

State of Idaho  
Department of Water Resources  
**Amended Water Right License**  
Water Right No. 85-15733

**Priority:** November 17, 2010

**Maximum Diversion Rate:** 0.10 CFS  
**Maximum Diversion Volume:** 8.6 AF

It is hereby certified that:

FLYING B FAMILY FARMS I LLC 369 LYTLE CREEK RD LYTLE CREEK CA 92358

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated November 17, 2010, and has submitted Proof of Beneficial Use on December 15, 2015. 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> |
|-----------------------|----------------------|--------------------------|----------------------|
| IRRIGATION            | 03/15 to 11/15       | 0.06 CFS                 | 8.0 AF               |
| DOMESTIC              | 01/01 to 12/31       | 0.04 CFS                 | 0.6 AF               |

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

GROUND WATER SE¼ NE¼ NW¼, Sec. 31, Twp 35N, Rge 04W, B.M. NEZ PERCE County

**Place of Use: IRRIGATION**

| 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 |       |        |
| 35N | 04W | 31  |    |    |    |    | 2.0 |    |    |    |    |    |    |    |    |    |    |    |       | 2.0    |

Total Acres: 2.0

**Place of Use: DOMESTIC**

| 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 |       |        |
| 35N | 04W | 31  |    |    |    |    | X  |    |    |    |    |    |    |    |    |    |    |    |       |        |

**Conditions of Approval**

1. Domestic use is for 1 home. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.
2. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
3. This right does not grant any right-of-way or easement across the land of another.

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 5<sup>th</sup> day of April, 2019.

  
DOUGLAS JONES  
Northern Regional Manager

State of Idaho  
Department of Water Resources  
**Attachment to Water Right License**  
85-15733

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.

04W



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

0 0.035 0.07 0.14 Miles



BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

|                                            |   |                                |
|--------------------------------------------|---|--------------------------------|
| <b>IN THE MATTER OF WATER RIGHT</b>        | ) | <b>AMENDED PRELIMINARY</b>     |
| <b>LICENSE NO. 85-15733 IN THE NAME OF</b> | ) | <b>ORDER APPROVING IN PART</b> |
| <b>FLYING B FAMILY FARMS 1 LLC</b>         | ) | <b>PETITION FOR</b>            |
|                                            | ) | <b>RECONSIDERATION</b>         |

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This matter having come before the Idaho Department of Water Resources (Department, IDWR) as a petition to reconsider the issuance of a water right license, the Department finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. On February 7, 2011, the Department issued Permit to Appropriate Water No. 85-15733 ("Permit") to Flying B Family Farms 1 LLC ("Applicant"). The Department issued the Permit as a preliminary order pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).

2. The Permit authorizes a total annual diversion volume of 0.26 cubic feet per second ("cfs") of water for domestic, stock, and irrigation purposes. The Permit specifies 1 home, 50 head of mixed stock, and up to 10 acres of irrigation.

3. The Permit set a deadline for filing proof of application of water to beneficial use as February 1, 2013. A Request for Extension of Time was filed on January 7, 2013 and a new deadline for filing proof was approved to February 1, 2016. Proof of Beneficial Use was filed on December 15, 2015 and included several pages of supporting documentation.

4. On June 11, 2018, IDWR conducted a beneficial use field exam for licensing purposes. The agent was accompanied by the Applicant's representative, Cory Baune.

5. In the course of the examination, and during follow up analysis, IDWR determined elements of the water right including flow rate, distribution system details and acres irrigated.

6. A license for the water right was signed on February 28, 2019 and mailed by USPS on March 1, 2019 as a preliminary order. On March 14, 2019, within the time period allowed, IDWR received a Petition for Reconsideration of the conclusions contained in the license, filed by the applicant.

7. The petition seeks relief for the licensed rate of flow, beneficial uses and number of acres to be changed to be as described on the approved permit.

8. IDWR requested additional information supporting the assertion of 10 acres of irrigation on March 14, 2019 by email. An undated aerial photo annotated with a polygon was received on March 26, 2019.

## **ANALYSIS**

1. Measurement of the rate of flow for diversion from the well was not possible with the configuration of the system. IDWR's examiner obtained a characteristic curve for the pump installed in the well from the pump contractor. It was determined that the pump is capable of diverting 0.14 cfs for the horsepower installed and lift from the water level in the well, assuming open discharge into the 10,800 gallon cistern.

2. During the beneficial use exam the examiner observed a home and lawn irrigation, but no evidence of livestock.

3. The examiner documented irrigation use through an automatic sprinkler system in the yard and garden areas and also by use of a portable large-nozzle impact sprinkler "gun".

4. Subsequent to the issuance of the license IDWR determined that an additional 0.6 acres of irrigation should be recognized and the allocated diversion rate and volume be commensurately adjusted.

## **CONCLUSIONS OF LAW**

1. Idaho Code § 42-219(1) states that after considering the evidence gathered during the field examination and license preparation the Department shall issue a license confirming the use.

2. The Department's Beneficial Use Examination Rules (IDAPA 37.03.02) provides direction for the Department in recommending for licensing only those quantities that represent the extent of beneficial use established during the permitted development period.

3. Idaho Department of Water Resources Rules of Procedure (IDAPA 37.01.01.730.02.a) states in part that any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of the order. The Department received the Applicant's Petition fourteen (13) days after the service date of the Permit. The petition was filed timely.

4. The Applicant's assertion that IDWR incorrectly specified the area irrigated is partially correct. The Applicant sought authorization for 10 acres of irrigation rather than the 1.4 acres on the preliminary License. The Department acknowledges that an area amounting to a total of 2.0 acres was demonstrated to have been irrigated within the authorized development period.

5. Flow rate for irrigation and total diversion appropriate for the adjusted acres must be adjusted as well.

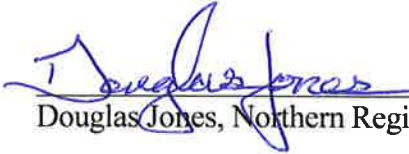
6. No evidence of stock watering was found at examination, nor during the subsequent information exchange and reevaluation.

7. The petition for reconsideration should be partially approved.

### ORDER

IT IS HEREBY ORDERED that the Applicant's Petition for Reconsideration of preliminary license No. 85-15733 is **PARTIALLY APPROVED**. The attached Amended Water Right License corrects the irrigated area to 2.0 acres and the irrigation flow rate and volume are increased to 0.06 CFS and 8.0 Acre Feet, respectively. The total flow and volume are modified accordingly.

Dated this 5<sup>th</sup> day of April, 2019.

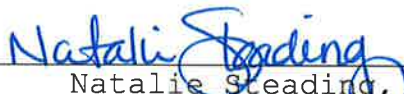
  
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Douglas Jones, Northern Regional Manager

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of April, 2019, that true and correct copies of the document described below were served by placing a copy of the same with the United States Postal Service, return recipe, postage prepaid and properly addressed to the following:

Document Served:            Preliminary Order  
                                 Explanatory Information to Accompany Order

Flying B Family Farms 1 LLC  
369 Lytle Creek Rd  
Little Creek CA 92358

  
\_\_\_\_\_  
Natalie Steading,  
Technical Records Specialist

## **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.