

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-09139

CONDITIONS OF APPROVAL

1. Heating use is for use in the City of Boise geothermal water system, from water diverted within the Boise Front Low Temperature Geothermal Resource Ground Water Management Area. A map depicting the heating place of use boundary for this water right at the time of this approval is attached to this document solely for illustrative purposes.
2. Water diverted pursuant to this right may also be used within the Boise Warm Springs Water District (place of use described under water right 63-5073) and the State of Idaho Geothermal System (place of use described under water right 63-9341) to provide an emergency source of water for heating purposes. Use of the water as an emergency source for Boise Warm Springs Water District and the State of Idaho Geothermal System is subject to the diversion rate and volume limits of this right.
3. This right does not grant any right-of-way or easement across the land of another.
4. The right holder shall maintain a measuring device or devices suitable for determining the instantaneous rate of diversion and cumulative annual diversion volume, as part of the diverting works. The type of measuring device shall be subject to the approval of the Department.
5. In addition to all other legal rights, remedies and authorities, the Department may curtail or limit the use of water under this right to remedy, without limitation: (1) depletion or other adverse effects on the Boise Front Low Temperature Geothermal Resource Management Area aquifer system, (2) increased pumping lift or decreased pressure in an existing prior user well, or (3) temperature decline causing an existing user system operating at reasonable efficiency to no longer operate.
6. Return flow discharged to a subsurface system must be authorized by an injection well permit. An existing injection well is located at T03N R02E S10 SWNWSE (Injection Well Permit No. 63W-135-001). Any change in depth or location of the injection well must be authorized by the Department.
7. The right holder shall maintain a measuring device suitable for determining the cumulative annual volume of water injected into the subsurface system.
8. Production limits under this right shall not exceed City injection by more than an average of 92.1 acre-feet (af) (30 million gallons) per year for any five (5) year period, and production shall not exceed injection by more than 153 af (50 million gallons) in any single year. Provided, production may exceed injection by more than 153 af per year in any single year only to the extent required due to catastrophic system failure, acts of God, war, fire, flood, other natural disaster, or other emergency circumstances. In such circumstances, the City must re-attain a rate of injection of all production in excess of 92.1 af per year as soon as feasible.
9. When notified and instructed by the Department, the right holder shall record and report the quantity of water diverted, the quantity of water injected into the subsurface, and other pertinent hydrologic and system information.
10. Water bearing zone to be appropriated is 642 to 1897 feet.

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 27 day of April, 2018.



JEFF PEPPERSACK
Water Allocation Bureau Chief

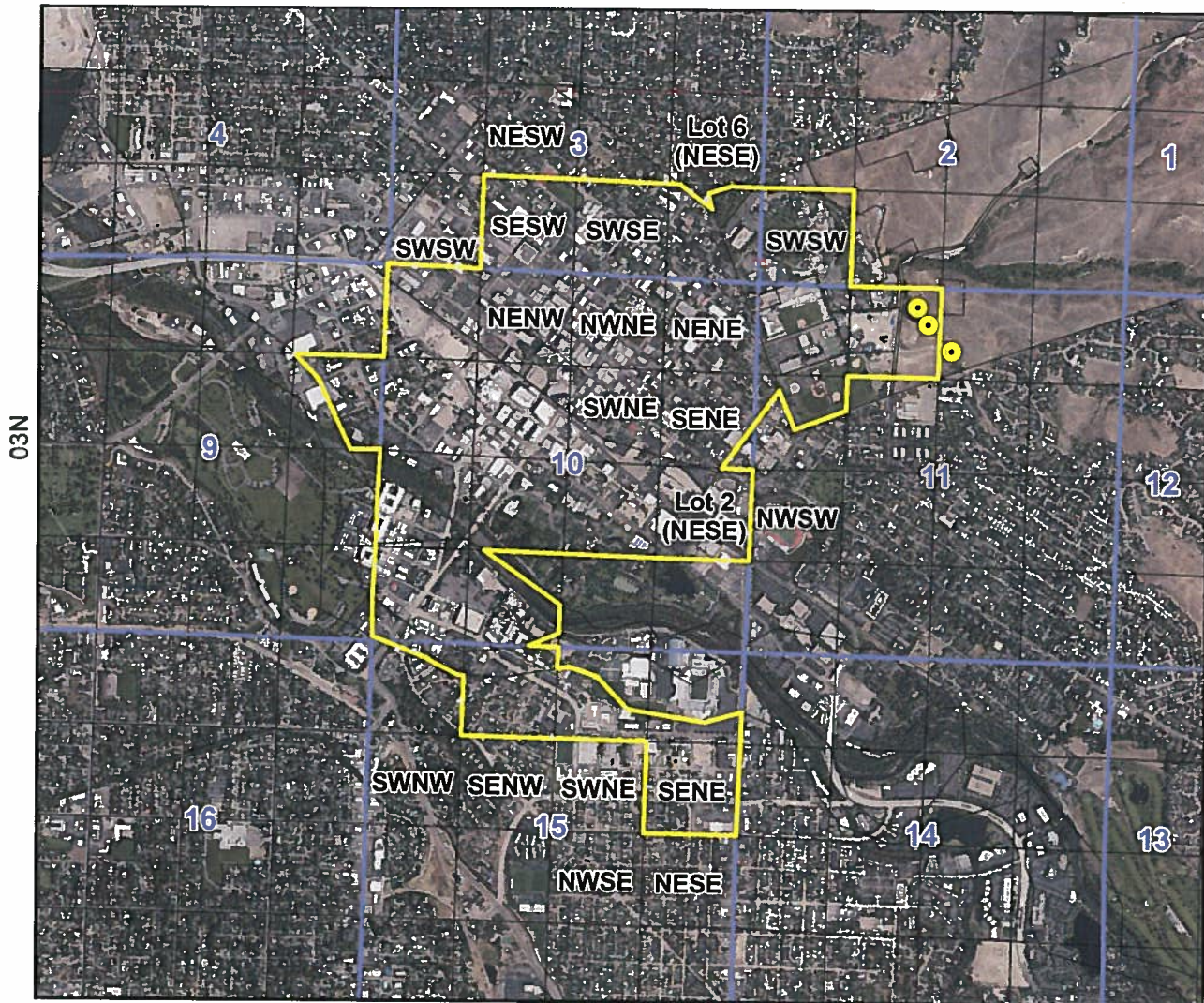
State of Idaho
Department of Water Resources

Attachment to Water Right License

63-9139

This map depicts the HEATING 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.

02E



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

0 0.325 0.65 1.3 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 27, 2018

City of Boise
c/o Robert A. Maynard
Perkins Coie LLP
1111 W Jefferson St., Ste. 500
P.O. Box 737
Boise, ID 83701-0737

RE: License 63-09139, City of Boise

Issuance of License

Dear Parties:

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with permit no. 63-9139. Please be sure to thoroughly review the conditions of approval and remarks listed on the license.

The Department has reviewed comments from the parties that responded to the draft license sent on January 25, 2018 and the meeting held on March 6, 2018. Many of the suggested changes were included in the license. Those that were not included are explained below.

Condition no. 5. The Department did not accept the proposed changes to subpart 3 because the changes may alter the meaning or intent of the condition. The Department chose to remain consistent with both the existing moratorium and the stipulated agreements of the parties.

Condition no. 6. The Department agrees that the location and depth of the injection well are important parameters to assure effective recharge to the low-temperature geothermal aquifer. The Department accepted the proposed change in simplified form.

Condition no. 11. This condition was proposed by parties with the intent to continue some components of the stipulated agreements for permit no. 63-9139. Unfortunately, the condition creates or continues ambiguities regarding the effectiveness of the stipulated agreements after licensing. As written, the condition only requires the water right holder to continue compliance with the stipulated agreements and does not address compliance by other parties.

Furthermore, many of issues the parties sought to address with this proposed condition relate to issues beyond this license. The Department agrees that continued management of the aquifer through monitoring, reporting and mitigation is important to ensure sustainability of the resource and the Department commends the parties for their cooperative efforts throughout the development period of the permit. The Department suggests a better approach for future management may be to develop a management plan to manage the effects of withdrawals from the aquifer, as contemplated under Idaho Code § 42-233b. The Department is committed to further discussions with the parties to work towards

development of a plan. In the interim, the desired components of the stipulated agreements for permit no. 63-9139 are sufficiently covered in the stipulated agreement for the City of Boise's new permit no. 63-34326.

The license is a PRELIMINARY ORDER issued by the Department pursuant to Idaho Code § 67-5243. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

If you have any questions, please contact me at (208) 287-4948.

Sincerely,



Jeff Peppersack
Chief, Water Allocation Bureau

Enclosures

C: Boise Warm Springs Water District, c/o Lyndon Nguyen and Cherise McLain, MSBT Law
Edwards Family LLC, c/o Dana Hofstetter, Hawley Troxell Ennis & Hawley LLP
State of Idaho, Dept. of Administration, c/o of Julie Weaver, Office of the Attorney General
State of Idaho, Dept. of Lands, c/o Angela Schaer Kaufmann, Office of the Attorney General
The Terteling Company, Inc., c/o Charles Honsinger, Hongsinger Law PLLC

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2018, I served a true and correct copy Water Right License No. 63-09139 by U.S. mail, postage prepaid to the following:

ROBERT A MAYNARD
PERKINS COIE LLP
1111 W JEFFERSON ST STE 500
PO BOX 737
BOISE ID 83701-0737

BOISE WARM SPRINGS WATER DISTRICT
C/O LYNDON NGUYEN AND CHERESE MCLAIN
MSBT LAW CHTD
950 W BANNOCK STE 520
BOISE ID 83702

EDWARDS FAMILY LLC
C/O DANA L HOFSTETTER
HAWLEY TROXELL ENNIS & HAWLEY LLP
PO BOX 1617
BOISE ID 83701-1617

STATE OF IDAHO, DEPT OF ADMINISTRATION
C/O JULIE WEAVER
OFFICE OF THE ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

STATE OF IDAHO, DEPT OF LANDS
C/O ANGELA SCHAER KAUFMANN
OFFICE OF THE ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

THE TERTELING COMPANY INC
C/O CHARLES L HONSINGER
HONSINGER LAW PLLC
PO BOX 517
BOISE ID 83701-0517



Emalee Rushing
Administrative Assistant

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.