

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-33996

Priority: October 08, 2014

Maximum Diversion Rate: 0.09 CFS

This is to certify, that MICHAEL E WOOD And/Or JENNIFER K WOOD
1417 N KOID RD
CALDWELL ID 83605

have applied for a permit to appropriate water from:

Source: UNNAMED DRAIN

Tributary: MASON SLOUGH

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/01 to 11/15	0.09 CFS	
AESTHETIC STORAGE	01/01 to 12/31		2.0 AF

LOCATION OF POINTS OF DIVERSION:

UNNAMED DRAIN	NE1/4SE1/4	Sec. 13, Twp 04N, Rge 03W, B.M., CANYON County
UNNAMED DRAIN	NE1/4SE1/4	Sec. 13, Twp 04N, Rge 03W, B.M., CANYON 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	
04N	03W	13																	4.2
Total Acres:			4.2																

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	03W	13													X				

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2020**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. This right is limited to the irrigation of 3 acres within the authorized place of use in a single irrigation season.

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NO. 63-33996

5. 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.
6. The pond established by the storage of water under this right shall not exceed a total capacity of 1.2 acre-feet or a total surface area of 0.3 acres.
7. Right 63-33996 authorizes the diversion of 1.2 acre-feet to be used for the initial filling of 1 onstream pond, 0.8 acre-feet for losses due to seepage and evaporation, for a total annual storage volume of 2.0 acre-feet. The right holder shall install outlet works at the dam prior to initial filling of the pond. The pond may be used for aesthetic storage but not for irrigation.
8. Prior to diversion of water under this right, the right holder shall install lockable devices, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the irrigation diversion and suitable control of the outlet works required for the pond.
9. When notified by the Department, the right holder shall provide a means acceptable to the Department to measure the amount of water entering the pond and the amount of water released from the pond.
10. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the irrigation diverting works.
11. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
12. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 6th day of April, 2015.



Jeff Peppersack
Interim Manager, Western Region



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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 9, 2015

MICHAEL E WOOD
JENNIFER K WOOD
1417 N KCID RD
CALDWELL ID 83605

RE: Permit No.63-33996

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit 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.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, 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,



For

Jeff Peppersack
Interim Manager, Western Region

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2015 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 63-33996

**JENNIFER K WOOD
1417 N KCID RD
CALDWELL ID 83605**

**MICHAEL E WOOD
1417 N KCID RD
CALDWELL ID 83605**

**REX R BARRIE
WATER MASTER
10769 W STATE ST
PO BOX 767
STAR ID 83669**

**SPF WATER ENGINEERING LLC
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706**

A handwritten signature in cursive script, reading "Rachel Sommer", positioned above a horizontal line.

**Rachel Sommer
Water Resource Agent**

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.

Lester, Steve

From: Lester, Steve
Sent: Tuesday, March 03, 2015 1:39 PM
To: 'Rex Barrie (waterdistrict63@qwestoffice.net)'
Subject: Application 63-33996 & Mason Slough

Contacts: Rex Barrie

Hi Rex:

This application for M. & J. Wood proposes water from an unnamed drain tributary to Mason Slough, near Mason Creek by Caldwell. It includes a small onstream aesthetic pond & a separate irrigation pump for 3 acres. No protests were filed. The application is ready to be resolved. Your 1/9/2015 Watermaster comments expressed concerns about potential effect on downstream senior rights and their reliance on return flow. You suggested the applicants should be required to mitigate (rental pool etc.).

I understand your point, but the department cannot require mitigation in this case. Requiring mitigation implies (a) water is not available for a new right, &/or (b) injury to senior rights cannot be avoided unless the new use is mitigated. The site is downstream from the fully appropriated reach of the river and is considered open for new rights without mitigation as a condition of approval. As an open area, a new use can be approved but conditioned to be subject to watermaster controls to prevent injury. Standard conditions modified to fit this situation and the concerns you raised are listed in the attached.

Under department policy, we should approve it without mitigation requirements. However, I think the controls required prior to diversion and additional ones that can be required later if needed will give you a good handle on this situation if it needs to be regulated. I'm glad to visit with you about this if you want, but we should move ahead fairly soon as irrigation season is getting close.

Regards,

Steve

APPLICATION 63-33996
PROPOSED CONDITIONS OF APPROVAL FOR WATERMASTER CONTROL

#259 (modified)

Right 63-33996 authorizes the diversion of 1.2 acre-feet to be used for the initial filling of 1 onstream pond, 0.8 acre-feet for losses due to seepage and evaporation, for a total annual storage volume of 2.0 acre-feet. The right holder shall install outlet works at the dam prior to initial filling of the pond. The pond may be used for aesthetic storage but not for irrigation.

#R05

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.

01H (modified)

Prior to diversion of water under this right, the right holder shall install lockable devices, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the irrigation diversion and suitable control of the outlet works required for the pond.

#18C (modified)

When notified by the Department, the right holder shall provide a means acceptable to the Department to measure the amount of water entering the pond and the amount of water released from the pond.

#01R (modified)

When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the irrigation diverting works.