

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-32641

Priority: March 28, 2007

Maximum Diversion Rate: 0.06 CFS

This is to certify, that JOHN BARINAGA
And
KIMBERLY BARINAGA
4915 S WHITLEY DR
FRUITLAND ID 83619

has applied for a permit to appropriate water from:

Source: GROUND WATER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/01 to 11/15	0.06 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NE1/4NE1/4 Sec. 20, Twp 07N, Rge 05W, B.M., PAYETTE 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
07N	05W	20	2.5																2.5

Total Acres: 2.5

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **December 31, 2010**.
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 does not grant any right-of-way or easement across the land of another.

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5. 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 22nd day of December, 2008.


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

December 23, 2008

JOHN BARINAGA
And
KIMBERLY BARINAGA
4915 S WHITLEY DR
FRUITLAND ID 83619

RE: Permit No. 63-32641

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 24, 2008 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.

63-32641

**JOHN BARINAGA
4915 S WHITLEY DR
FRUITLAND ID 83619**

**KIMBERLY BARINAGA
4915 S WHITLEY DR
FRUITLAND ID 83619**



**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.



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

December 4, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

John & Kimberly Barinaga
4915 S Whitley DR
Fruitland ID 83619

RE: Application for Permit #63-32641

Dear Barinagas:

Our office is in the process of final processing of your application. Our review of the application form revealed several minor corrections that are needed prior to the issuance of your permit. Please make the following changes on the form—see stickies:

-Under #7: Time completion: **Place a 2 in the blank—2 years**
Both John & Kimberly initial and date near the blank.

-Under #9 Place of Use: **Cross out all letters/number under the NE of NE boxes. Place 2 1/2 (21/2 acres) in the NE of NE box**
-Cross out the 1s under the Total columns
Both John & Kimberly initial and date near the changed boxes.

Please return the application in the enclosed envelope.

Should you have any questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,



John Westra, Manager

Enclosure—Original Application Form.

- Information received 12/12/08 Back.

Affidavit of Publication

RECEIVED

STATE OF IDAHO,
COUNTY OF PAYETTE

NOV 14 2008

WATER RESOURCES
WESTERN REGION

Water Right
TITLE OF PUBLICATION

Water Resources
SPONSOR OF PLAINTIFF
PLAINTIFF OR LEGAL AGENT

9/9/54 being
duly sworn, deposes and says:
That he is the clerk of

THE INDEPENDENT-ENTERPRISE, a weekly newspaper published at Payette, in the County of Payette and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Payette; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for two (2) consecutive weeks in the regular and entire issue of said paper during the period and time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with Nov. 5, 2008, and ending with the issue of Nov. 12, 2008.

STATE OF IDAHO
COUNTY OF

On this 13th day of Nov in the year 2008, before me, a Notary Public, personally appeared [Signature] 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 he executed the same.

Notary Public for Idaho

Residing at Payette

My commission expires: 7-1-10

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

63-32641

JOHN BARINAGA
KIMBERLY BARINAGA
4915 S WHITLEY DR
FRUITLAND ID 83619

Point(s) of Diversion NENE S20
T07N R05W PAYETTE County

Source GROUND WATER

Use: IRRIGATION 03/15 To
10/31 0.06 CFS

Total Diversion: 0.06 CFS

Date Filed: 03/28/2007

Place Of Use: IRRIGATION

T07N R05W S20 NENE

Number of Acres 2.5

Remark: Water bearing zone to be appropriated is from 100 to 130 feet. 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 11/24/2008. The protestant must also send a copy of the protest to the applicant. DAVID R. TUTHILL, JR., Director

No. 1652

Nov. 5, 12

✓ OK DB
11-28-08

STATEMENT

Independent-Enterprise

PAYETTE, IDAHO

Number of Lines 33

Number of Insertions Two (2)

33 Lines @ 1.14 . . . \$ 37.62

33 Lines @ 2.00 . . . \$ 66.00

TOTAL COST
WILL BE \$ 103.62

No 1652