



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 • Web Site: www.idwr.idaho.gov

C.L. "BUTCH" OTTER

Governor

GARY SPACKMAN

Interim Director

June 12, 2012

CITY OF NAMPA
411 3RD ST S
NAMPA ID 83651

RE: License No. 63-33022
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 review thoroughly the conditions of approval and remarks listed on your license.

The license is a FINAL ORDER issued by the Department pursuant to Rule 740 of the Department's Rules of Procedure (IDAPA 37.01.01). Please refer to the enclosed document titled *Explanatory Information to Accompany a Final Order* for more information regarding final orders issued by the Department.

This water right license is for reasonably anticipated future needs (RAFN) municipal use. RAFN water rights are unique in that they allow for the construction of improvements and the beneficial use of water to occur over the entire duration of the planning horizon, which can be substantially longer than the standard development period as described in Idaho Code § 42-204. Because proof of beneficial use may be due before the development authorized by a RAFN water right permit is complete, the Department may be required to license a RAFN water right for a diversion of water in excess of that which has been physically diverted and beneficially used at the time of licensing.

Idaho Code § 42-217(4) requires a RAFN permit holder to submit revised justification for the RAFN amount when submitting proof of beneficial use. The greater the time span between the planning horizon, which may be decades, and the development period, which ends with the proof statement, the greater the challenge for the Department to evaluate the appropriateness of the RAFN diversion rate at the time of licensing. A long period of time between the proof due date and the planning horizon substantially increases the chance that the Department may issue a license for a diversion rate for beneficial use that may never occur. Consequently, it is the Department's current practice to require the maximum development period afforded by statute (i.e. a five year

development period with the possibility of an additional five year extension of time) for all RAFN water rights.

For this water right permit, proof of beneficial use was submitted less than 14 months after the permit was issued. Such a short development period greatly inhibits the Department's ability to ascertain to what extent physical construction and beneficial use are consistent with the full RAFN authorization. The development period for this water right is inconsistent with current Department practice and shall not be considered as precedent for future RAFN water rights. To reduce the time period between the time for submittal of proof of beneficial use and the end of the planning horizon, a condition similar to the following will be included on all future RAFN water rights.

A proof of beneficial use statement shall be due on or before <permit issue date plus five years>. If proof is submitted on or before <permit issue date plus five years>, the permit holder shall, at the same time, submit a request for a five year extension of time pursuant to Idaho Code § 42-204(5). Based upon information provided, the Director will decide whether it is appropriate to grant the extension. Nothing in this condition prevents the permit holder from submitting a request for extension of time to submit proof of beneficial use prior to the filing of proof.

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 208-287-4800.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Spackman", with a stylized, flowing script.

Gary Spackman
Interim Director

Enclosure(s)

Cc. SPF Water Engineering (c/o Roxanne Brown) 300 E. Mallard Drive, Su. 350 Boise, ID 83706
Givens Pursley LLP (c/o Chris Meyers) 601 W. Bannock Street Boise, ID 83701

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2012 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved License) to the person(s) listed below:

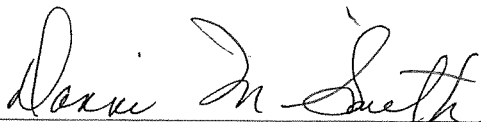
RE: WATER RIGHT NO.

63-33022

**CITY OF NAMPA
411 3RD ST S
NAMPA ID 83651**

**SPF WATER ENGINEERING
C/O ROXANNE BROWN
300 E MALLARD DR STE 350
BOISE ID 83706**

**GIVENS PURSLEY LLP
C/O CHRIS MEYERS
601 W BANNOCK ST
BOISE ID 83701**

A handwritten signature in black ink, reading "Danni M Smith", is written over a horizontal line.

Danni M Smith

Technical Records Specialist 2

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.