

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 37-20899

PRIORITY: December 16, 2002

Maximum Diversion Volume: 7.4 AF

It is hereby certified that:

THOMAS M O GARA FAMILY TRUST C/O BRIAN BARSOTTI
PO BOX 370 KETCHUM ID 83340

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated December 16, 2002, and has submitted Proof of Beneficial Use on June 30, 2004. An examination confirms water is diverted from:

SOURCE:
GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL DIVERSION VOLUME</u>
RECREATION STORAGE	01/01 to 12/31	7.4 AF
WILDLIFE STORAGE	01/01 to 12/31	7.4 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼SE¼ Sec. 8, Twp 01S, Rge 19E, B.M. BLAINE County
GROUND WATER SW¼SE¼ Sec. 8, Twp 01S, Rge 19E, B.M. BLAINE County

PLACE OF USE: WILDLIFE STORAGE and RECREATION STORAGE

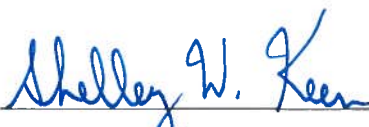
Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01S	19E	8															X	X	

CONDITIONS OF APPROVAL

1. The right holder shall not construct a berm or dam or otherwise impede the natural overland flow of surface water arising from or associated with the use of water under this right.
2. Water stored under this right is subject to fluctuations of the water table caused by changes in the flow of local streams and by diversions under prior ground water rights. This right does not guarantee the maintenance of any particular ground water level.
3. Wildlife Storage and Recreation Storage are for two excavated ponds that intercept the natural ground water table.

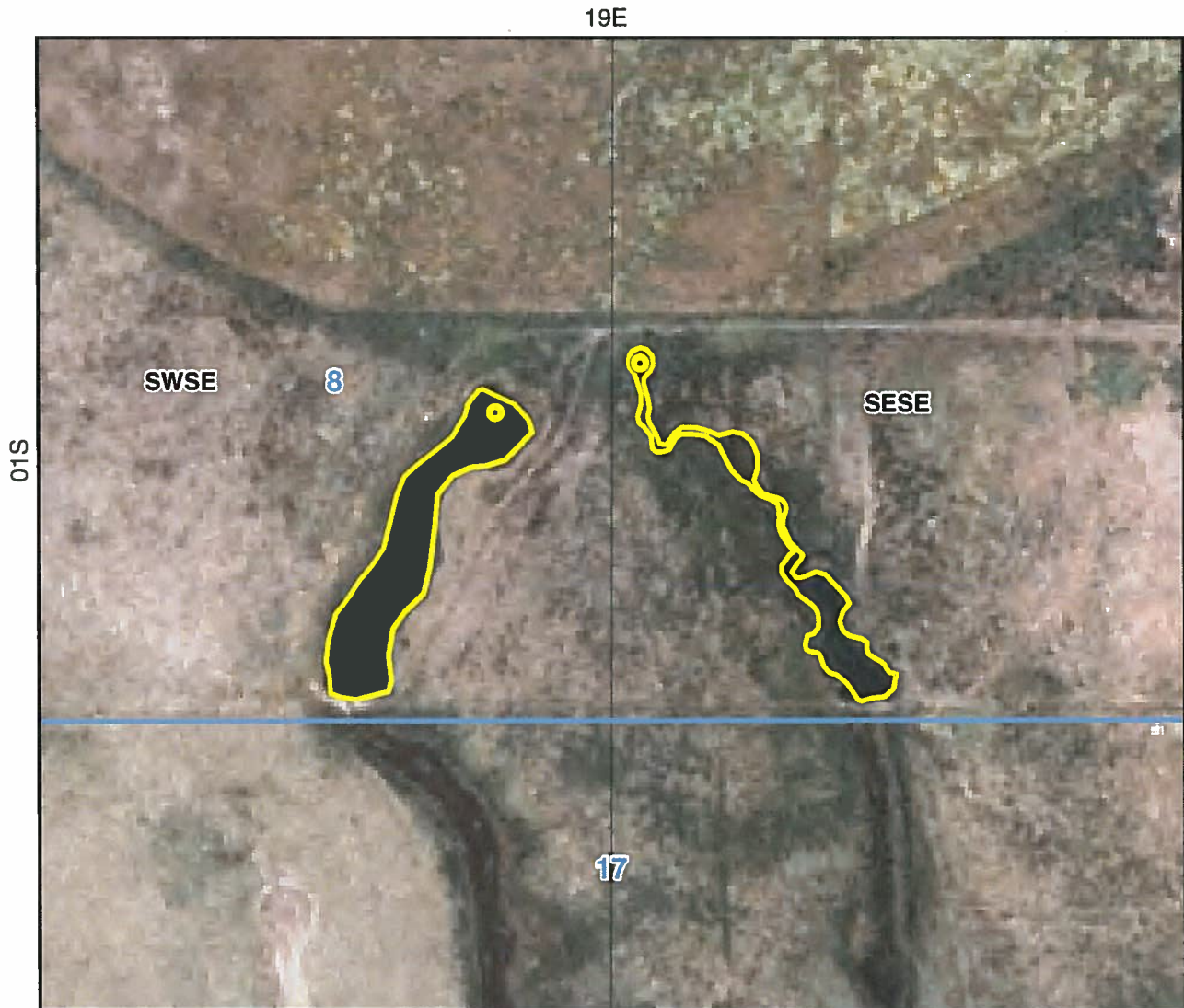
This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 20th day of March, 2018.


SHELLEY W. KEEN
Water Rights Section Manager

State of Idaho
Department of Water Resources
Attachment to Water Right License
37-20899

This map depicts the WILDLIFE STORAGE and RECREATION STORAGE 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 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

March 21, 2018

THOMAS M O GARA FAMILY TRUST
C/O BRIAN BARSOTTI
PO BOX 370
KETCHUM ID 83340

RE: License No. 37-20899

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources ("Department") 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 all the conditions of approval listed on your license. The conditions may include ongoing requirements, such as maintenance of a measuring device or implementation of mitigation, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district.

The license is a PRELIMINARY ORDER issued by the Department 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.

Also, 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. Water right forms are available from any office of the Department or on the Department's website at idwr.idaho.gov

If you have any questions concerning the enclosed information, please contact me at (208) 287-4951.

Sincerely,

Pamela S Skaggs
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2018, I served a true and correct copy of Water Right License No. 37-20899 by U.S. Mail, postage prepaid, to the following:

THOMAS M O GARA FAMILY TRUST (Current Owner)
C/O BRIAN BARSOTTI
PO BOX 370
KETCHUM ID 83340

D L EVANS BANK (Security Interest)
PO BOX 87
TWIN FALLS ID 83303-0087



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.

MEMORANDUM

TO: Water Right File 37-20899

FROM: Daniel Nelson – Analyst 3

DATE: March 15, 2018

SUBJECT: Licensing Review of Water Right 37-20899

The field report for this permit was submitted by Jeffery Rau of Brockway Engineering. This permit is for 2 small ponds that were developed in a spring/boggy area. The ponds appear to fill with some runoff water and shallow ground water. There are several springs in this area, and the area is at the head of Cain Creek in Blaine County. The NRCS Soils Survey website shows that the ground water in this area at 23 inches, so intercepting shallow ground water does seem reasonable. The permit allowed this storage use to be processed similar to a non-consumptive use, because this area is a natural bog type area. It was determined that the evaporation losses would not vary that much from the original wetland area, so this right is considered to be no more consumptive than it was prior to the development of the ponds.

I was able to recreate the pond sizes from 2006 aerial photograph, and matched the information provided by the field examiner. I find no reason to question the field examiner's pond and volume calculations. The ponds appear to be empty or only partially full in most of the aerial photos, but the field examiner did provide pictures with the ponds full during his June 2004 field examination. I am not able to determine when the 2004 aerial photos available to the Department were taken, but in those aerial photos, it appears as though the ponds are not completely full. It is possible that the water for the ponds is only available in the early spring, and the aerial photo available to the Department was probably taken later in the year.

Condition 1 on this permit should be carried forward to licensing, since this condition was included on the permit to resolve a dispute with a downstream water user. Condition 2 (068) should be removed as is standard. Condition 3 (123) should be carried forward to licensing. Condition 4 should be changed to condition 219 with the following edits:

Right 37-20899 authorizes total annual storage volume of 7.4 acre-feet to be used for the initial filling the ponds. This right does not authorize any storage volume for evaporation losses, and water from the pond cannot be diverted or used for any other purpose without authorization from an approved water right.

Permit 37-20899 – License Review Maps

The first photo below is a 2003 Google Earth Photo of the ponds. It appears from this photo that the ponds are full. The second photo is the 2004 aerial photo available to the Department. As you can see, it appears as though the west pond is empty and most of the east pond is empty. The aerial photo supplied with the field examination shows the ponds full as of June of 2004.



The 2006 aerial photo below shows the ponds full. I am assuming this is as full as they can possibly get.

