

State of Idaho
Department of Water Resources
Water Right License
REVISED
WATER RIGHT NO. 1-10633

PRIORITY: February 11, 2015

Maximum Diversion Rate: 29.57 CFS

It is hereby certified that:

A & B IRRIGATION DISTRICT PO BOX 675 RUPERT ID 83350-0675

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 11, 2015, and has submitted Proof of Beneficial Use on May 11, 2018. An examination confirms water is diverted from:

SOURCE:
SNAKE RIVER

TRIBUTARY:
COLUMBIA RIVER

and a water right has been established as follows:

BENEFICIAL USE
IRRIGATION

PERIOD OF USE
03/15 to 11/15

DIVERSION RATE
29.57 CFS

LOCATION OF POINT(S) OF DIVERSION:

SNAKE RIVER

NE $\frac{1}{4}$ NW $\frac{1}{4}$

Sec. 20, Twp 10S, Rge 22E, B.M. MINIDOKA County

CONDITIONS OF APPROVAL

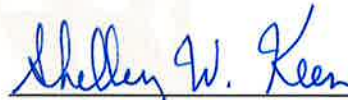
1. The boundary encompassing the place of use for irrigation under this water right is described with a digital boundary as authorized by Idaho law. The data comprising the digital boundary are stored in the electronic document management system of the Department and are incorporated into this approval by this reference. A map depicting the place of use is attached to this approval document to illustrate the place of use described by the digital boundary.
2. Place of use is for irrigation of 1,478.5 acres within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.
3. Use of water under this right will 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 01. In addition, the watermaster of State Water District 130, or its successor, shall be responsible for administering the requirement that this water right must be used in lieu of ground water rights in Water District 130.
4. 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).

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5. This right is limited to use on land with an irrigation ground water right(s) and does not authorize irrigation of land not previously irrigated with ground water. The purpose of this right is to reduce the right holder's reliance on ground water. Unless needed for operation and management purposes, the right holder shall not simultaneously apply water diverted pursuant to this right and ground water on the same land. Further, ground water may be used during the same irrigation season of use when water is unavailable pursuant to this right.
6. The right holder shall not divert and use water under this right if the natural flow in the Snake River is not sufficient to fill senior rights diverting from the Snake River as determined by the Watermaster of Water District 01.
7. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
8. The point of diversion is located within the Lee Placer Claim within Section 20, Township 10 South, Range 22 East, B.M., generally located within the projected NENW.
9. 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 Section 42-219, Idaho Code. 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 19th day of June, 2018.



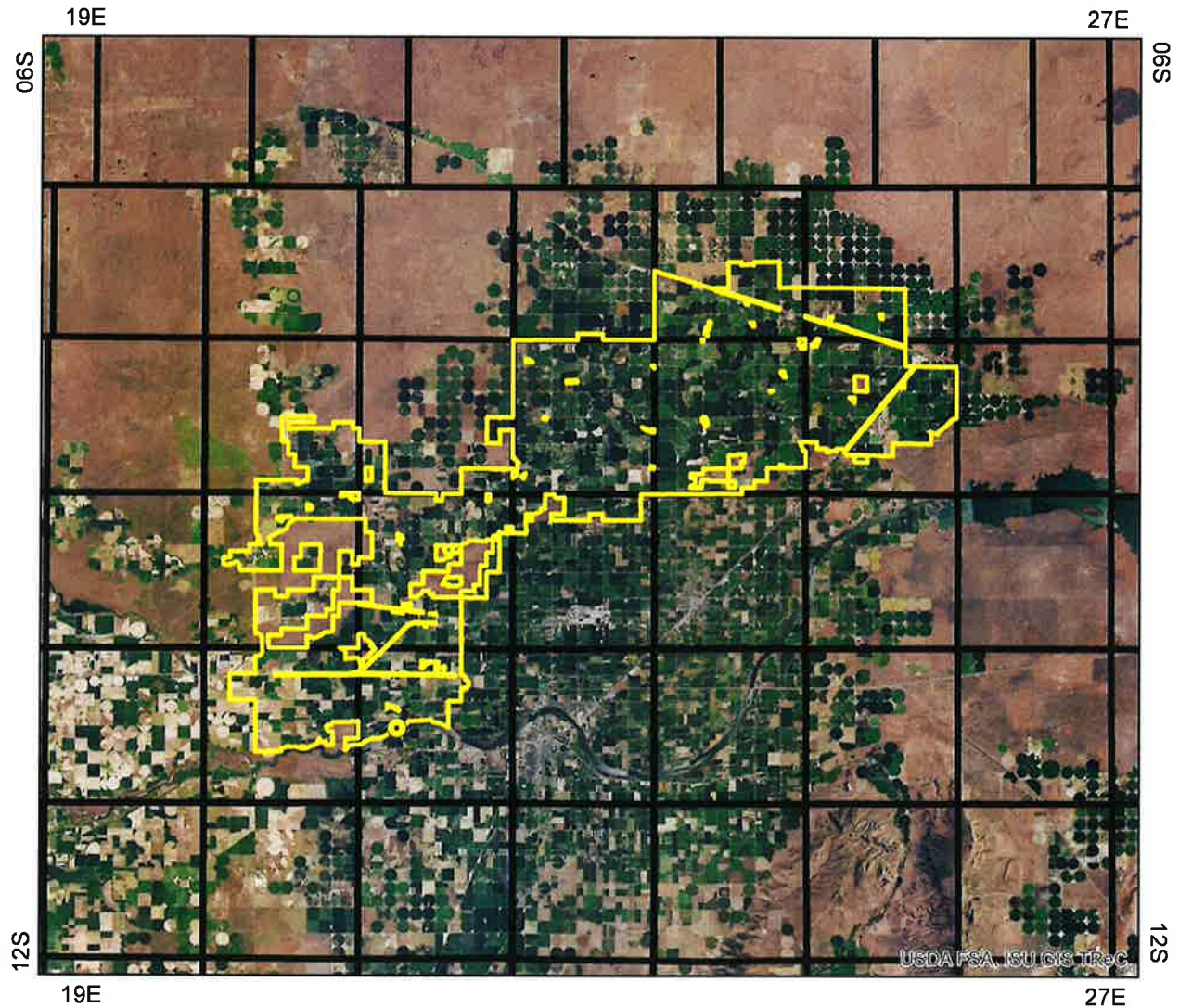
SHELLEY W. KEEN
Water Rights Section Manager

A & B Irrigation District

Attachment to Water Right License

1-10633

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.



0 4.5 9 18 Miles

-  Point of Diversion
-  Place Of Use Boundary
-  Townships





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

C.L. "Butch" Otter
Governor

Gary Spackman
Director

June 19, 2018

A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

RE: License No. 1-10633

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources (IDWR) has enclosed a revised water right license for the water right no. referenced above. The revised license is a preliminary order issued by IDWR pursuant to Rule 760 of IDWR's Rules of Procedure (IDAPA 37.01.01). The revised water right license supersedes the license issued on June 14, 2018. If you disagree with this preliminary order, you can petition for reconsideration, request a hearing, or appeal to district court as further described in the enclosed information sheet.

If you have any questions, please contact me at 208-287-4951.

Sincerely,

Pamela Skaggs, Water Rights Supervisor
Water Right Permits Section

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2018, I served a true and correct copy of Revised Water Right License No. 1-10633 by U.S. Mail, postage prepaid, to the following:

A & B IRRIGATION DISTRICT (Current Owner)
PO BOX 675
RUPERT ID 83350-0675

TRAVIS L THOMPSON (Attorney)
BARKER ROSHOLT & SIMPSON LLP
163 2ND AVE W
PO BOX 63
TWIN FALLS ID 83303-0063

WATER DISTRICT #01
LYLE SWANK (Watermaster)
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

WATER DISTRICT #130
NATHAN ERICKSON (Watermaster)
650 ADDISON AVE W STE 500
TWIN FALLS IDS 83301



Darla Block
Technical Records Specialist I

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.

Block, Darla

From: Block, Darla
Sent: Tuesday, June 19, 2018 12:28 PM
To: 'tlt@idahowaters.com'
Subject: Signed Revised License for 01-10633
Attachments: Revised Water Right License #1-10633.pdf

Travis Thompson,
Revised License going out in the mail tomorrow.

*Darla Block
Technical Records Specialist
Water Allocation Bureau
Ph. #(208) 287-4945
Darla.Block@idwr.Idaho.gov*

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Scott A. Magnuson
Jonas A. Reagan*



163 Second Ave. West
P.O. Box 63
Twin Falls, ID 83303-0063
(208) 733-0700 telephone
(208) 735-2444 facsimile

1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Travis L. Thompson
tlt@idahowaters.com

June 18, 2018

VIA EMAIL & U.S. MAIL

Mr. Shelley Keen
Water Rights Section Manager
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

Re: A&B Irrigation District Water Right License 01-10633

Dear Shelley:

Thank you for the call today and discussion regarding Condition #5 on the Department's proposed water right license 01-10633 for the A&B Irrigation District. As discussed, the District is concerned about the condition's language and whether or not it would prevent current operations in the Unit A Pumping Plant #2 and Pipeline Project ("Pipeline").

The District appropriated water under water right 01-10633 to provide Snake River natural flow, when available, to approximately 1,478 acres that were formerly irrigated with the District's groundwater rights. The "soft conversion" helps the District save groundwater in a limited area of the Eastern Snake Plain Aquifer (ESPA). As you may be aware, the District had to abandon certain wells in this area and has had a difficult time with pumping rates given the reduced supply.

At the time of the Pipeline design the District was able to add additional "soft conversion" lands on the Pipeline necessitating the filing of an additional natural flow water application (01-10673). Through operations the past three years the District has pumped groundwater at peak times to maintain pressure and ensure proper operation of the Pipeline. In rough numbers, of the 7,104 acre-feet pumped and delivered through the Pipeline in 2017, approximately 278 acre-feet was groundwater (i.e. about 4%).

Mr. Shelley Keen (IDWR)
June 18, 2018
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As written, the District is concerned that Condition #5 may be construed to prevent the District from pumping groundwater at a time when surface water is also being delivered through the Pipeline under water right 01-10633. It is my understanding that IDWR has a different view in that if surface water under 01-10633 is insufficient to deliver and properly irrigate the 1,478 acres than groundwater could be used at the same time to irrigate a portion of those lands through the Pipeline. It is also my understanding that the condition was not meant to restrict the District's groundwater rights but was a description of how the surface water should be used when available.

Finally, although the water is commingled, it is likely the District could approximate how much water from each source is used on a daily basis based upon delivery records if needed. If the condition needs to be revised to accurately reflect the District's and IDWR's understanding, we would certainly provide additional information. I have included suggested language below for consideration:

"This right is limited to use on land with an irrigation ground water right(s) and does not authorize irrigation of land not previously irrigated with ground water. The purpose of this right is to reduce the right holder's reliance on ground water. Unless needed for operation and management purposes, the right holder shall not simultaneously apply water diverted pursuant to this right and ground water on the same land. Further, ground water may be used during the same irrigation season of use when water is unavailable pursuant to this right."

Again, given our discussion a revision of Condition #5 may not be necessary. It is the District's intent to only use one water source on any given acre served by the Pipeline. In other words, if surface water is available under 01-10633, the District does not intend to simultaneously use groundwater on those acres irrigated with surface water. However, groundwater has been needed at times to ensure pressure in the Pipeline and if necessary would be used to irrigate lands that cannot receive sufficient surface water.

If you have any questions or need additional information please call me at 733-0700.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

cc: Dan Temple, A&B