

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 94-07560

PRIORITY: April 26, 2010

Maximum Diversion Rate: 0.03 CFS

It is hereby certified that:

DON MACDONALD 1526 WOODLAND DR DALTON GARDENS ID 83815 And/Or
RICK JOST 1526 WOODLAND DR DALTON GARDENS ID 83815

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 26, 2010, and has submitted Proof of Beneficial Use on November 28, 2016. An examination confirms water is diverted from:

SOURCE:
COEUR D ALENE RIVER

TRIBUTARY:
COEUR D ALENE LAKE

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/15 to 10/31	0.03 CFS

LOCATION OF POINT(S) OF DIVERSION:

COEUR D ALENE RIVER L2 (SW $\frac{1}{4}$ SE $\frac{1}{4}$) Sec. 27, Twp 50N, Rge 02E, B.M. SHOSHONE 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	
50N	02E	27															1.0 L 2		1.0

Total Acres: 1

CONDITIONS OF APPROVAL

1. Water shall not be diverted under this right when flows in the Coeur d'Alene River are below minimum flow amounts as defined by Right 94-7341. The right holder shall be responsible for monitoring the daily flow of the Coeur d'Alene River using real-time data and shall cease diverting water when flows in the Coeur d'Alene River are below established minimum flow amounts. Unless otherwise specified by the Director of the Department of Water Resources, data from the U.S. Geological Survey Cataldo gauging station, No. 12413500, may be used for purposes of determining the daily flow amounts.
2. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
3. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
4. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
5. This right does not grant any right-of-way or easement across the land of another.

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 7th day of December, 2016.

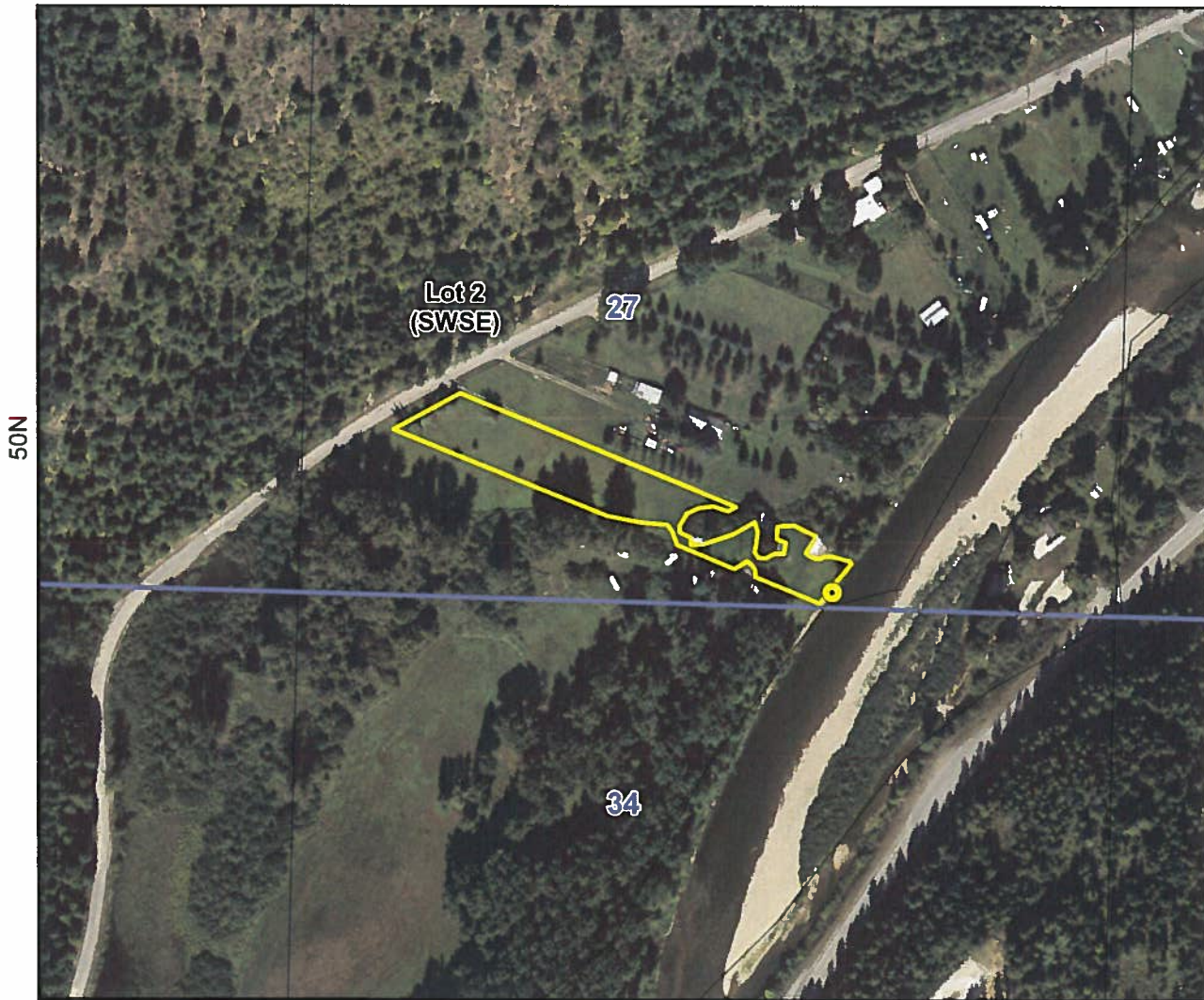


SHELLEY W. KEEN
Water Rights Section Manager

State of Idaho
Department of Water Resources
Attachment to Water Right License
94-7560

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.

02E



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

0 0.035 0.07 0.14 Miles



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

IN THE MATTER OF PERMIT	)	
NO. 94-7560 IN THE NAME OF	)	PRELIMINARY ORDER
DONALD MAC DONALD AND	)	REINSTATING A PERMIT
RICK YOST	)	
_____	)	

This matter having come before the Idaho Department of Water Resources (“Department”), the Department finds, concludes and orders:

FINDINGS OF FACT

1. On February 13, 2014, the Department issued Permit No. 94-7560 (“permit”) in the names of Donald MacDonald and Rich Yost with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted to the Department on or before February 1, 2015. The permit bore the priority date of April 26, 2010.
2. The Department inadvertently failed to mail a notice to the permit holder sixty (60) days prior to the proof due date, as required pursuant to Section 42-204, Idaho Code.
4. On November 9, 2016, the Department notified the permit holder by certified mail that proof of beneficial use was due by January 1, 2017, and instructed the permit holder of the steps to be taken to submit the proof or a Request for Extension of Time (“extension request”).
5. On November 28, 2016, the permit holder filed a Statement of Completion for submitting proof of beneficial use (“proof”) with the appropriate license examination fee.

CONCLUSIONS OF LAW

1. Section 42-204, Idaho Code, provides as follows:

Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date;

2. Section 42-218a, Idaho Code, provides in pertinent part, as follows:

A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said

lapsing shall be sent by the department to the applicant at the address of record by regular mail . . .

3. Section 42-218a (3), Idaho Code, provides as follows:

The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

4. The permit lapsed when proof of beneficial use was not submitted by the July 1, 2015 deadline.

5. The Department erred by failing to comply with the 60-day notice provision of Section 42-204, Idaho Code, and by failing to send notice of the permit lapsing pursuant to Section 42-218a, Idaho Code.

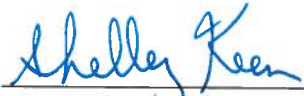
6. The permit holder has provided a reasonable showing why the permit should be reinstated by submitting acceptable proof of beneficial use on November 8, 2016.

7. The Department should reinstate Permit No. 94-7560 with no change in the priority date.

ORDER

IT IS HEREBY ORDERED that Permit No. 94-7560 is reinstated with no advance of the original priority date.

Dated this 7th 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 7, 2016

DON MACDONALD
RICK JOST
1526 WOODLAND DR
DALTON GARDENS ID 83815

RE: License No. 94-7560

Issuance of License

Dear Water Right Holder(s):

Enclosed is an order that reinstated the permit since proof and the license examination fee were submitted after the proof due date of February 1, 2015. Please note that the priority date for this permit has not been advanced due to Department failure to notify you sixty (60) days prior to the proof due date that proof of beneficial use was due, as provided in section 42-204, Idaho Code.

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 the order reinstating the permit are PRELIMINARY ORDERS issued by the Department pursuant to section 67-5243, Idaho Code. 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)

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2016, I mailed true and correct copies, postage prepaid, of the foregoing PRELIMINARY ORDERS (Preliminary Order Reinstating a Permit) and (Approved License) to the person(s) listed below:

RE: WATER RIGHT NO.

94-7560

**DON MACDONALD
1526 WOODLAND DR
DALTON GARDENS ID 83815**

**RICK JOST
1526 WOODLAND DR
DALTON GARDENS ID 83815**



**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.