

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 37-21742

PRIORITY: April 17, 2006

Maximum Diversion Rate: 0.70 CFS

It is hereby certified that:

BLAINE COUNTY SCHOOL DISTRICT #61 118 W BULLION ST HAILEY ID 83333

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 17, 2006, and has submitted Proof of Beneficial Use on December 29, 2016. 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 **DIVERSION RATE**
04/15 to 10/31 0.70 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW¼NE¼ Sec. 27, Twp 01S, Rge 21E, 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	
01S	21E	27	1.6	5.1	2.0														8.7

Total Acres: 8.7

CONDITIONS OF APPROVAL

1. Use of water under this right will 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. 130.
2. 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 cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
37-22205	Irrigation	0.13	30.5	8.7

The land that will no longer be irrigated under this right is located within the SWSW, Section 03, Township 02S, Range 21E (6 ac); NWNW, Sec. 10, Township 02S, Range 21E (2.7 ac), B.M.

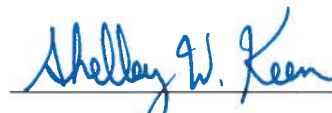
If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right shall be reduced by the same proportion as the reduction to the mitigation rights.

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3. At any time Right 37-22204 is being used to irrigate the lands in Sections 3 and 10, Township 2 South, Range 21 East, the 8.7 mitigation acres in the SWSW of Section 3 and the NWNW of Section 10, Township 2 South, Range 21 East, shall not be irrigated with water from the Little Wood Irrigation District or with water from any other water right appurtenant to said property as of the date of this approval.
4. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
5. If the Little Wood Irrigation District rights appurtenant to the place of use are sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
6. This right when combined with all other rights shall provide no more than a combined annual maximum diversion volume of 30.5 af at the field headgate for the place of use.
7. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
8. Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point of diversion in accordance with Department specifications.
9. The right holder shall maintain and acceptable measuring device at the authorized point of diversion, in accordance with Department specifications.
10. This right is for the use of trust water, and it is subject to review 20 years after its initial approval of February 7, 2007, to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
11. Use of water pursuant to this right is either nonconsumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right. Regulation of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required.

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 8th day of August, 2017.

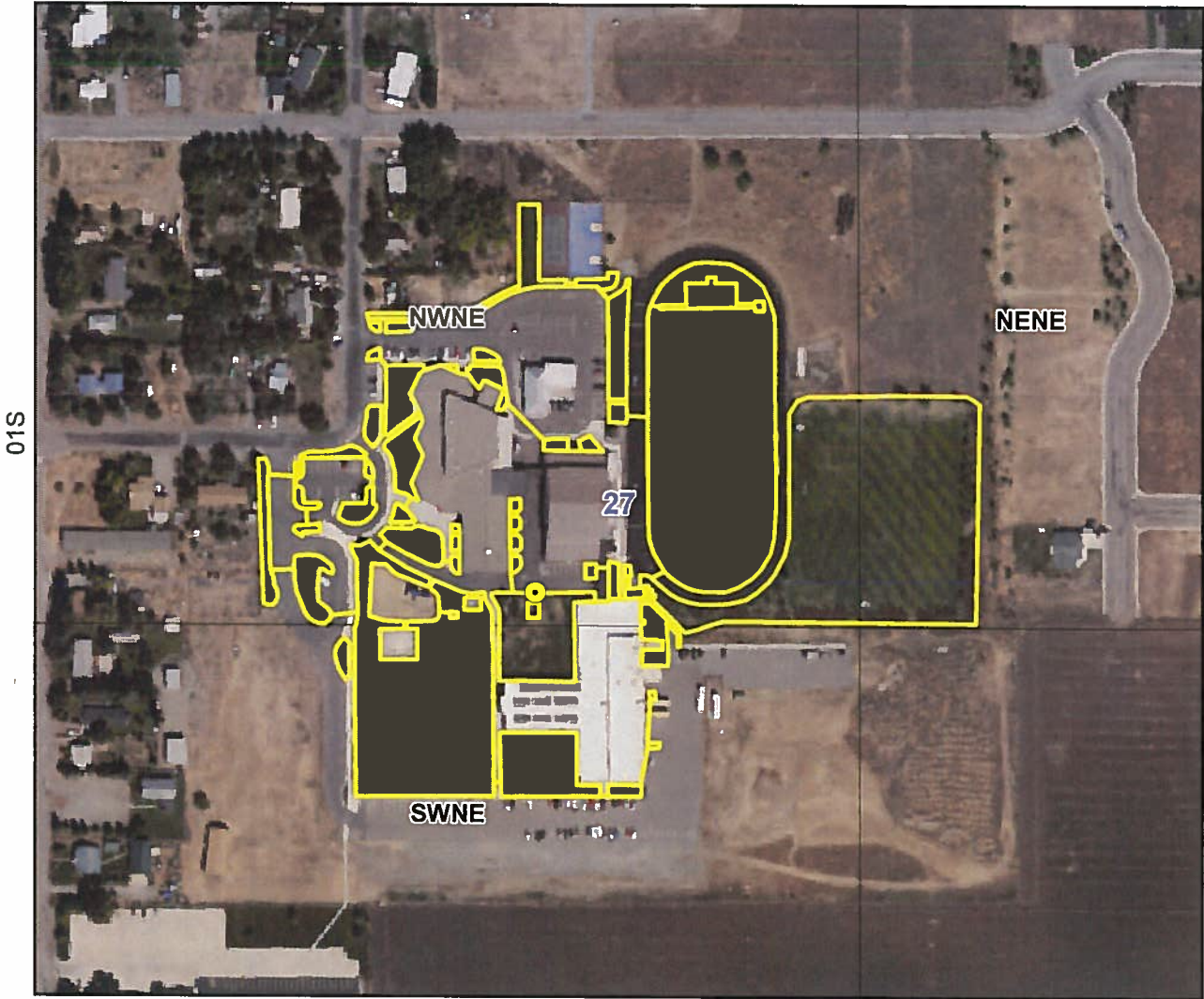


SHELLEY W. KEEN
Water Rights Section Manager

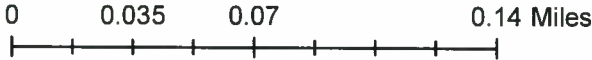
State of Idaho
Department of Water Resources
Attachment to Water Right License
37-21742

This map depicts the IRRIGATION 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.

21E



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





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

August 11, 2017

BLAINE COUNTY SCHOOL DISTRICT #61
118 W BULLION ST
HAILEY ID 83333

RE: License No.37-21742

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,

Pamela Skaggs, Water Rights Supervisor
Water Right Permits Section

Enclosure(s)

cc: SPF WATER ENGINEERING LLC
WATER DISTRICT #130

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 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. 37-21742

**BLAINE COUNTY SCHOOL DISTRICT #61
118 W BULLION ST
HAILEY ID 83333**

**SPF WATER ENGINEERING LLC
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706**

**WATER DISTRICT #130
NATHAN ERICKSON
650 ADDISON AVE W STE 500
TWIN FALLS ID 83301**



**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

DATE: August 8, 2017
TO: Water Right File 37-21742
FROM: Shelley W. Keen *SWK*
RE: Approval condition no. 3 on License 37-21742

Approval condition no. 3 on License 37-21742 states:

At any time Right 37-22204 is being used to irrigate the lands in Sections 3 and 10, Township 2 South, Range 21 East, the 8.7 mitigation acres in the SWSW of Section 3 and the NWNW of Section 10, Township 2 South, Range 21 East, shall not be irrigated with water from the Little Wood Irrigation District or with water from any other water right appurtenant to said property as of the date of this approval.

This condition is unique, and it deserves some explanation. Water Right 37-21742 authorizes the diversion of ground water for 8.7 acres of supplemental irrigation. Because Right 37-21742 is for a new consumptive use in the ESPA moratorium area, mitigation was required. To mitigate, Blaine County School District #61 acquired a portion of Right 37-2657B, also a supplemental ground water right, and stopped using it.¹ IDWR calls this approach "mitigation by non-use". Subsequent to issuance of Permit 37-21742, Right 37-2657B was split by ownership. The portion acquired by Blaine County School District #61 for mitigation is now Right 37-22205, and the remainder is Right 37-22204.

If the entire places of use for Rights 37-22204 and 37-22205 are irrigated exclusively from the primary water source, Little Wood Irrigation District, the use of water pursuant to Right 37-21742 at its authorized place of use is mitigated by the non-use of Right 37-22205. However, when water diverted pursuant to Right 37-22204 is being commingled with a declining supply of Little Wood Irrigation District Water, special care is needed to ensure the required mitigation is accomplished. The concern is that in order to achieve a full irrigation of the places of use for Rights 37-22204 and 37-22205, the owner of Right 37-22204 will shift the Little Wood Irrigation District Supply onto the 8.7 mitigation acres and divert more ground water than was historically used on the acres remaining under Right 37-22204 to make up the deficit there. The result of such a practice would be to negate the mitigation requirement, as the places of use for Rights 37-22204 and 37-22205 and the place of use for Right 37-21742 would all be fully irrigated. Approval condition no. 3 on License 37-21742 eliminates the concern by stating that if Right 37-22204 is being used, the 8.7 acres mitigation acres within the place of use for Right 37-22205 cannot be irrigated from the Little Wood Irrigation District or any other right currently appurtenant to the 8.7 acres. Irrigation of the 8.7 acres when the Little Wood Irrigation District supply is short could occur in the future if another supplemental water supply were to be acquired.

Permit 37-21742 required the owner of Right 37-22204 to notify the watermaster of Water District 130 prior to diverting water pursuant to Right 37-22204. Approval condition no. 3 on License 37-21742 does not contain the notification requirement because the Department should not be using an approval issued to Blaine County School District #61 to compel a different entity to take some action.

¹ Permit 37-21742 was for 20 acres of supplemental irrigation, so Blaine County School District #61 acquired a 20-acre portion of Right 37-2657B. License 37-21742 is for the 8.7 acres of supplemental irrigation actually developed. Consequently, License 37-21742 requires only 8.7 acres of mitigation by non-use.