

State of Idaho
Department of Water Resources
Water Right License
Water Right No. 63-10240

Priority: June 11, 1984

Maximum Diversion Rate: 1,680.00 CFS

It is hereby certified that:

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

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 11, 1984, and has submitted Proof of Beneficial Use on June 07, 2010. An examination confirms water is diverted from:

Source : BOISE RIVER

Tributary: SNAKE RIVER

Beneficial Use

POWER

Period of Use

1/01 to 12/31

Rate of Diversion

1,680.00 CFS

Location of Point(s) of Diversion

BOISE RIVER L7 (NW¼ SE¼), Sec. 13, Twp 03N, Rge 04E, B.M. ELMORE County

BOISE RIVER L7 (NW¼ SE¼), Sec. 13, Twp 03N, Rge 04E, B.M. ELMORE County

Place of Use: POWER

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		
03N	04E	13														X L7				

Conditions of Approval

1. 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.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
3. This right does not grant any right-of-way or easement across the land of another.
4. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
5. Use of water under this right shall be non-consumptive.
6. The term of this water right 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 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 license shall remain in effect.

State of Idaho
Department of Water Resources
Water Right License
Water Right No. 63-10240

7. The right for the use of water confirmed in this license shall be junior and subordinate to all 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 right or 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 right.
8. 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.
9. 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 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 8th day of August, 2019.



SHELLEY KEEN
Water Allocation Bureau Chief

State of Idaho
Department of Water Resources
Attachment to Water Right License
63-10240

This map depicts the POWER 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.

04E



-  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

322 E FRONT ST STE 648 PO BOX 83720 • BOISE, ID 83720-0098

Phone: (208)287-4800 • Fax: (208)287-6700 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

August 12, 2019

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

RE: License No. 63-10240

Issuance of License

Dear Water Right Holder(s):

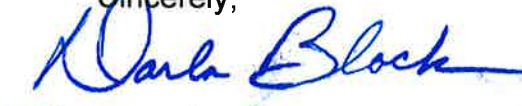
The Department of Water Resources ("Department") has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review all the conditions of approval listed on your license. The conditions may include ongoing 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) 287-4910.

Sincerely,


For Clay Webster
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I served a true and correct copy of Water Right License No. 63-10240 by U.S. Mail, postage prepaid, to the following:

BOISE PROJECT BOARD OF CONTROL (Current Owner)
2465 W OVERLAND RD
BOISE ID 83705-3155

FARMERS COOPERATIVE DITCH CO (Interested Party)
PO BOX 69
PARMA ID 83660-0069

FARMERS UNION DITCH CO LTD (Interested Party)
2153 N POLLARD LN
STAR ID 83669-5150

PIONEER IRRIGATION DISTRICT (Interested Party)
PO BOX 426
CALDWELL ID 83606-0426

SETTLERS IRRIGATION DISTRICT (Interested Party)
1910 N GARDEN ST
BOISE ID 83706-2424

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



Darla Block
Technical Records Specialist 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.

MEMORANDUM

TO: 63-10240

FROM:  Clay Webster

DATE: July 17, 2019

RE: Licensing Place of Use (POU) and Points of Diversion (PODs) legal descriptions

During the course of processing the license for permit 63-10240, it was noted that the POU and PODs fall within Government Lot 7. This was not identified on the application for permit nor the permit approval.

A review of the file revealed that the location of these have not changed since the original submittal of the application for permit. However, the department's tools have improved greatly.

No guidance was found that establishes an amendment is required in this situation.

The department is taking the opportunity of licensing this right to clarify the legal descriptions on the water right.

Edl, Michele

From: Albert Barker <apb@idahowaters.com>
Sent: Thursday, July 11, 2019 3:47 PM
To: Edl, Michele
Cc: 'Bob Carter'; Rick Martin; Mike Kukla
Subject: FW: questions about 63-10240
Attachments: 63-10240 amendment map.jpg; 63-10240 amend for lic.pdf; 63-10240 cvr ltr.pdf

Michele-

Rick Martin forwarded your email answering his questions about the Arrowrock license.

I understand your explanation on the flow rate and we will be submitting a second application for additional flow based on post-warranty period flow.

The request to file an application for an amended permit seems unwarranted, however. The POD and the POU were permitted in T3N R4E section 13 NWSE ¼ ¼. The actual location of the POD and POU are in T3N R4E section 13 NWSE ¼ ¼. The Boise Project did not change or amend the location of the POD or POU at all. Your examiner has asked that the right be described in Lot 7 of in T3N R4E section 13 NWSE ¼ ¼. If the Department wants to add a condition to the permit that recognizes that the POU is in Lot 7 of the permitted POU that is not a change that requires an amended application.

Rule 37.03.02.010.03 of the Beneficial Use Examination Rules defines Amendment as "A change in point of diversion, place, period or nature of use or other substantial change in the method of diversion or use of a permitted water right."

Adding a government lot description doesn't change anything; it is an actual description of what was represented as a ¼¼ description. Even so, referring to a government lot in the same ¼ ¼ section without changing the ¼ /14 section is not a "substantial" change. The examiner should be able to add that description without needing to process an amendment. If there is some guidance at the Department explaining why an amendment to add reference to a particular government lot in the same ¼ ¼ section is necessary please forward it for our review.

Second, the map you provided shows the location of the POD behind the dam in the middle of the river. The government lot only covers the dry land adjacent to the river and follows the meander of the river. The land behind the dam in the river bed is not in government lot 7, but it is in T3N R4E section 13 NWSE ¼ ¼. So it would not be appropriate to describe the POD as in government lot 7.

According to Supplement to Permit Processing No. 5 (January 12, 2000) clarifications that do not rise to the level of amendments can be accomplished by IDWR by adding those clarifications to the comments field in the water rights database as well. That may be another more efficient way to record the government lot for the POU.

Thank you for your consideration of these comments and requests.

Albert P. Barker
Barker Rosholt & Simpson LLP
1010 W Jefferson, Suite 102
Boise, Idaho 83702
(208) 336-0700

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: Edl, Michele [<mailto:Michele.Edl@idwr.idaho.gov>]
Sent: Tuesday, July 9, 2019 10:39 AM
To: Rick
Cc: Grimm, Angie; Webster, Clay
Subject: questions about 63-10240

Rick Martin,

Thank you for taking the time to share your questions and concerns about the pending license of 63-10240 (the Arrowrock project) with me this morning.

This email is intended to 1) give you a brief explanation for the flow rate recommended for this right and 2) show you the need for an amendment of the legal addresses of both the points-of-diversion and the place-of-use.

1)

In July of 2007, the Boise Project Board of Control requested an extension of time to more fully develop the authorized beneficial use and had been granted until August 1, 2012 to submit the Proof-of-Beneficial-Use statement. However, the proof statement for this right was received at IDWR's State office on June 7, 2010. With submittal of the proof statement, the development period of the permit closed. The project had been online only a few months in the spring of 2010 which meant that the development period was cut very short. After a Proof of Beneficial Use statement has been submitted, a permit cannot be retained to cover future development of the resource.

I am recommending 1680 cfs as the maximum rate for the license. This recommendation is based on the data you provided via email on 5/22/2019. The maximum instantaneous flow through the power plant during the development period was 1679.61 cfs (which rounds up to 1680 cfs). That flow rate occurred on May 24, 2010. The plant flow data was accompanied by companion generation data which confirmed beneficial power use.

2)

Attached to this email is a map showing that the points-of-diversion and the place-of-use are located in government lot 7 (NW1/4 SE1/4), rather than simply in the NW1/4 SE1/4. The legal addresses of these elements need to be corrected before a license can be issued.

I would be happy to schedule a meeting with you and/or with Mr. Carter for a more in-depth discussion about this right.

Sincerely,
Michele Edl
208-287-4946