

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 65-23762

Priority: July 17, 2018

Maximum Diversion Rate: 0.05 CFS

This is to certify, that ERIK BRY
PO BOX 204
GARDEN VALLEY ID 83622
has applied for a permit to appropriate water from:

Source: SCRIVER CREEK

Tributary: MIDDLE FORK PAYETTE RIVER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/15 to 10/31	0.02 CFS
DOMESTIC	01/01 to 12/31	0.03 CFS

LOCATION OF POINT(S) OF DIVERSION:

SCRIVER CREEK L3 (SE¼SW¼) Sec. 22, Twp 10N, Rge 04E, B.M. BOISE County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10N 04E 22												1.0					1.0
												L3					

Total Acres: 1.0

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10N 04E 22												X					
												L3					
10N 04E 27					X												

CONDITIONS OF APPROVAL

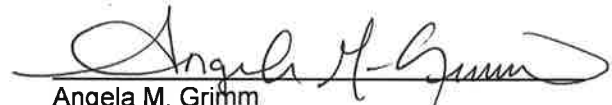
1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2024**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation 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. 65.
5. 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.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 65-23762

6. 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.
7. Place of use is located within Lot 4, Pine Tree Ranch Subdivision #3.
8. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water. The right holder shall not divert water after June 15 each year unless the watermaster authorizes continued diversion and use of water under this water right. When the watermaster informs the right holder that water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use. The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.
9. Domestic use is for 1 home and does not include lawn, garden, landscape, or other types of irrigation.
10. 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.
11. 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 Section 42-204, Idaho Code.

Signed this 15th day of JANUARY, 2019.


Angela M. Grimm
Water Rights Supervisor

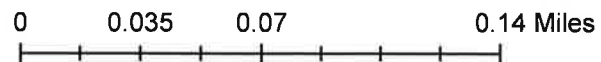
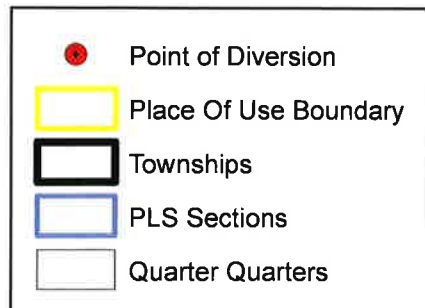
State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

65-23762

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.

04E



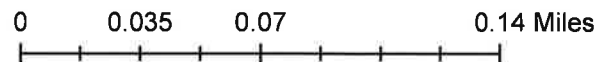
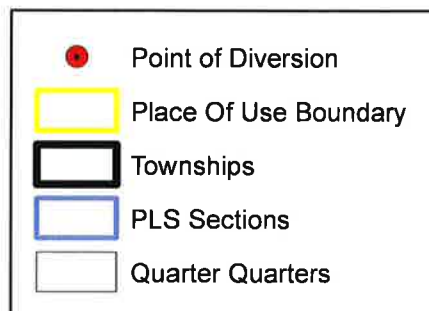
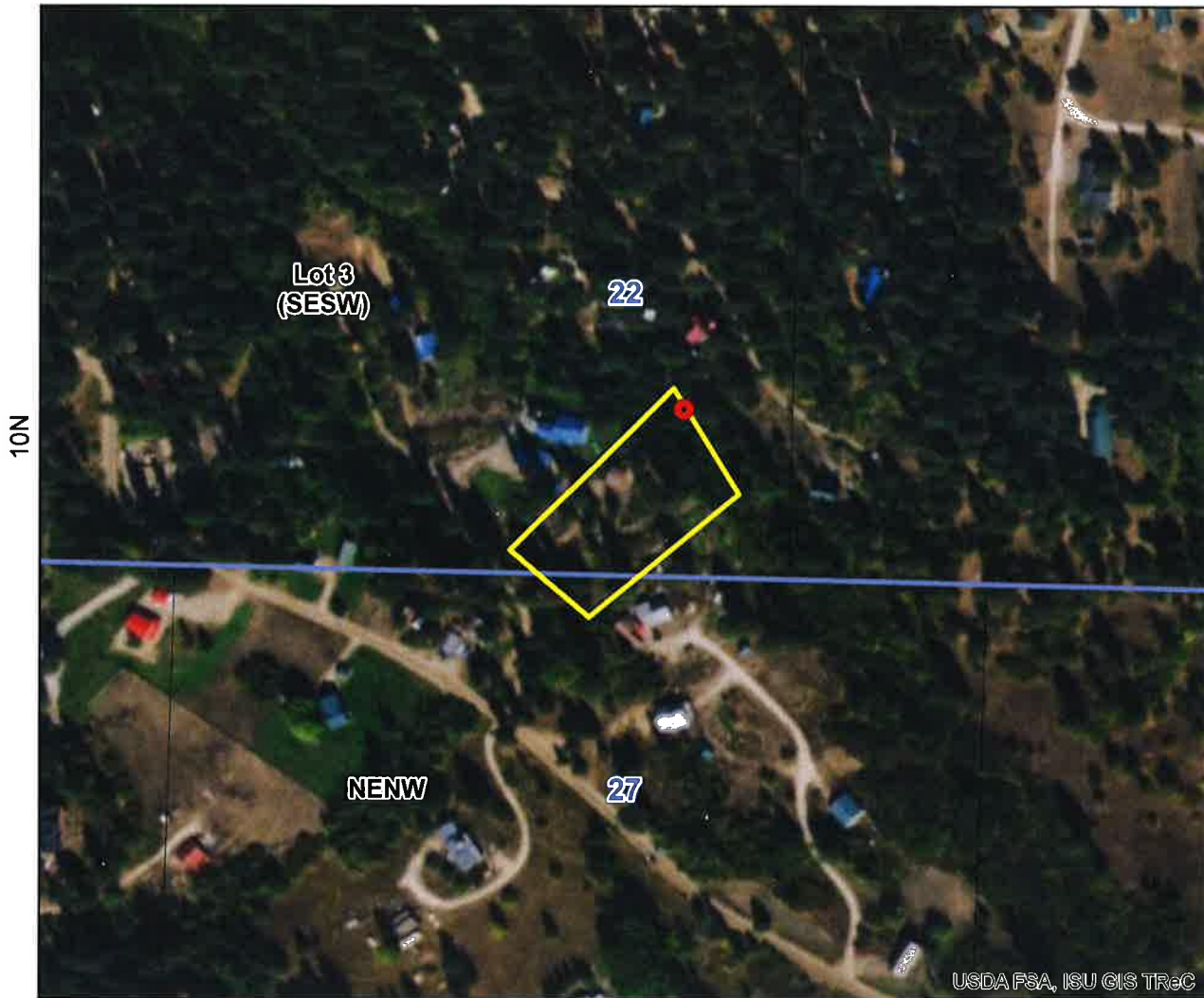
State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

65-23762

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.

04E





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

January 15, 2019

ERIK BRY
PO BOX 204
GARDEN VALLEY ID 83622

RE: Permit Nos. 65-23762 & 65-23797

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources ("Department") has issued the enclosed permits authorizing you to establish new water rights. Please be sure to thoroughly review all the conditions of approval listed on your permits. 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 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,

Anna Kaiser
Anna Kaiser

For

Nick Miller
Engineer, Manager 2

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2019, I served a true and correct copy of Permit to Appropriate Water Nos. 65-23762 & 65-23797 by U.S. Mail, postage prepaid, to the following:

ERIK BRY (Current Owner)
PO BOX 204
GARDEN VALLEY ID 83622

WATER DISTRICT #65
RON SHURTLEFF (Watermaster)
102 N MAIN ST
PAYETTE ID 83661



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.

MEMORANDUM

DATE: 01/02/2019
TO: 65-23762, 65-23797
FROM: Phill Hummer
RE: Water availability

Erik Bry has submitted 2 applications for permit proposing the use of water from Scriver Creek on 2 separate lots within the Pine Tree Ranch Subdivision. The two applications together propose 0.10 cfs for the irrigation of 3 acres and 0.07 cfs for domestic use associated with 2 homes, for a total of 0.17 cfs. There has been some issues with water supply on Scriver Creek in the past and some measurement data does exist.

The attached graph and table show flow rate calculations for Scriver Creek. According to the graph and chart there are times when the flow in the Creek would not be adequate to support the proposed uses but there are some problems with this data. The field notes indicate the channel is non-uniform with significant vegetation and the flow is typically turbulent. For this reason the flow rate was calculated using the float method which is not the most accurate method. Site 1 is about 180 feet downstream from Site 2. There are no water right diversion in-between the two sites and there are no sources of new water. For this reason measurements taken at the two sites should be more similar, but are very different. For example the rate reported for Jun 24, 2008. One at Site 2 it was reported the flow rate was 0.73 cfs but 180 feet downstream at Site 1 the flow rate was reported to be 4.38 cfs. For these reasons these flow calculations provide a good starting point but should not be the only deciding factor when considering the approval of applications 65-23762 and 65-23797.

The point of diversion for both of the applications are upstream of the MSF right no. 65-12733 end point on the Payette River. Comments received from the Idaho Water Resources Board indicate that they are concerned the minimum flows are not met during low flow years. MSF right no. 65-12733 is condition to be subordinated to future appropriations for municipal and domestic use, but the condition specifies future appropriations from the South Fork and the main stem of the Payette River. So MSF right no. 65-12733 is not subordinate to these two new applications.

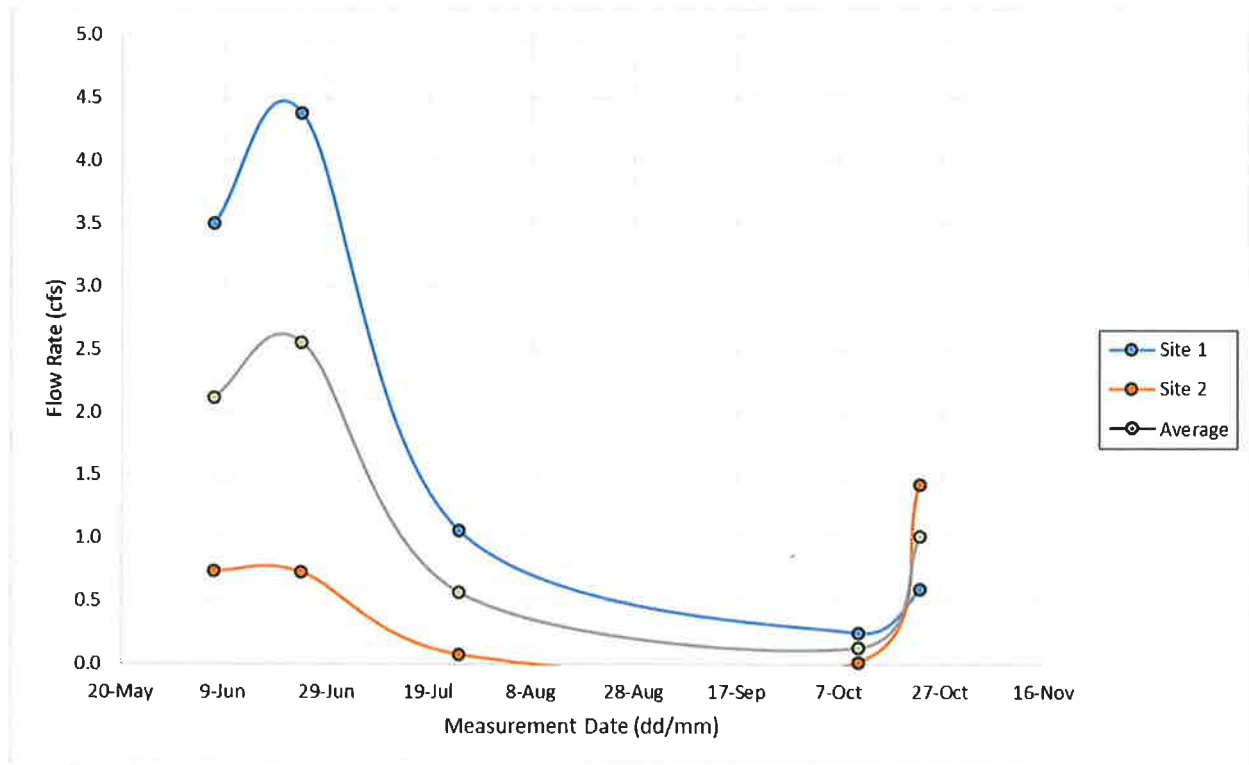
The SRBA court determined that senior surface water rights diverting from Scriver Creek are to be considered *not* junior to water rights diverting from the Payette River and should be administered separately from other rights in Basin 65. However, the separate streams does not apply to these new applications since they were not decreed uses. These new applications are within Water District 65M (not currently active) and would be administered in priority with rights from the Payette River and its tributaries. The applications propose 1 and 2 acres of irrigation for yards and gardens as well as domestic use. The amount of water necessary to water a garden and for home use is minimal and it is likely a beneficial use could be made during water short years. There were no protests filed by other water users on Scriver Creek.

These applications should be approved but with conditions allowing watermaster control. The extent of beneficial use can be evaluated at the time a licensing field examination is conducted. The examination would reveal the times, if any, the proposed diversions were curtailed and if the applicant was able to make a beneficial use from the water available to them.

Basin	Sequence	Process	Status	RightID	Priority Date	Chambers Rate	Source List	Water Use List	Current Owner	Other Owner	Total Acres	Volume	Water District
65	3221	Water Right	Decreed	219450	8/6/1881	1.350	SCRIVER CREEK	IRRIGATION	PTR INC	PINE TREE RANCH INC(Original Owner)	88.0		65M - Scriver Creek
65	3222	Water Right	Decreed	219459	9/26/1881	2.900	SCRIVER CREEK	IRRIGATION	PTR INC	PINE TREE RANCH INC(Original Owner)	181.0		65M - Scriver Creek
65	3223	Water Right	Decreed	219460	4/1/1882	0.540	SCRIVER CREEK	IRRIGATION	PTR INC	PINE TREE RANCH INC(Original Owner)	34.0		65M - Scriver Creek
65	3224	Water Right	Decreed	219482	7/23/1883	1.240	SCRIVER CREEK	IRRIGATION	PTR INC	PINE TREE RANCH INC(Original Owner)	67.0		65M - Scriver Creek
65	3225	Water Right	Decreed	219483	7/23/1883	1.970	SCRIVER CREEK	IRRIGATION	PTR INC	PINE TREE RANCH INC(Original Owner)	83.0		65M - Scriver Creek
65	8290	Water Right	Decreed	219622	2/4/1928	0.320	SCRIVER CREEK	IRRIGATION	PTR INC	PINE TREE RANCH INC(Original Owner)	161.0		65M - Scriver Creek
65	10782	Water Right	Decreed	219075	3/15/1910	0.990	LEFT FORK SCRIVER CREEK	DOMESTIC, IRRIGATION FROM STORAGE, IRRIGATION, STOCKWATER, FIRE PROTECTION	TERACE LAKES RECREATIONAL RANCH INC		48.0		65M - Scriver Creek
65	13018	Water Right	License	553155	4/20/1989	0.080	SCRIVER CREEK	IRRIGATION	INGRAM, CECIL D; INGRAM, LOIS ANN		2.5	8.8	65M - Scriver Creek
65	13022	Water Right	License	71869	5/2/1989	0.020	SCRIVER CREEK	DOMESTIC	BRY, ERIK; BRY, MARY	ASHER, PAM(Precious Owner); ASHER, RON(Precious Owner); WOOD, JOHN W(Original Owner); JOYCE, W(Original Owner)	0.6	0.6	65M - Scriver Creek
65	13064	Water Right	License	71915	4/24/1989	0.030	SCRIVER CREEK	IRRIGATION	ROBBINS, RODGER L; ROBBINS, TERRY R		0.5	1.5	65M - Scriver Creek
65	13259	Water Right	License	72140	4/24/1990	0.030	SCRIVER CREEK	FIRE PROTECTION, IRRIGATION	CANFIELD, DAISY; CANFIELD, ROBERT		0.2	0.7	65M - Scriver Creek
65	13388	Water Right	License	882650	2/15/2000	0.020	SCRIVER CREEK	STOCKWATER	MC GRATH, THOMAS PATRICK			0.7	65M - Scriver Creek
65	13412	Water Right	License	36224	10/10/1992	0.020	SCRIVER CREEK	FIRE PROTECTION	PYLE, CAROLINE				65M - Scriver Creek
65	13802	Water Right	License	550945	8/27/1998	0.020	SCRIVER CREEK	DOMESTIC	PAIDIA, VIRGINIA	BENTON, KATHERINE(Precious Owner); NILSSON, JERRY(Original Owner)		0.6	65M - Scriver Creek
65	19035	Water Right	Decreed	370179	5/1/1880	0.020	SCRIVER CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH				65M - Scriver Creek
65	19038	Water Right	Decreed	370186	5/1/1880	0.020	WEST FORK SCRIVER CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH				65M - Scriver Creek
65	19039	Water Right	Decreed	216323	5/1/1880	0.020	MIDDLE FORK SCRIVER CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH				65M - Scriver Creek
65	19791	Water Right	Decreed	368248	6/28/1934	0.020	LEFT FORK SCRIVER CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH				65M - Scriver Creek
65	20638	Water Right	Decreed	369235	6/28/1934	0.020	LEFT FORK SCRIVER CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH				65M - Scriver Creek
65	13388	Water Permit		547889	2/15/2000	0.100	SCRIVER CREEK	DOMESTIC, STOCKWATER	MC GRATH, THOMAS PATRICK				65M - Scriver Creek
65	23762	Water Application		887626	7/17/2018	0.050	SCRIVER CREEK	DOMESTIC, IRRIGATION	BRY, ERIK		1.0		
65	23787	Water Application		887628	8/30/2018	0.120	SCRIVER CREEK	DOMESTIC, IRRIGATION	BRY, ERIK		2.0		
total WR													
total with app													8.900

- WR downstream of applications

Calculated Flow Rates in Scriver Creek



Measurement Date	Calculated Flow Rate (cfs)		
	Site 1	Site 2	Avg Site 1 & 2
7-Jun	3.5	0.74	2.12
24-Jun	4.38	0.73	2.555
25-Jul	1.06	0.08	0.57
11-Oct	0.25	0.02	0.135
23-Oct	0.6	1.43*	1.015

*There was a broken water pipe emptying into the creek above the measurement point this day.

RECEIVED

AUG 03 2018

WATER RESOURCES
WESTERN REGION

State of Idaho
Department of Water Resources
Application for Permit
RECOMMENDATION FORM

Application No.: 65-23762

Applicant's Name: Erik Bry

Recommendation:

- a) ☐ I do not oppose approval of this application.
- b) ☐ I do not oppose approval of this application if it is conditioned as follows:
- c) ☐ I oppose approval of this application for the following reasons:
- d) ☒ Additional comments: See attached Board comment letter.

Dated this 8 day of August, 2018

Idaho Water Resource Board

Signature

Cynthia Bridge Clark

Printed Name

The Idaho World

P.O. Box 220
Idaho City, ID 83631
(208) 297-8075

RECEIVED

AUG 13 2018

State of Idaho)
County of Boise)

WATER RESOURCES
WESTERN REGION

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

65-23762 *✓ OK RW 8/14/18*
ERIK BRY
PO BOX 204
GARDEN VALLEY, ID 83622
Point of Diversion L3 (SESW) S22 T10N R04E BOISE County Source SCRIVER CREEK Tributary MIDDLE FORK PAYETTE RIVER
Use: DOMESTIC 01/01 to 12/31 0.03 CFS
Use: IRRIGATION 03/15 to 10/31 0.02 CFS
Total Diversion: 0.05 CFS

Date Filed: 6/18/2018

Place of Use: IRRIGATION
T10N R04E S22 L3 (SESW)
Place of Use: DOMESTIC
T10N R04E S22 L3 (SESW)
T10N R04E S27 NENW
Total Acres: 1
Place of use is lot 4 within the Pine Tree Ranch Subdivision #3

65-23783 *✓ OK RW 8/14/18*
VINTAGE PROPERTIES LLLP
C/O RANDY THOMPSON

PO BOX 1486
BOISE, ID 83701
Point of Diversion L5 (SWSW) S26 T07N R02E BOISE County Source PAYETTE RIVER Tributary SNAKE RIVER
Use: IRRIGATION 03/15 to 10/31 0.08 CFS
Total Diversion: 0.08 CFS

Date Filed: 7/11/2018

Place of Use: IRRIGATION
T07N R02E S26 L5 (SWSW)
T07N R02E S27 NESE SESE

Total Acres: 2.5

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 8/20/2018. The protestant must also send a copy of the protest to the applicant. GARY SPACKMAN, Director
Published in the Idaho World on 8/1/2018 and 8/8/2018.

Eileen Capson, being duly sworn, deposes and says: that she is the Publisher of THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and the State of Idaho; the said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for two (2) consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy eight weeks past previous to the first publication of this notice. Such notice was published with the issue beginning with August 1, 2018 and ending with the issue of August 8, 2018.

Eileen K. Capson

State of Idaho)
County of Boise)

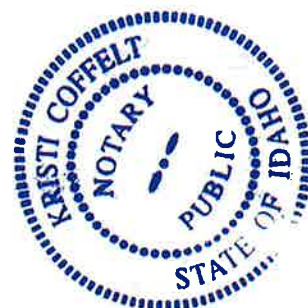
On this 10th day of August in the year 2018, before me, a notary public, personally appeared Eileen Capson known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Kristi Coffelt

Notary Public for Idaho

Residing at Idaho City, Idaho

Commission Expires 1.14/21



MEMORANDUM

RECEIVED

AUG 03 2018

WATER RESOURCES
WESTERN REGION

DATE: August 3, 2018
TO: Rachel Neely
FROM: Emily Skoro
RE: IDWR Application for Permit No. 65-23762

The Idaho Water Resource Board (Board), would like to submit the following comments for consideration when processing the Application for Permit No. 65-23762. The applicant is requesting a water right for domestic use (0.03 cfs) and irrigation of 1 acre (0.02 cfs) for a total diversion rate of 0.05 cfs and 2.5 acre-feet per year. The source of water supply is Scriver Creek which is a tributary of the Middle Fork Payette River.

The applicant should be aware that the Board holds a minimum stream flow (MSF) water right 65-12733 on the south fork and the main stem of the Payette River downstream of the applicant's POD. Any water rights with a priority date junior to the Board's water right should be administered in priority and may be curtailed if the MSF is not being met. USGS Gages 1323500 (South Fork Payette River at Lowman, ID) and 13237920 (Middle Fork Payette River near Crouch, ID) are located within the reach of the Board's MSF water right. Utilizing the flow data measured at both of the specified gages will allow the applicant to verify that the MSF is being met. Historic records show that flows in this reach of the Payette River are generally below the MSF most of the year during minimum flow years. Therefore, flows measured at the referenced gages should be used to verify current Payette River stream flows, and diversions should be limited to times when the Board's MSF water right is met. Please see the attached Proof Report for the diversion rates authorized under the Board's MSF water right 65-12733.