

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-12202

PRIORITY: April 17, 1995

Maximum Diversion Rate: 0.20 CFS
Maximum Diversion Volume: 42.8 AF

It is hereby certified that:

KEITH S ALBI 9340 W PEBBLE BROOK LN GARDEN CITY ID 83714 And
LISA ALBI 9340 W PEBBLE BROOK LN GARDEN CITY ID 83714

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 17, 1995, and has submitted Proof of Beneficial Use on May 29, 1996. An examination confirms water is diverted from:

SOURCE:
UNNAMED DRAIN

TRIBUTARY:
BOISE RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
AESTHETIC	01/01 to 12/31	0.20 CFS	42.8 AF

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED DRAIN L7 (NW¼SE¼) Sec. 23, Twp 04N, Rge 01E, B.M. ADA County

PLACE OF USE: AESTHETIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01E	23														X L 7			

CONDITIONS OF APPROVAL

1. Place of use is located within Lot 27, Blk. 1, The Woods at Riverside Subdivision.
2. Aesthetic use is for a waterfall.
3. 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. 63.
4. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide suitable control of the diversion.
5. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
6. The Director retains jurisdiction of this right to require streamflow augmentation or other action determined to be appropriate to protect prior surface water or ground water rights. Such stream flow augmentation or other action will be required only upon a determination of need and applicability by the Director.

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 15th day of December, 2016.



SHELLEY W. KEEN
Water Rights Section Manager

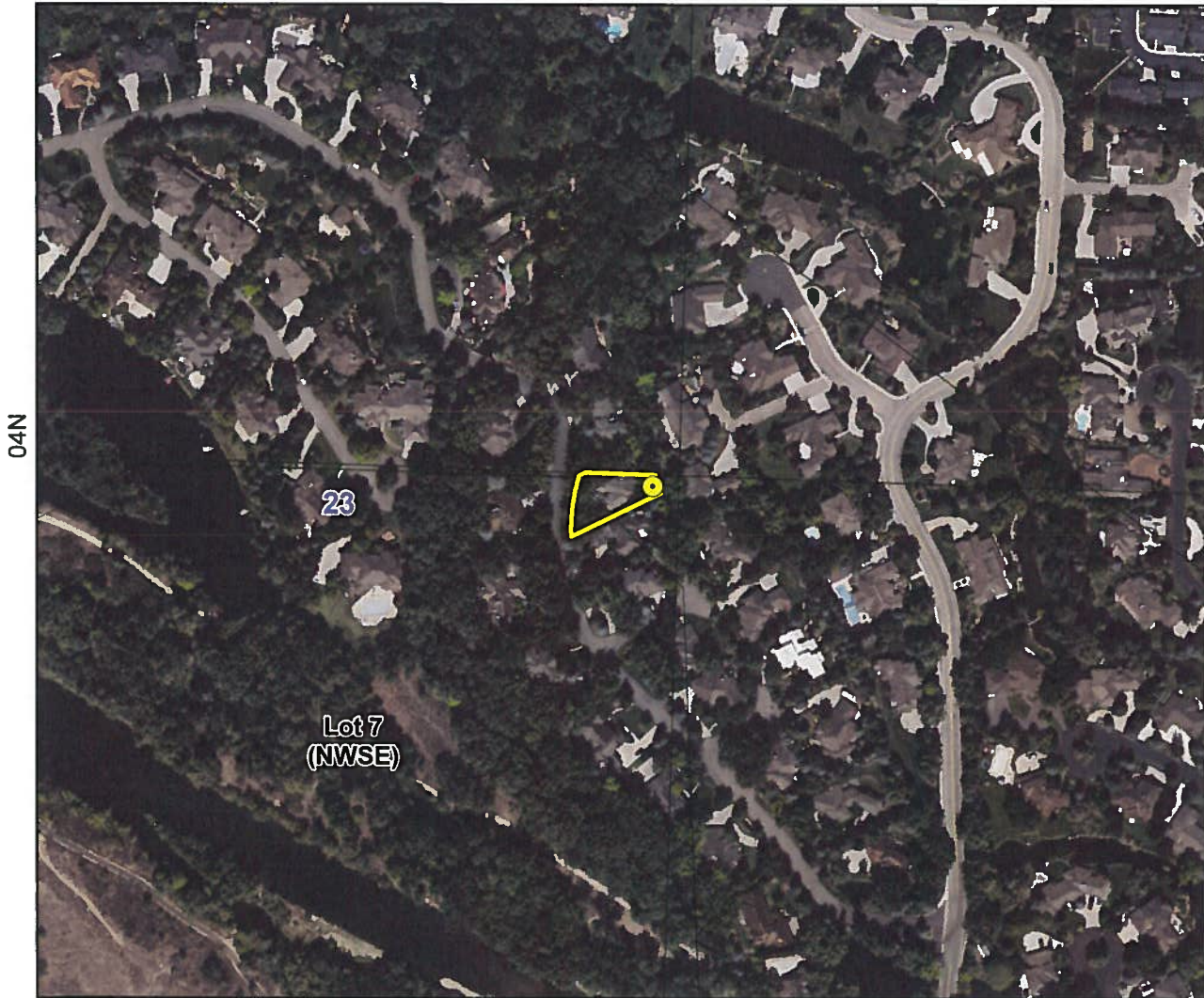
State of Idaho
Department of Water Resources

Attachment to Water Right License

63-12202

This map depicts the AESTHETIC 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.

01E



0 0.035 0.07 0.14 Miles

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



STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
 PERMIT NO. 63-12202 IN THE NAME OF) **ORDER GRANTING PETITION**
 JOE CESTARO) **FOR RECONSIDERATION**
 _____)

This matter having come before the Department of Water Resources (Department) as a petition to reconsider a preliminary order voiding a permit, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On November 23, 2016, the Department mailed Joe Cestaro (permit holder) and Keith S. Albi and Lisa Albi (property owners) a packet containing a Preliminary Order (order) voiding Permit No. 63-12202 (permit). The Department issued the order due to non-compliance with the following condition:

Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.

2. The Department issued the order as a preliminary order of the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).

3. 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.

4. On November 25, 2016, the Department received a petition for reconsideration of the order (petition) from the property owners on behalf of the permit holder. In the petition, the property owners requested the order voiding the permit be withdrawn.

5. On November 28, 2016, Department staff informed the property owners that they would need to either install a lockable controlling works on the diversion or request that condition requiring the lockable controlling works be waived. Staff also suggested the property owners seek the advice of the watermaster of Water District 63 regarding a possible waiver of the condition.

6. On December 14, 2016, the watermaster informed the Department that the water delivery system for the permitted use is designed to allow him to lock the power boxes in the off position if regulation were required. He suggested the Department waive the lockable device requirement and replace it with two conditions allowing the Department to require a more specific lockable controlling works and a measurement device in the future, if necessary.

CONCLUSIONS OF LAW

1. The petition was filed timely.
2. The Department should grant the petition to reconsider the order.
3. Rule 35.02.d of the Department's Beneficial Use Examination Rules (IDAPA 37.03.02.035.02.d) authorizes the Department to waive or modify a measuring device requirement or a lockable device requirement on a permit.
4. The Department should withdraw the order and modify the permit condition to state that the Department may require the right holder to install a lockable controlling works and a measurement device in the future.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order voiding Permit No. 63-12202 is **GRANTED** pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). A water right license should be **ISSUED** for Permit No. 63-12202 with the following conditions:

When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.

Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide suitable control of the diversion.

Dated this 15th day of December, 2016.



Shelley Keen, Manager
Water Rights Section



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

December 15, 2016

KEITH S ALBI
LISA ALBI
9340 W PEBBLE BROOK LN
GARDEN CITY ID 83714

RE: License No. 63-12202

**Issuance of a License & and Order Granting a Petition for Reconsideration
Withdrawing an Order Voiding a Permit**

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 and order granting a petition for reconsideration withdrawing the order voiding a permit are both PRELIMINARY ORDERS issued by the Department pursuant to Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01). They can and will become final orders 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

Enclosure(s)

c: WATER DISTRICT #63

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2016, I mailed true and correct copies, postage prepaid, of the foregoing PRELIMINARY ORDERS (Approved License) & (Order Granting Petition for Reconsideration) to the person(s) listed below:

RE: WATER RIGHT NO.

63-12202

**KEITH S ALBI
9340 W PEBBLE BROOK LN
GARDEN CITY ID 83714**

**LISA ALBI
9340 W PEBBLE BROOK LN
GARDEN CITY ID 83714**

**WATER DISTRICT #63
REX BARRIE
PO BOX 767
STAR ID 83669-0767**



**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.