

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-32229

PRIORITY: December 28, 2005

Maximum Diversion Volume: 690.0 AF

It is hereby certified that:

LAGUNA POINTE HOA INC 9601 W STATE ST #203 BOISE ID 83714

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated December 28, 2005, and has submitted Proof of Beneficial Use on February 17, 2011. An examination confirms water is diverted from:

SOURCE:
GROUND WATER

TRIBUTARY:
BOISE RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL DIVERSION VOLUME</u>
AESTHETIC STORAGE	01/01 to 12/31	690.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER L3 (NE¼NW¼) Sec. 21, Twp 04N, Rge 01E, B.M. ADA County

GROUND WATER L2 (NW¼NE¼) Sec. 21, Twp 04N, Rge 01E, B.M. ADA County

PLACE OF USE: AESTHETIC STORAGE

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	21		X L 2	X		X	X L 4		X									
04N	01E	21			X L 2		X L 3			X L 3									

CONDITIONS OF APPROVAL

1. The two ponds established by the storage of water under this right shall not exceed a total capacity of 690 af or a total surface area of 43.3 acres.
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 divert 144.3 af into the pond(s) for aesthetic storage use pursuant to water right 63-144A and Transfer 73959 each year, or the same 144.3 af under Right 63-144A shall remain undiverted in the Boise River and be identified as mitigation by non-use in the water right record. If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on another place of use, or is not available due to a shortage of water, a priority call or for any other reason, the right holder shall immediately implement an alternative mitigation plan acceptable to the department, such as rental of water from the Water Supply Bank or the Boise Rental Pool, or acquisition and transfer of private rights, or the right holder shall fill-in the ponds to halt depletion of groundwater.

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Water Right License
WATER RIGHT NO. 63-32229

1. 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 by non-use.

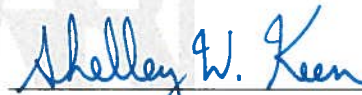
Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
63-144A	Aesthetic Storage Diversion to Storage 2.03	NA	144.3	NA

The aesthetic storage use under Right 63-144A is located within the Government Lots 2 (W1/2NE), 3 (E1/2NW) and 4 (NWNW), Section 21, Township 04N, Range 01E, B.M.

2. The right holder shall obtain authorization from the Department of Water Resources prior to changing mitigation under Right 63-144A from mitigation by non-use to the alternative mitigation of delivered aesthetic storage water as described in Transfer 73959.
3. Water stored under this right is subject to fluctuations of the water table caused by changes in the flow of local streams and by diversions under prior ground water rights. This right does not guarantee the maintenance of any particular ground water level.
4. Place of use is within the Coast to Coast Subdivision.

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 16th day of August, 2016.

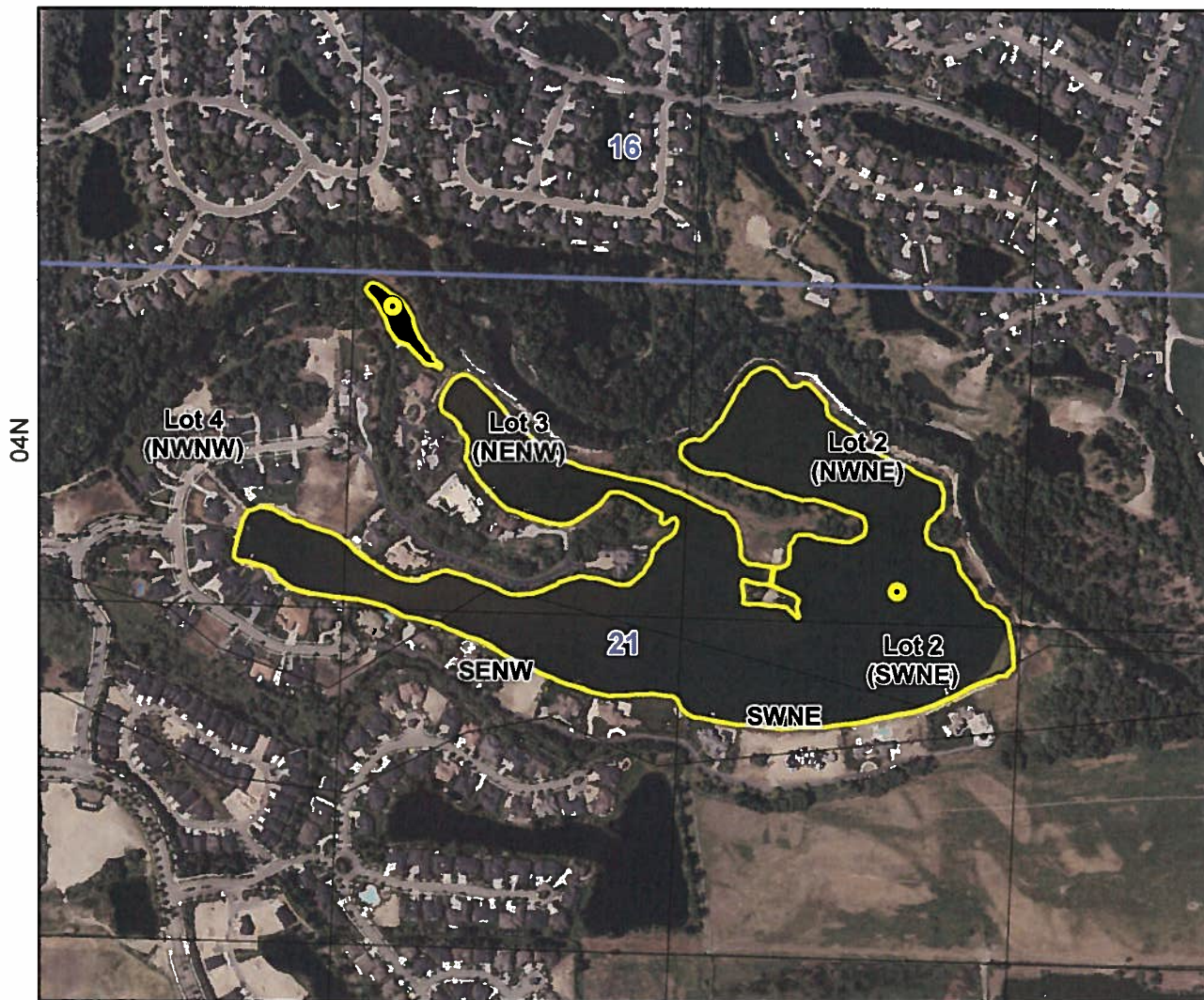


SHELLEY W. KEEN
Water Rights Section Manager

State of Idaho
Department of Water Resources
Attachment to Water Right License
63-32229

This map depicts the AESTHETIC STORAGE 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



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

0 0.075 0.15 0.3 Miles





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

August 17, 2016

LAGUNA POINTE HOA INC
9601 W STATE ST #203
BOISE ID 83714

RE: License No. 63-32229

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

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2016, 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.

63-32229

**LAGUNA POINTE HOA INC
9601 W STATE ST #203
BOISE ID 83714**



**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: July 13, 2016

To: Water Right 63-32229

From: Steven Visosky

Re: Licensing of Water Right 63-32229

This memo is to recap a telephone conversation with Brent Giesler of the Laguna Pointe HOA in late October/early November of 2015. Unfortunately, I did not record the exact date of the phone conversation.

On October 22, 2015, the Department sent Laguna Pointe HOA a letter stating that it determined the portion of water right 63-144A described as aesthetic storage would need to be changed to mitigation by non-use and would be left in the Boise River unused until such time that the construction of the Graham Gilbert headgate and diversion was completed. In this telephone conversation that occurred after receiving this letter, Brent Giesler acknowledged that the Department would be moving forward with this change with the water right 63-144A in order to license water right 63-32229.

It should be noted that Brent Giesler expressed concern that Laguna Pointe HOA would "loose" this portion of the water right left unused in the river for mitigation. Department staff confirmed that at this point in time with the current rules, the portion of mitigation by non-use left in the river could be changed back to the original intended use of aesthetic storage being diverted into the Graham Gilbert Ditch. Department staff also confirmed that an advertised transfer would not be required to make the change back to the original intended use of aesthetic storage.



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

October 22, 2015

LAGUNA POINTE HOA INC
9601 W STATE STREET 203
BOISE ID 83714

RE: Water Appropriation Permit No. 63-32229.

Dear Laguna Ponte HOA,

On October 15, 2015, the Department received your plan to improve the Graham Gilbert Ditch with the request of 24 months to accomplish this task. The Laguna Pointe ponds are required to have the aesthetic storage supplied by a portion of water right 63-144A to cover the evaporation losses from the ponds. Water cannot be stored in the ponds unless water from 63-144A is available to be diverted through the Graham Gilbert Ditch into the ponds **OR** the aesthetic storage portion of water right 63-144A is left unused in the Boise River to mitigate the evaporation losses of the ponds. In order to give you the time needed to repair the ditch and headgate and to get this permit licensed, it has been determined that the portion of water right 63-144A described as aesthetic storage will be changed to mitigation by non-use and will be left in the Boise River unused until such time as you can complete the construction of the Graham Gilbert headgate and diversion.

This will allow the Department to license permit 63-32229 giving you the ability to legally have water in your ponds while you are working on the Graham Gilbert Ditch. Once construction of the Graham Gilbert Ditch is completed, you will need to file the proper paperwork to move water right 63-144A back to its original use and to be conveyed through the Graham Gilbert Ditch. The license will be conditioned to reflect that the mitigation use from 63-144A will be used to mitigate the evaporation losses from the Laguna Pointe ponds by being left in the river and not used.

If you have any questions in regard to this matter, please do not hesitate to contact me.

Sincerely,

Steven Visosky
Water Resource Agent
Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise ID 83720-0098
Phone (208) 287-4933
steven.visosky@idwr.idaho.gov

October 15, 2015

Idaho Department of Water Resources
322 East Front Street
Boise, ID 83720

Re: Water Appropriation Permit No. 63-32229

Dear Dan and Steven,

After review of the options previously described in our letter dated September 14, 2015, the Laguna Pointe Homeowner's Association is electing option two.

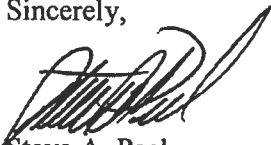
Option Two is to improve the Graham-Gilbert Ditch with a lockable head gate and flow measuring device. The ditch could be relocated within the same quarter section without a change in the water right. This option would also not require a change in the water right or public notice. If the diversion is relocated the new location and measuring device needs to be approved by the water master. The water master may have additional requests as well.

Since we are still accepting and reviewing proposals for the aforementioned options of the Graham Gilbert Ditch, we have not decided exactly which option we are going choose. TO Engineers is actively working with the various agencies to determine their requirements as well.

We believe we can complete either option under Option Two within 24 months from the date of this letter, but are working on starting early 2016 if all approvals can be attained and water levels are cooperative.

Please let me know if this is acceptable or if you have any other questions.

Sincerely,



Steve A. Peel
President
Laguna Pointe HOA
208-484-4455



State of Idaho

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 14, 2015

LAGUNA POINTE HOA INC
9601 W STATE STREET 203
BOISE ID 83714

RE: Water Appropriation Permit No. 63-32229, extension of time to submit a plan

Dear Laguna Ponte HOA,

On September 14, 2015, IDWR received your request to extend the required date to submit a plan to satisfy the conditions of permit 63-32229. This letter restated the options that were discussed at our September 10th meeting along with a requested extension until October 15, 2015 to submit a plan. We understand that your plan may require engineers and/or contractors to assist you with dates and IDWR agrees that October 15, 2015 is an acceptable date.

IDWR will withhold further action on this permit until October 15, 2015. If IDWR does not receive a response by October 15, 2015, it will be assumed that you are not interested in pursuing a water right license, and action will be taken to void your permit.

If you have any questions in regard to this matter, please do not hesitate to contact me.

Sincerely,

Steven Visosky
Water Resource Agent
Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise ID 83720-0098
Phone (208) 287-4933
Fax (208) 287-6700
steven.visosky@idwr.idaho.gov

September 14, 2015

Idaho Department of Water Resources
322 East Front Street
Boise, ID 83720

Re: Water Appropriation Permit No. 63-32229

Dear Dan and Steven,

Thank you again for taking the time to meet last Thursday in our response to the letter dated August 14, 2015, to help us better understand the issues regarding permit no. 63-32229. The following is a brief summary of the three options discussed for Laguna Pointe HOA to satisfy permit no. 63-32229 conditions:

One option is to mitigate the 144.3 af that was to be diverted into the ponds by leaving the water in the Boise River. This will require a written statement from the HOA and completed mitigation plan evaluation checklist requesting that storage component on water right 63-144A be changed to mitigation and left in the river and not diverted. It is understood that this is not a transfer of water right and does not require public comment. It is also understood that if in the future the water right holders wanted to divert this water into the pond they could change the use back through the same process without requiring a transfer or public comment provided no other changes are made to the water right.

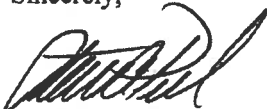
Option two is to improve the Graham-Gilbert Ditch with a lockable head gate and flow measuring device. The ditch could be relocated within the same quarter section without a change in the water right. This option would also not require a change in the water right or public notice. If the diversion is relocated the new location and measuring device needs to be approved by the water master. The water master may have additional requests as well.

Option three is to change the water right to include the old breach as an additional point of diversion. The Water Master has indicated to IDWR staff that he would require that all outlets from the pond then be improved with measuring devices. This would constitute a water right transfer and require public comment.

Due to several variables to analyze which option will best satisfy Laguna Pointe's conditions requirements, I respectfully request until October 15th to submit a plan to the Idaho Department of Water Resources. This should give us sufficient time to work with our engineers and contractors to complete the final plan submission.

Please let me know if this is acceptable or if you have any other questions.

Sincerely,



Steve A. Peel
President
Laguna Pointe HOA



State of Idaho

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 14, 2015

LAGUNA POINTE HOA INC
9601 W STATE STREET 203
BOISE ID 83714

RE: Water Appropriation Permit No. 63-32229

Dear Laguna Ponte HOA,

On July 8th, 2015, IDWR staff met Laguna Pointe HOA board members Steve Peel and Brent Giesler concerning the ponds related to permit 63-32229. The purpose of the site visit was to verify the conditions of approval with the permit for the licensing process. It became evident at the site visit that one of the conditions of the permit was not being fulfilled. Condition #4 of permit 63-32229 states the following:

"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 divert 144.3 af into the pond(s) pursuant to water right 63-144A and Transfer 73959 each year.** If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on another place of use, or is not deliverable due to a shortage of water, a priority call or for any other reason, the right holder shall immediately implement an alternative mitigation plan acceptable to the department, such as rental of water from the Water Supply Bank or the Boise Rental Pool, or acquisition and transfer of private rights, or the right holder shall fill in the ponds to halt depletion of groundwater."

Transfer 73959 mentioned in the above condition, references permit 63-32229 along with water right 63-144A. For informational purposes, water right 63-144A, currently owned By Laguna Pointe HOA, as modified by transfer No. 73959, includes the following conditions:

#9 This right authorizes an annual diversion volume of 144.3 af for aesthetic storage as replacement for evaporation losses from aesthetic ponds authorized under Right 63-32229.

#2. 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).

#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 for the delivery of water through the Coast 2 Coast Subdivision to other users of the common conveyance system.

The source of water currently listed on permit 63-32229 is ground water. The source of water for water right 63-144A is the Boise River. The evaporative losses from the ponds under permit 63-32229 are to be replaced by a diversion from the Boise River from water right 63-144A, not from ground water. During our site visit, it was observed that the Graham Gilbert Ditch, the conveyance ditch from the Boise River to the ponds, was not properly diverting water from the Boise River as described in the water right conditions. Based on our observation of the Graham Gilbert Ditch, **conditions of permit 63-32229 have not been met.**

Two options are available to resolve the problem with the condition that has not been met. Laguna Pointe HOA can mitigate the 144.3 af that was to be diverted into the ponds by leaving the water in the Boise River through non-use. This mitigation from non-use would replace the ground water currently being used for the evaporative losses of the ponds. This alternative mitigation plan would satisfy the condition of approval. In order to achieve this process, we will need a written statement from your organization requesting that storage component on water right 63-144A be changed to mitigation and left in the river and not diverted. This request should be signed by a representative of the board and if an approval of the board is necessary, then it would be a good idea to include the minutes of the board meeting showing that the board agreed with the decision.

A second option is to complete the work necessary to properly divert 144.3 af into the ponds pursuant to water right 63-144A and transfer 73959 each year. This option will require a detailed plan with acceptable dates and deadlines that verifies Laguna Pointe is actively working towards completion of the project.

IDWR will withhold further action on this permit for 30 days from the date of this letter in order to allow the home owners association time to respond. If IDWR does not receive a response by September 14, 2015, it will be assumed that you are not interested in pursuing a water right license, and action will be taken to void your permit. If you need additional time to respond, please contact me to discuss your options.

If you have any questions in regard to this matter, please do not hesitate to contact me.

Sincerely,



Steven Visosky
Water Resource Agent
Idaho Department of Water Resources
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