DEPARTMENT OF
WATER RESOURCES

Western Region • 2735 W Airport Way • Boise, ID 83705-5082
Phone: 208-334-2190 • Fax: 208-334-2348 • Email: westerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

10/16/2023

DONNA HEFFNER
4811 MONTOUR RD
EMMETT, IDAHO 83617

Re: Notice of Intent to Void For Permit 65-13627

Dear Applicant(s),

The Idaho Department of Water Resources (IDWR) is continuing to review Permit No. 65-13627 in order to issue a license for the uses developed. The Department notified you on June 8, 2023, that no further action on your permit will take place until the condition on the permit requiring a measuring device is satisfied. The letter stated that a written reply must be made within thirty (30) days, or the Department will void the application. As of October 16, 2023, no written correspondence was received by the Department. If it is your intent to install a measuring device and satisfy the condition requiring a measuring device, please provide a written response to the original letter or request additional time to respond. It is the intent of the Department to void your application within the next fourteen (14) days if no response is received.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Sincerely,

Jared Adamson
Water Resource Agent, Sr.

Enclosure(s): June 8, 2023 Letter

Adamson, Jared

From: mick@ysursalaw.com
Sent: Tuesday, October 10, 2023 2:41 PM
To: Adamson, Jared
Subject: Letter Response

RECEIVED
OCT 10 2023
WATER RESOURCES
WESTERN REGION

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Jared,

Thank you for taking to time to talk on the 29th. As we discussed, this email is in response to the September 11, 2023 letter my clients received. As you know I represent the Lynch's and Duarte's (65-24198 and 65-24199 respectively). They are the relatively new owners of the parcels appurtenant to the respective water allotments and are separate than the holders of number 65-13627 although they all used the same point of diversion. As I mentioned on the 29th, both my clients are willing to do what is necessary to properly comply with any IDWR requirements for their water use – including installing a measuring device.

Please accept our response to your letter as my clients' desire for compliance based on the understanding that they do not hold the majority of the water allotment from that specific diversion point. As such we are working with the holder of 65-13627 to properly comply yet cannot guaranty their compliance.

It would be great to get another conversation on the books with you in the upcoming weeks so that we can see what we need to do to resolve any outstanding issues. Please let me know what time works for you. I am happy to come down to your office if that makes things easier.

Thanks,

Mick Ysursa, Esq., MBA
5598 N. Eagle Rd. #102
Boise, ID 83713
208.562.4107

Lindow, Clint

From: mick@ysursalaw.com
Sent: Thursday, September 21, 2023 3:30 PM
To: Lindow, Clint
Subject: RE: contact

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Hi Clint,

My clients Lynch and Duarte (65-24229 and 65-24230 respectively) received a letter from IDWR dated September 11, 2023. Any chance you could forward me that letter as well? I talked with them about some of its contents, but would like to have the full letter if possible?

Thank you.

Mick Ysursa, Esq., MBA
5598 N. Eagle Rd. #102
Boise, ID 83712
208.562.4107

From: Lindow, Clint <Clint.Lindow@idwr.idaho.gov>
Sent: Wednesday, May 24, 2023 4:14 PM
To: mick@ysursalaw.com
Subject: contact

Mick,

My direct number here at IDWR Western region is (208) 605-4630 if you have any questions. Please reply to this email so I know it reaches you. Thank you.

IDAHO DEPARTMENT OF WATER RESOURCES

Clint Lindow
Water Resource Agent
P: (208) 605-4620
Idaho Dept. of Water Resources
idwr.idaho.gov

IDAHO DEPARTMENT OF
WATER RESOURCES

Western Region • 2735 W Airport Way • Boise, ID 83705-5082
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Governor Brad Little **Director Gary Spackman**

September 11, 2023

DUARTE REVOCABLE LIVING TRUST
26415 JOSEL DRIVE
SANTA CLARITA, CA 91387-5029

RE: License of Permit to appropriate Water right No. 65-24230

DUARTE REVOCABLE LIVING TRUST:

The Department of Water resources has continued review of water right permit Nos. 65-13627, 65-24229, and 65-24230 to issue a license for the uses developed. Upon review of these files, it was noted that, as of last contact with the owner of water right permit 65-13627, Donna Heffner, on March 2, 2020, the following condition on the permit had not been adhered to:

> *Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.*

Permit 65-24229 in the name of Anthony Lynch and Harmony Satre, and permit 65-24230, in the name of Duarte Revokable Trust, were split from permit 65-13627 on December 19, 2022. These permits also list the same point of diversion (POD) and carry the same condition requiring the installation of a measuring device and lockable controlling works.

On June 9, 2023, a letter was sent to Donna Heffner (copy enclosed) requesting information regarding the installation of the measuring device and providing 30 days for a response before actions would be taken to void the permit. To date, no response has been received.

Because water right permits 65-24229 and 65-24230 utilize the same POD and contain the same requirement for a measuring device, it is assumed at this juncture that there is no measuring device in place for any of the aforementioned permits. If a measuring device has been installed, please notify the Department so a representative can visit the site and confirm its installation. Alternatively, a request for a variance from this condition can be made by submitting request to the Watermaster of water district 65, Neil Shippy, and obtaining a written waiver or other variance from the condition. Mr. Shippy can be reached by phone at (208) 642-4465, by written request at 102 N Main St. Payette, ID 83661-2522, or by email at neil.waterdistrict65@gmail.com.

Pursuant to Idaho Code 42-219(8), if the conditions of approval on a permit are not complied with the Idaho Department of Water Resources may issue an order voiding the permit. The permit will be voided without a timely written reply within the next thirty (30) days.

IDWR will withhold further action on your permit for 30 days from the date of this letter to allow you time to respond. If IDWR does not receive a timely response within the 30 period, it will be assumed that you are not interested in pursuing a water right license, and action will be taken to void your permit. If you need additional time to respond, please contact me at (208) 605-4620 for additional information or to discuss your options.

Thank you for your attention to these matters.

Sincerely,

IDAHO DEPARTMENT OF WATER RESOURCES

Clint Lindow
Water Resource Agent
P: (208) 605-4620
Idaho Dept. of Water Resources
idwr.idaho.gov

IDAHO DEPARTMENT OF
WATER RESOURCES

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83705-5082
Phone: 208-334-2190 • Fax: 208-334-2348 • Email: westerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little Director Mathew Weaver

September 11, 2023

Anthony Lynch & Harmony Satre
5115 Montour road
Emmett, Idaho 83617-5011
RE: License of Permit to appropriate Water right No. 65-24230

DUARTE REVOCABLE LIVING TRUST:

The Department of Water resources has continued review of water right permit Nos. 65-13627, 65-24229, and 65-24230 to issue a license for the uses developed. Upon review of these files, it was noted that, as of last contact with the owner of water right permit 65-13627, Donna Heffner, on March 2, 2020, the following condition on the permit had not been adhered to:

> *Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.*

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On June 9, 2023, a letter was sent to Donna Heffner (copy enclosed) requesting information regarding the installation of the measuring device and providing 30 days for a response before actions would be taken to void the permit. To date, no response has been received.

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IDWR will withhold further action on your permit for 30 days from the date of this letter to allow you time to respond. If IDWR does not receive a timely response within the 30 period, it will be assumed that you are not interested in pursuing a water right license, and action will be taken to void your permit. If you need additional time to respond, please contact me at (208) 605-4620 for additional information or to discuss your options.

Thank you for your attention to these matters.

Sincerely,

IDAHO DEPARTMENT OF WATER RESOURCES

Clint Lindow
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idwr.idaho.gov

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Governor Brad Little

Director Gary Spackman

June 8, 2023

DONNA HEFFNER
4811 MONTOUR RD
EMMETT, IDAHO 83617

RE: License of Permit to appropriate Water right No. 65-13627

Dear Mrs. Heffner:

The Department of Water Resources (IDWR) has continued review of permit 65-13627 in order to issue a license for the uses developed. In a review of the file, it was noted that, as of last contact on March 2, 2020, the following condition on the permit had still not been adhered to:

> Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

The Department's field examiner found no measuring device on your diversion. You must resolve this issue before a license can be issued. Through review of the file and correspondence between yourself and the Department, it appears a measuring device had been purchased and simply needed to be installed. If this device has been installed, please notify the Department so a representative can visit the site and confirm its installation. Alternatively, you may request a variance from this condition by submitting a request to the Watermaster of water district 65, Neil Shippy, and obtaining a written waiver or other variance from the Watermaster. Mr. Shippy can be reached by phone at (208) 642-4465, by written request at 102 N Main St. Payette, ID 83661-2522, or by email at neil.waterdistrict65@gmail.com.

Pursuant to Idaho Code 42-219(8), if the conditions of approval on a permit are not complied with the Idaho Department of Water Resources may issue an order voiding the permit. The permit will be voided without a timely written reply within the next thirty (30) days.

IDWR will withhold further action on your permit for 30 days from the date of this letter to allow you time to respond. If IDWR does not receive a timely response within the 30 period, it will be assumed that you are not interested in pursuing a water right license, and action will be taken to void your permit. If you need additional time to respond, please contact me to discuss your options.

Please contact me at (208) 605-4620 for additional information. Thank you for your attention to these matters.

Sincerely,

IDAHO DEPARTMENT OF WATER RESOURCES

Clint Lindow
Water Resource Agent
P: (208) 605-4620
Idaho Dept. of Water Resources
idwr.idaho.gov

Cc: Angela Heffner

Miller, Nick

From: PureMagma . <puremagmaunlimited@gmail.com>
Sent: Tuesday, October 22, 2019 10:47 AM
To: Miller, Nick; waterdist65@srvinet.com
Subject: Re: Licensing permit 65-13627
Attachments: Heffner, Estate of Donald - COURT Amended Statement of Informal Probate 2.25.2019.pdf; Heffner, Estate of Donald - COURT Amended Statement .pdf

Good morning Nick,

I do have questions.

Far more questions than I can possibly elaborate on in this email.

When I sent my email to Tyler Smith, which he forwarded to you and on October 10th you responded to me, I attached a copy of Letters of Administration... Did you receive a copy?

For your convenience, I will attach another copy of that document along with my Appointment of Personal Representative in Intestacy for your records.

In my capacity as Representative in Intestacy and Administrator to my family's estate, it would be helpful for you to direct your correspondences to me to avoid confusion. Your email and the attached letter addressed to my Mother are a prime example of why this is important. In this instance, you infer that you and my Mother reached an agreement for the installation of the flow meter sometime in March... which isn't financially feasible. We will not have the economic capacity to pay for the installation of the flow meter in March 2020 (*let alone April or May*). Furthermore, last night, when I pointed this out to my Mother, she assured me that, according to both Ron Shurtleff and you, *"there are programs available to help us pay for the installation"* yet when I asked her to prove either of those claims were ever made... She was unable to do so.

If this was part of your conversation, how come this information did not make it into your "summary" of your conversation with her?

Furthermore, during our telephone conversation (on October 10th) you actually mention to me that we could *"request a variance"* and I asked you to email me the information regarding that option so that I could look into do it. But yesterday's email is the only email I have received from you and I did not see where you provided that information.

How can you write a letter claiming you reached an agreement (with my Mother) to complete the installation of a flow meter in March 2020, knowing that you and Mr. Shurtleff have both been told that we do not have the financial means to do so? Why have you verbally dangled the existence of other available options for resolving this flow meter issue in front of us, but have not made any *actual information* on participating in those options available to us?

In 2012 my parents had to filed a Chapter 12 bankruptcy and many long term issues loom over their estate which were born out of that "reorganization." This gives me very limited financial resources for managing our farm and because we are farmers (who depend of harvesting crops to bolster our finances), a springtime flow meter installation will be financially problematic.

I was recently presented a "2019 Assessment Invoice" that was incorrectly addressed and ended up in the possession of a neighbor (who apparently forgot to give it to us since April). According to the 2019 Assessment

Invoice for "Water Right Number 65-13627" our usage is assessed at only $30... This fractional amount of cost makes this ongoing demand for this additional flow meter financially excessive compared to what the IDWR stands to gain. (Even at $100 it would take more than fifty years to offset the costs involved in completing this install.)

I must insist on the creation of a more financially feasible resolution with IDWR than you have presented so far. Your expectation that we can incur the many expenses that are still necessary in order to complete the installing of the TigerMAG flow meter is unrealistic and the IDWR's continual threats being made to canceling our water permit without the flow meter installed is an unfair catch-22 situation that must be resolved without causing further financial damage to our family farm.

Sincerely,

Angie Heffner

On Mon, Oct 21, 2019 at 11:36 AM Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

> I spoke on the telephone with Mrs. Heffner this morning and am sending the attached letter to summarize our discussion and the plan for moving forward with this permit. Please let me know if you have any questions.
>
> Nick Miller
>
> Manager, IDWR Western Region

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region • 2735 W Airport Way • Boise ID 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348
Website: idwr.idaho.gov • Email: westerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

October 21, 2019

DONNA HEFFNER
4811 MONTOUR RD
EMMETT, ID 83617

RE: Licensing of Permit to Appropriate Water 65-13627

Dear Mrs. Hefner:

I am following up on our telephone discussion this morning to provide a quick summary of where we are in the process and the plan we had discussed. I am also sending a copy of this to Angela Hefner and Ron Shurtleff so they are aware of the plan as well.

The Idaho Department of Water Resources is in the process of licensing your water right permit. A condition of the permit required that the diversion works be equipped with a measuring device. You have purchased an approved measuring device (I believe it is a Sparling Tigermag), but have not yet installed it. The department cannot complete licensing your permit until the meter is installed. As we discussed this morning, you intend to install the meter in late March 2020 and we anticipate the department will meet you and your meter installer onsite at that time to help identify a workable location to install the meter.

I will contact you in early March to schedule a time to visit the site and identify a location to install the meter. After the watermaster or department staff has verified the meter has been installed, we will proceed with licensing the permit.

As we discussed, if you or your installer would like to identify a location for the meter before next March, please contact me and I would be happy to advance the schedule. Please let me know if you have any questions.

Sincerely,

Nick Miller
Manager, IDWR Western Region

Cc:
Angela Heffner via email to: puremagmaunlimited@gmail.com
Ron Shurtleff via email to: waterdist65@srvinet.com

Smith, Tyler

From: PureMagma . <puremagmaunlimited@gmail.com>
Sent: Wednesday, October 09, 2019 11:40 AM
To: Smith, Tyler; Kelly, Patrick; Spackman, Gary
Subject: Water Permit 65-13627
Attachments: Heffner, Estate of Donald - COURT Certified Copy of Letters of Administration 2.22.2019.pdf

Dear Mr. Smith,

This email is being sent in response to your letter dated September 12, 2019 that was addressed to my parents, Donald and Donna Heffner, with regard to the Permit to Appropriate Water that was issued in 1995 and was renewed annually every year thereafter. It is apparent from the tone of your letter that Mr. Shurtleff failed to mention to IDWR that Donald Heffner passed away on June 15, 2018. Because my Father, Donald Heffner passed away unexpectedly, his death created intestacy. Attached herewith is a copy of the court issued Appointment of Personal Representative, which grants me the authority to act on behalf of my family's estate in the absence of my father, Donald D. Heffner.

This email is my written correspondence per your demand and threat to void their water permit. IDWR has illegally differentiated Permit 65-13627 (and the named permit holders) and is continuing to deny the right to fair and equal governance as provided in the Idaho Constitution: ***42-102. MEASUREMENT OF WATER. A cubic foot of water per second of time shall be the legal standard for the measurement of water in this state, and it shall be the duty of the department of water resources to devise a simple, uniform system for the measurement and distribution of water.***

The '*simple uniform system for the measurement and distribution of water*' that is used by the Water Master for water district 65, Ron Shurtleff requires that permit holders providing him with access to data collected by *power meters* which are installed by Idaho Power. The meter used by Idaho Power for the purpose of regulating power consumption of irrigation pumps is the only metering system operating on all irrigation systems located in water district 65. It would be redundant and cost prohibitive to ask farmers to install any additional flow tracking devices when the metering systems used by Idaho Power produce accurate usage reading that are readily available online.

Sadly, in an effort to appease your department, on May 16, 2018, my parents purchased a Sparling Tigermag EP FM656 electromagnetic flow meter, for $1,874.82 plus the costs shipping. The unit arrived and installation commenced shortly before my father's untimely death. Ultimately I halted the flow meter installation because the unit require connection to the irrigation systems electrical supply (in addition to the irrigation mainline connection) and once operational, the TigerMAG drawing electricity would interfere with the accuracy of the readings from the ***industry standard flow meter***—which is the only meter that provides monthly usage updates available online to District 65 Water Master, Ron Shurtleff—is also the same flow meter uniformly attached to all the irrigation systems because it is the power meter installed by Idaho Power. And since both flow meters operate using principles of electromagnetism (e.g., Faraday's Law of Induction) when measuring the flow of any form of current—your demand was redundant. Since you did not placed the same "2nd flow meter" demand on other irrigation systems with water appropriation permits in our area, it implies that my parents were specifically targeted by your office.

To date, my father's gravesite does not have a headstone, but we do own a fancy flow meter that we cannot use because it would interfere with the accuracy of the data used by our area Water Master. The damage caused by

your department to my family is heinous and I will pursue legal action against the Idaho Department of Water Resources for violating my parents right to due process governance; for distorting the terms and conditions of their water permit specifically—to the exclusion of all other similar area water permits. Because Agents of IDWR fraudulently misrepresented the facts about both the terms of their water; and now also, by falsely changing the status of their water permit in your letter by inferring that their permit was only *an application* (when it has existed for more than 20 years) this implies that you defraud and prey on the aging and elderly. All of these actions have been damaging and inflicted tremendous financial harm to my parents and their estate. The timeline of events makes it clear that the undue stress brought about by Patrick Kelly's demand for the installation of a flow meter (which is *a 2nd flow meter*) set water permit 65-13627 apart from any other irrigation system in our area and was surely a factor in the acute myocardial infraction leading to my Dad's untimely death—*none of which constitutes simple uniform governance.*

Tomorrow I'm meeting with my attorney and I will discuss the extent of losses that my parents suffered as a result of the lawlessness emanating out of the Idaho Department of Water Resources.

Sincerely,

Angela Heffner

Erik J. Bolinder, ISB #5676
Heidi M. Burgoyne, ISB #10416
Exceed Legal PLLC
855 W. Broad St., Suite 300
Boise, ID 83702
P: (208) 297-5959
Email: ebolinder@exceed.legal
Email: hburgoyne@exceed.legal

Attorneys for Personal Representative

Filed: 02/22/2019 16:08:20
Third Judicial District, Gem County
Shelly Tilton, Clerk of the Court
By: Deputy Clerk - Dodson, Laura

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE ESTATE OF DONALD D. HEFFNER DECEASED.	Case No.: CV23-19-0145 LETTERS OF ADMINISTRATION (I.C. 15-3-602 and I.C. 15-3-702)

Angela J. Heffner is hereby appointed personal representative/special administrator of the Estate of Donald D. Heffner, deceased, with all authority pertaining thereto. Administration of the estate is unsupervised.

These Letters are issued to evidence the appointment, qualification, and authority of the personal representative.

WITNESS, my signature and the seal of the Court, this _____ day of _____, 20___.

Signed: 2/22/2019 03:38 PM

MAGISTRATE

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of Signed: 2/22/2019 04:08 PM, 2019, I caused five (5) certified copies of the LETTERS OF ADMINISTRATION to be served by the method indicated below, and addressed to the following:

Heidi Burgoyne
EXCEED LEGAL, PLLC
855 W. Broad Street
Suite 300
Boise, ID 83702

(X) U.S. Mail, Postage Prepaid
( ) Certified Mail/Return Receipt
( ) Hand Delivered
( ) Facsimile
(X) Email: hburgoyne@exceed.legal

Shelly Tilton

Clerk of the Court

By: Laura Dodson
Deputy Clerk

MAGISTRATE DIV. 3RD JUDICIAL DISTRICT of the State of IDAHO In & for Gem County

STATE OF IDAHO } ss
COUNTY OF GEM }

I certify that the foregoing is a true and correct copy of the original on file in this office.

DATED Signed: 2/22/2019 04:13 PM

SHELLY TILTON, Clerk

By Laura Dodson
Deputy

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region • 2735 Airport Way • Boise, Idaho 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

Brad Little
Governor

GARY SPACKMAN
Director

COPY

September 12, 2019

DONALD AND DONNA HEFFNER
4811 MONTOUR RD
EMMETT, ID 83617

Re: Notice of Intent to Void Water Permit 65-13627

Dear Applicant(s),

On July 20, 1995 the Department of Water Resources (IDWR) received your Application for Permit to appropriate water. The Department requested additional information via a letter dated January 9, 2018. The letter stated that a written reply must be made within thirty (30) days or the Department will void the application. On January 24, 2018, the department received an extension request for time to submit the requested information for an additional six months. The Department then sent the applicant a letter January 30, 2018 stating that the information requested by received no later than July 24, 2018.

A voice message was left for the applicant on September 6, 2019 requesting the additional information. On that same date, the Water Master for water district 65, Ron Shurtleff, was contacted regarding the applicants instillation of a measuring device. Ron stated that the applicants had the measuring device as of the fall of 2018, but had yet to install it as of then. He had not been to the property this irrigation season and therefore was unaware of the current status of the measuring device.

As of September 12, 2019, no written correspondence was received by the Department. If it is your intent to further pursue your application, please provide written response to the original letter or request additional time to respond. It is the intent of the Department to void your application within the next thirty (30) days if no response is received.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Sincerely,

Tyler Smith
Water Resource Agent
Idaho Department of Water Resources
Phone: (208) 334-2190
Email: tyler.smith@idwr.idaho.gov

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region • 2735 Airport Way • Boise, Idaho 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 30, 2018

DONALD AND DONNA HEFFNER
4811 MONTOUR RD
EMMETT ID 83617

RE: Permit No. 65-13627 extension request

Dear Permit Holder,

On October 23, 1995, an irrigation permit was issued with conditions stating prior to the diversion of water, the right holder would install and maintain a measuring device and lockable controlling works. On August 7, 1998, a field exam was conducted by department staff and found that a measuring device had not been installed on the system required by the permit. On January 9, 2018, I requested evidence that such a device was installed so that a license could be issued. On January 24, 2018, the department received an extension request for time to submit this information for an additional six months.

This is notice that your request has been granted and the information outlined in IDWR's letter dated January 9, 2018 shall be received no later than **July 24, 2018**.

Sincerely,

Patrick Kelly
Water Resource Agent. Sr.

Angela Heffner

4733 Montour Road
Emmett, Idaho 83617
PureMagmaUnlimited@gmail.com (208)584-3827

January 22, 2018

RECEIVED
JAN 24 2018
WATER RESOURCES
WESTERN REGION

Attn: Mr. Patrick Kelly
Senior Water Resource Agent, Sr.

IDAHO DEPARTMENT OF WATER RESOURCES
2735 Airport Way
Boise, Idaho 83705

RE: Donald and Donna Heffner
Water Permit No. 65-13627

Dear Mr. Kelly,

This letter is a response to your letter addressed to my parents dated January 09, 2018, with regards to the above referenced permit.

I am writing you to request that you delay voiding the permit as of March 1, 2018 and grant 6 months of additional time to fulfill the terms set forth in your letter, so the irrigation system can be properly modified per the terms of the permit. This request for leniency is implored for the following reasons:

1. My father, Donald Heffner, is elderly and has been in poor health for the past several years. Unfortunately, he is showing early signs of a degenerative form of Alzheimer's/Dimentia that has already claimed the life of his younger brother. He suffers spells of limited physical mobility and memory loss where he becomes confused. His declining health is increasingly becoming a hardship for my mother and it is for this reason, that my mother (Donna Heffner) has asked me to help her resolve this matter. Having read your letter, I am doing my best to understand what you're requiring and why.
2. To assist my need for greater context than your letter provides, I took the liberty of accessing information about the referenced water permit through the idwr.idaho.gov website. I studied the permit and read through the 43-page PDF file containing the original permit application—this epic missive being a multitude of correspondences, forms, notations and supporting documents originating during the mid-1990's. The PDF file represented as "the Permit Application" is a formidable paper trail that I believe demonstrates how easy it was for the measuring device and lockable control mechanism requirement to inadvertently fall through the cracks. The application/approval process occurred over many months and was conflated by multiple agencies having contact with my parents; namely: The United States Department of Interior, Snake River division of the Bureau of Reclamation, Payette River Water District No. 65 and [also] Idaho Department of Water Resources. Each of these agencies were in contact with my parents, asserting their interests and diluting the significance of other agencies regarding what, to my parents, is essentially one topic—*Payette River water access*.
3. Ultimately, it was not an act of insolence that caused the permit to be issued without the measuring device installed, it was the fact that the system was inspected, approved and the permit was issued. The inspection and issuance of the permit both implied and led my parents to believe they had satisfied all the terms of the approval process. I examined the copy of the permit that is available through the IDWR website. It does not indicate that it must be conspicuously posted, thus it would be

remiss to believe that after its issuance anyone would actually read past the words ***"Permit To Appropriate Water"*** before carefully filing the document away for safekeeping.

4. Since the original issuance of the permit, the renewal payments have been ongoing for more than 20 years, this surely bolstered my parents' belief that they were operating in accordance with the terms of their permit. This begs the question, 'Is it fair to be lulled into a sense of security over such an extended span of time only to be notified of infractions—*in the dead of winter*—and receive less than 2 months to rectify the matter?' (This is in reference to the date your letter was written combined with your deadline "*by the start of the 2018 irrigation season, March 1, 2018*."). Admittedly, I'm not an authority, and I'm doing my best to learn quickly—but logistically, to perform the installation in your requested timeframe appears to be an extreme expectation. At this time of year, the ground has the capacity to be frozen and the Payette river is shallow water, silt and bedrock. Even if there was enough available water, our irrigation pump has been winterized. As it stands, it would not be able to function correctly for the purpose of testing to ensure the proper installation of the modifications.
5. It will be several months before the river is neither too low, nor too high, for safe submersion and operation. To be left unable to irrigate after March 1, 2018 would hinder our ability to farm this coming season and it would significantly increase the level of hardship my parents are currently facing with my father's declining health.

Although I understand why you feel your timeframe is a justifiable expectation—the length of time that has lapsed since the issuance of the permit is certainly shocking. But I don't believe you gave enough consideration to the feasibility of undertaking the work within that timeframe. This is my reason for emphasizing the contributing factors outside of my parents control that lent to their non-compliance and why I am requesting 6 months to complete the modifications.

My goal is to bring the irrigation system into compliance and I hope you will graciously keep the permit active and allow 6 months additional time for the modifications to be completed. I am forwarding a copy of this letter to Basin 65 Watermaster, Ron Shurtleff, in hopes that he can work with me to assist my parents by directing me towards resources that may assist in resolving the issues at hand. To keep everyone consensually informed I am including a copy of my letter to Mr. Shurtleff, herewith.

If you wish to discuss this further, please contact me at 208-584-3827.

Kind regards,

Angela Heffner

Angela Heffner

4733 Montour Road
Emmett, Idaho 83617
PureMagmaUnlimited@gmail.com (208)584-3827

January 21, 2018

RECEIVED
JAN 24 2018
WATER RESOURCES
WESTERN REGION

Mr. Ron Shurtleff
Water District Number 65
102 N Main St
Payette, ID 83661

RE: Donald and Donna Heffner
Water Permit No. 65-13627

Dear Mr. Shurtleff,

Enclosed please find herewith, a response letter I am sending to Mr. Patrick Kelly regarding his letter addressed to my parents written on January 09, 2018, regarding the above referenced permit. I am requesting additional time for the installation of the equipment as it does not seem feasible to test the installation and ensure calibration accuracy at a time of season when we are not able to pump water from the river.

As stated in my letter to Mr. Kelly, my father (Don Heffner) is suffering age-related health issues. In 2015, my dad's younger brother died from a degenerative form of Alzheimer's/Dementia. Shortly before his passing, my mother and I realized we were experiencing similar symptoms with my Dad. We've had to soften his grip on farm management, but we also try to allow him to feel involved by letting him deal with as many little tasks as possible. In this vein, my mother was not aware of the terms of the water permit, the purpose of the information you were needing, nor did she view your communications in years past any differently than the various data collecting agencies and statistical bureaus that routinely contact farmers wanting information—so she allowed my father to continue handling the matter of water usage.

However, having read Mr. Kelly's letter, I will be managing the matter of water usage and communication with you moving forward. Mr. Kelly was kind enough to provide a list of IDWR approved flow meters. I am doing my best to form a solid understanding of what is lacking with my family's existing irrigation system and how best to remedy the issues. I would like more information about your function as the Basin 65 Watermaster and how I can make certain that in the future you are provided with accurate details of our water usage.

Admittedly, I do not want to rush into a situation where I hire an installer and buy whatever equipment is peddled during the off-season for the sheer purpose of satisfying the demands of the original permit, only to discover that the work will need to be corrected or redone at added expense once our irrigation pump can be placed back into the river.

Both my mother and I would greatly appreciate you supporting my request for leniency to be extended in this matter. I assure you that once I understand both the function of the system to be installed and the ideal method for delivery of our water usage data, I will bring my parents irrigation system into complete compliance.

I would greatly appreciate any information you can give towards assisting me in selecting the proper equipment to meet the needs of your work and ensuring that it will allow our farming operation to continue using the water permit moving forward.

I apologize for any difficulties my parents may have caused you and I also look forward to providing better support for your work in the future.

Kindest regards,

Angela Heffner

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region • 2735 Airport Way • Boise, Idaho 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 9, 2018

COPY

DONALD AND DONNA HEFFNER
4811 MONTOUR RD
EMMETT ID 83617

RE: Water Permit No. 65-13627

Dear Mr. & Mrs. Heffner,

Thank you for contacting me this morning in regards to the letter that was sent November 24, 2017, in regards to a measuring device. As a reminder, a condition of permit 65-13627 states: *Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.*

As discussed, I am sending you a list of approval devices recommended by the department. A measuring device should have been installed at the time the system was authorized by the permit in 1995. In order to issue a water right license, a device must be installed and maintained on the system.

Please support evidence that a measuring device and lockable control are installed. A license will not be issued without them. A copy of this letter is being forwarded to Basin 65 Watermaster, Ron Shurtleff. Ron may be able to assist you with a recommendation for your system.

Pursuant to Idaho Code § 42-219(8), if the conditions of approval on a permit are not complied with IDWR may issue an order voiding the permit. Please submit evidence of a measuring device and lockable control for the permit to become license. You may seek additional time to provide the information by making a written request to interrupt processing for up to six months. The permit will be voided without evidence of measuring device and lockable control works by the start of the 2018 irrigation season, March 1, 2018.

Please contact me at 208-334-2190 for additional information. Thank you for your attention to these matters.

Sincerely,

Patrick Kelly
Senior Water Resource Agent, Sr.
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
p: 208.334.2190
patrick.kelly@idwr.idaho.gov

Kelly, Patrick

From: Kelly, Patrick
Sent: Wednesday, December 27, 2017 3:10 PM
To: 'waterdist65@srvinet.com'
Subject: Measuring device for 65-13627?

Hello Ron,
I am contacting you today to see if an irrigation water use on the Payette rings a bell. I am working to license permit number 65-13627 in the name of Donald and Donna Heffner. Based on a 1995 field exam, I am recommending a rate of 1.10 cfs for 55 acres. The permit has a condition that requires the user to install and maintain a measuring device but such a device was not installed at the time of the field exam. Last November, I sent the Heffner's a letter requesting evidence that one was installed, but a response to this letter has not been received.

I am wondering if you have any knowledge whether or not such a device is in place. This is located just a few miles upstream of Emmett, at the Montour Rd/Park St Bridge. Thanks for your help in advance!

Regards,

Patrick Kelly
Water Resource Agent, Senior
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
p: 208.334.2190
f: 208.334.2348
patrick.kelly@idwr.idaho.gov

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Western Region • 2735 Airport Way • Boise, Idaho 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 24, 2017

COPY

DONALD AND DONNA HEFFNER
4733 MONTOUR RD
EMMETT ID 83617

RE: Water Permit No. 65-13627

Dear Mr. & Mrs. Heffner,

The Department of Water Resources (IDWR) is reviewing permit 65-13627 so a license for the developed uses can be issued. On October 23, 1995, you filed an application for permit for a Snake River diversion to deliver water for irrigation and stockwater purposes. On August 7, 1998, a representative of the department conducted an examination to verify the water use developed under your permit. Reviewing the information collected during the 1998 field exam, evidence regarding a measuring device was missing from the file.

Condition of permit 65-13627 states: *Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.*

Please support evidence that a measuring device and lockable control are installed. A license will not be issued without them. As an alternative, you may obtain a waiver from the Water District 65 Watermaster which will allow the department to modify language of this condition.

Pursuant to Idaho Code § 42-219(8), if the conditions of approval on a permit are not complied with IDWR may issue an order voiding the permit. Please submit evidence of a measuring device and lockable control for the permit to become license. You may seek additional time to provide the information by making a written request to interrupt processing for up to six months. The permit will be voided without a timely written reply within the next thirty (30) days.

Please contact me at 208-334-2190 for additional information. Thank you for your attention to these matters.

Sincerely,

Patrick Kelly

Patrick Kelly
Senior Water Resource Agent, Sr.
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
p: 208.334.2190
patrick.kelly@idwr.idaho.gov