

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 47-08367

PRIORITY: June 09, 1994

Maximum Diversion Rate: 4.90 CFS
Maximum Diversion Volume: 2,290.0 AF

It is hereby certified that:

GEORGIANNA ROBERTS 3085 N 3500 E KIMBERLY ID 83341

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 09, 1994, and has submitted Proof of Beneficial Use on May 14, 1996. An examination confirms water is diverted from:

SOURCE:
UNNAMED STREAM

TRIBUTARY:
COTTONWOOD CREEK

and a water right has been established as follows:

BENEFICIAL USE
FISH PROPAGATION

PERIOD OF USE
05/10 to 12/31

DIVERSION RATE
4.90 CFS

ANNUAL DIVERSION VOLUME
2,290.0 AF

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM NE¼NE¼ Sec. 29, Twp 11S, Rge 18E, B.M. TWIN FALLS County

PLACE OF USE: FISH PROPAGATION

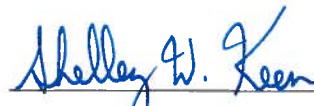
Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	18E	29	X																

CONDITIONS OF APPROVAL

1. The waste water diverted under this right is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place of use or manner of wasting it, or to recapture it.
2. The right holder shall not divert water at a rate exceeding what is reasonably necessary for the beneficial use authorized by this right.
3. Use of water under this right shall be non-consumptive.
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).
5. 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. 47O.

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 12th day of March, 2018.



SHELLEY W. KEEN
Water Rights Section Manager

State of Idaho
Department of Water Resources
Attachment to Water Right License
47-8367

This map depicts the FISH PROPAGATION 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.



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

0 0.035 0.07 0.14 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 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

March 14, 2018

GEORGIANNA ROBERTS
3085 N 3500 E
KIMBERLY ID 83341

RE: License No. 47-8367

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The license 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 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.

Please note that water right owners are required to report any change of water right 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. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

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

Sincerely,

A handwritten signature in blue ink that reads "Pamela Skaggs".

Pamela Skaggs, Water Rights Supervisor
Water Right Permits Section

Enclosure(s)

c: WATER DISTRICT #47-0

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2018 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

RE: WATER RIGHT NO.

47-8367

**GEORGIANNA ROBERTS
3085 N 3500 E
KIMBERLY ID 83341**

**WATER DISTRICT #47-0
AMIE FRANKLIN
2754 ROCK CREEK RD
HANSEN ID 83334**



**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.

MEMORANDUM

TO: Water Right File 47-8367

FROM: Daniel Nelson – Analyst 3

DATE: March 9, 2017

SUBJECT: Licensing Review of Water Right 47-8367

I performed the field examination on this permit in 1997. At that time all field examined permits were sent to the state office for licensing. There are couple of issues that are involved with this permit that need to be addressed prior to licensing the permit.

Source:

The source of water for this permit is an unnamed stream. In the application for permit, the permit holder stated that a portion of the unnamed stream was attributed to wastewater, and it was also confirmed during the field exam that the unnamed stream is used to convey wastewater. The unnamed stream is largely dependent on canal seepage and waste water from nearby farms. It appears from speaking with the permit holder and aerial photography, that some of that wastewater is no longer available due to the installation of pivots and sprinkler systems on the ground where the wastewater originated. The Department cannot require upstream farmers to purposely waste water in order to fulfill a downstream water right, so it has been decided that wastewater conditions should be added to the water right license to ensure that permit holder is unable to make a call on the flows in the stream attributed to wastewater.

Season of Use:

The fish propagation facility was used between May 10 and December 31. This would coincide with the canal seepage. Once water in the canal stopped running, it would take a month or two before the water attributed to the canal seepage would drop to a point where the flows in the unnamed stream could no longer support the raceways. The flows would increase in early May when the wastewater started flowing back into the unnamed stream. Therefore, I recommend that the season of use be limited to May 10 to December 31.

Water Use:

The application for this permit was filed for on-stream fish propagation. Typically, these types of fish propagation permits are actually described as fish propagation storage, and are only given a volume, since there is no way for the permit holder to regulate the amount of water flowing through the raceways.

The permit holder did develop the system almost identically to what was requested in the application, so there is no question that the facility was developed according to the design in the application for permit.

Per discussions with administration, it was determined that we cannot change the use at this time to fish propagation storage, so it will remain fish propagation.

Diversion Rate and Volume:

The maximum diversion rate of the unnamed stream at the time of the field exam was determined to be 9.71 cfs. The permit limited the diversion rate to 4.90 cfs. As discussed above, there is no way for the permit holder to limit the flow of water flowing through the fish hatchery. However, we cannot allow a diversion rate above the permitted amount. It is assumed the additional diversion rate is not being used for fish propagation. By limiting the amount of water available for the fish propagation, it will also assist in avoiding issues with the wastewater diverted into the stream.

The maximum volume that we can allow is based on the permit diversion rate of 4.91 cfs. The volume would be 2,290 af ($4.90 \text{ cfs} \times 1.9835 \times 236 \text{ days} = 2,293.7 \text{ af}$)

Facility Size / Beneficial Use:

In order to ensure that excess water is not being used for the fish propagation use, the Department performs an analysis of the facility to determine if it is operating within the industry standards. I have attached two spreadsheets analyzing the facility. The analysis shows that at the full diversion rate of 9.71 cfs, the facility is operating in well within most of the criteria except for exchanges per hour. When you use the permitted diversion rate of 4.9 cfs is facility slightly below industry standards.

According to literature available, fingerlings are considered to be between 2 to 5 inches and table fish are considered be approximately 8 inches. In this facility, the fish were raised to a certain size and then moved to a larger facility to enhance the fish growth. The facility has not raised fish since 1998, so the permit holder was not able to tell me what size the fish were raised to

before they were moved. However, the literature suggests that this move probably happened when the fish exceeded the fingerling designation or somewhere around 5 to 6 inches.

Based on the facility size and capability, it does appear as though this system would only be used to raise fingerlings and not raise to trout to table size in the quantities of fish stocked into the ponds in the mid 1990's.

Conditions:

As mentioned above, the majority of the water flowing in the unnamed stream during the season of use would be wastewater. Therefore, condition 176 should be added to the license. Condition 122 should also be added, since the permit holder doesn't have control over the amount of water that runs through the facility.

All of the conditions issued on the permit are no longer standard, so they were deleted or replaced by current conditions. Conditions R43, R05, and 027 were added to the permit. The water district for this stream is the Rock Creek Water District - 470.

Fish Propagation Worksheet

Determination of Density Index = Weight of Fish Produced in pounds/ (Fish length in inches X Facility Volume in ft³)		
Fish Weight	5,247.00	
Length	5.00	
Volume	9,212.00	
Density Index	0.11	
Under Ideal Conditions, Density Index should be between 0.4 and 1		

Determination of Flow Index = Weight in Pounds/ (Fish Length X Diversion Rate in gpm).		
Fish Weight	5,247.00	
Length	5.00	
Diversion Rate	2,199.00	
Flow Index	0.48	
Under Ideal Conditions, Flow Index should be between 0.83 and 2.7		

Determination of facility exchange = Diversion Rate in cfs X 3600/ Facility Volume in ft³		
Diversion Rate	4.90	
Facility Volume	9,212.00	
Exchanges per Hour	1.91	
Under Ideal Conditions, Exchanges per Day should be 2.5 for Trout.		

Adjusted Density Index if the Facility was a Standard Facility is as follows: Adjusted Density Index = (Actual Density Index X Standard Exchange of 2.5 per Hour)/ Actual Exchanges per Hours=.		
Actual Density Index	0.11	
Actual Exchanges Per Hour	1.91	
Adjusted Density Index	0.15	
If the Adjusted Density Index is between 0.4 and 1 then the density Index was Lowered to handle a lower diversion rate, so the annual volume should equal diversion capacity.		

Diversion Capacity Calculation = Diversion Rate in cfs X 1.9835 X 356 days		
Diversion Rate	4.9	
Total Volume	3547.4898	

<--- Use This Volume if Adjusted Density Index falls Within Standards.

This permit limited the diversion rate to 4.90 cfs, but the actual flow in the unnamed stream was 9.71 cfs at the time of the field exam. The fish rearing facility is onstream, so there is no way to control the water being run through the raceways. Therefore, I created two spreadsheets - this one at the permitted rate, and the second one at full flow rate.

The owner stated that she hasn't raised fish since 1998, and no longer has any records of the fish numbers. She was able to tell me that she stocked 40,000 fingerlings in the spring of 1996, and 68,000 fingerlings in the summer of 1996. She informed me that she raised the fish for a local fish farmer, who would monitor the growth of the fish and remove them as they became too crowded. Therefore, I used the higher end of standard size of fingerlings. All of the data available on the internet states that fingerlings are considered to be between 2 to 5 inches and 10 to 35 grams. I converted the grams to pounds using the following calculation :

$$68,000 \text{ fish} \times 35 \text{ g} \times 0.00220462 = 5246.9956$$

The number of exchanges for this facility are relatively high, but it is an onstream facility with little or no control of the water entering the facility. The water used for this fish facility is basically wastewater from the local canal, so it seems reasonable that they would need to run a higher volume of water through the facility to deal with water quality issues. The unnamed stream ran through a pond on the neighbor's property prior to entering the permit holder's property, so the majority of the solids were removed from the water before it reached the fish raceways.

Fish Propagation Worksheet

Determination of Density Index = Weight of Fish Produced in pounds/ (Fish length in inches X Facility Volume in ft³)		
Fish Weight	5,247.00	
Length	5.00	
Volume	9,212.00	
Density Index	0.11	
Under Ideal Conditions, Density Index should be between 0.4 and 1		

Determination of Flow Index = Weight in Pounds/ (Fish Length X Diversion Rate in gpm).		
Fish Weight	5,247.00	
Length	5.00	
Diversion Rate	4,429.00	
Flow Index	0.24	
Under Ideal Conditions, Flow Index should be between 0.83 and 2.7		

Determination of facility exchange = Diversion Rate in cfs X 3600/ Facility Volume in ft³		
Diversion Rate	9.71	
Facility Volume	9,212.00	
Exchanges per Hour	3.79	
Under Ideal Conditions, Exchanges per Day should be 2.5 for Trout.		

Adjusted Density Index if the Facility was a Standard Facility is as follows: Adjusted Density Index = (Actual Density Index X Standard Exchange of 2.5 per Hour)/ Actual Exchanges per Hours=.		
Actual Density Index	0.11	
Actual Exchanges Per Hour	3.79	
Adjusted Density Index	0.08	
If the Adjusted Density Index is between 0.4 and 1 then the density Index was Lowered to handle a lower diversion rate, so the annual volume should equal diversion capacity.		

Diversion Capacity Calculation = Diversion Rate in cfs X 1.9835 X 236 days		
Diversion Rate	9.71	
Total Volume	4545.3093	

<---- Use This Volume if Adjusted Density Index falls Within
Standards.

This permit limited the diversion rate to 4.90 cfs, but the actual flow in the unnamed stream was 9.71 cfs at the time of the field exam. The fish rearing facility is onstream, so there is no way to control the water being run through the raceways. Therefore, I created two spreadsheets - this one at full flow, and the second one at the permitted rate.

The owner stated that she hasn't raised fish since 1998, and no longer has any records of the fish numbers. She was able to tell me that she stocked 40,000 fingerlings in the spring of 1996, and 68,000 fingerlings in the summer of 1996. She informed me that she raised the fish for a local fish farmer, who would monitor the growth of the fish and remove them as they became too crowded. Therefore, I used the higher end of standard size of fingerlings. All of the data available on the internet states that fingerlings are considered to be between 2 to 5 inches and 10 to 35 grams. I converted the grams to pounds using the following calculation :

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The number of exchanges for this facility are relatively high, but it is an onstream facility with little or no control of the water entering the facility. The water used for this fish facility is basically wastewater from the local canal, so it seems reasonable that they would need to run a higher volume of water through the facility to deal with water quality issues. The unnamed stream ran through a pond on the neighbor's property prior to entering the permit holder's property, so the majority of the solids were removed from the water before it reached the fish raceways.

RECEIVED

FEB 23 2018

DEPARTMENT OF
WATER RESOURCES

February 21, 2018

Dear Mr. Nelson,

I apologize that it has taken so long in getting the information you asked for. After checking the files that I have, I can't find anything that gives me numbers or dates of fingerlings. I planted in the ponds from 1995-1998.

I have inquired from people who were here at the different times that the fish were delivered and we remember that in 1995 the ponds were stacked with 40,000 fingerlings, again in the spring of 1996 with 68,000 fingerlings, also later in the summer of 1996, but I can't remember how many at that time, or for the years 1997 and 1998.

Hopefully this will answer some of the questions you have asked. If I can be of any more help, Please let me know.

Sincerely,

Georgina Roberts



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

February 2, 2018

GEORGIANNA ROBERTS
OR DOUGLAS ROBERTS
3085 N 3500 E
KIMBERLY ID 833341

RE: Additional Information Request for Permit 47-8367

Dear Ms. Roberts:

On August 21, 1995, water right permit 47-8367 was approved in your name for 4.90 cfs for fish propagation. You submitted proof of beneficial use in May of 1996, and the permit was field examined in June of 1997. A number of water right permits like yours were held until a court case known as the Snake River Basin Adjudication (SRBA) was completed. That court case was resolved and now the Department is attempting to resolve those permits that were held due to the SRBA.

I was fortunate enough to have performed the field examination for this permit, and most of the information needed to license this permit has been verified. I have been asked to move forward with the licensing of this permit. One of the requirements that arose from the SRBA court case was that all fish propagation facilities needed to supply a record of the number of fish raised in the facility. We need this information to ensure that the water used in the facility is needed for this system.

Therefore, I need to ask if you could supply me with any records that you may have of the number of fish raised in the facility. We are particularly interested in the fish numbers in the facility in 1995 and 1996 if they are available.

I have also noted from the State Tax records that the property is currently owned by Douglas D. Roberts and his wife. If Georgia Roberts is no longer the owner of this property, then we will need to put the ownership of the water right into the new owner's name. I have included an assignment of permit that will allow Ms. Roberts to assign the permit to the current owner of the property. If Ms. Roberts is unable to assign the permit to the new the new owner, please call me and I will provide you with the proper forms and instructions to place the water right into the proper ownership.

I have attached a computer generated copy of the permit, a map of the permitted place of use, and an assignment of permit form.

Please feel free to contact me if you have any questions. I am required to place of deadline of 30 days on any request for information. If you cannot provide the information within 30 days, please don't hesitate to contact me and request additional time if needed. If I do not receive the requested information from you within thirty (30) days, I will take action to void your permits under the provision of Section 42-219(8) of the Idaho Code.

Respectfully,



Daniel A. Nelson

Staff Hydrologist

Telephone # (208) 287-4867

Fax (208) 287-6700 (attn: Dan Nelson)

Email dan.nelson@idwr.idaho.gov

Enclosure(s): Assignment of Permit form
Computer Generated Copy of Permit 47-8367
Aerial Photo Map of Permit Place of Use.

Map of place of use and point of diversion for permit 47-8367.

This 2013 aerial photo shows the general location of the place of use and point of diversion of the permit. It is located approximately 0.2 of a mile south of the corner of 3100 North and 3500 East roads. The property address is 3085 North 3500 South, Kimberly, Idaho 833341.

