

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34706

Priority: March 07, 2019

Maximum Diversion Rate: 0.11 CFS

This is to certify that

STEINER LIVING TRUST 7978 BASE LINE RD MELBA ID 83641-5122

has applied for a permit to appropriate water from:

Source : WASTE WATER

Tributary: SNAKE RIVER

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

Beneficial Use**Period of Use****Rate of Diversion**

IRRIGATION

03/01 to 11/15

0.09 CFS

STOCKWATER

01/01 to 12/31

0.02 CFS

Location of Point(s) of Diversion

WASTE WATER SW¼ SW¼, Sec. 35, Twp 01N, Rge 02W, B.M. CANYON 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	
01N	02W	35											4.5						4.5

Total Acres: 4.5

Place of Use: STOCKWATER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	02W	35											X						

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2020**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
4. 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.
5. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
6. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to

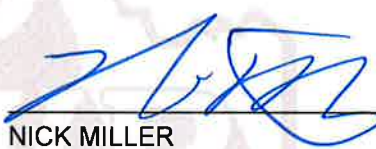
State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34706

the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.

7. 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.
8. Source locally known as Grouch Drain.
9. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

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

Signed this 3rd day of December, 2019.



NICK MILLER
Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34706

This map depicts the IRRIGATION & STOCKWATER 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 0.035 0.07 0.14 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

December 03, 2019

STEINER LIVING TRUST
7978 BASE LINE RD
MELBA ID 83641-5122

RE: Permit No. 63-34706

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources Western has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review all the conditions of approval listed on your permit. The conditions include requirements that you must accomplish, such as timely submittal of proof of beneficial use or installation of a measuring device, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Failure to comply with the conditions of approval may result in your permit lapsing or being canceled.

The permit is a PRELIMINARY ORDER issued 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.

The final step in the water right process is issuance of a water right license. To receive a water right license, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* ("Proof") by the date shown in condition no. 1 of your permit. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit. If you have already diverted and used water to the full extent intended, you may complete and submit the enclosed Proof form immediately.

You may also require approvals from other Department programs, such as Ground Water Protection, Safety of Dams, or Stream Channel Protection, to accomplish your proposed development. Please call or visit any Department office or see the Department's website at idwr.idaho.gov for more information about these programs.

Also, please note that permit holders are required to report any change of 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. Forms to assign ownership or update your address are available from any office of the Department or on the Department's website.

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

Sincerely,



Kersie Thorneycroft

For Nick Miller
Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on December 03, 2019, I served a true and correct copy of Permit to Appropriate Water No. 63-34706 by U.S. Mail, postage prepaid, to the following:

STEINER LIVING TRUST (Current Owner)
7978 BASE LINE RD
MELBA ID 83641-5122

JULIE KLEIN FISCHER (Representative)
MORROW & FISCHER PLLC
332 N BROADMORE WAY STE 102
NAMPA ID 83687

WATER DISTRICT #63
REX BARRIE (Watermaster)
PO BOX 767
STAR ID 83669-0767


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.

Shearer, Justin

From: Julie Fischer <jfischer@morrowfischer.com>
Sent: Monday, October 28, 2019 10:17 AM
To: Shearer, Justin
Cc: Dove Spangler
Subject: FW: Application for Permit Nos. 63-34705 and 63-34706

Hi Justin,
Is the below email from Scott, as attorney for Boise Kuna, sufficient to move forward with the permitting? Please let me know.
Thank you,
Julie

From: Scott Magnuson <sam@idahowaters.com>
Sent: Monday, October 28, 2019 9:35 AM
To: Julie Fischer <jfischer@morrowfischer.com>
Subject: RE: Application for Permit Nos. 63-34705 and 63-34706

Julie:

I apologize for not getting back to you earlier, but I ran into some temporary delays. I have confirmed with the District that it does not allocate any water out of the Grouch Drain.

Call me if you have any questions.

Scott A. Magnuson
Barker Rosholt & Simpson LLP
1010 W. Jefferson, Suite 102
Boise, Idaho 83702
Tel: (208) 336.0700
Fax: (208) 344.6034

CONFIDENTIALITY NOTICE: This e-mail and its attachments are confidential and may be privileged. If you believe this e-mail has been sent to you in error, please notify the sender immediately and delete this email. Do not deliver, distribute or copy this transmission.

From: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>
Sent: Thursday, October 3, 2019 3:15 PM
To: Julie Fischer <jfischer@morrowfischer.com>
Cc: Dove Spangler <dspangler@morrowfischer.com>; Russell Steiner <russsteiner79@gmail.com>; CenturyLink Customer <mlenz52@q.com>; Randy Boehlke <rlboehlke@gmail.com>
Subject: RE: Application for Permit Nos. 63-34705 and 63-34706

Julie,

This is really becoming quite a bit more complicated and drawn out more than necessary. The language of the stipulations asking for the permits to be conditioned with the following is a bit overkill of what is necessary to proceed with processing the applications:

"The source of this water right includes wastewater. The wasting of water may be discontinued at any time.

Boise Kuna Irrigation District has no duty to deliver wastewater to the water right holder.”

The requested stipulations above are standard conditioning of all waste water permits. All that has been needed is written consent from BKID confirming that the water out of Grouch Drain does nor does not remain under its control for other users. Or in other words, whether it is waste water or in fact allocated water. Thus, the review and approval of said stipulations by the BKID board is not necessary if an authorized agent of the company is simply willing to provide a written confirmation that the intended waters for appropriation out of Grouch Drain are in fact waste water and not waters allocated for intended users.

Please let me know this helps expedite the process. Seeing as how these applications were filed in March, waiting til November for a board approval of stipulations that will be placed on the permits if approved seems excessive.

Let me know if you have any questions or concerns.

Thanks and regards,

Justin Shearer
Water Resource Agent, Sr.
208-334-2190



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: idwr.idaho.gov • Email: westerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

September 4, 2019

JULIE KLEIN FISCHER, PLLC
MORROW & FISCHER ATTORNEYS AT LAW
332 N BROADMORE WAY, STE. 102
NAMPA, ID 83687

COPY

RE: Application for Permit 63-34705 & 63-34706

Notice of Intent to Void Application for Permit

Dear Ms. Fischer:

On March 7, 2019, IDWR (the Department) received applications for permit 63-34705(Lenz) & 63-34706(Steiner Living Trust) proposing to develop rights to divert 1.4 cfs of waste water and 0.11 cfs of waste water, respectively, from Grouch Drain, a tributary of Snake River, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 1 North, Range 35 East, B.M., for irrigation and/or stockwater purposes in Canyon County.

IDWR must determine if the water the applicant wishes to appropriate is waste water available for appropriation or whether it is "live" water under control of an irrigation delivery organization to satisfy downstream users insure that this local public interest is protected. The irrigation organization in the area which Lenz and Steiner Living Trust wish to appropriate appears to be Boise Kuna Irrigation District (BKID).

On April 10, 2019 a letter requesting the applicants provide written consent from BKID confirming if the water does nor does not remain under its control for other users within thirty (30) days. This requested additional information in the form of written consent from BKID has not been provided to date.

If I do not receive the requested information from you within **fourteen (14) days**, I will take action to void applications 63-34705 & 63-34706 under the provision of Section 42-204 of the Idaho Code that permits the Department to void the record of said applications if additional information is requested and is not provided within 30 days. Refunds are not issued for voided applications

If you have any questions, please contact me at 208-287-4947. Thank you for your attention to these matters.

Respectfully,

Justin Shearer

Water Resource Agent, Sr.

MORROW & FISCHER
ATTORNEYS AT LAW

332 N. Broadmore Way, Ste. 102
Nampa, Idaho 83687
208.475.2200
Fax 208.475.2201
www.morrowfischer.com

May 10, 2019

Sent via facsimile and US Mail

Justin Shearer, Sr. Water Resource Agent
Idaho Department of Water Resources
Western Region
2735 W. Airport Way
Boise, Idaho 83705

RECEIVED

MAY 13 2019

WATER RESOURCES
WESTERN REGION

Re: Application for Permit 63-34706

Dear Mr. Shearer:

Thank you for your letter dated April 10, 2019. I was out of the office through April 20, so am just now in a position to respond to your inquiry.

Regarding the request for written confirmation of a right-of-way to use the waste ditch / drain I am enclosing a letter from the applicant, Mr. Steiner. As you can see, the drain ditch is on his property and he has direct access to it.

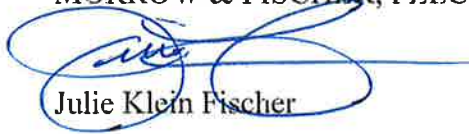
With respect to your inquiry about the nature of the water in Grouch Drain, it is our understanding Boise Kuna Irrigation District waste water is collected in this drain. The drain also appears to run year around suggesting it also contains live water. Because the drain is believed to have BKID waste water, the applicant offered to include certain conditions of approval that are outlined in the project summary attached to the application. These conditions mirror conditions BKID agreed to in separate application for permit from Grouch Drain. See Permit 63-34427. If you would prefer we obtain the same consent (or stipulation) from BKID in this matter I will contact BKID's attorney and discuss getting that done.

If you need anything further, or would like us to proceed in working with BKID, please let me know.

Thank you.

Sincerely,

MORROW & FISCHER, PLLC



Julie Klein Fischer

Encl.
C: Client

RECEIVED

MAY 01 2019

WATER RESOURCES
WESTERN REGION

29512 1889567

1 IDWR - WESTERN REGION

2735 AIRPORT WAY
BOISE ID 83705

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)

County of Canyon)

Sharon Jessen
of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

LEGAL NOTICE

The following applications have been filed to appropriate the public waters of the State of Idaho:

63-34604

CHARLES W YOUNG JR
491 S HILL RD
MELBA, ID 83641
Point of Diversion NWSW S3 T01S R02W CANYON
County Source WASTE WATER Tributary SNAKE RIVER
Use: IRRIGATION 03/01 to 11/15 1.42 CFS
Total Diversion: 1.42 CFS
Date Filed: 8/28/2018
Place Of Use: IRRIGATION
T01S R02W S3 NWSW SWSW
Total Acres: 71

63-34675

STEVEN L MARTINEAU
VICKI D MARTINEAU
6814 LYNWOOD RD
NAMPA, ID 83686-9286
Point of Diversion NWNW S33 T02N R02W CANYON
County Source WASTE WATER Tributary SNAKE RIVER
Use: IRRIGATION 03/01 to 11/15 0.27 CFS
Total Diversion: 0.27 CFS
Date Filed: 2/7/2019
Place Of Use: IRRIGATION
T02N R02W S33 NWNW
Total Acres: 13.5

63-34705

MIKE LENZ
324 WHITE ROCK WAY
MELBA, ID 83641-5279
Point of Diversion SWSW S35 T01N R02W CANYON
County Source WASTE WATER Tributary SNAKE RIVER
Use: IRRIGATION 03/01 to 11/15 1.4 CFS
Total Diversion: 1.4 CFS
Date Filed: 3/7/2019
Place Of Use: IRRIGATION
T01S R02W S3 L1(NENE) SENE
Total Acres: 70

63-34706

STEINER LIVING TRUST
7978 BASE LINE RD
MELBA, ID 83641-5122
Point of Diversion SWSW S35 T01N R02W CANYON
County Source WASTE WATER Tributary SNAKE RIVER
Use: IRRIGATION 03/01 to 11/15 0.09 CFS
Use: STOCKWATER 01/01 to 12/31 0.02 CFS
Total Diversion: 0.11 CFS
Date Filed: 3/7/2019
Place Of Use: IRRIGATION, STOCKWATER
T01N R02W S35 SWSW
Total Acres: 4.5

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 5/6/2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

April 18, 25, 2019

1889567

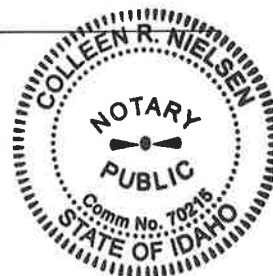
1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 time(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.

That said notice was published the following:
04/18/2019 04/25/2019

STATE OF IDAHO
County of Canyon

On this 25th day of April in the year of 2019 before me a Notary Public, personally appeared. Sharon Jessen, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.

Notary Public for Idaho
Residing at Canyon County
My Commission expires 06/28/2023



April 19, 2019

RECEIVED

MAY 13 2019

WATER RESOURCES
WESTERN

Department of Water Resources

Western Region

2735 W. Airport Way

Boise, ID 83705-5082

Regarding Application Permit #63-34706

TO: Justin Shearer, Water Resource Agent, Sr.

I am in receipt of a letter from your office stating that your office needs a letter of confirmation of a right-of-way to use the waste ditch for delivery of waste water that runs through our property.

From the time the waste water comes over what is commonly known in our area as "Echo Falls", the water lands in a pool after an approximately 80 foot fall and then runs across a parcel of ground we own identified as "35-1N-2W SW TX 14169 IN SWSW".

It also then flows across another parcel of land we own described as "35-1N-2W SW TX 06401 IN S 1/2 SWSW".

As the owner of both of these parcels of ground, I maintain the ditches involved for the delivery of the waste water that flows through these ditches. No other entity such as the Boise Kuna Irrigation District or the Boise Project Board of Control does any maintenance of the ditches through which the waste water flows.

As the owner of these two parcels of land I have given, by default, as the ditches were in use when I purchased these two parcels of land, the right-of-way for the waste water to be conveyed across our land we own.

Thank you for your consideration,

Steiner Living Trust

Russell E. Steiner

7978 Baseline Road

Melba, ID. 83641