

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-33329

Priority: January 08, 2010

Maximum Diversion Rate: 80.00 CFS

It is hereby certified that BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705 has complied with the terms and conditions of the permit,
issued pursuant to Application for Permit dated January 08, 2010; and has submitted Proof of Beneficial
Use on May 30, 2013. An examination confirms water is diverted from:

SOURCE

BOISE RIVER

Tributary: SNAKE RIVER

and a water right has been established as follows:

BENEFICIAL USE

POWER

PERIOD OF USE

03/15 to 10/31

DIVERSION RATE

80.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

BOISE RIVER L17 (NW1/4SW1/4) Sec. 3, Twp 02N, Rge 03E, B.M.

ADA County

PLACE OF USE: POWER

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	05W	5		X															
				L 2															

CONDITIONS OF APPROVAL

1. This water right authorizes the generation of power only when the water is diverted from the Boise River under rights for irrigation or other authorized purposes.
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).
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, Boise River.
4. This right does not grant any right-of-way or easement across the land of another.

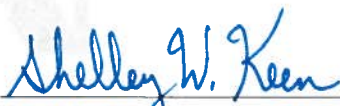
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WATER RIGHT NO. 63-33329

5. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
6. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
7. The term of this water right license shall run concurrently with energy sales agreement Case Number IPC-E-10-05, Order Number 31060 approved by the Idaho Public Utilities Commission, which expires on March 8, 2030. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the prior term and any prior conditions on the water right license shall remain in effect.
8. Project location is the Golden Gate Canal Arena Drop.
9. Use of water under this right shall be non-consumptive.

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 and sealed this 10th day of September, 2015.


for GARY SPACKMAN
Director



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

September 11, 2015

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705

RE: License Nos. 63-33329 & 63-33599

Issuance of Licenses

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right Licenses confirming that water rights have been established in accordance with your permits. Please be sure to thoroughly review the conditions of approval and remarks listed on your licenses.

The licenses 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)

c: BARKER ROSHOLT & SIMPSON LLP
WATER DISTRICT #63

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2015, I mailed true and correct copies, postage prepaid, of the foregoing PRELIMINARY ORDERS (Approved Licenses) to the person(s) listed below:

RE: WATER RIGHT NOS.

63-33329 & 63-33599

**BARKER ROSHOLT & SIMPSON LLP
ATTN ALBERT BARKER
1010 W JEFFERSON STE 102
PO BOX 2139
BOISE ID 83701-2139**

**BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705**

**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.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER

Governor

July 14, 2015

GARY SPACKMAN

Director

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705

RE: Water Appropriation Permit 63-33329

Notice of Intent to Void Permit

Dear Permit Holder:

On September 1, 2010, IDWR issued permit 63-33329 authorizing you to develop a right to divert 80.0 cfs of water from the Boise River within the NW¼SW¼ of Section 3, Township 2 North, Range 3 East, B.M., for power production. Under the terms of the permit, the development was to have been completed by September 1, 2013. On May 30, 2013, IDWR received your Proof of Beneficial Use statement indicating you had completed your development and put the water to beneficial use. Also on May 30, 2013, an independent field examiner reported that a powerhouse had been constructed and that water was flowing through it, but he did not provide a reading of the power generation occurring at the time of his exam nor did he provide records of power generation which had occurred within the development period of the permit. The examiner did not confirm that a beneficial use of water had been developed in accordance with your permit.

The final step in the water appropriation process is the issuance of a Water Right License. By issuing a license, IDWR recognizes that you have met the requirements for establishing a water right. If you have not developed a beneficial use of water within the development period authorized by your permit, however, no water right has been established, and no license can be issued. Once the development period authorized by your permit expires, your permit cannot be retained to cover future development of the resource.

If you believe a water right license should be issued to you, please supply information to demonstrate that you established a beneficial use of water by May 30, 2013 in accordance with Permit 63-33329. If I do not receive the requested information from you within **fourteen (14) days**, I will take action to void your permit under the provision of Section 42-219(8) of the Idaho Code. If you have any questions about the processing of this permit, please contact me at 208-287-4946.

Respectfully,

Michele D. Edl (E.I.T.)

Ec: Albert Barker
Dennis Daugherty
Terry Daugherty
Dave Shaw

Edl, Michele

From: Edl, Michele
Sent: Monday, July 13, 2015 4:19 PM
To: 'Terry Daugherty'; 'Dennis Daugherty'; 'Tim Page'
Cc: 'dshaw@erresources.com'; Barker, Albert (IWRB Member)
Subject: Notice of Intent to Void Permit 63-33329
Attachments: 63-33329 Notice of Intent to Void Permit-No Beneficial Use.doc

Gentlemen,

I have yet to receive the information that I requested in this email. Without it, no beneficial use of water for power production has been confirmed to have occurred during the development period of the permit. And as a consequence, I have limited options for processing this permit.

I have attached an early-bird copy of a letter which will be mailed from the state office tomorrow, July 14, 2015.

Respectfully,
Michele Edl

From: Edl, Michele
Sent: Wednesday, June 03, 2015 6:21 PM
To: 'Albert Barker'
Cc: 'dshaw@erresources.com'
Subject: Additional Information Request 63-33329

Mr. Barker, Mr. Shaw,

On June 3, 2013, IDWR received the Proof of Beneficial Use statement and Beneficial Use Field Report for Permit 63-33329. Receipt of those documents ended the development period for this permit. I have been assigned to review the file contents and, if possible, to issue a license for the use. I have completed an initial review and I found that although the Beneficial Use Field Report has been accepted, the use of water for power generation was not confirmed by the information in the report.

1)The Beneficial Use Field Report doesn't provide a record of power generation occurring at the time of the exam nor does it include readings of power generated during the development period of the permit. Therefore, although the report has information about the diversion of water, without generation records the report doesn't confirm that that diverted water was put to power generation use.

2)The report doesn't provide information about the hydraulic capacity of the turbine. Permit 63-33329 is limited to 80 cfs for use in the Arena Drop powerhouse. But Section F Flow Calculations, on page 4 of the Beneficial Use Field Report, indicates that as much as 90 cfs was passing through the project. A photo of the generator nameplate is provided in the report but there isn't a photo of the turbine nameplate. Nor is there other evidence of the turbine's capacity. Without proof of the turbine's capacity, the report doesn't confirm that the measured/diverted rate (90 cfs) or the recommended rate (80 cfs) could be utilized to generate power.

Finally, the report doesn't recommend a license volume. Beneficial Use Examination Rule 37.03.02.035 j exempts on-stream, run-of-river hydropower projects from the requirement of a volume recommendation, but this facility doesn't qualify under that rule and therefore a volume of water beneficially used is required for the license.

I have permission to join the FERC inspector, Jordan Reimer, during his scheduled inspection of the Arena Drop project on June 24, 2015. It would be easy for me to confirm power generation at that time and to take a photo of the turbine nameplate as some evidence of its capacity. But that exercise will not provide the needed evidence of power generation during the development period.

Therefore, to facilitate the licensing process, please provide:

- 1) One year's worth of daily generation data and the companion flow data. The data should be from the best generation year within the development period of the permit. For Permit 63-33329 that period is September 1, 2010 through June 3, 2013.
- 2) Evidence of the hydraulic capacity of the turbine installed at the Arena Drop project. That evidence could be in the form of the as installed equipment specifications sheet, results from the turbine's index/commissioning test or the turbine's characteristic performance curves.
- 3) A recommendation for the annual volume of water beneficially used for power and the calculations used to obtain that recommendation.

I suspect that some of the information that I am requesting is not immediately available, but I would like to complete the licensing of this permit soon. Therefore, please respond to this information request within 30 days. And don't hesitate to contact me for clarification or with other questions related to the water right licensing of this project.

Respectfully,
Michele Edl
208-287-4946

Edl, Michele

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