

8. On January 24, 1967, the State Reclamation Engineer issued License G-27967 authorizing the diversion of 1.28 cfs from ground water for the irrigation of 64 acres. The water right was later renumbered as water right 13-2201.

9. Also on January 24, 1967, the State Reclamation Engineer issued License G-28865 authorizing the diversion of 0.70 cfs from ground water for the irrigation of 38 acres. The water right was later renumbered as water right 13-2214.

10. Also on January 24, 1967, the State Reclamation Engineer issued License G-29918 authorizing the diversion of 0.26 cfs from ground water for the irrigation of 13 acres. The water right was later renumbered as water right 13-2243.

11. Water rights 13-2201, 13-2214, 13-2243 in total authorized the diversion of 2.24 cfs and the irrigation of 115 acres.

12. On February 25, 1975, Ralphs filed Application for Permit 13-7103, proposing to divert 0.56 cfs from the Ralphs Well to irrigate 28 acres. Application 13-7103 states: "Owner is using existing well and sprinkler system to irrigate newly acquired land that has no water rights." The Department approved the application and issued Permit 13-7103 on April 10, 1975.

13. The Department conducted a beneficial use field examination for Permit 13-7103 on July 1, 1981. The examiner found that 28 acres had been developed under the permit and the acres were irrigated with sprinklers. Water was diverted from the Ralphs Well using a 50 horsepower Fairbanks-Morse pump. The examiner measured the system when the 28 acres were being irrigated and found that the well produced 1.35 cfs at that time.

14. The 1981 Field Report included the following statement: "Four lines measured were on 28 acres listed in P.O.U. Since this system is used on other acreage at other times the 1.35 cfs is naturally excessive but doesn't necessarily represent capacity of the system."

15. The 1981 Field Report does not state whether the places of use described in water rights 13-2201, 13-2214 and 13-2243 were also being irrigated at the time of the exam. The 1981 Field Report does not describe the infrastructure used to irrigate the places of use under water rights 13-2201, 13-2214 and 13-2243. It only describes the system used to irrigate the place of use for Permit 13-7103.

16. The Department issued a license for water right 13-7103 on November 22, 1983. Water right license 13-7103 authorized the diversion of 0.56 cfs from ground water and the irrigation of 28 acres. The license for water right 13-7103 included the following condition: "This right when combined with Right No. 13-2001, 13-2214 and 13-2243 shall not exceed 1.35 cfs."

ANALYSIS

The condition included on water right 13-7103 contains an erroneous water right reference. The condition refers to water right 13-2001, which is a right to divert water from North Gooseberry Creek for domestic and irrigation use and is not associated in any way with the Ralphs property or the Ralphs Well. The condition should have referred to water right 13-2201, the 1959 ground water irrigation right described above.

In addition to listing the wrong water right number, the combined rate limit condition on water right 13-7103 is inconsistent with the 1981 Field Report. The field examiner did not conduct an examination of water rights 13-2201, 13-2214 or 13-2243. There is no evidence that the acres described under those rights were even being irrigated during the 1981 field exam. Therefore, the measurement conducted by the field examiner does not represent the total system capacity, but only the capacity of the system when irrigating the place of use for Permit 13-7103. It is possible that the places of use for water rights 13-2201, 13-2214 and 13-2243, or portions thereof, were still being irrigated through open ditches (zero pressure), which would significantly change the amount of water produced by the well.

The Department's calculation for the combined diversion rate for water rights 13-2201, 13-2214, 13-2243 and 13-7103 was in error. Because the existing water rights were not included in the field exam, the combined diversion rate should not have diminished the authorized rate for the three existing water rights. The field examiner measured a diversion rate of 1.35 cfs when the system was being used to irrigate the 28 acres described under Permit 13-7103. This rate exceeds the 0.56 cfs authorized by Permit 13-7103. Ralphs had already successfully demonstrated that the system produced the 2.24 cfs authorized by water rights 13-2201, 13-2213, 13-2243. Therefore, the combined rate limit for the rights should have been 2.24 cfs. There is no evidence in the historical record that the Ralphs well could produce more than 2.24 cfs when all of the acres described under water rights 13-2201, 13-2214, 13-2243 and 13-7103 were being irrigated at the same time.

CONCLUSIONS OF LAW

Pursuant to Idaho Code § 42-219, the Department has a duty to carefully examine the evidence related to the beneficial use developed under a permit. This includes carefully reviewing the report prepared after the beneficial use field exam. The Department did not carefully review the evidence summarized in the beneficial use field report for Permit 13-7103 because the Department adopted a combined rate limit (1.35 cfs) that is inconsistent with the amounts reported by the field examiner. The 1981 Field Report states that the 1.35 cfs measured by the field examiner did not represent the total system capacity.

Idaho Code § 42-220 states that a license "shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein" Section 42-220 also states that "[t]he right to continue the beneficial use of such waters shall never be denied nor prevented for any cause other than the failure, on the part of the use or holder of such right, to pay the ordinary charges or assessments which may be made or levied to cover the

expenses for the delivery or distribution of such water . . .” Water rights 13-2201, 13-2214 and 13-2243 were not included in the field exam for water right 13-7103. Therefore, Department should not have adopted a combined rate limit that would reduce the authorized diversion rates for those three rights.

ORDER

IT IS HEREBY ORDERED that Water Right License 13-7103 is CORRECTED as set forth in Corrected Water Right License 13-7103 issued in conjunction with this order.

Dated this 1st day of February, 2021.

A handwritten signature in black ink, appearing to read 'J. Cefalo', written over a horizontal line.

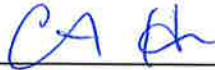
James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 1 day of February 2021, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING LICENSE with the United States Postal Service, postage prepaid and properly addressed, to the person(s) listed below:

RE: PRELIMINARY ORDER CORRECTING LICENSE (13-7103)

**DENNIS RALPHS
C/O DAN RALPHS
41 S MAIN HWY
CLIFTON, ID 83228**



Christina Henman
Administrative Assistant

State of Idaho
Department of Water Resources
Corrected Water Right License
Water Right No. 13-7103

Priority: February 25, 1975

Maximum Diversion Rate: 0.56 CFS
Maximum Diversion Volume: 98.0 AF

It is hereby certified that:

DENNIS C RALPHS
PO BOX 7
CLIFTON ID 83228

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 25, 1975, and has submitted Proof of Beneficial Use on February 6, 1980. An examination confirms water is diverted from:

Source : GROUND WATER

Beneficial Use

IRRIGATION

Period of Use

4/01 to 10/31

Rate of Diversion

0.56 CFS

Annual Volume

98.0 AF

Location of Point(s) of Diversion

GROUND WATER SE¼ NW¼, Sec. 22, Twp 14S, Rge 38E, B.M. FRANKLIN County

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S	38E	22									8.0			1.0		14.0	5.0		28.0

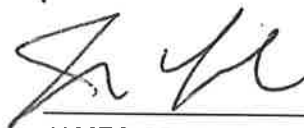
Total Acres: 28.0

Conditions of Approval

1. Rights 13-2201, 13-2214, 13-2243 and 13-7103 when combined shall not exceed a total diversion rate of 2.24 cfs.

This license is issued pursuant to the provisions of Idaho Code § 42-219. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 1st day of February, 2021.



JAMES CEFALO
Eastern Regional Manager

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N SKYLINE DR STE A • IDAHO FALLS, ID 83402-1718

Phone: (208)525-7161 • Fax: (208)525-7177 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

November 18, 2019

DENNIS RALPHS
C/O DAN RALPHS
41 S MAIN HWY
CLIFTON, ID 83228

RE: License No. 13-7103

Dear Water Right Holder:

The Department of Water Resources ("Department") has issued the enclosed Corrected Water Right License confirming that a water right has been established in accordance with the development occurring under Permit 13-7103. Please be sure to thoroughly review all the conditions of approval listed on the corrected license. The conditions may include ongoing requirements, such as maintenance of a measuring device or implementation of mitigation, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district.

The license is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

If you have any questions concerning the correct license, please contact me at (208) 525-7161.

Sincerely,

Christina Henman
Eastern Regional Manager

Enclosure(s)