

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
No. 63-34518

Priority: February 27, 2018

Maximum Diversion Rate: 0.05 CFS

This is to certify that

AL RUSSELL JR 1350 S WILLOW WOOD WAY EAGLE ID 83616

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**

IRRIGATION

**Period of Use**

03/01 to 11/15

**Rate of Diversion**

0.05 CFS

**Location of Point(s) of Diversion**

BOISE RIVER NE¼ SW¼, Sec. 16, Twp 04N, Rge 01E, B.M. ADA 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 |        |
| 04N | 01E | 16  |    |    |    |    |    |    |    |    | 3.0 |    |    |    |    |    |    |    | 3.0    |

Total Acres: 3.0

**Conditions of Approval**

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2024**.
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. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
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. 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.

State of Idaho  
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7. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation by non-use. The mitigating right may also include a condition stating that the mitigation by non-use is for the benefit of this right.

| Right No. | Use Changed to<br>Mitigation by Non-Use | Mitigation<br>Rate (cfs) | Mitigation<br>Acres |
|-----------|-----------------------------------------|--------------------------|---------------------|
| 63-20041  | Irrigation                              | 0.05                     | 3.0                 |

The land that will no longer be irrigated under this right is located within the Boise Canal Company service boundary.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.

8. 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.
9. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

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

Signed this 4<sup>th</sup> day of June, 2019.



NICK MILLER  
Engineer, Manager 2

State of Idaho  
Department of Water Resources

**Attachment to Permit to Appropriate Water**  
63-34518

This map depicts the IRRIGATION 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.

01E



-  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](http://www.idwr.idaho.gov)

Brad Little  
Governor

Gary Spackman  
Director

June 04, 2019

AL RUSSELL JR  
1350 S WILLOW WOOD WAY  
EAGLE ID 83616

RE: Permit No. 63-34518

### Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources ("Department") 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 first commence the excavation or construction of your diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is complete. In addition, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* 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.

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](http://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,

A handwritten signature in blue ink, appearing to read "Anna Miller".

*For* Nick Miller  
Engineer, Manager 2

Enclosures

CC: BOISE CITY CANAL CO

## CERTIFICATE OF SERVICE

I hereby certify that on June 04, 2019, I served a true and correct copy of Permit to Appropriate Water No. 63-34518 by U.S. Mail, postage prepaid, to the following:

AL RUSSELL JR (Current Owner)  
1350 S WILLOW WOOD WAY  
EAGLE ID 83616

BOISE CITY CANAL CO  
PO BOX 2157  
BOISE ID 83701-2157



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Anna Kaiser  
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.

RECEIVED

APR 02 2019

WATER RESOURCES  
WESTERN REGION

BOISE CITY CANAL COMPANY

P.O. Box 2157, Boise, ID 83701

March 24, 2019

Phill Hummer  
Water Resource Agent  
Idaho Department of Water Resources  
322 E. Front St.  
Boise ID 83702

Dear Phill,

Boise City Canal Company agrees to sell three shares of water to Al Russell annually.  
One share of Boise City Canal water is good for up to one acre and equals .015 CFS or .75 of a miners inch.

You are authorized to change three (3) acres of water from "irrigation" "to mitigation by nonuse".  
The amount of water changed to mitigation by nonuse is .045 CFS or 2.25 Miners inches.  
The water right associated with this application is 63-20041.

Regards,



Michael Harrison  
Water Manger  
Boise City Canal Company  
208-387-3526



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](http://idwr.idaho.gov) • Email: [westerninfo@idwr.idaho.gov](mailto:westerninfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

March 22, 2019

**COPY**

AL RUSSELL JR  
1350 S WILLOW WOOD WAY  
EAGLE ID 83616

Mr. Russell,

On May 24, 2018 the Department of Water Resources received your mitigation plan for Application for Permit 63-34518 (application). This proposes to leave 3 shares of Boise City Canal Co water authorized under water right 63-20041 un-diverted in the Boise River. To complete processing your application, please obtain a signed document from the Boise City Canal Co board approving this proposal.

Please submit the requested information for the application to be processed. You may seek additional time to provide the information by making a written request to interrupt processing for up to six months. The application will be voided without a timely written reply within the next thirty (30) days.

Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in blue ink that reads "Patrick Kelly". The signature is written in a cursive, flowing style.

Patrick Kelly  
Water Rights Supervisor

**LEGAL PROOF OF PUBLICATION**

| Account # | Ad Number  | Identification                                | PO      | Amount   | Cols | Lines |
|-----------|------------|-----------------------------------------------|---------|----------|------|-------|
| 263978    | 0003719075 | LEGAL NOTICE The following application has be | Russell | \$102.65 | 1    | 58    |

**Attention: RACHEL NEELY**IDAHO DEPT OF WATER RESOURCES / WEST  
2735 AIRPORT WAY  
BOISE, ID 837055082**LEGAL NOTICE**

The following application has been filed to appropriate the public waters of the State of Idaho:

**63-34518**  
**AL RUSSELL JR**  
1350 S WILLOW WOOD WAY  
EAGLE, ID 83616  
Point of Diversion NESW S16  
T04N R01E ADA County Source  
BOISE RIVER Tributary SNAKE  
RIVER  
Use: IRRIGATION 03/01 to  
11/15 0.06 CFS  
Total Diversion: 0.06 CFS Date  
Filed: 2/27/2018  
Place of Use: IRRIGATION  
T04N R01E S16 NESW  
Total Acres: 3

Mitigation is proposed for consumptive use, a portion of Boise City Canal Co will be left undiverted in the Boise River.

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](http://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 7/9/2018. The protestant must also send a copy of the protest to the applicant.  
GARY SPACKMAN,  
Director

Pub. June 21, 28, 2018  
0003719075-01

RECEIVED

JUL 05 2018

WATER RESOURCES  
WESTERN REGION

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Idaho Statesman, in conformity with Section 60-108, Idaho Code, as amended, for:

2 Insertions

Beginning issue of: 06/21/2018

Ending issue of: 06/28/2018

*Janice Hildreth*  
(Legals Clerk)

STATE OF IDAHO )

, SS

COUNTY OF ADA )

On this 29th day of June in the year of 2018 before me, a Notary Public, personally appeared before me Janice Hildreth known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

*Anna Gomm*  
Notary Public FOR Idaho  
Residing at: Boise, Idaho

My Commission expires: 08/17/2022

