



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

August 29, 2013

NEIL DE WIT
C/O DE WIT DAIRY
2011 BOB BARTON HWY
WENDELL ID 83355

RE: License No. 36-8388

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 208-287-4916.

Sincerely,


For Craig L. Saxton

Water Rights Supervisor

Enclosure(s)

cc: METROPOLITAN LIFE INSURANCE CO

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2013, 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.

36-8388

**NEIL DE WIT
C/O DE WIT DAIRY
2011 BOB BARTON HWY
WENDELL ID 83355**

**METROPOLITAN LIFE INSURANCE CO
10801 MASTIN BLVD STE 930
OVERLAND PARK KS 66210**



**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
Water Right License

WATER RIGHT NO. 36-08388

Priority: May 08, 2003

Maximum Diversion Rate: 0.17 CFS
Maximum Diversion Volume: 45.0 AF

It is hereby certified that NEIL DE WIT
C/O DE WIT DAIRY
2011 BOB BARTON HWY
WENDELL ID 83355 has complied with the terms and conditions of the permit,
issued pursuant to Application for Permit dated February 3, 1989; and has submitted Proof of Beneficial Use
on May 08, 2003. 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>	<u>ANNUAL DIVERSION VOLUME</u>
STOCKWATER	01/01 to 12/31	0.17 CFS	45.0 AF
COMMERCIAL	01/01 to 12/31	0.17 CFS	45.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NW1/4NW1/4	Sec. 34,	Twp 08S,	Rge 15E, B.M.	GOODING County
GROUND WATER	NW1/4NW1/4	Sec. 34,	Twp 08S,	Rge 15E, B.M.	GOODING County

PLACE OF USE: STOCKWATER AND COMMERCIAL

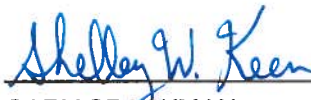
Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08S	15E	34						X											

CONDITIONS OF APPROVAL

1. Commercial use is for a dairy.
2. 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 diverting works.
3. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.
4. 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. 130.

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 28th day of August, 2013.

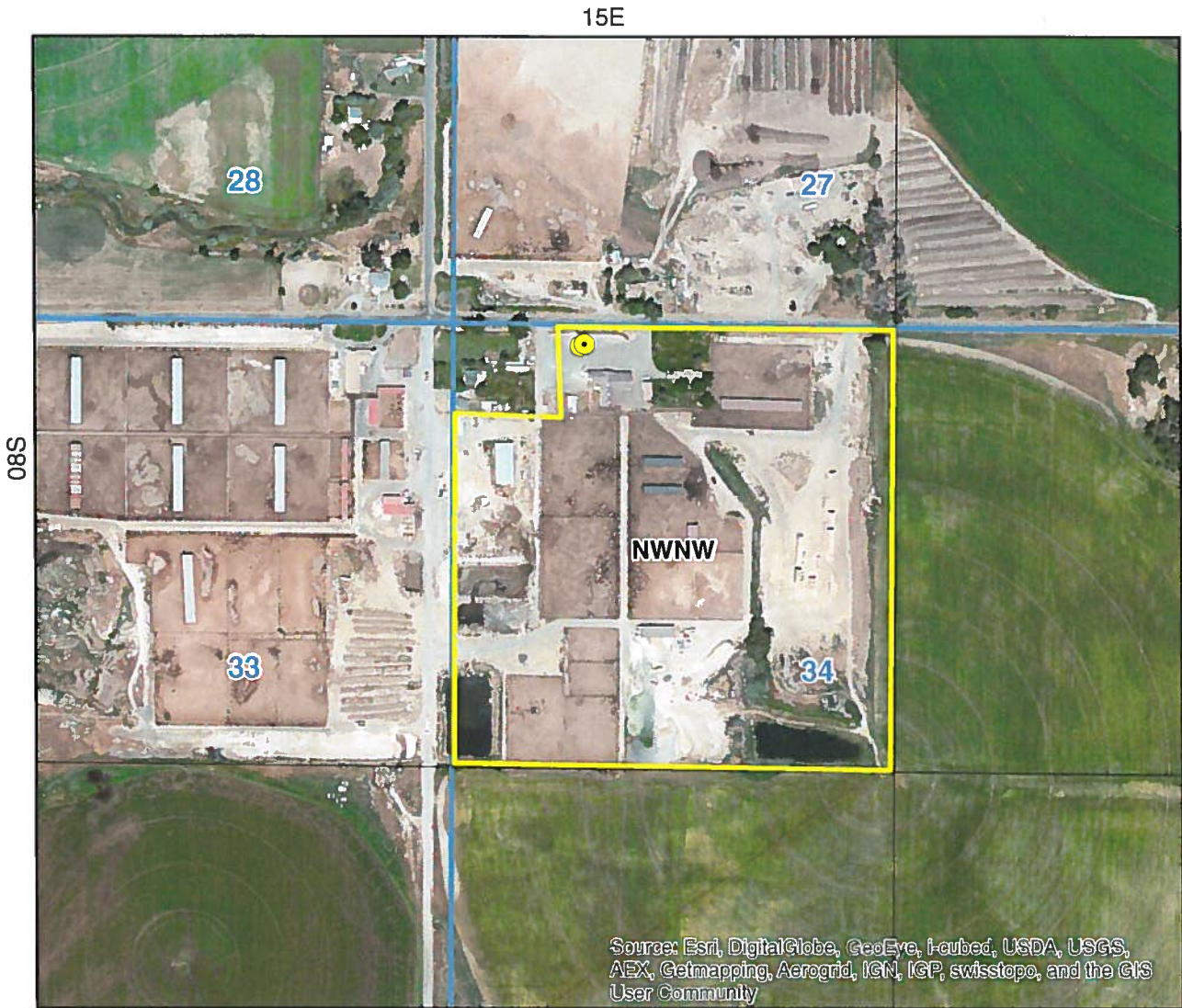

for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources

Attachment To Water Right License

36-8388

This map depicts the STOCKWATER AND COMMERCIAL 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
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.05 0.1 0.2 Miles



MEMORANDUM

TO: Water Right File – 36-8388

FROM: Daniel Nelson – Staff Hydrologist

DATE: August 21, 2013

SUBJECT: Review of Water Right File for Licensing

This water right permit was approved on February 3, 1989 for commercial and stockwater uses for 0.30 cfs. The permit lapsed on February 15, 1990. Proof of Beneficial use as submitted with a field exam done by Brockway Engineering was submitted on May 8, 2003. The permit was re-instated on May 15, 2003 with the priority advanced to May 8, 2003.

I have reviewed the field exam that was submitted, and the field exam seems complete and fairly accurate. The field exam recommended a diversion rate of 0.18 cfs and 44.9 af for both the commercial and stockwater uses with a combined total of 0.18 cfs.

My review of the documentation supplied with the field exam is as follows:

The diversion rate measured with both pumps running was 78.3 gpm. $78.3 \text{ gpm} \div 448.8 = 0.17 \text{ cfs}$. Therefore, the license should be limited to a total of 0.17 cfs. According to table No. 6 – “Annual Use of Water for Stockwater Purposes the 600 head of dairy cattle associated with this permit would require a maximum of 0.39 cfs, so the 0.17 cfs diversion rate measured should be listed as 0.17 cfs for the commercial use and 0.17 cfs for the stockwater use with a total diversion rate should be limited to 0.17 cfs.

The data supplied for the volume calculations was very good. The stockwater volume came to 23.7 af for the dairy cattle, 1.2 af for the dry cows, and 3.4 af for the younger stock for a total of 28.3 af for the stockwater use. The commercial volume was also very well done with a volume of 14.45 af for the parlor use and 2.24 af for the feed mixing and clean up uses for a total commercial use of 16.7 af. When the commercial volume and the stockwater volume are combined the total volume for this water right should be limited to 45 af ($28.3 \text{ stockwater} + 16.7 \text{ commercial} = 45 \text{ af}$ total). The 45 af can be listed for both the commercial and the stockwater uses with a total volume of 45 af.

Our office received a letter from Brockway Engineering requesting that the land application of the wastewater be included on the permit under the commercial component. This isn't necessary and will require an amendment. The land being used for land application is already covered by canal company water rights, so there isn't a need to include the land application lands on this permit. I spoke with Chuck Brockway Jr. and he agreed that this wasn't needed. He sent an email to confirm that they didn't want to pursue the amendment of permit to extend the commercial place of use onto the lands where the waste water was being land applied. This email is in the file.

The only significant overlapping water right is water right 36-10782 for domestic use. This water right is for the home on the property and is different from a well that is not connected into the dairy water system. Therefore, it shouldn't affect the water use for this permit. There are canal company water rights overlapping this property and a water right for the property on the corner that is owned by separate individual.

The condition listed on the permit was removed. This water right is now within the borders of water district 130. Measurement for this system has been waived, but could be re-instated if needed. I added conditions 01R, 01P, and R05 to address the water district issues.

Nelson, Dan

From: Charles G. Brockway [charles.g.brockway@brockwayeng.com]
Sent: Wednesday, August 21, 2013 12:06 PM
To: Nelson, Dan
Cc: 'Rob Williams'
Subject: DeWitt Dairy 36-8388 beneficial use exam

Dan,

Thanks for your call this morning. I understand that current IDWR policy does not require land application to be described as a commercial place of use on a water right. It is acceptable to the permittee to adhere to current standards and delete the recommendation by the field examiner to include this place of use.

Thanks and feel free to contact me if any other questions arise.

Chuck

Charles G. Brockway, Ph.D., P.E.
Brockway Engineering, PLLC
2016 Washington St. North, Suite 4
Twin Falls, ID 83301
(208) 736-8543
charles.g.brockway@brockwayeng.com

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.