

State of Idaho  
Department of Water Resources  
**Water Right License**  
WATER RIGHT NO. 63-32601

PRIORITY: December 23, 2015

Maximum Diversion Volume: 74.0 AF

It is hereby certified that:

BEL AIR EAGLE LLC 2500 N DALLAS PKWY STE 424 PLANO TX 75093

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 09, 2007, and has submitted Proof of Beneficial Use on December 23, 2015. An examination confirms water is diverted from:

**SOURCE:** GROUND WATER

and a water right has been established as follows:

|                              |                             |                                           |
|------------------------------|-----------------------------|-------------------------------------------|
| <u><b>BENEFICIAL USE</b></u> | <u><b>PERIOD OF USE</b></u> | <u><b>ANNUAL<br/>DIVERSION VOLUME</b></u> |
| AESTHETIC STORAGE            | 01/01 to 12/31              | 74.0 AF                                   |

**LOCATION OF POINT(S) OF DIVERSION:**

GROUND WATER L1 (NE¼NE¼) Sec. 14, Twp 04N, Rge 01W, 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 | 01W | 14  | X  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     | L1 |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |

**CONDITIONS OF APPROVAL**

- 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.
- The one (1) pond established by the storage of water under this right shall not exceed a total capacity of 74 acre-feet or a total surface area of 3.7 acres.
- Per Transfer 73833, Right 63-32789 authorizes the diversion of 0.07 cfs and 13.0 af of water to ground water recharge to offset evaporation losses from the pond authorized by this right. 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 an acquisition and transfer of private rights, or the right holder shall fill in the ponds to halt depletion of ground water.

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4. 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.
5. Water bearing zone to be appropriated is 0 to 30 feet.

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 29<sup>th</sup> day of July, 2016.



Nick Miller  
Manager, IDWR Western Region

State of Idaho  
Department of Water Resources  
**Attachment to Water Right License**  
63-32601

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.

01W



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

0 0.035 0.07 0.14 Miles





**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](http://www.idwr.idaho.gov)

**C. L. "BUTCH" OTTER**  
Governor

**GARY SPACKMAN**  
Director

August 1, 2016

BEL AIR EAGLE LLC  
2500 N DALLAS PKWY  
STE 424  
PLANO TX 75093

RE: License No. 63-32601

**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)

cc: SPF WATER ENGINEERING LLC

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 1, 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.**

**63-32601**

**BEL AIR EAGLE LLC  
2500 N DALLAS PKWY  
STE 424  
PLANO TX 75093**

**SPF WATER ENGINEERING LLC  
C/O SCOTT N KING  
300 E MALLARD DR STE 350  
BOISE ID 83706**



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**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.

## Kelly, Patrick

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**From:** Lori Graves [LGraves@spfwater.com]  
**Sent:** Wednesday, July 06, 2016 9:53 AM  
**To:** Kelly, Patrick  
**Cc:** Terry Scanlan; dyorgason6@gmail.com; timl@american-communities.com  
**Subject:** RE: Bel Air LLC right 63-32601  
**Attachments:** IMG\_20160704\_100229816.jpg

Patrick,

To satisfy Bel Air's mitigation requirement of 13 afa, 8 gpm from the artesian well located on the south end of the pond needs to be flowing into the pond. On Monday, July 4<sup>th</sup>, I visited the site and measured an average of 18 gpm flowing from the artesian well into the pond (5 gallons x 60 seconds/17 seconds). Attached is a photo of the artesian well at the time of my site visit. Please let me know if you need additional information.

**From:** Kelly, Patrick [<mailto:Patrick.Kelly@idwr.idaho.gov>]  
**Sent:** Thursday, June 30, 2016 1:18 PM  
**To:** Lori Graves <[LGraves@spfwater.com](mailto:LGraves@spfwater.com)>  
**Subject:** Bel Air LLC right 63-32601

Lori,

I am getting closer to licensing Bel Air permit 63-32601. The order to reinstate the permit has been signed by Nick. We wanted to confirm that the mitigation associated with the pond is occurring. The plan states that 13.0 af of water is diverted into the pond annually pursuant to water right 63-32789. Please provide a statement from your client that this is occurring and forward it to my office. This should wrap up the processing of this right. Thanks Lori.

### Patrick Kelly

Water Resource Agent, Senior  
Idaho Department of Water Resources  
2735 Airport Way  
Boise, Idaho 83705  
p: 208.334.2190  
f: 208.334.2348  
[patrick.kelly@idwr.idaho.gov](mailto:patrick.kelly@idwr.idaho.gov)





**State of Idaho**

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**C. L. "BUTCH" OTTER**  
Governor

**GARY SPACKMAN**  
Director

February 29, 2016

THE ORCHARDS AT EAGLE LLC  
802 W BANNOCK STE 801  
BOISE ID 83702

COPY

RE: Assignment of Permit for 63-32601

Dear Permit Holder,

On December 1, 2008, water right permit 63-32601 was issued to The Orchards at Eagle LLC for an aesthetic storage pond within the NENE, Sec 14, Twn 4 North, Rge 1 West of Ada County B.M. Ownership records of this land were submitted by Bel Air, Eagle LLC with proof of beneficial use and field report on December 23, 2015.

In line with Idaho Statute 42-218A, Bel Air, Eagle LLC filed a report prepared by a certified water right examiner to clearly confirm and establish the extent of beneficial use of water in connection with the permit. Before accepting a proof submittal from a party other than the permit holder, the department will attempt to contact the permit holder of record.

This letter is acting as notice from the department in an attempt to determine interest in 63-32601 by the permit owner. If The Orchards at Eagle LLC maintains continued interest in permit 63-32601, please describe what the final disposition of the permit should be. If the permit holder has no further interest in the permit, an assignment of permit form should be completed and returned to my office.

Please submit the requested information for the permit to be processed. The permit may be licensed in the current land owners name without a timely written reply within the next fourteen (14) days.

IDWR forms and other information are available on the Internet at [www.idwr.idaho.gov](http://www.idwr.idaho.gov) . Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Respectfully,

Patrick Kelly  
Water Resource Agent, Sr.

Enclosure(s): Assignment of Permit form



**SPF WATER**  
ENGINEERING

December 28, 2015

RECEIVED

DEC 30 2015

WATER RESOURCES  
WESTERN REGION

Angie Grimm  
IDWR Western Region Office  
2735 Airport Way  
Boise, ID 83705

**Subject: Request for Reinstatement of Lapsed Permit 63-32601**

Dear Angie,

On December 23, 2015, I submitted an application package on behalf of Bel Air Eagle, LLC. Included with the submittal was an unsigned **Request for Reinstatement** of Lapsed permit 63-32601, with the explanation that the original signed form was in transit and would be submitted ASAP. As promised, enclosed is the signed original request. The fee has been previously paid per check No. 010302 submitted December 23, 2015. Please let me know if there are any questions.

Sincerely,

Lori Graves  
Water Rights Specialist

Cc: Ronny Guerrero via email  
Dave Yorgason via email

Enclosures

SPF file number: 1234.0010

RECEIVED

DEC 30 2015

WATER RESOURCES  
WESTERN REGION

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

Fee \$250.00

Receipt no. W043764

Received by [Signature]

Date 12/23/15

**Request to Reinstate a Permit Lapsed more than Sixty Days**

*Statements of Completion for Submitting Proof of Beneficial Use* submitted more than sixty (60) days after mailing of a lapsed permit notice must be accompanied by a Beneficial Use Field Report prepared by a certified water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved, a statement of reasonable cause for filing late proof of beneficial use, and a reinstatement application fee of \$250 per§ 42-218a(2), Idaho Code.

**Statement of reasonable cause for filing a late proof of beneficial use:**

Property has been held up in bankruptcy, followed by two changes in property ownership.

**Required items:**

- ☒ Statement of Completion for Submitting Proof of Beneficial Use
- ☒ Beneficial Use Field Report
- ☒ Reinstatement application fee of \$250

The information contained in this statement is true to the best of my knowledge. I understand that should the department reinstate my permit that the priority date will be advanced to the day that proof of beneficial use was received.

[Signature]  
Signature of Permit Holder or Authorized Representative

Ronny Guerrero  
Print Name and Title if applicable

12/23/15  
Date

Signature of Permit Holder or Authorized Representative

Print Name and Title if applicable

Date



December 23, 2015

Angie Grimm  
IDWR Western Region Office  
2735 Airport Way  
Boise, ID 83705

RECEIVED

DEC 23 2015

WATER RESOURCES  
WESTERN REGION

**Subject: Ownership Change Notice  
Beneficial Use Field Exam, Permit 63-32601  
Extension of Time to Avoid Forfeiture, Right 63-32789  
Application for Permit**

Dear Angie,

Enclosed on behalf of Bel Air Eagle, LLC, are the documents we discussed in our meeting Monday, December 14, 2015. Below is a brief description of each:

- ✓ 1. **Notice of Change in Water Right Ownership** from O C Holdings Inc. to Bel Air Eagle, LLC. Filing fee for this notice is \$75 (enclosed).
- ✓ 2. **Beneficial Use Field Exam** for lapsed permit 63-32601, including as Attachment A, a signed **Proof of Beneficial Use** and an unsigned **Request for Reinstatement**. The signed reinstatement request is currently in transit and will be submitted ASAP. The filing fee for the proof is waived because SPF conducted the licensing exam. The filing fee for the reinstatement is \$250 (enclosed).

Note: the permit is currently in the name of The Orchards at Eagle, LLC, who lost the property in bankruptcy and has since dissolved. A request for permit assignment was prepared and sent to the original manager of The Orchards at Eagle, LLC, who indicated he would not comply. The pond authorized under permit 63-32601 has clearly been developed and as owners of the associated property, Bel Air Eagle clearly have an interest in the permit. Consequently, the required proof of beneficial use is being submitted by Bel Air Eagle as allowed per Idaho Department of Water Resource's Administrative Permit Processing Memo No. 10.

- ✓ 3. **Extension of Time to Avoid Forfeiture** for water right 63-32789 that authorizes irrigation use on Bel Air's property and provides mitigation water for the pond. The forfeiture period allowed for non-use of this right is set to expire December 31, 2015. Filing fee for this application is \$100 (enclosed).
- ✓ 4. **Application for Permit** requesting water right coverage for the pond area developed in excess of the amount authorized under lapsed permit 63-32601. ~~Filing fee for the application is \$200~~ (enclosed).

Fee is  
\$100<sup>00</sup>

Check No. 010302 for \$625 is enclosed for the filing fees. Thank you very much for meeting with me and for your consideration and assistance in this matter. Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Graves".

Lori Graves  
Water Rights Specialist

Cc: Ronny Guerrero via email  
Dave Yorgason via email

Enclosures

SPF file number: 1234.0010