



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 W Airport Way • Boise ID 83705-5082

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

October 5, 2020

BOISE PROJECT BOARD OF CONTROL
C/O ROBERT CARTER
2465 W OVERLAND RD
BOISE ID 83705

RE: Application for Permit No. 63-34891

Dear Parties:

The Idaho Department of Water Resources (Department) prepared the attached draft permit approval incorporating standard conditions required by the Department, and conditions reflecting the settlement between Boise Project Board of Control (Applicant) and Elmore County, Board of Commissioners (Protestant) in this contested matter. Please note, the condition requested in paragraph 2 of Elmore County's Stipulated Conditional Withdrawal of Protest is similar in language and intent to a standard Department condition. The Department considers "permits that become licensed" implied under the standard approval condition "2- Subject to all prior water rights". Therefore, the Department believes approval condition '2' satisfies Elmore County's second conditional withdrawal request.

Please review the draft approval carefully. If you think the draft approval does not substantially conform to your settlement, please contact the Department within 14 days of the date of this letter with your concerns. The application has no remaining protests; therefore, if we do not hear from you, the Department will take the steps necessary to bring the application to final resolution. Note that you may file a petition for reconsideration within 14 days after the Department issues a preliminary order approving the transfer.

The Department also requests additional information required by IDAPA 37.03.040.05.c-g - Water Appropriation Rules from you at this time. This requirement includes the following items discussed in Water Appropriation Rule 40, Rule Subsections 040.05c through 040.05g (copy enclosed).

1. effect on existing water rights
2. sufficiency of water supply
3. good faith, delay or speculative purposes
4. financial resources
5. local public interest
6. state-wide public interest

Please submit the above requested Rule 40 information for application and permit processing to continue. **Your written response is required within the next thirty (30) days.** You may seek additional time to provide the information if necessary. The application will be voided without a timely written reply. Refunds are not available for voided applications.

IDWR forms and other information are available online at www.idwr.idaho.gov. Please do not hesitate to contact the office at 208-334-2190 if you have any questions or concerns regarding the enclosed information. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anna Kaiser', is written over a light blue circular stamp.

Anna Kaiser
Water Resource Agent

Enclosures: Draft Permit Approval
IDAPA 37.03.08.040.05.c-g

Cc: Albert Barker – Barker Rosholt & Simpson
Dylan B Lawrence – Elmore County, Board of Commissioners
Scott L Campbell – Campbell Law Chartered

State of Idaho
Department of Water Resources

DRAFT**Permit to Appropriate Water**

No. 63-34891

DRAFT**Priority:** May 01, 2020**Maximum Diversion Rate:** 220.00 CFS

This is to certify that

BOISE PROJECT BOARD OF CONTROL 2465 W OVERLAND RD BOISE ID 83705-3155

has applied for a permit to appropriate water from:

Source : BOISE RIVER**Tributary:** SNAKE RIVER

and a permit is APPROVED for development of water as follows:

Beneficial Use

POWER

Period of Use

01/01 to 12/31

Rate of Diversion

220.00 CFS

Location of Point(s) of Diversion

BOISE RIVER NW¼ SE¼, Sec. 13, Twp 03N, Rge 04E, B.M. ELMORE County

Place of Use: POWER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	04E	13														X			

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **November 01, 2025**.
2. Subject to all prior water rights.
3. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
4. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.
5. This right does not grant any right-of-way or easement across the land of another.
6. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
7. Use of water under this right shall be non-consumptive.
8. The term of this permit shall run concurrently with Arrowrock Hydroelectric Project license 4656 issued by the Federal Energy Regulatory Commission (FERC), which expires on February 28, 2039. The term shall automatically extend to run concurrently with any annual renewals of the project's FERC license. Prior to the issuance of a subsequent or new FERC license for the project, the Director may review the water right permit or subsequent water right license and may issue an order canceling all or any part of the use, establishing a new term, or revising, adding or deleting conditions under which the water right may be exercised. The order shall take effect on the date the current term, as may be extended through annual renewals, expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the project's subsequent or new FERC license and any prior conditions on the water right permit or subsequent water right license shall remain in effect.

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9. The rights for the use of water acquired under this right shall be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
10. This right does not convey any authority to require or demand the delivery or release of water, but shall only allow generation of hydroelectricity using water delivered or released to satisfy existing water rights and operating procedures, flood control, or other authorized purposes.
11. Construction, operation, maintenance, repair, replacement or modification of the project works and features under this right shall not injure, reduce, or impair existing water rights established under state law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs, or its tributaries.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this _____ day of _____, 20_____.

DRAFT

PATRICK KELLY
Water Rights Supervisor

IDAPA 37.03.08.040.05.c-g
Water Appropriation Rules 40.05.c through 40.05.g

c. The following information shall be submitted for applications to appropriate unappropriated water or trust water... Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:

i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.

ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.

h. The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the Director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The Director may request any or all of the following information for any filing seeking the reallocation of trust water.

i. A project design and estimate of cost of development shall be submitted. For applications appropriating more than twenty-five (25) cfs, or ten thousand (10,000) AF of storage, or generating more than five (5) megawatts, the information shall be prepared and submitted by a qualified engineer licensed under the provisions of Chapter 12, Title 54, Idaho Code, unless waived by the Director. The design shall be definite enough to reflect the project's impacts and implications as required in subsequent rules.

ii. If the project proposes development for irrigation purposes, information shall be submitted on crop rotation, including acreages, for lands when newly developed.

iii. Information shall be submitted concerning the number and kinds of jobs that will be created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment shall be submitted.

iv. For applications or permits being reprocessed for more than twenty-five (25) cfs, or more than ten thousand (10,000) AF of storage, or more than five (5) megawatts, information shall be submitted concerning the changes to community services that will be required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities and public health and safety facilities, if any.

v. Information shall be submitted concerning the source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods.

vi. Information shall be submitted concerning the location, amount, and quality of return flow water, and any water conservation features of the proposed project.

vii. If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigatable land classification system, and a schedule for bringing into production the project lands.