

State of Idaho
Department of Water Resources
Water Right License
Water Right No. 63-34206

Priority: March 22, 2016

Maximum Diversion Rate: 0.02 CFS

Maximum Diversion Volume: 6.6 AF

It is hereby certified that:

HAWK STONE 3921 W CATALPA DR BOISE ID 83703

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated March 23, 2016, and has submitted Proof of Beneficial Use on December 13, 2019. An examination confirms water is diverted from:

Source : WASTE WATER

Tributary: BOISE RIVER

Beneficial Use

HEATING

Period of Use

01/01 to 12/31

Rate of Diversion

0.02 CFS

Annual Volume

6.6 AF

Location of Point(s) of Diversion

WASTE WATER SW¼ NE¼, Sec. 29, Twp 04N, Rge 02E, B.M. ADA County

WASTE WATER SW¼ NE¼, Sec. 29, Twp 04N, Rge 02E, B.M. ADA County

WASTE WATER SW¼ NE¼, Sec. 29, Twp 04N, Rge 02E, B.M. ADA County

Place of Use: HEATING

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	02E	29													X	X			

Conditions of Approval

1. Measuring devices of a type acceptable to the department shall be maintained at the points of diversion and the discharge from the heating network. The measuring devices shall ensure that the identical quantity of water being diverted is discharging back to the ditch from which it was diverted. The right holder shall record such measurements and report them annually to Water District 63S.
2. Use of water under this right shall be non-consumptive.
3. This right shall be regulated by the Watermaster of Water District 63S. Regulation by the Watermaster includes unannounced inspections and measurement of the ground water diverted under right nos. 63-5195 from which waste water would be generated in the SW1/4NE1/4, Section 29, T4N, R2E (3611 Whitehead) and/or unannounced inspections and measurement of waste water diversion and beneficial use under this right.
4. The department shall issue a notice of violation and an order to show cause why this right should not be cancelled or revoked if the department determines any of the following: (a) The right holder is consumptively using water under this right. (b) Low temperature geothermal water is being delivered to the right holder without prior beneficial use of the low temperature geothermal water diverted under water right 63-5195, or that the beneficial use under 63-5195 is not reasonably efficient. (c) The right holder is diverting or using water not in compliance with the conditions of this water right.
5. Heating use is for 1 agricultural outbuilding

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6. The waste water diverted under this right is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place of use or manner of wasting it, or to recapture it.
7. This right does not grant any right-of-way or easement across the land of another.
8. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestants and the right holder under separate agreements to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreements not specifically addressed in other conditions herein. Enforcement of those portions of the agreements not specifically addressed in other conditions shall be the responsibility of the protestants and the water right holder.

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 July, 2020.

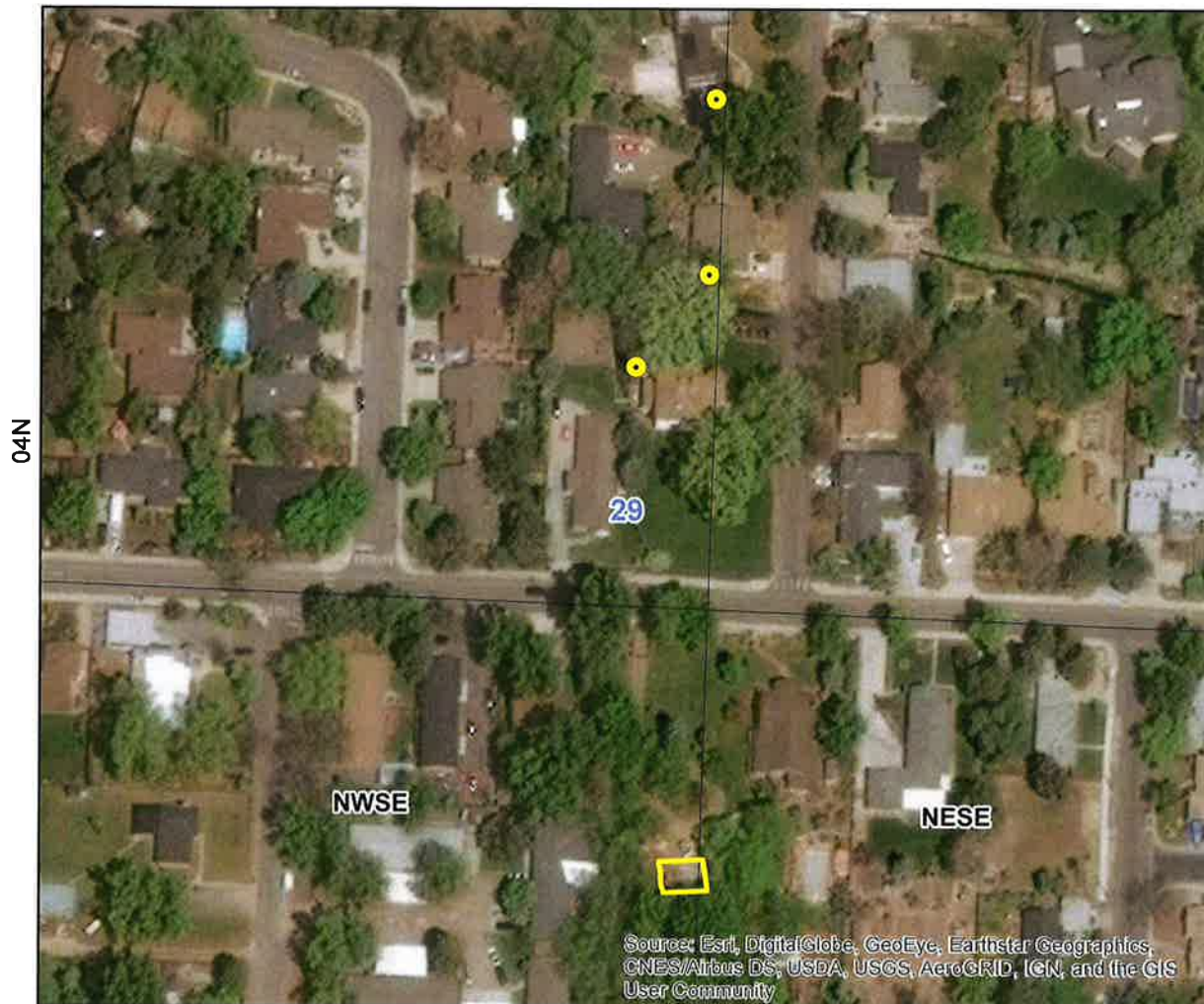


NICK MILLER
Western Regional Manager

State of Idaho
Department of Water Resources
Attachment to Water Right License
63-34206

This map depicts the HEATING 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.

02E



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

0 0.0175 0.035 0.07 Miles





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: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

July 01, 2020

HAWK STONE
3921 W CATALPA DR
BOISE ID 83703

RE: License No. 63-34206

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources ("Department") has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review all the conditions of approval listed on your 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.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Water right forms are available from any office of the Department or on the Department's website at idwr.idaho.gov

If you have any questions concerning the enclosed information, please contact me at (208) 334-2190.

Sincerely,

For : Nick Miller
Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on July 01, 2020, I served a true and correct copy of Water Right License No. 63-34206 by U.S. Mail, postage prepaid, to the following:

HAWK STONE
3921 W CATALPA DR
BOISE ID 83703

WATER DISTRICT #63S
MICHAEL MC VAY
322 E FRONT ST
BOISE ID 83720



Kensie Thorneycroft
Administrative Assistant 1

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.

Kelly, Patrick

From: Kelly, Patrick
Sent: Thursday, June 18, 2020 10:34 AM
To: Huelse, Kate
Cc: Huelse, Kate
Subject: RE: Water Right 63-34206
Attachments: Heating-Cooling Rate.xls

Mr Stone,

Allow me to add some clarification to the situation if I may. IDAPA 37.03.02 Beneficial Use Examination Rules state that "For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period for the permit... Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit..."

Granting you a water right to allow you to divert at full capacity for the entirety of the season is not in the local public interest nor should it be expected that you would operate the system in such a manner. The Department must calculate the beneficial use occurring under any permit and utilizes tools to do so. Attached is a heating and cooling spreadsheet we use to calculate the heating use associated with your shop. Using data from the National Oceanic and Atmospheric Administration, and account for a seasonably cold winter, we may recommend a total volume of 6.6 af. This is volume takes into consideration an average season temperature of 22 degrees and a source temperature of only 90 degrees.

Idaho Code 42-219 states in part, "In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit." When Kate requested information regarding reporting to the watermaster as part of conditions of the permit, you stated that no water had been diverted for 2019. While you do not need to fully divert the beneficial use during the beneficial use period under the fifty year heating/cooling allowance, you do need to show that you have followed all of the conditions of the permit.

Please submit any diversion data you have to Watermaster 63S. IDWR will move forward with the licensing process. If you find discrepancies with the license once it is issued, you may file a petition for reconsideration within 14 days from the approval date. As a curtesy, I will make a personal note to notify you once the license is signed. Please do not hesitate to contact me with any questions you might have.

Sincerely,

Patrick Kelly
Water Rights Supervisor
Emergency Agency Coordinator
2735 Airport Way
Boise, Idaho 83705
o: 208.334.2190
patrick.kelly@idwr.idaho.gov

From: Huelse, Kate
Sent: Thursday, June 18, 2020 8:38 AM

To: 'Hawk Stone' <hawkstone1@gmail.com>

Subject: FW: Water Right 63-34206

Hello Hawk,

We cannot calculate your annual diversion based on a theoretical use. The licensing process requires you prove beneficial use.

The annual diversion you are to report to the 63S watermaster would provide evidence of beneficial use as well as comply with your permit conditions.

You did indeed show us your system during the field exam, however, you will still need to provide evidence that you diverted 0.02 CFS over the heating season.

Did you divert any water besides the 3 days in 2019 over your beneficial use period (March 2017 to December 2019)?

Please review your records to report an accurate annual volume.

Thank you,

Kate

From: Hawk Stone [<mailto:hawkstone1@gmail.com>]

Sent: Wednesday, June 17, 2020 6:43 PM

To: Huelse, Kate <Kate.Huelse@idwr.idaho.gov>

Subject: Re: Water Right 63-34206

Kate,

I disagree with your interpretation, and request that you issue my water right for a diversion rate of **0.02cfs**. Annual volume (assuming a constant diversion for the 8 month heating season between October 1 and May 31) would be **9.65AFA**.

My permit states that I must provide proof of beneficial use before March 1 2020. I did provide such proof, as demonstrated during your field visit. There is no condition in the permit that says I am only entitled to the annual volume actually diverted during the development period. As you know, the hard freeze caused a blockage in the pipes that rendered me unable to divert for the entire season of use. So I cannot prove volume, but I did prove rate. To calculate the annual volume, all you need to do is multiply the proved beneficial use (0.02cfs) by the number of days of planned use (243).

When you and Patrick did the field visit, you said that everything was in order, and that I could expect the water right to be issued imminently. It has been almost 4 months now, and this is the first I am hearing of a volume requirement. I have followed my permit conditions and proved the use, so please go ahead and issue the water right.

Sincerely,

Hawk

On Wed, Jun 17, 2020 at 12:39 PM Huelse, Kate <Kate.Huelse@idwr.idaho.gov> wrote:

Hawk,

You received a water right permit that approved you to divert up to 0.03 CFS in March of 2017 and you requested 3 years to develop that right.

We can only license your water right for what you diverted over the time you received a permit to the time you submit proof of beneficial use.

We calculate an annual volume based on your developed beneficial use to determine the rate for which you will be licensed.

If you submit 3 days of 0.02 CFS you would be licensed for an annual volume of 0.1 AFA.

Based on our calculations you would require an annual volume of 6.6 AF in order to heat your 300 square foot shed.

Did you use your system in 2017 or 2018?

Thanks,

Kate

From: Hawk Stone [mailto:hawkstone1@gmail.com]
Sent: Tuesday, June 16, 2020 6:38 PM
To: Huelse, Kate <Kate.Huelse@idwr.idaho.gov>
Subject: Re: Water Right 63-34206

Kate,

Thank you for the email. I believe I understand the problem, and I need to make a correction.

I did indeed divert water for beneficial use for a few days in 2019, but had to modify the system, which then froze. That is why it wasn't actively diverting during the field visit. The system worked while it was in use.

I didn't realize that I needed to report this small use, especially since my water right had not been approved. This was an error, and thus my report to Mr. McVay was incorrect.

Should I send Mr. McVay a corrected report of my 2019 water use, which will amount to 3 days of 0.02cfs?

Hawk

On Tue, Jun 16, 2020 at 3:07 PM Huelse, Kate <Kate.Huelse@idwr.idaho.gov> wrote:

Hello Hawk,

Processing your license has been held up as we evaluate your beneficial use and compliance with the conditions on your permit.

The condition in question is :

Measuring devices of a type acceptable to the department shall be installed at the proposed points of diversion and the proposed discharge from the heating network. The measuring devices shall ensure that the identical quantity of water being diverted is discharging back to the ditch from which it was diverted. The right holder shall record such measurements and report them annually to Water District 63S.

In order to proceed with licensing we are required to ensure all conditions have been met as well as have evidence that the water you have applied for is being beneficially used. You received a permit to divert 0.03 CFS of water on March 22, 2017, you then requested 3 years to develop your beneficial use. Proof of Beneficial Use was submitted in December of 2019 as diverting a total rate of 0.02 CFS.

Part of the licensing process is calculating the annual volume associated to your developed beneficial use. Conditions of the permit state that you are to report to the 63S water master between the time of when your permit was issued and when you submitted your proof of beneficial use. You initially confirmed that you had not reported to the watermaster at any point during the beneficial use period. You then reported to the watermaster that no water was diverted in 2019. I am contacting you today to confirm the beneficial use developed during the beneficial use period. Based on the calculations attached to this email, it is estimated that you would require an annual volume of 6.6 AFA.

Please confirm the accuracy of this calculation. Review your records to report an accurate volume to your watermaster to comply with conditions of your permit. Once we receive annual report, we may resume licensing your heating use. Finally, please let me know if you have any questions, I am happy to help.

I have also attached a copy of your permit and proof of beneficial use.

All the Best,

Kate Hulse

Water Resource Agent

Idaho Department of Water Resources

Phone: (208) 871-9866

Email: Kate.Hulse@idwr.idaho.gov

From: Hawk Stone [mailto:hawkstone1@gmail.com]

Sent: Tuesday, June 16, 2020 9:04 AM

To: Hulse, Kate <Kate.Hulse@idwr.idaho.gov>

Subject: Re: Water Right 63-34206

Kate,

I'm out of town all week, and mostly out of cell-phone coverage.

Could you maybe put the information in an email, please?

Thanks

Hawk

On Tue, Jun 16, 2020 at 8:39 AM Hulse, Kate <Kate.Hulse@idwr.idaho.gov> wrote:

Hi Hawk,

The phone call is just to update you on where you license is in processing and why there has been a lag.

If you have time this week Patrick and I would be happy to have a conference with you at your convenience.

Thanks,

Kate

From: Hawk Stone [mailto:hawkstone1@gmail.com]

Sent: Monday, June 15, 2020 7:08 PM

To: Huelse, Kate <Kate.Huelse@idwr.idaho.gov>

Subject: Re: Water Right 63-34206

Kate,

I didn't hear back from you. Could you please update me with the reason for a phone call, and what is happening with my water right?

Thank you

Hawk

On Wed, Jun 3, 2020 at 6:38 PM Hawk Stone <hawkstone1@gmail.com> wrote:

Kate, this is a really busy time for me.

I'm happy to have a phone call, but could you please send me an email outlining the situation? I would like to find out what's going on.

Hawk

On Wednesday, June 3, 2020, Huelse, Kate <Kate.Huelse@idwr.idaho.gov> wrote:

Hi Hawk,

Would you like to set up a phone appointment this week to discuss your license?

Patrick and I can hop on a conference call and bring you up to speed with what's been going on.

We are available at your convenience.

Again, my apologies for the delay in processing, the pandemic has slightly effected the efficiency of processing.

Thank you,

Kate

From: Huelse, Kate
Sent: Tuesday, June 2, 2020 8:21 AM
To: 'Hawk Stone' <hawkstone1@gmail.com>
Subject: FW: Water Right 63-34206

Hello Hawk,

My apologies for the lag in response time. Your license is in the final stages of being processed and is currently being reviewed by the Western Regional Manager.

Thank you,

Kate

From: Jones, Chad
Sent: Tuesday, June 2, 2020 8:09 AM
To: Huelse, Kate <Kate.Huelse@idwr.idaho.gov>
Cc: hawkstone1@gmail.com
Subject: FW: Water Right 63-34206

From: Hawk Stone [<mailto:hawkstone1@gmail.com>]
Sent: Monday, June 01, 2020 8:47 PM
To: Western Info <westerninfo@idwr.idaho.gov>
Subject: Fwd: Water Right 63-34206

Hello,

I'm trying to reach Kate Huelse, but having no luck. Does she still work for IDWR? See the details in my email below

Sincerely,

Hawk Stone

----- Forwarded message -----

From: **Hawk Stone** <hawkstone1@gmail.com>

Date: Wednesday, May 20, 2020

Subject: Water Right 63-34206

To: "Huelse, Kate" <Kate.Huelse@idwr.idaho.gov>

Kate,

I haven't heard back from you since April, when I submitted my water use to the WD63S water master, at your request.

When can I expect my water right to be issued, please?

I hope you're well. Thanks for your attention to my case.

Sincerely,

Hawk

On Thu, Apr 9, 2020 at 2:16 PM Huelse, Kate <Kate.Huelse@idwr.idaho.gov> wrote:

Hello Hawk,

I hope you are well, I tried calling this afternoon but must have missed you.

I am currently working on processing your license.

I just wanted to reach out regarding compliance with one of the conditions on your permit that will be carried over to your license.

The condition in question is:

“The measuring devices shall ensure that the identical quantity of water being diverted is discharging back to the ditch from which it was diverted.

The right holder shall record such measurements and report them annually to Water District 63S.”

Has this been accomplished?

Please feel free to contact me if you have any questions.

I can be reached by cell at (208) 871-9866.

Thank you!

Respectfully,

Kate Hulse

Kate Hulse

Water Resource Agent

Idaho Department of Water Resources

Phone: (208) 871-9866

Email: Kate.Hulse@idwr.idaho.gov