State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 63-33113

Priority: September 29, 2008 Maximum Diversion Rate: 0.11 CFS

This is to certify, that ROBERT FLOOD
126 W THORNBERRY CT
BOISE ID 83702

has applied for a permit to appropriate water from:

Source: GROUND WATER

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
IRRIGATION	03/01 to 11/15	0.11 CFS
DOMESTIC	01/01 to 12/31	0.06 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	L2 (NW1/4NE1/4)	Sec. 5, Twp 01N, Rge 01W, B.M., ADA County
GROUND WATER	L2 (NW1/4NE1/4)	Sec. 5, Twp 01N, Rge 01W, B.M., ADA County
GROUND WATER	L2 (NW1/4NE1/4)	Sec. 5, Twp 01N, Rge 01W, B.M., ADA County
GROUND WATER	L3 (NE1/4NW1/4)	Sec. 5, Twp 01N, Rge 01W, B.M., ADA County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
01N 01W 5		10.8			.2												11.0
		L 2			L 3												

Total Acres: 11

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
01N 01W 5		X			X												
		L 2			L 3												

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 63-33113

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2012.**
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
5. This right is limited to the irrigation of 3.5 acres within the place of use described above in a single irrigation season.
6. Irrigation when combined under Rights 63-33111, 63-33112, 63-33113 and 63-33114 shall not exceed a total diversion rate of 0.32 cfs, a total annual maximum diversion volume of 63 af at the field headgate, and the irrigation of 14 acres.
7. Place of use is located within Lots 7 and 8, Waldvogel Acres Subdivision.
8. Domestic use is for 2 homes and does not include lawn, garden, landscape, or other types of irrigation.
9. Combined rights 63-33111, 63-33112, 63-33113 and 63-33114 are limited to a maximum of 4 wells.
10. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
11. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
12. This right does not grant any right-of-way or easement across the land of another.
13. 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.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 30th day of April, 2009.

John Westra

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

DAVID R. TUTHILL, JR.
Director

April 30, 2009

ROBERT FLOOD
126 W THORNBERRY CT
BOISE ID 83702

RE: Permit No. 63-33111, 63-33112, 63-33113 and 63-33114

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,

Jean Hersley

for John Westra
Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 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. 63-33111- 63-33114

ROBERT FLOOD
126 W THORNBERRY CT
BOISE ID 83702

Jean Hersley

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: Files **MEMO FILED IN 63-33111**

FROM: Steve Lester

DATE: April 23, 2009

RE: Applications 63-33111, 63-33112, 63-33113 and 63-33114

Robert Flood filed one application and paid a fee on 9/4/08 for 4 wells, 8 homes and yards plus a common 10-acre pasture. It actually appeared he intended 4 separate systems linked only by possible ability to irrigate some/all of the pasture. The application was not data entered, but it was returned with a suggestion of how to replace it with 4 filings.

He submitted 4 applications on 9/29/08 and completed the fee payment then. Each application has a 9/29/08 priority.

The applications were advertised without protests. The only overlap is the possible one for the shared pasture.

The ads did not include the water bearing zone. That is regrettable but not cause for re-advertising. The water bearing zone is not needed as a condition of approval for ground water downstream from the Star tributary boundary.

Conditions limiting yard irrigation and common area irrigation are not needed since the site is no longer in the ground water restricted area of Basin 63 (conditions 070, 071 etc.).

Rate of Flow – Application vs. Permit Approval

Based on discussions with the applicant, IDWR prepared notes for the applicant to include with each application – see the application page labeled "Application Remarks – Waldvogel Acres Subd."

Each application proposed a well for domestic use for 2 homes, total yard irrigation of 1 acre[1], and up to 2.5 acres of irrigation within the common 10-acre pasture. Domestic and irrigation rates in each application were not intended to be additive (application remarks).

---

[1] Each subd. lot about ¾ acre so probably will not exceed about ½ acre yard per home. But not required to remain within ½ acre yard limit due to location within Basin 63. Avoid excessive conditions of approval about that.

Note the pasture is entirely in NWNE. Three of the applications cover their respective wells, homes and yards within a single ¼ ¼. Application 63-33113 ("#3 of 4") proposes a well in 1 tract with most of the homes/yards in that tract but a little of homes/yards in the other tract.

Ideally the applications would have been amended and advertised with the maximum allowable rates. For each application, the domestic rate is correct but the irrigation rate is excessive. Each application should be limited as follows in this regard:

- Domestic, internal 2 homes = 0.06 cfs
- Irrigation, 1 acre yard + 2.5 acres in pasture: 3.5 acres x 0.03 cfs/acre = 0.11 cfs

  (allow max. rate for < 5 acres per application)
- Total = 0.11 cfs (recall not additive per application remarks).

Approval of less than the advertised amount is not problematic.

Post-advertising discussion with State Office staff identified a concern about diversion points per application. Based on the application remarks, that staff suggested listing all 4 wells as potential P/Ds for all 4 applications – "just in case." It was determined this could be done with written consent from the applicant without needing to formally amend the applications and without republishing legal notices. This was completed with the applicant's 4/20/09 response filed in 63-33111. A condition of approval limiting the maximum number of wells under combined rights addresses this adjustment.

Combined Totals

The unusual yards plus common pasture require combined irrigation limits. Allow each application to have its maximum 0.03 cfs/acre for less than 5 acres but limit combined uses. For the shared 10-acre pasture, limit total to the standard 0.20 cfs. For each additional acre for yards, allow 0.03 cfs. This would result in a maximum 10-acre pasture plus 4 acres of yards if fully developed. The irrigation limits should include:

- 10 acres pasture x 0.02 cfs/acre = 0.20 cfs
- 4 acres yards x 0.03 cfs/acre = 0.12 cfs
- Total 14 acres = 0.32 cfs
- Use standard 4.5 af/acre x 14 acres volume = 63 af.

Conditions of Approval

Allow **3 years** to file proof as requested for each application.

26A … start 1 year etc.

R69 … 0.03 cfs and 4.5 afa per acre

X27 … irrigation of 3.5 acres …

X35 (adapted for the situation): Irrigation when combined under rights 63-33111, 63-33112, 63-33113 and 63-33114 shall not exceed a total diversion rate of 0.32 cfs, a total annual maximum diversion volume of 63 af at the field headgate, and the irrigation of 14 acres.

X60 … subd. lots …

- 63-33111 = Lots 2 and 3, Waldvogel Acres Subdivision
- 63-33112 = Lots 4 and 5, Waldvogel Acres Subdivision
- 63-33113 = Lots 7 and 8, Waldvogel Acres Subdivision
- 63-33114 = Lots 9 and 10, Waldvogel Acres Subdivision

WB5 … domestic use is for 2 homes, no lawn, garden etc.

No code #: Combined rights 63-33111, 63-33112, 63-33113 and 63-33114 are limited to a maximum of 4 wells.

046 … well drilling

01M … possible measurement/report[2]

121 … possible future mitigation

004

[2] Good to use for overall scenario even though each application does not exceed rate or acres normally requiring this condition.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082
PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

April 16, 2009

RECEIVED
APR 20 2009
WATER RESOURCES
WESTERN REGION

ROBERT FLOOD
126 W THORNBERRY CT
BOISE ID 83702

Re: Applications for Permit Nos. 63-33111 through 63-33114

Dear Mr. Flood:

The Idaho Department of Water Resources (IDWR) can approve the above referenced applications for Waldvogel Acres Subdivision once a final detail is clarified.

Each of the four applications proposes a single well for two homes and yards plus additional irrigation for a shared 10-acre pasture. The applications were filed in a manner to cover any combination of wells to irrigate the pasture. IDWR suggests approval of the applications to list all four wells as potential points of diversion for all four applications due to the shared pasture portion of the proposed development. This would provide maximum flexibility for this situation.

The applications can be approved with that arrangement upon receiving your written consent to proceed that way. Please provide your comments within the next thirty (30) days to allow approvals to be issued.

Please contact me at 334-2190 if you have any questions about this suggestion. Thank you for your attention to this matter.

Sincerely,

Steve Lester

Steve Lester
Water Rights Supervisor

APPROVES All 4 wells
As pl'd for All 4 Appl's.
-SL

I approve of the modification of the language.

4-20-09

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082
PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
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April 16, 2009

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126 W THORNBERRY CT
BOISE ID 83702

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Please contact me at 334-2190 if you have any questions about this suggestion. Thank you for your attention to this matter.

Sincerely,

Steve Lester

Steve Lester
Water Rights Supervisor

SEE 4/20/09 RESPONSE IN
63-33111
-SL

Idaho Statesman

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

LEGAL ADVERTISING PROOF OF PUBLICATION

RECEIVED
MAR 30 2009
WATER RESOURCES
WESTERN REGION

Account #	DTI#	Identification	Amount:
047628	428817	LEGAL NOTICE APPROPRIATE PUBLIC WATERS - FLOOD	$125.00

Attention:	P.O. #	Run Dates
DENISE BUFFINGTON		MARCH 19, 26, 2009

IDAHO DEPT. WATER RESOURCES WEST
2735 AIRPORT WY.
BOISE, ID 83705

Number of Lines: 2 X 30

Affidavit: 1

Legal #:

LEGAL NOTICE

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

63-33113
ROBERT FLOOD
126 W THORNBERRY CT
BOISE ID 83702

Point(s) of Diversion	L2 (NWNE) S5 T01NR01W
ADA County	Source GROUND WATER
Use: IRRIGATION	03/01 To 11/15 0.2 CFS
Use: DOMESTIC	01/01 To 12/31 0.06 CFS
Total Diversion:	0.2 CFS
Date Filed:	09/29/2008
Place Of Use:	IRRIGATION
T01N R01W S5	NWNE Lot 2
Number of Acres	11
Place Of Use:	DOMESTIC
T01N R01W S5	NWNE Lot 2 NENW Lot 3

should match domestic

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of $25.00 for each application on or before 04/06/2009. The protestant must also send a copy of the protest to the applicant.

DAVID R. TUTHILL, JR., Director

Pub. Mar. 19,26, 2009

0000428817-01

✓ OK DB 4-9-09

Advertised correctly per database at that time.
D'entry error corrected for irr. pln = domestic pln, nonfatal error so ok.
-JL 4-10-09

JANICE HILDRETH, 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

[X] consecutive weekly [ ] single
[ ] consecutive daily [ ] odd skip
insertion(s)

beginning issue of: MARCH 19, 2009
ending issue of: MARCH 26, 2009

Janice Hildreth

STATE OF IDAHO)
.ss
COUNTY OF ADA)

On this 26 day of MARCH in the year of 2009 before me, a Notary Public, personally appeared before me Janice Hildreth 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.

Sarah Clemens

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: 5/13/14

SARAH CLEMENS NOTARY PUBLIC STATE OF IDAHO