

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 37-08660

PRIORITY: August 09, 1990

Maximum Diversion Rate: 0.02 CFS

Maximum Diversion Volume: 2.5 AF

It is hereby certified that:

BARBARA BENSON
97 FREEDOM LOOP
BELLEVUE ID 83313-5013

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 09, 1990, and has submitted Proof of Beneficial Use on May 02, 1994. An examination confirms water is diverted from:

SOURCE:
GROUND WATER

and a water right has been established as follows:

BENEFICIAL USE
IRRIGATION

PERIOD OF USE
04/15 to 10/31

DIVERSION RATE
0.02 CFS

ANNUAL DIVERSION VOLUME
2.5 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER L4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) Sec. 18, Twp 01N, Rge 19E, B.M. BLAINE County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	19E	18											0.7						.7

Total Acres: 0.7

CONDITIONS OF APPROVAL

1. A flow rate of 0.20 cfs authorized by right no. 37-00353H must remain in the Big Wood River at its described point of diversion to compensate for depletion of groundwater authorized by this right.
2. Diversion under this right may occur as long as Big Wood River can supply water to water right 37-00353H with a priority date of June 12, 1886.
3. For purposes of regulating this right with respect to other groundwater rights, the priority of this right shall be August 9, 1990.
4. The Director retains jurisdiction over the use of water under this right to adjust the mitigation and to require the collection and reporting of pumpage and use data.
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. 37.

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6. 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).
7. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.

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 2nd day of September, 2017.



COREY SKINNER
Southern Regional Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, Idaho 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 6, 2017

BARBARA BENSON
97 FREEDOM LOOP
BELLEVUE ID 83313-5013

RE: License No. 37-8384 & 37-8660

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 208-736-3033.

Sincerely,

Corey Skinner
Southern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2017 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.

37-8384 & 37-8660

**BARBARA BENSON
97 FREEDOM LOOP
BELLEVUE ID 83313-5013**



**Denise Maline
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.

MEMORANDUM

Date: August 29, 2017
To: Permits 37-8384 and 37-8660 (Barbara Benson) Files
From: Jim Bitzenburg
Re: Information pertaining to the licensing of permits 37-8384 and 37-8660

Permit 37-8384

The field exam for permit 37-8384 was completed by Brian Block on June 5, 1992, and is the basis for the licensing of permit 37-8660. Mr. Block did not make a measurement of the flow from the well but did a theoretical flow rate analysis which yielded a potential flow rate of 0.24 cfs. During his field exam in 1992, he found 3.5 acres of irrigation but the permit is limited to 3.0 acres so that is the amount recommended. The recommended flow rate of 0.09 cfs should be retained (0.03 cfs x 3 acres per Beneficial Use Exam Rules on irrigation of less than 5.0 acres), but I believe the volume should be changed to 10.5 AF to reflect the current Field Headgate Requirements of IDWR (3.5 AF/year/acre).

Additionally, a domestic right (37-10696) is already appurtenant to the property which should be sufficient to cover the various domestic uses on Ms. Benson's ground including her home, a small apartment in the horse barn, and several automatic stock watering troughs in and around the barn. One horse and one goat were the only forms of livestock present on the day I visited the property. There is also only one tax lot parcel for Ms. Benson's land at this location. Therefore, I believe the domestic portion of permit 37-8384 should be dropped at licensing.

The irrigation season of use is being updated from the permitted 4/01 to 11/01 to the current 4/15 to 10/31.

During my field exam on August 29, 2017, I located the well within a well house attached to the horse barn, so the placement of the well for right 37-10696 has been moved in ArcMap to the actual location.

Permit 37-8660

In examining past aerial imagery, it appears that about 3.7 acres of irrigation has occurred on the property and with the 3.0 acres allotted to permit 37-8384, only 0.7 acre is available to be credited to permit 37-8660 at licensing. At the rate of 0.03 cfs/acre allowed under Beneficial Use Exam Rules for irrigation of less than five acres, the flow rate recommended should be 0.02 cfs (0.03 cfs x 0.7 acres). The theoretical flow rate analysis calculated by Mr. Block in 1992 allows sufficient rate of flow (0.24 cfs) for the domestic right 37-10696 (0.04 cfs), the first irrigation permit 37-8384 (0.09 cfs), and this permit (0.02 cfs). The recommended volume should be 2.45 AF (0.7 acres x 3.5 AF).

Permit 37-8660 is mitigated by the non-use of Big Wood River irrigation right 37-353H (apparently formerly designated as 37-353F) and I contacted Water District 37 Watermaster Kevin Lakey to confirm that it is still left in the Big Wood River as mitigation. He confirmed that it is, and that permit 37-8660 is shut off when 37-353H is no longer in priority.

The irrigation season of use is being updated from the permitted 4/15 to 10/15 to the current 4/15 to 10/31.

Bitzenburg, James

From: Kevin Lakey <watermanager@cableone.net>
Sent: Tuesday, June 20, 2017 7:10 AM
To: Bitzenburg, James
Subject: RE: Non-delivery of Mitigation right 37-353H

Jim,
353H is no longer diverted and is left in the Big Wood River and we do shut off 37-8660 when 353H would be off by priority.

Kevin Lakey
Water District 37

From: Bitzenburg, James [mailto:James.Bitzenburg@idwr.idaho.gov]
Sent: Thursday, June 15, 2017 8:31 AM
To: Kevin Lakey
Subject: Non-delivery of Mitigation right 37-353H

Kevin-

I am in the process of licensing permit 37-8660 (ground water, irrigation, 0.09 cfs, 6.0 acres, proof report attached) in the name of Barbara Benson. This permit was approved with the condition that Big Wood River right 37-353H (0.20 cfs formerly irrigation, now mitigation, also attached), would be left in the Big Wood River and no longer diverted. I am contacting you to get confirmation that 37-353H is no longer being diverted. It also appears that there is a condition on permit 37-8660 that it can only be diverted while 37-353H is in priority- I'm not sure how that can be confirmed.

This thing has been lurking out there since 1994 when Proof of Beneficial Use was filed, so just get back to me at your convenience.

It looks like the flooding issues are decreasing and hopefully things are going well for you.

Thanks for your help, Kevin.

Jim

Jim Bitzenburg
Water Resource Agent
Idaho Department of Water Resources
Southern Regional Office
Phone (208)-736-3033
Fax (208)-736-3037
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