

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-12147

PRIORITY: September 29, 1994

Maximum Diversion Rate: 5.00 CFS

It is hereby certified that:

EAGLE WATER CO INC PO BOX 455 EAGLE ID 83616-0455

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated September 27, 1994, and has submitted Proof of Beneficial Use on February 03, 1999. An examination confirms water is diverted from:

SOURCE: GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
MUNICIPAL	1/01 to 12/31	5.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

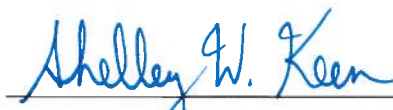
GROUND WATER SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 8, Twp 04N, Rge 01E, B.M. ADA County
GROUND WATER NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 15, Twp 04N, Rge 01E, B.M. ADA County

CONDITIONS OF APPROVAL

1. 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.
2. Place of use is within the service area of Eagle Water Company as provided for under Idaho law. The place of use is generally described as within the city limits of Eagle and the surrounding service area.
3. This right does not grant any right-of-way or easement across the land of another.
4. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.

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 12th day of May, 2016.

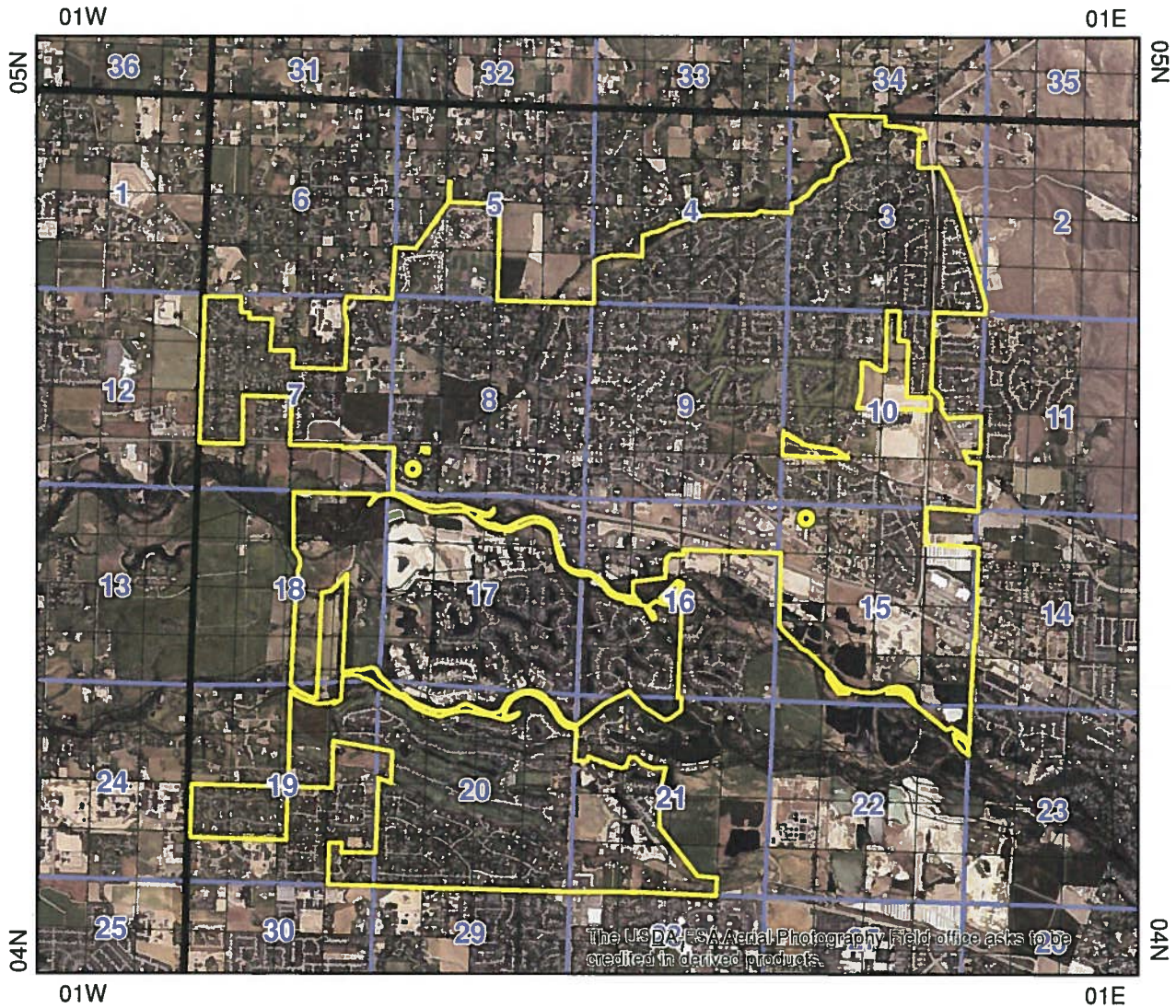


SHELLEY W. KEEN
Water Rights Section Manager

Attachment to Water Right License

63-12147

This map depicts the MUNICIPAL 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.



● Point of Diversion

Water Service Area Boundary

Townships

PLS Sections





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

May 13, 2016

EAGLE WATER CO INC
PO BOX 455
EAGLE ID 83616-0455

RE: License No. 63-12147

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 May 16, 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.

63-12147

**EAGLE WATER CO INC
PO BOX 455
EAGLE ID 83616-0455**



**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: May 3, 2016
To: Water Right File 63-12147
From: A. Newbry
Re: Licensing Memorandum

The beneficial use field exam for permit 63-12417 was completed in 1999, about 15 ½ years ago. Because of the length of time since the field exam, I estimate that this might be a pertinent time and place to summarize the history of this permit and the findings of the field exam.

September 13, 1994	Eagle Water Company submits Application for Permit 63-12147.
January 27, 1995	IDWR issues permit 63-12147 to Eagle Water Company for 5.00 cfs of Municipal use. The permit bears a 09/27/1994 priority date because the application was not accompanied by the full fee.
May 26, 1995	Eagle Water Company submits Application for Amendment of permit to add a POD. Approved June 7, 1995.
August 4, 1995	IDWR issues an order removing three of the permit conditions which previously restricted the use commercial, industrial, domestic, and irrigation uses under the municipal permit.
August 27, 1996	Eagle Water Company submits Application for Amendment of permit to revise the location of one of their PODs. Approved November 18, 1996.
January 30, 1997	Eagle Water Company submits a Request for Extension of Time to Submit Proof of Beneficial Use. Their proof due date is extended to February 1, 1998.
January 30, 1998	Eagle Water Company submits a second Request for Extension of Time to Submit Proof of Beneficial Use. Their proof due date is extended to February 1, 1999.
February 3, 1999	Eagle Water Company submits Proof of Beneficial use two days late.
April 23, 1999	IDWR issues an order to reinstate Permit 63-12147; it bears a 09/29/1994 priority date.
June 10, 1999	IDWR performs field exam for Permit 63-12147.

Discussion:

In 1996, the State of Idaho codified the Municipal Water Rights Act. This Act changed municipal water right processing methods such that municipal providers were then allowed to apply for water rights based on reasonably anticipated future needs (RAFN). Prior to this Act, municipal providers could “perfect a water right based on the maximum instantaneous diversion rate for the pumping system that was installed and operational during the development period of the permit (limited by the permitted amount), even if the provider did not beneficially use the entire capacity during the development period of the permit” (Peppersack 2009, App. Processing Memo No. 18).

IDWR's 2009 Application Processing Memo No. 18 holds that existing permits issued prior to the date of the memorandum should be handled on a case-by-case basis when determining beneficial use for licensing purposes. The issuance of Permit 63-12147 predates the Municipal Water Rights Act of 1996 and Application Processing Memo No. 18. The field exam was performed in 1999, after the issuance of the Municipal Water Rights Act, but prior to Application Processing Memo No. 18. Therefore, this permit falls into the case-by-case basis category.

A review of the beneficial use field report reveals that the field examiner anticipated that the permit would be licensed using the method used for permits issued prior to the 1996 Municipal Water Rights Act. He did not collect the diversion information required to demonstrate each POD's peak instantaneous diversion rate during the permit development period. Nor did he obtain diversion information for the entire system, in attempt to prove that 63-12147 actually adds an increment of beneficial use above and beyond the pre-existing water rights.

Because of the common licensing practice during the permit development period 1995 to 1999, one might guess that the permit holder now anticipates a water right license with a diversion rate commensurate with the installed capacity of the system at the time of the field exam. During the time between 1999 and 2016, the permit holder may have even “grown-in” to this permit (the process by which the beneficially used diversion rate grows closer to the licensed diversion rate), a pre-RAFN municipal water right practice which was not uncommon.

Because Permit 63-12147 was issued in January 1995, prior to the Municipal Water Rights Act of 1996 and Application Processing Memo No. 18, I recommend that the license be issued commensurate with the field examiner's recommendation at the full permit diversion rate of 5.00 cfs, which is still less than the well capacity at the time of the field exam.