

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
LICENSE NO. 63-11610 IN THE)
NAME OF JRS PROPERTIES III LP)
_____)

**PRELIMINARY ORDER
CORRECTING LICENSE**

This matter having come before the Idaho Department of Water Resources ("Department"), the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On January 28, 1992, the Department issued water right permit no. 63-11610 ("Permit") in the name of Golden Developments Co. for irrigation use from ground water. The authorized place of use included Government Lot 4, Section 5, Township 2 North, Range 3 East, B.M. Ada County.
2. On January 19, 1995, the Department received an assignment of permit that assigned ownership of the Permit from Golden Developments Co. to J.R. Simplot Self-Declaration of Revocable Trust.
3. On January 30, 1998, J.R. Simplot Self-Declaration of Revocable Trust submitted a Proof of Beneficial Use statement.
4. On April 27, 2000, the Department conducted a beneficial use field examination to confirm the extent of developed irrigation use authorized by the Permit.
5. On August 29, 2019, the Department confirmed the place of use irrigated under the Permit with JRS Properties III, L.P.
6. On September 6, 2019, the Department received an assignment of permit that assigned ownership of the Permit from J.R. Simplot Self-Declaration of Revocable Trust to JRS Properties III, L.P.
7. On September 11, 2019, the Department issued water right license no. 63-11610 ("License") in the name of JRS Properties III, L.P. for irrigation use from ground water. The License place of use includes land within Government Lot 4 (NW¼ NW¼) of Section 5, Township 2 North, Range 3 East, B.M. Ada County.
8. On December 18, 2019, the Department received a petition for reconsideration of the License ("Petition") from Fredric W. Price on behalf of the USDI Bureau of Land Management ("BLM"). The Petition was received after the fourteen (14) day filing deadline.

9. The Petition provided notice that a portion of the place of use listed on the License is on federal land. “The legal land description T02N, R03E, S05, Lot 4 (NWNW) is entirely owned by the BLM.” *Petition for Reconsideration* at 2.
10. The Petition provided notice that JRS Properties III, L.P. is not authorized to irrigate the federal land within Government Lot 4 (NW¼ NW¼) of Section 5, Township 2 North, Range 3 East, B.M. Ada County. “JRS PROPERTIES III LP is not authorized to conduct agricultural activities, nor irrigate federal land described in T02N, R03E, S05, Lot 4 (NWNW).” *Id.* at 2.
11. On August 28, 2020, the Department sent JRS Properties III, L.P. a Notice of Intent to Correct the License (“Notice”). No objections were received in response to the Notice.

CONCLUSIONS OF LAW

1. Because the BLM’s Petition was received after the 14 day filing deadline, the BLM’s Petition is untimely. Idaho Code § 67-5245. However, the Department will consider the information in the Petition under the Department’s general authority to modify licenses pursuant to Idaho Code § 67-5245.
2. Idaho Code § 67-5254(1) provides in pertinent part:

An agency shall not revoke, suspend, modify, annul, withdraw or amend a license... unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.
3. Under Idaho law, an appropriator need not have a possessory interest in the land upon which the place of use is located in order to establish a water right. *Joyce Livestock Co. v. United States*, 144 Idaho 1, 18, 156 P.3d 502, 519 (2007). However, a water right cannot be initiated by trespass upon private property. *Id.* This rule applies to federal land. *See id.* 144 Idaho 1, 19, 156 P.3d at 520 (“Idaho law could not authorize anyone to trespass upon federal land.”).
4. The Department should not have included 0.2 acres of irrigation within Government Lot 4 (NW¼ NW¼) of Section 5, Township 2 North, Range 3 East, B.M. Ada County as part of the authorized place of use of the License as it appears the permit holder did not have authorization to apply water to beneficial use on federal land.
5. The Department should correct right no. 63-11610 by removing the portion of the place of use on federal land from the License.

ORDER

IT IS HEREBY ORDERED that Water Right License No. 63-11610 is **CORRECTED** as set forth in the Revised Water Right License No. 63-11610 issued in conjunction with this order.

Dated this 19th day of OCTOBER, 20 20.


Angela Grimm
Water Rights Section Manager

State of Idaho
Department of Water Resources

REVISED**Water Right License****REVISED****Water Right No. 63-11610****Priority:** July 15, 1991**Maximum Diversion Rate:** 0.91 CFS**Maximum Diversion Volume:** 204 AF

It is hereby certified that:

JRS PROPERTIES III LP
PO BOX 27
BOISE ID 83707-0027

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 15, 1991, and has submitted Proof of Beneficial Use on January 30, 1998. An examination confirms water is diverted from:

Source : GROUND WATER**Beneficial Use**

IRRIGATION

Period of Use

3/15 to 11/15

Rate of Diversion

0.91 CFS

Annual Volume

204 AF

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 31, Twp 03N, Rge 03E, B.M. ADA County

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
02N	02E	1	0.8 L1																	0.8
02N	03E	4						0.5 L4												0.5
02N	03E	5	0.2 L1	0.6 L2																0.8
02N	03E	6	0.5 L1	1.1 L2	0.7	1.8	0.8 L3			0.9										5.8
03N	02E	36																1.2		1.2
03N	03E	31									2.1	1.1 L3			5.6	2.9	2.8	4.4		18.9
03N	03E	32									2.4	3.6	1.6	2.0		1.3	4.7	1.2		16.8
03N	03E	32														0.1 L3		0.3 L3		0.4

Total Acres: 45.2

Conditions of Approval

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
2. Diversion and use of water with a temperature greater than 85 degrees Fahrenheit is not authorized under this right.
3. This right does not grant any right-of-way or easement across the land of another.

State of Idaho
Department of Water Resources

REVISED

Water Right License

REVISED

Water Right No. 63-11610

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 19th day of OCTOBER, 2020.



ANGELA GRIMM

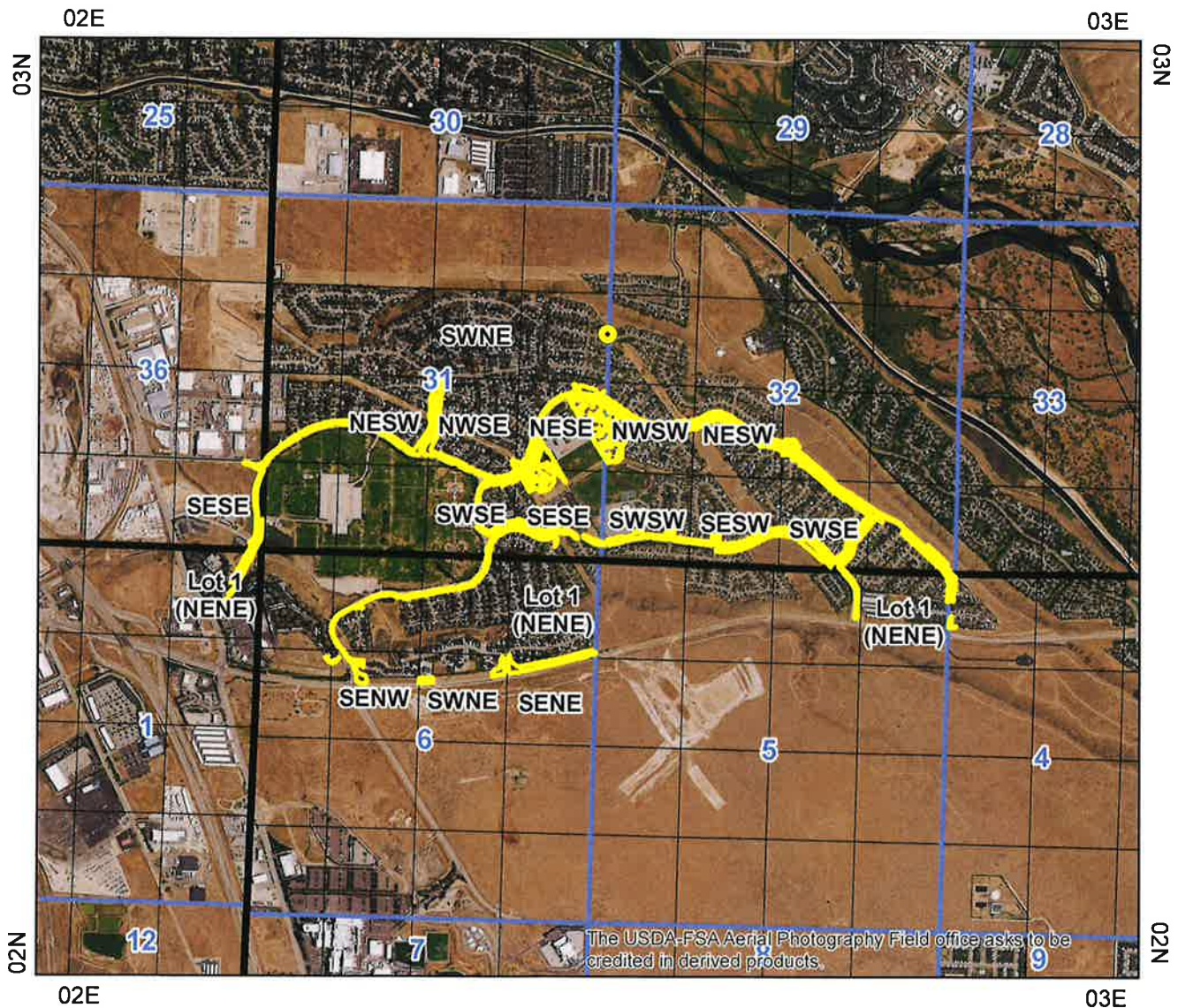
Water Rights Section Manager








State of Idaho
Department of Water Resources

REVISED Attachment to Water Right License REVISED
63-11610

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.



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

0 0.325 0.65 1.3 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

October 19, 2020

JRS PROPERTIES III LP
PO BOX 27
BOISE ID 83707-0027

RE: Water Right License 63-11610

Dear Water Right Holder:

The Department of Water Resources (IDWR) has issued the enclosed Revised Water Right License correcting Water Right License 63-11610. The license confirms that a water right has been established in accordance with your permit. This license supersedes the license document issued on September 11, 2019. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The Revised License is **PRELIMINARY ORDER** issued by the Department pursuant to Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the change.

If you have questions, please contact me at (208) 287-4951.

Sincerely,

for
Angela M Grimm
Water Rights Section Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2020, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER CORRECTING LICENSE** to the persons listed below:

RE: Water Right Permit No. 63-11610

JRS PROPERTIES III LP
PO BOX 27
BOISE ID 83707-0027

A handwritten signature in cursive script, reading "Jean Hersley", is written over a horizontal line.

Jean Hersley
Technical Records Specialist II

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.