

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 37-20743

Priority: February 17, 2011

Maximum Diversion Rate: 0.05 CFS
Maximum Diversion Volume: 3.5 AF

It is hereby certified that BRIAN L SMITH
PO BOX 629
BELLEVUE ID 83313

DIANE STEFFEY-SMITH
PO BOX 629
BELLEVUE ID 83313

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 17, 2011; and has submitted Proof of Beneficial Use on July 09, 2012. An examination confirms water is diverted from:

SOURCE

BIG WOOD RIVER
GROUND WATER

Tributary: MALAD RIVER

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>
AESTHETIC STORAGE	01/01 to 12/31		3.5 AF
DIVERSION TO STORAGE	04/15 to 10/31	0.05 CFS	
FIRE PROTECTION STORAGE	01/01 to 12/31		3.5 AF

LOCATION OF POINT(S) OF DIVERSION:

BIG WOOD RIVER	NE1/4SW1/4NW1/4	Sec. 36, Twp 02N, Rge 18E, B.M.
BLAINE County		
GROUND WATER	NW1/4SE1/4SW1/4	Sec. 7, Twp 01N, Rge 19E, B.M.
BLAINE County		

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	
01N	19E	7															X		

PLACE OF USE: FIRE PROTECTION 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	
01N	19E	7															X		

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CONDITIONS OF APPROVAL

1. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
37-21665	Irrigation	0.02	3.5	1.0
37-21672	Irrigation	0.016		1.0
37-21681	Irrigation	0.001		1.0
37-21690	Irrigation	0.01		1.0
37-21699	Irrigation	0.001		1.0
37-21708	Irrigation	0.023		1.0
Total		0.051		1.0

The land that will no longer be irrigated under these rights totals 1.0 acres and is located within the SWSE, Section 07, Township 01N, Range 19E, B.M.

The unchanged portions of the above listed water rights shall hereafter authorize irrigation of a total of 7.1 acres in the Place of Use. In addition the unchanged portions of these rights used for irrigation when combined shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate.

This right is deliverable out of priority to the extent to which it is being mitigated. If the specified mitigation rights, or portions thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right shall be reduced by the same proportion as the reduction to the mitigation rights.

2. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
3. 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 0.23 acre.
4. The right holder shall install and maintain an impermeable liner in the pond to eliminate seepage losses.
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. 37.
6. 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).
7. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.

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8. Diversion and use of water under this right from the Big Wood River is delivered via the District No. 45 Canal operated by the Wood River Valley Irrigation District No. 45 and subject to their assessment and control.
9. The annual storage volume limit of 3.5 af under this right provides for the annual filling of the pond, 1.2 af, and the annual evaporative losses in the pond, 0.4 af, and refresh volume, 1.9 af, all to be determined at the site of the pond.

This right is limited to 0.02 cfs at the site of the pond. This right includes conveyance loss to the site of the pond.

10. The right holder shall make full beneficial use of water from the Big Wood River authorized under this right subject to the limitation described above prior to diversion of ground water authorized under this right.
11. Diversion and use of surface water under this right is limited when combined with rights 37-21672, 37-21681, 37-21690, 37-21699 and 37-21708 from the Big Wood River to no more than 0.416 cfs and diversion and use of ground water under this right is limited when combined with right 37-21665 from ground water to no more than 0.16 cfs.

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 this 1st day of July, 2013.

For



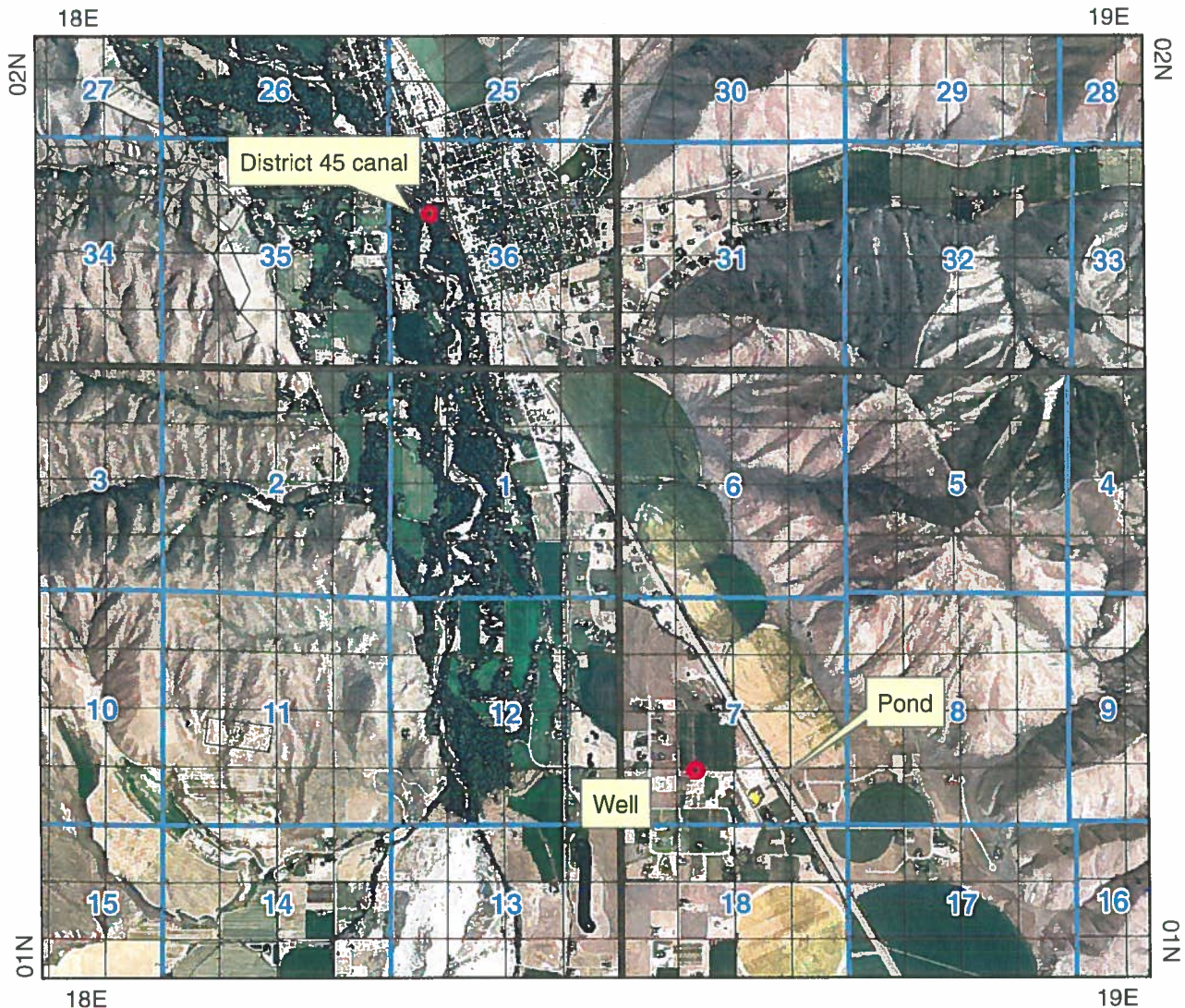
GARY SPACKMAN
Director

State of Idaho
Department of Water Resources

Attachment To Water Right License

37-20743

This map depicts the AESTHETIC STORAGE and FIRE PROTECTION STORAGE 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





State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

July 11, 2013

BRIAN L SMITH
DIANE STEFFEY-SMITH
PO BOX 629
BELLEVUE ID 83313

RE: License No. 37-20743

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 208-736-3033.

Sincerely,

Allen Merritt
Southern Region Manager

Enclosure(s)

cc: SPECK & AANESTAD

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 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. 37-20743

**BRIAN L SMITH
DIANE STEFFEY-SMITH
PO BOX 629
BELLEVUE ID 83313**

**SPECK & AANESTAD
C/O JAMES P SPECK
PO BOX 987
KETCHUM ID 83340**

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

**Denise Maline
Administrative Assistant**

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.