

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT NO. _____)	PRELIMINARY ORDER
63-144A IN THE NAME OF LAGUNA POINTE)	MODIFYING A MITIGATION
HOA, INC.)	REQUIREMENT
_____)	

This matter having come before the Idaho Department of Water Resources ("Department") as a request to modify the mitigation requirement for a water right, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On April 25, 2008, the Department issued Permit to Appropriate Water No. 63-32229 with a condition stating that the permit holder must mitigate for the proposed depletion of water by diverting "144.3 af into the pond(s) pursuant to water right 63-144A and Transfer 73959 each year." The portion of Water Right No. 63-144A to be diverted into the ponds for mitigation purposes was to be delivered through the Graham-Gilbert Ditch.
2. On May 1, 2008, the Department approved Transfer No. 73959 changing a portion of Water Right No. 63-144A from irrigation purposes to diversion to storage and aesthetic storage purposes so that 144.3 AF of water could be diverted from the Boise River "as replacement for evaporation losses from aesthetic ponds authorized under Right 63-32229."
3. Due to problems with the delivery of water via the Graham-Gilbert Ditch, when the Department issued Water Right License No. 63-32229 ("License") to Laguna Pointe HOA, Inc. ("Laguna Pointe") on August 16, 2016, the License included the following revised mitigation requirement:

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 divert 144.3 af into the pond(s) for aesthetic storage use pursuant to water right 63-144A and Transfer 73959 each year, or the same 144.3 af under Right 63-144A shall remain undiverted in the Boise River and be identified as mitigation by non-use in the water right record.

4. The License also included an approval condition stating that a 144.3 AF portion of Water Right No. 63-144A would be changed to mitigation by non-use to offset the depletion of water caused by the licensed water use.
5. The License also included an approval condition stating:

The right holder shall obtain authorization from the Department of Water Resources prior to changing mitigation under Right 63-144A from mitigation by non-use to the

alternative mitigation of delivered aesthetic storage water as described in Transfer 73959.

6. On January 25, 2017, the Department approved Transfer No. 81366 authorizing Laguna Pointe to change the location of the point of diversion for the Graham-Gilbert Ditch.
7. On February 14, 2018, Laguna Pointe requested ("Request") that "the use of water right 63-144A be changed from mitigation by non-use back to the original use of aesthetic storage and delivered through the new Graham-Gilbert Ditch headgate diversion." The Request states that Laguna Pointe "has completed the construction of the Graham-Gilbert Ditch Diversion headgate and measuring weir." The Request included a statement from the watermaster of Water District No. 63 that the Graham-Gilbert Ditch diversion "met all requirements . . . for lockable controlling works and measurement."

CONCLUSIONS OF LAW

1. The License authorizes Laguna Pointe to seek a change in the mitigation requirement from mitigation by non-use to the diversion and delivery of water to aesthetic storage as described in Transfer 73959.
2. By changing the authorized point of diversion location for Right No. 63-144A and constructing a new headgate and measuring device at the new location, Laguna Pointe has re-established its ability to divert and use water for aesthetic storage purposes as authorized in Transfer No. 73959.
3. The Department should approve the Request.

ORDER

IT IS HEREBY ORDERED that the Request is **APPROVED**.

IT IS FURTHER HEREBY ORDERED THAT the approval condition on Water Right No. 63-32229 changing a portion of Water Right No. 63-114A to mitigation by non-use is **REMOVED** and the official record for Water Right No. 63-114A is **CHANGED** to so that the mitigation by non-use portion reverts to the diversion to storage and aesthetic storage uses authorized by Transfer No. 73959.

DATED this 12th day of April, 2018.



Shelley W. Keen, Manager
Water Rights Section



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 12, 2018

LAGUNA POINTE HOA INC
9601 W STATE ST #203
BOISE ID 83714

RE: Preliminary Order in the matter of Water Right Nos. **63-144A & 63-32229**

Dear Water Right Holder(s):

The accompanying order is a "**preliminary order**" issued by the department pursuant to Rule 730 of the department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action of the department unless any party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-287-4947.

Sincerely,

A handwritten signature in blue ink that reads "Shelley W. Keen".

Shelley W. Keen
Water Rights Section Manager

Enclosure(s)

c: WATER DISTRICT #63

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2018, I mailed a true and correct copy, certified, postage prepaid, of the foregoing **(PRELIMINARY ORDER MODIFYING A MITIGATION REQUIREMENT)** to the person(s) listed below:

RE: Preliminary Order in the Matter of Water Right Nos. **63-144A & 63-32229**

**LAGUNA POINTE HOA INC
9601 W STATE ST #203
BOISE ID 83714**

**WATER DISTRICT #63
REX BARRIE
PO BOX 767
STAR ID 83669-0767**



Darla Block
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.

Keen, Shelley

From: Visosky, Steven
Sent: Wednesday, February 28, 2018 10:13 AM
To: Keen, Shelley
Subject: FW: Water Appropriation Permit No. 63-32229
Attachments: Letter to IDWR 02-14-2018.pdf

From: Ryan Reynolds [mailto:rkreyno@gmail.com]
Sent: Wednesday, February 14, 2018 3:09 PM
To: Visosky, Steven <Steven.Visosky@idwr.idaho.gov>
Cc: Miller, Nick <Nick.Miller@idwr.idaho.gov>; Sterling, Dave <dsterling@to-engineers.com>; Waterdistrict63@qwestoffice.net
Subject: Water Appropriation Permit No. 63-32229

Dear Mr. Visosky,

The Laguna Pointe HOA has completed the construction of the Graham-Gilbert Ditch Diversion headgate and measuring weir. The Construction was completed on December 15, 2017 and Rex Barrie, Water District 63 Watermaster, has inspected and approved the new headgate. See attached e-mail from Rex.

We are requesting that the use of water right 63-144A be changed from mitigation by non-use back to the original use of aesthetic storage and delivered through the new Graham-Gilbert Ditch headgate and diversion.

I am attaching the formal letter with my signature. Please reply letting me know that you are in receipt of this email and any additional requirements within the process.

If you have any questions please contact me at (208) 631-0479.

Best Regards,
Ryan Reynolds
Laguna Pointe HOA, Treasurer

CC: Dave Sterling, T-O

Nick Miller, IDWR

Rex Barrie, Watermaster

From: Rex Barrie [mailto:Waterdistrict63@qwestoffice.net]
Sent: Wednesday, February 07, 2018 6:52 AM

To: Sterling, Dave
Cc: nick.miller@idwr.idaho.gov
Subject: Graham Gilbert Diversion

Dave,

I inspected the new diversion for the Graham Gilbert Ditch on 2/6/2018 and can inform you that the new site has met all requirements of the Idaho Department of Water Resources for lockable controlling works and measurement.

Please let me know if you have any questions.

Rex R. Barrie

Boise River Watermaster

February 14, 2018

Idaho Department of Water Resources
Attn: Steven Viskosky – Water Resource Agent
322 E. Front St.
PO Box 38720
Boise, ID 83720-0098

RE: Water Appropriation Permit No. 63-32229

Dear: Mr. Viskosky,

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We are requesting that the use of water right 63-144A be changed from mitigation by non-use back to the original use of aesthetic storage and delivered through the new Graham-Gilbert Ditch headgate and diversion.

If you have any questions please contact me at (208) 631-0479.

Sincerely,
Ryan Reynolds
Laguna Pointe HOA, Treasurer

A handwritten signature in black ink, appearing to read 'Ryan Reynolds', with a stylized flourish at the end.