

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-33281

Priority: October 02, 2009

Maximum Diversion Rate: 0.45 CFS

This is to certify, that U S GEOLOGICAL SURVEY
IDAHO WATER SCIENCE CENTER
230 COLLINS RD
BOISE ID 83702

has applied for a permit to appropriate water from:

Source: GROUND WATER

Tributary: BOISE RIVER

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

BENEFICIAL USE

COMMERCIAL

PERIOD OF USE

01/01 to 12/31

RATE OF DIVERSION

0.45 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER

NE1/4NW1/4

Sec. 11, Twp 03N, Rge 02E, B.M., ADA County

PLACE OF USE: COMMERCIAL

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
03N 02E 11					X												

CONDITIONS OF APPROVAL

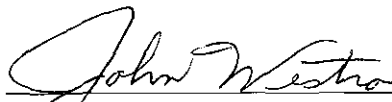
1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2011**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
5. Upon specific notification by the Dept, the right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
6. The point of diversion identified in this right is located within the boundaries of the Boise Front Low Temperature Geothermal Resource Groundwater Management Area. Diversion and use of water with a temperature greater than 85 degrees Fahrenheit is not authorized under this right.
7. 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. 63, Boise River.

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-33281

8. Upon specific notification by the Department, 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).
9. Water bearing zone to be appropriated is from 75 to 95 feet.
10. To prevent injury to prior water rights appropriating water from the Boise River and/or underlying shallow aquifer tributary to the Boise River, water diverted under this right shall be fully discharged to Cottonwood Creek within the NE 1/4 of NW 1/4 Section 11, T03N, R02E.
11. Commercial use is for a water education and research facility.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 1st day of December, 2009.


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
Interim Director

December 1, 2009

U S GEOLOGICAL SURVEY
IDAHO WATER SCIENCE CENTER
230 COLLINS RD
BOISE ID 83702

RE: Permit No.63-33281

Permit Approval Notice

Dear Permit Holder:

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.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

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,


for John Westra
Western Regional Manager

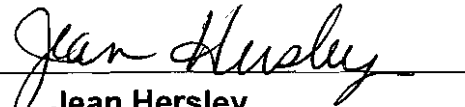
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 63-33281

**U S GEOLOGICAL SURVEY
IDAHO WATER SCIENCE CENTER
230 COLLINS RD
BOISE ID 83702**



Jean Hersley
Office Specialist II

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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 issuance 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.

MEMORANDUM

TO: File

FROM: Steve Lester 

DATE: November 18, 2009

RE: Application 63-33281 Conditions of Approval

See database comments for an overview of this application. "Commercial" use was discussed in 8/31/09 email. Well construction issues are noted in 10/9/09 and 10/13/09 emails – see below for discussion on that. Watermaster support is in 10/16/09 email.

The intention is to develop an aquifer test site at the USGS equipment yard in Fort Boise Park by St. Luke's Hospital. The project will be an education and training site focusing on aquifer testing while water is diverted from an existing well and discharged to the adjacent creek. This will include a variety of water measurement equipment near the well for training purposes.

Site is within the Boise Front GWMA but only involves cold water shallower than 300 feet. GWMA issues are n/a. Condition 058 for Boise Front is moot for this existing well. Use condition 073 instead.

The shallow ground water is considered tributary to the fully appropriated reach of the Boise River. Mitigation for the proposed use will be done by fully discharging diverted water into Cottonwood Creek on USGS property (well is about 25 ft. from the creek). The creek is a cement channel, making stream channel issues n/a. USGS has worked with the City of Boise about discharge.

I met with USGS contact Jim Bartolino at the site on 9/28/09. We visited the well site and discussed plans to complete the project. He amended the application to make it conform to IDWR standards. The priority was established by the final date of fee payment. He agreed to ask for 2 years to file proof, although this got overlooked on the amended application. Allow 2 years.

The source remains subject to watermaster regulation but does not need to be actively controlled or measured at this time. Modify water district conditions to be activated only if necessary. Note the planned measurement equipment part of the project will be useful for the watermaster if needed.

Condition 165 has been previously modified by agreement with the SO and used for ground water concerns upstream from Star in some prior approvals. Modify it again to cover this one as suggested below.

Well drilling issues have not been resolved. The production well was drilled by BOR, which has a drilling crew housed at this site to drill throughout several western states. Three monitoring wells were also drilled for this project (see application aerial photo map). Idaho drilling permits and an Idaho licensed driller were not involved. Bartolino said this was standard USGS-BOR practice in

several states. He also said the wells BOR drills are constructed to individual state well construction standards. Maybe previous IDWR approvals (or agreements?) have already addressed this federal drilling issue.

We probably do not want to get into a protracted and most likely unwinnable dispute with the applicant over the federal drilling on federal property issue. A modified version of condition 046 is therefore suggested – a “retain authority” approach that might work.

Suggested Conditions

2 years to file proof.

004
026.

046 modified - Upon specific notification by the Department, the right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

073 modified (includes 1st sentence from condition 058) - The point of diversion identified in this right is located within the boundaries of the Boise Front Low Temperature Geothermal Resource Groundwater Management Area. Diversion and use of water with a temperature greater than 85 degrees Fahrenheit is not authorized under this right.

R05 - 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. 63, Boise River.

R43 modified – Upon specific notification by the Department, the right holder shall maintain a measuring device and/or lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

Water bearing zone to be appropriated is from 75 to 95 feet.

165 modified - To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, water diverted under this right shall be fully discharged to Cottonwood Creek within the NE ¼ of NW ¼ Section 11, T3N, R2E.

X01 modified - Commercial use is for a water education and research facility.

Idaho Statesman

RECEIVED

OCT 26 2009

P.O. Box 40, Boise, Idaho 83707-0040

WATER RESOURCES
WESTERN REGION

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DT#	Identification	Amount
047628	467112	LEGAL NOTICE APPROPRIATION OF PUBLIC WATERS	\$133.00
Attention:	P.O. #	Run Dates	
DENISE BUFFINGTON		OCTOBER 15, 22, 2009	
IDAHO DEPT. WATER RESOURCES WEST 2735 AIRPORT WY. BOISE, ID 83705		Number of Lines	
		2 X 32	
		Affidavit	Legal #
		1	

LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-33281
U S GEOLOGICAL SURVEY
IDAHO WATER SCIENCE CENTER
230 COLLINS RD
BOISE, ID 83702

Point of Diversion: NENW S11 T03N R02E ADA County Source
Use: COMMERCIAL
Total Diversion: 01/01 to 12/31 0.45 CFS
Date Filed: 8/25/2009 0.45 CFS
Place Of Use: COMMERCIAL
T03N R02E S11 NENW

Water bearing zone to be appropriated for an existing cold water well is from 75 to 95 feet. Use is for educational training at USGS complex in Fort Boise Park. Consumptive use mitigated by routing shallow ground water to the Boise River via Cottonwood Creek.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Idaho Code § 42-211. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 11/27/2009. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

Pub. Oct. 15, 22, 2009

0000467112-01

TINA BARTLETT being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

beginning issue of: OCTOBER 15, 2009
ending issue of: OCTOBER 22, 2009

Tina Bartlett

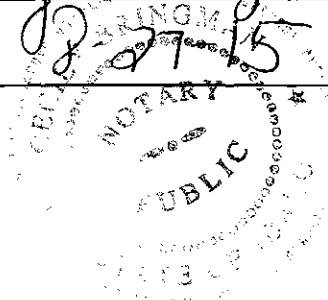
STATE OF IDAHO)
 .ss

COUNTY OF ADA)

On this 22 day of OCTOBER in the year of 2009
before me, a Notary Public, personally appeared before me
TINA BARTLETT Known or identified to me to be the person
whose name subscribed to the within instrument, and being
by me first duly sworn, declared that the statements therein
are true, and acknowledged to me that she executed the same.

Cecily Bring

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires:



✓ OK DB 11/6/09

Buffington, Denise

From: Water District 63 [waterdistrict63@qwestoffice.net]
Sent: Friday, October 16, 2009 8:13 AM
To: Buffington, Denise
Subject: Re: Comment letter 63-33281

Denise,

No objection to this one.

Rex Barrie
Boise River Watermaster

----- Original Message -----

From: Buffington, Denise
To: Water District 63
Sent: Tuesday, October 13, 2009 2:20 PM
Subject: Comment letter 63-33281

Please review the attached information and comment as necessary. Feel free to contact our office if you have any questions about this information.

Thank You,

Denise Buffington
Administrative Assistant
Dept of Water Resources
Western Region

10/16/2009

Lester, Steve

From: James R Bartolino [jrbartol@usgs.gov]
Sent: Tuesday, October 13, 2009 6:13 AM
To: Lester, Steve
Subject: Re: Water Right Application, Boise USGS Site

Steve:

Thanks—sorry for the delay in getting back to you.

I've done some calling around about Federal drilling on Federal land. The authorities usually cited in such cases (aside from powers granted in the U.S. Constitution) are the Reclamation Act of June 17, 1902 (P.L. 57-161, 32 Stat. 388) for the U.S. Bureau of Reclamation and the Organic Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31) for the U.S. Geological Survey.

We have provided the completion logs in the IDWR format, though I will be happy to recomplete them on the actual forms.

Hope this helps. Thanks. —Jim

James R. Bartolino, Ph.D. — Hydrologist
District Ground-Water Specialist
U.S. Geological Survey, Idaho Water Science Center
230 Collins Rd.
Boise, ID 83702
Phone: 208-387-1392 v
208-387-1372 f
Email: jrbartol@usgs.gov

IdWSC home page: <http://id.water.usgs.gov>
USGS Publications: <http://pubs.usgs.gov>

From: "Lester, Steve" <Steve.Lester@idwr.idaho.gov>
To: <jrbartol@usgs.gov>
Date: 10/05/2009 08:45 AM
Subject: Water Right Application, Boise USGS Site

← 10/5 email already in file

Jim:

Thanks for sending the additional fee. Processing will continue.

One thing you can do to help that along: if possible, please provide something that documents how well drilling by USGS &/or BOR follows state guidelines/regulations. I recall you said something about that when we met - that

10/13/2009

Lester, Steve

From: Whitney, Rob
Sent: Friday, October 09, 2009 7:54 AM
To: Neace, Thomas
Cc: Lester, Steve; Whitney, Rob; Westra, John
Subject: USGS and USBOR Licensing and Permitting

Tom,

Some time ago we started to discuss permitting and licensing requirements for Federal agencies. Mainly the USBOR as related to the drilling of wells. It is standard to place conditions on a water right permit that requires compliance with 42-235 (drilling permit) and 42-238 (driller license)

Do you know where we stand with BOR? Are they licensed? Should they be? Do we require D.P. for well and submittal of log? I can't recall the SOP's Slifka had with BOR and USGS et.al. We may need to re-visit these issues and develop some guidance docs for staff. Let me know what you think/know. THX, RW