

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-33113

Amended**Amended****PRIORITY:** September 29, 2008

Maximum Diversion Rate: 0.08 CFS

Maximum Diversion Volume: 13.1 AF

It is hereby certified that:

ROBERT FLOOD 126 W THORNBERRY CT BOISE ID 83702

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated September 29, 2008, and has submitted Proof of Beneficial Use on September 08, 2016. An examination confirms water is diverted from:

SOURCE:
GROUND WATER

TRIBUTARY:

and a water right has been established as follows:

BENEFICIAL USE
IRRIGATION

PERIOD OF USE
03/01 to 11/15

DIVERSION RATE
0.08 CFS

ANNUAL DIVERSION VOLUME
13.1 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER L2 (NW¼NE¼) Sec. 5, Twp 01N, Rge 01W, B.M. ADA 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	01W	5		2.9 L 2															2.6

Total Acres: 2.9

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
2. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
3. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-33113

Amended

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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 26th day of January, 2017.



NICK MILLER
Western Regional Manager



State of Idaho
Department of Water Resources

Attachment to Amended Water Right License 63-33113

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.



0 0.035 0.07 0.14 Miles

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



BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF LICENSE	)	
NOs. 63-33113 AND 63-33114	)	
IN THE NAME OF	)	PRELIMINARY ORDER GRANTING
ROBERT FLOOD	)	PETITION FOR RECONSIDERATION
_____	)	

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of two water right licenses, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On April 30, 2009, the Department issued Permits 63-33113 and 63-33114 (permits) authorizing Robert Flood (permit holder) to develop two rights to divert up to 0.22 cfs from groundwater in Section 5, Township 1 North, Range 1 West, B.M., Ada County, for domestic use in two homes and to irrigate a total of 7 acres.
2. On February 22, 2012 the Department approved a request to extend the time to file proof of beneficial use until May 1, 2017 for both permits.
3. On September 8, 2016, the Department received proof of beneficial use statements for the permits.
4. On September 22, 2016, a Department field examiner (examiner) prepared a field examination report to document the beneficial use of water developed in accordance with the permit. The examiner reported that the permit holder had diverted groundwater and irrigated 5.2 acres in accordance with the permits.
5. On December 29, 2016 the Department issued Water Right Licenses 63-33113 and 63-33114 (licenses) confirming the right to divert up to 11.7 acre feet per year each from groundwater in Govt. Lot 2, Section 5, Township 1 North, Range 1 West, B.M., Ada County, to irrigate 2.6 acres under each permit.
6. On January 5, 2017, the Department received a petition for reconsideration from Robert Flood requesting amended licenses to confirm the development of a right to irrigate an additional 0.30 acres under each license. The right holder asserted the examiner's report incorrectly depicts the irrigated place of use and the sprinkler system used to irrigate the place of use at the time proof was filed.
7. The examiner who conducted the water right examination for the license reviewed the documentation submitted by the right holder and acknowledged an error in her reporting of the beneficial use developed in accordance with the permits. On January 26, 2017, the examiner submitted a memorandum in which she agrees that the "an additional approximately 0.6 acres are under irrigation for the western lots beyond the amount calculated previously ".

CONCLUSIONS OF LAW

1. The licenses were issued as preliminary orders of the Department pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
2. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

3. Idaho Code § 67-5243(3) provides as follows:

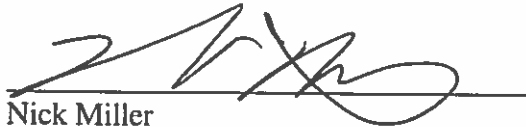
Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the service date of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition.

4. The Department should grant the petition for reconsideration of the order pursuant to Idaho Code § 67-5243(3).

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the orders issuing Water Right Licenses 63-33113 and 63-33114 is **GRANTED** pursuant to Idaho Code § 67-5243(3) and IDAPA 37.01.01.730.02.a.

Dated this 26th day of January, 2017.



Nick Miller
Manager, IDWR Western Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 26, 2017

ROBERT FLOOD
126 W THORNBERRY CT
BOISE ID 83702

RE: License No. 63-33113

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)334-2190.

Sincerely,

Nick Miller

Western Regional Manager

Enclosure(s)

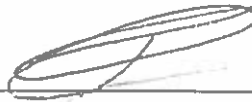
CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2017 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved License and Order Granting Petition for Reconsideration) to the person(s) listed below:

RE: WATER RIGHT NO.

63-33113

**ROBERT FLOOD
126 W THORNBERRY CT
BOISE ID 83702**

A handwritten signature in black ink, appearing to read 'Rachel Neely', is written over a horizontal line.

**Rachel Neely
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.