

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE)	ORDER GRANTING PETITION
NO. 51-13108 IN THE NAME OF)	FOR RECONSIDERATION AND
UNITED STATES OF AMERICA)	MODIFYING A PRELIMINARY
ACTING THROUGH USDI BUREAU)	ORDER
OF LAND MANAGEMENT)	
_____)	

This matter having come before the Department of Water Resources ("Department") as a result of the filing of a petition for reconsideration of the preliminary order establishing water right license no. 51-13108, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On December 27, 2019 the Department issued water right license no. 51-13108 ("License") in the name of the United States of America acting through USDI Bureau of Land Management ("BLM") for industrial and domestic use from ground water.
2. On January 13, 2020, the Department received a petition for reconsideration ("Petition") of the License from the BLM. The Petition stated that the annual diversion volumes for the beneficial uses on the License do not match the Beneficial Use Field Report. The Petition also stated that the BLM uses ground water from the authorized point of diversion for the control of prescribed fire operations, a beneficial use of water that was not recognized in the Beneficial Use Field Report. The BLM requested that additional annual volume be recognized on the License for industrial use and that approval condition no. 3 of the License be modified to describe the use of water for the control of prescribed fire operations.
3. The Beneficial Use Field Report describes an annual volume of 0.3 acre-feet per year for domestic use and an annual volume of 0.6 acre-feet per year for industrial use.
4. The License authorized an annual volume of 0.6 acre-feet per year for domestic use and an annual volume of 0.3 acre-feet per year for industrial use.
5. The Petition provides additional information demonstrating that an additional 0.1 acre-feet per year was used for control of prescribed fire operations.

6. The portion of the place of use located in the SE¼ SW¼ of Section 35, Township 13 South, Range 9 East was not included on the License, because the Beneficial Use Field Examiner did not observe or report any fire trucks filled from that location for the control of prescribed fire operations.
7. The point of diversion is located within the geographic area from which groundwater is determined to be tributary to the Snake River in the Milner Dam to Swan Falls Dam reach pursuant to IDAPA 37.03.08.030.01.a.

CONCLUSIONS OF LAW

1. The License should accurately describe each established water right as confirmed pursuant to Idaho Code § 42-219.
2. The License incorrectly described the annual volumes of water applied to beneficial use for domestic and industrial purposes and the place of use for the industrial use of water.
3. The Department should correct the annual volumes of water, the legal description of the place of use for industrial use, and approval condition no. 3 to accurately describe all beneficial uses developed under water right permit no. 51-13108.
4. The source of water authorized by the License meets the definition of Trust Water pursuant to IDAPA 37.03.08.030.01.c.
5. The Department should add conditions of approval to the License to define the source of the License as Trust Water.

ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to IDAPA 37.01.01.730.02.a.

IT IS HEREBY ORDERED that the conditions of approval, the legal description of the place of use for industrial use, and the annual volumes of water for each beneficial use of water authorized by water right no. 51-13108 are **MODIFIED** as set forth in the amended water right license issued on this date in conjunction with this order.

Dated this 29th day of JANUARY, 2020.


Angela Grimm
Water Rights Section Manager

State of Idaho
Department of Water Resources

AMENDED Water Right License AMENDED

Water Right No. 51-13108

Priority: June 10, 2014

Maximum Diversion Rate: 0.07 CFS

Maximum Diversion Volume: 1.0 AF

It is hereby certified that:

UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT
1387 S VINNELL WAY BOISE ID 83709-1657

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 10, 2014, and has submitted Proof of Beneficial Use on May 05, 2016. An examination confirms water is diverted from:

Source : GROUND WATER

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>	<u>Annual Volume</u>
INDUSTRIAL	01/01 to 12/31	0.07 CFS	0.7 AF
DOMESTIC	01/01 to 12/31	0.07 CFS	0.3 AF

Location of Point(s) of Diversion

GROUND WATER SE¼ SW¼, Sec. 35, Twp 13S, Rge 09E, B.M. OWYHEE County

Place of Use: INDUSTRIAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	09E	35															X		
13S	09E	35												X					

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	09E	35															X		

Conditions of Approval

1. Rights 51-13108, 51-7375, 51-12950, and 51-2356 when combined shall not exceed a total diversion rate of 0.07 cfs.
2. This right does not grant any right-of-way or easement across the land of another.
3. Industrial use includes firefighter training, washing fire trucks, control of prescribed burns, and general facility operations.
4. Domestic use is for the Juniper Butte Range Complex/Fire Guard Station compound and housing for personnel.

State of Idaho
Department of Water Resources

AMENDED Water Right License AMENDED

Water Right No. 51-13108

5. This right is for the use of trust water, and it is subject to review 5 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
6. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31. See IDAPA 37.03.08.030.

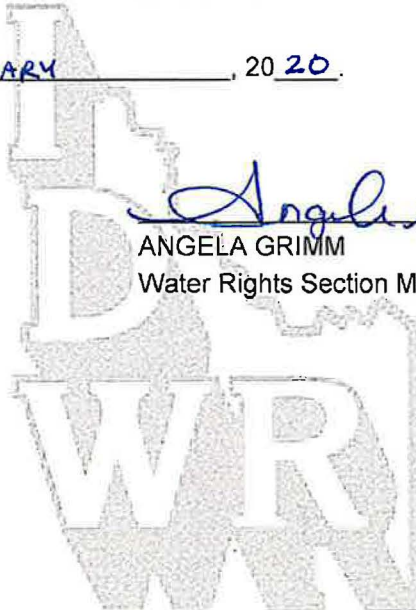
This license is issued pursuant to the provisions of Idaho Code § 42-219. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 29th day of JANUARY, 20 20.



ANGELA GRIMM

Water Rights Section Manager

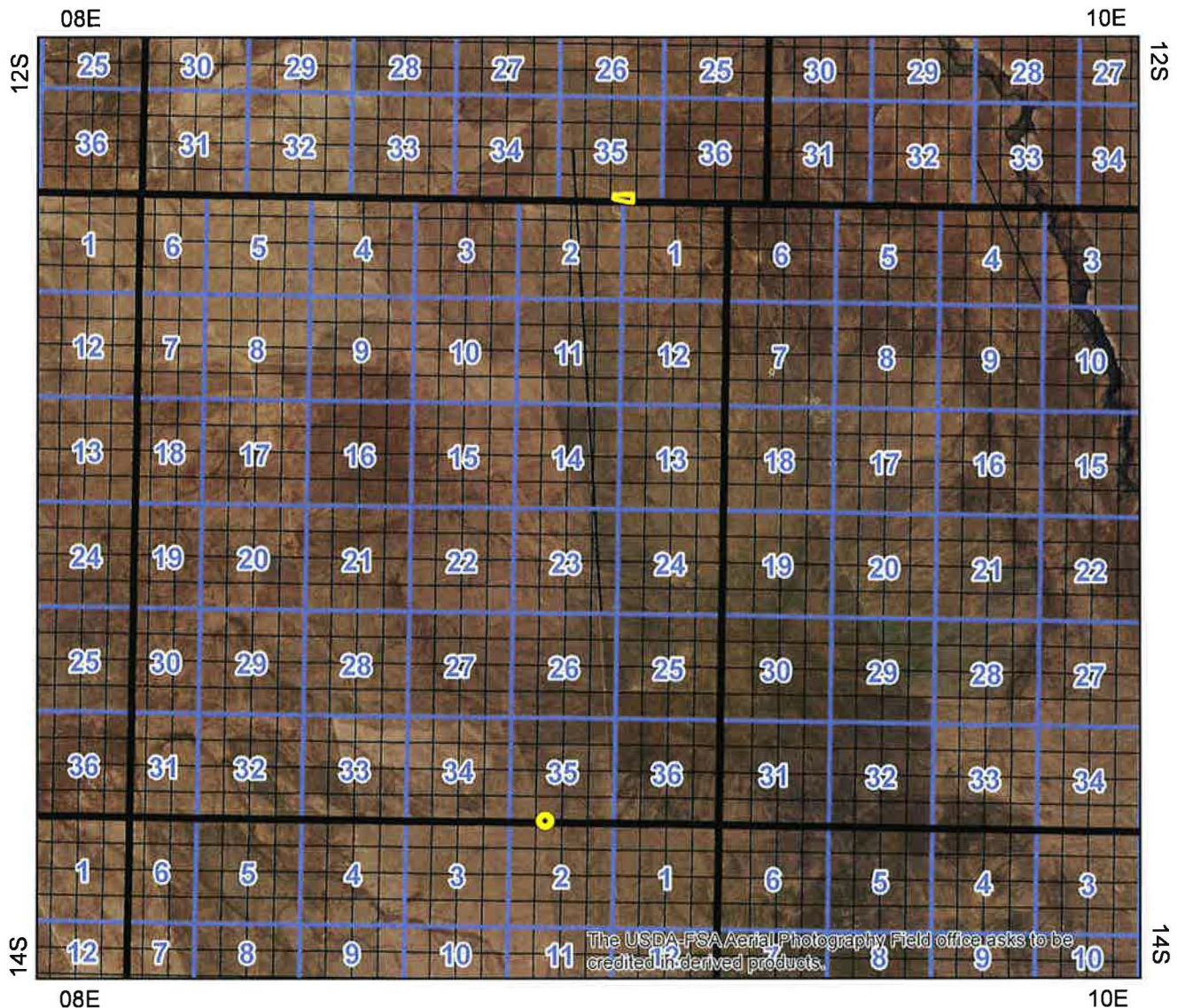


State of Idaho
Department of Water Resources

Attachment to Water Right License

51-13108

This map depicts the DOMESTIC 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.



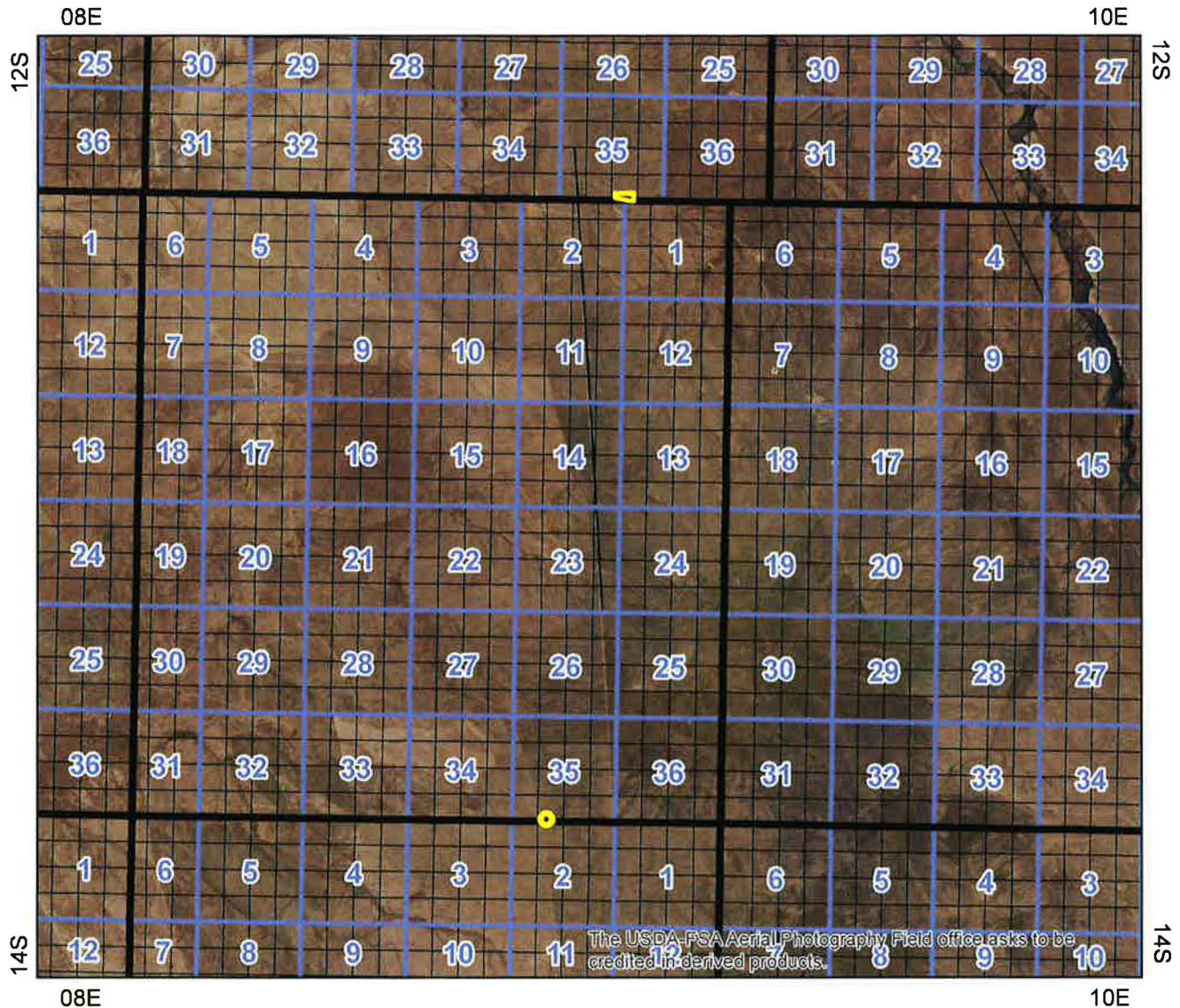
- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 1 2 4 Miles



State of Idaho
Department of Water Resources
Attachment to Water Right License
51-13108

This map depicts the INDUSTRIAL 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 1 2 4 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

January 30, 2020

UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
1387 S VINNELL WAY
BOISE ID 83709-1657

RE: Preliminary Order in the matter of License No. 51-13108

Dear Permit Holder(s):

The accompanying order is an **"amended preliminary order"** issued by the department pursuant to Rule 730 of the department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action of the department unless any party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-287-4951.

Sincerely,

for Angela M Grimm
Water Rights Section Manager

Enclosure(s)

c: IDWR Western Region
Lisa Claxton- BLM Jarbidge Field Office

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2020, I served a true and correct copy of the foregoing **ORDER GRANTING PETITION FOR RECONSIDERATION AND MODIFYING A PRELIMINARY ORDER** by U.S. Mail, postage prepaid and properly addressed to the persons listed below:

RE: Water Right License No. 51-13108

**UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
1387 S VINNELL WAY
BOISE ID 83709-1657**



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.