

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 67-14405

Priority: December 16, 2002

Maximum Diversion Volume: 17.0 AF

It is hereby certified that KERMIT L WIGGINS
PO BOX 86
CAMBRIDGE ID 83610-0086 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated December 16, 2002; and has
submitted Proof of Beneficial Use on April 22, 2003. An examination confirms water is diverted from:

SOURCE

UNNAMED STREAM

Tributary: RUSH CREEK

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL DIVERSION VOLUME</u>
IRRIGATION FROM STORAGE	03/15 to 10/31	17.0 AF
IRRIGATION STORAGE	01/01 to 12/31	17.0 AF

LOCATION OF POINT OF DIVERSION:

UNNAMED STREAM SW1/4SE1/4 Sec. 10, Twp 15N, Rge 03W, B.M., WASHINGTON County

PLACE OF USE: IRRIGATION FROM 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	
15N 03W 10									31.0						34.0	35.0	100.0

PLACE OF USE: IRRIGATION 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	
15N 03W 10																X	

CONDITIONS OF APPROVAL

1. 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. 67.
2. This right when combined with all other rights shall provide no more than 5.0 afa from storage.
3. Rights 67-4542, 67-14585, 67-14586, 67-14587, 67-14588, 67-14591, 67-14592, 67-7931 and 67-14405 when combined shall not exceed the irrigation of 100 acres.

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4. Storage of water flowing into the reservoir after June 15 of each year in violation of this water right is cause for the director to cancel or revoke this water right.
5. Upon notification by the department, the right holder shall install and maintain: (a) measuring devices to allow the watermaster to measure amount of water entering the reservoir and released from the reservoir; and/or (b) install a lockable device and reservoir outlet works to provide the watermaster suitable control of the reservoir. Measuring devices and/or a lockable device and reservoir outlet works shall be of a type approved by the department.
6. The following rights are diverted through point of diversion described above: 67-7931 & 67-14405.
7. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.
8. 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.

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 20th day of June, 2014.



JOHN WESTRA
Western Regional Manager



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

June 23, 2014

KERMIT L WIGGINS
PO BOX 86
CAMBRIDGE ID 83610-0086

RE: License No. 67-14405

Issuance of License

Dear Water Right Holder:

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,


For:

John Westra
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

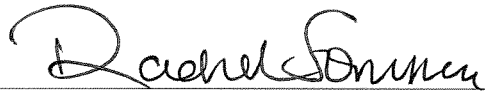
I hereby certify that on June 23, 2014 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved License) to the person(s) listed below:

RE: WATER RIGHT NO.

67-14405

**KERMIT L WIGGINS
PO BOX 86
CAMBRIDGE ID 83610-0086**

**BRANDI S HORTON
WATER MASTER
2297 SNAPP LN
MIDVALE ID 83645**

A handwritten signature in black ink, reading "Rachel Sommer", is written over a horizontal line.

**Rachel Sommer
Administrative Assistant I**

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)

A preliminary order is an order of the Department of Water Resources ("Department") 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 Titles 37.01.01.302 and 37.01.01.303 (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 remind 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.

Walker, Kay

From: Walker, Kay
Sent: Monday, May 12, 2014 2:46 PM
To: watermaster67@hotmail.com
Cc: Walker, Kay
Subject: Wiggins 67-7931 & 67-14405
Attachments: Draft 67-14405.pdf; Draft 67-7931.pdf; Wiggins memo.pdf

*no response -
kw 5/28/14
OK 6/29/14*

Hi, Brandi!

We have prepared draft licenses for the "junior reservoir" up at Kermit Wiggins place. Attached you will find a review memorandum and the proposed draft licenses. Please note that Right No. 67-14405 is being licensed with the source of an "unnamed stream" rather than Rush Creek. We have explained the source clarification in the review memorandum.

We wanted to give you an opportunity to review these items and make any comments you may have before we finalize. Please review the attachments and call or e-mail any concerns or comments you have within the next 10 days. If we don't hear from you by May 27th we will assume that you are agreeable with the proposals and will route them for final action.

Thanks for your attention to this matter.

Kay Walker
Sr. Water Resource Agent
Western Region
334-2190

MEMORANDUM

TO: Permit Nos. 67-7931 & 67-14405

FROM: Kay Walker *KW*

RE: Field Exams and Proposed Licenses

Date: May 12, 2014

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While preparing to license Permit 67-14405 I noticed that this older permit was still pending licensing. I then pulled exam for 67-7931 to see if we could license them both at the same time.

It is found that Mr. Wiggins has developed a reservoir that can hold 37 acre feet of water. Permit No. 67-7931 was issued for storage of 20 acre feet of water. When dam safety went out to survey this dam (Wiggins #3) it was determined that he had built the dam larger than permitted. He was advised to file an additional application for permit to cover the additional storage in the reservoir. Mr. Wiggins then filed Application 67-14405 for storage of 50 acre feet in the same reservoir as 67-7931. Disregard examiner comments about allowing Rush Creek as a source, that is a misunderstanding of the record and what the permit allows as noted in 5/20/1996 database comments about deleting the Rush Creek exchange concept.

Permit 67-14405 was issued for same system but with the source of Rush Creek. There is no way for Rush Creek to get into this reservoir except indirectly through a waste ditch that collects waste water from other Rush Creek rights. The source on this permit should be clarified to show that this right is fed by the same source as 67-7931 which is an unnamed stream. This is the only way water can enter this reservoir and was the intention of the applicant at time of submittal since reservoir was already developed and in use when Application 67-14405 was submitted. This clarification is not an expansion and does not need an amendment.

Use of water from this reservoir only occurs when there is no water available from Rush Creek and older reservoirs known as Wiggins and Wiggins #2. This was determined by our field examiner when he was conducting exam for Permit 67-14405. This reservoir therefore should have no live flow components attached since it is not used to disperse any water except water that had been stored when there was waste water or spring runoff available. The irrigation use has been removed from both of the proposed licenses. It was also determined by dam safety that the reservoir can only hold 37 acre feet of water so the rights will be recommended for storage only with no refill water included in the proposals.

The place of use recommended for licensing covers 100 acres. This place of use was determined by arc map and land currently irrigated. In review of exam for 67-7931 it is noticed that only 85 acres were being recommended. When exam for 67-7931 was conducted Transfer No. 4148 was being processed and it created a 100 acre place of use for all of Mr. Wiggin's water rights. The proposed licenses will have slightly different amounts in each 40 than what was found under Transfer 4148. For example, we removed land out of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ (where this new reservoir is located) and then added land surrounding the upper reservoirs that he irrigates, finding 100 acres. I believe this is the best solution since examiner found 100 acres on exam for permit 67-14405.

Mr. Wiggins has many water rights on his property but the live flow rights do not exceed an inch to the acre and the storage rights don't exceed 5 acre feet per acre. Therefore, I recommend we issue licenses for the water stored in new reservoir in SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 10, Twp. 15N, Rge. 3W, not to exceed 37 acre feet (20 acre feet for License 67-7931 & 17 acre feet for License 67-14404) as found by our dam safety files. See letters of 11/5/2002 & 9/29/2003 regarding the storage amount attached to the field exams.