

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 65-23355

Priority: September 03, 2009

Maximum Diversion Volume: 6.0 AF

This is to certify, that SANDS LLC
C/O STEVE LOOMIS
7154 W STATE ST #187
BOISE ID 83714

has applied for a permit to appropriate water from:

Source: UNNAMED STREAM **Tributary:** ROBBS CREEK

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION STORAGE	01/01 to 12/31	6.0 AF
IRRIGATION FROM STORAGE	03/15 to 10/31	5.0 AF

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM SE1/4NW1/4 Sec. 8, Twp 06N, Rge 02E, B.M., BOISE County

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	
06N	02E	8								X				X					

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	
06N	02E	8			4.0				6.0										10.0

Total Acres: 10

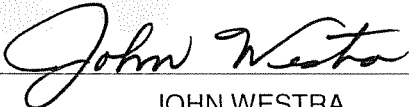
CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2016**.
2. Subject to all prior water rights.
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. 65.
4. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

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5. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water. The right holder shall not divert water after June 15 each year unless the watermaster authorizes continued diversion and use of water under this water right. When the watermaster informs the right holder that water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use. The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.
6. Prior to storage of water under this right, the right holder shall provide an adjustable and lockable reservoir storage outlet works and a means acceptable to the department to measure the amount of water entering the reservoir and the amount of water released from the reservoir.
7. 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.
8. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
9. Storage of water under this right may be subject to the Idaho Dam Safety statutes, and the Department of Water Resources Dam Safety rules and regulations. Prior to diversion and storage of water a completed "Application for Construction of a Small Dam" with fees must be submitted to the Department of Water Resources Dam Safety Section for review and authorization of storage.
10. Storage is for 1 pond not to exceed a total active storage capacity of 5 acre feet and a total surface area of 0.5 acres.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 10th day of June, 20 13.



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 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 10, 2013

Sands LLC
7154 W State ST #187
Boise ID 83714

RE: Robbs Creek Dams

Dear Mr. Loomis:

The purpose of this letter is to address recent applications for construction of dams and permitting of water storage reservoirs on Robbs Creek all located in Township 06N, Range 02E, Sections 4, 8, & 9.

Recent construction applications received by our agency propose the following new dam/storage facilities on the creek:

Water Right	Name	Dam Height (feet)	Storage (acre-feet)
#65-23431	Coneen	19.5	5
#65-23355	Alan	19.5	5

Two other existing dam/storage facilities include #65-11141 Home Lake in the upper drainage and Webster Lane Dam (Swensen) located between the proposed Alan and Coneen facilities.

Artificial hydraulic barriers (dams) that have a capacity of 10 acre-feet or less or a water storage height of 6 feet or less in a low hazard location are not subject to Idaho Department of Water Resources (Department) dam safety regulation (§42.1711). Based on the water storage height and storage capacities of the referenced structures, none appear large enough to be subject to Department design review and regulation individually. However, our current review has revealed safety concerns regarding the facilities cumulatively. Coupled with the steep creek gradient, an embankment failure or large runoff event in the upper drainage potentially could initiate a chain reaction of embankment failures downstream if spillway capacities and embankment freeboard* are not adequate.

Recommendations

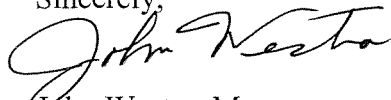
To help protect downstream life and property from the consequences of a failure and sudden release of water, however unlikely, the Department recommends that an emergency overflow spillway with a minimum depth of two (2) feet (freeboard) and minimum bottom width of 6 feet be constructed at the Home Lake, Alan, and Coneen facilities. Although not required you are nonetheless encouraged to engage the services of a licensed professional engineer to assist in the proper design and construction of your dams.

Now therefore, the Department may consider the facilities exempt from dam safety regulation provided this recommendation for spillway construction is implemented at each facility. Please contact the Department once construction has been completed for an on-site confirmation.

Please be advised that the dam owner is responsible and potentially liable for any damages to downstream life and property that may result from a failure of their dam and uncontrolled release of water, regardless the height or amount of reservoir storage thereof.

Should you have questions, please contact me at the Western Regional Office 208-334-2190 or John Falk at our state office 208-287-4927.

Sincerely,

A handwritten signature in black ink, appearing to read "John Westra". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Westra".

John Westra, Manager

Cc: J. Falk, SO
Water right Files 63-11141, 65-2354, 65-23355, 65-23431,

*Freeboard is the vertical height between the lowest point along the top of the dam and maximum operating level of water in the reservoir.



State of Idaho

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June 7, 2013

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

SANDS LLC
C/O STEVE LOOMIS
7154 W STATE ST #187
BOISE ID 83714

RE: Permit No.65-23355

Amendment of Permit Approval Notice

Dear Permit Holders:

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.

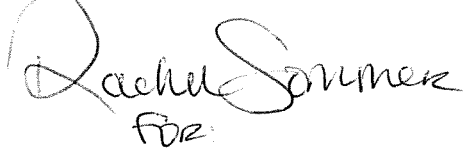
The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

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,

A handwritten signature in black ink that reads "Rachel Sommer". Below the signature, the word "for:" is written in a smaller, cursive script.

John Westra

Western Regional Manager

Enclosures

cc: SPF WATER ENGINEERING LLC

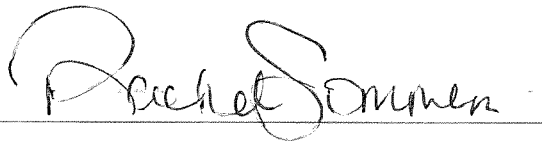
CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Amendment of Permit) to the persons listed below:

RE: WATER RIGHT NO. 65-23355

**SANDS LLC
C/O STEVE LOOMIS
7154 W STATE ST #187
BOISE ID 83714**

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

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)

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.