

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF PERMIT NO.)
63-33806 IN THE NAME OF)
KEITH AND ALISON HORN)
_____)**

**ORDER WITHDRAWING
A PRELIMINARY ORDER AND
SUBSTITUTING A NEW ORDER**

This matter having come before the Department of Water Resources ("Department") the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On October 30, 2013, the Department granted Application for Water Right Permit No. 63-33806 ("Permit") in the name of Keith and Alison Horn ("Owners") authorizing the use of ground water from within the NW¼NE¼ of Section 32, Township 05N, Range 01E, B.M., for irrigation, domestic, and stockwater purposes.
2. Condition of Approval No. 11 on the Permit restricts the diversion and use of water with a temperature greater than 85 degrees Fahrenheit.
3. The well driller's report for the well (Well Tag No. D0067455) utilized as the point of diversion describes the water pumped from the well after completion had a temperature of 56 degrees Fahrenheit.
4. On April 2, 2024, the Department issued Water Right License No. 63-33806 ("License") as a Preliminary Order. The License included a condition of approval restricting the diversion and use of water with a temperature greater than 85 degrees Fahrenheit.

CONCLUSIONS OF LAW

1. Rule 760 of the Department's Rules of Procedure (IDAPA 37.01.01.760) states in relevant part:

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order or by issuing a substitute recommended or preliminary order.

2. The Owners complied with the condition restricting the use to a temperature greater than 85 degrees Fahrenheit during development.

3. The restriction is not necessary and should be removed from the License.
4. The Department should withdraw the Preliminary Order and issue an Amended License.

ORDER

IT IS HEREBY ORDERED that the preliminary order issuing License No. 63-33806 is **WITHDRAWN** and **SUBSTITUTED**.

IT IS FURTHER ORDERED License No. 63-33806 is amended in accordance with the attached document.

DATED this 16th day of April, 2024.



Phillip Hummer
Water Rights Section Manager

State of Idaho
Department of Water Resources
Amended Water Right License
Water Right No. 63-33806

Priority: July 02, 2013

Maximum Diversion Rate: 0.15 CFS

Maximum Diversion Volume: 14.3 AF

It is hereby certified that:

KEITH HORN 550 W HEIKES LN EAGLE ID 83616 AND
ALISON HORN 550 W HEIKES LN EAGLE ID 83616

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 02, 2013, and has submitted Proof of Beneficial Use on October 26, 2023. An examination confirms water is diverted from:

Source : GROUND WATER

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>	<u>Annual Volume</u>
IRRIGATION	03/01 to 11/15	0.09 CFS	13.5 AF
STOCKWATER	01/01 to 12/31	0.02 CFS	0.2 AF
DOMESTIC	01/01 to 12/31	0.04 CFS	0.6 AF

Location of Point(s) of Diversion

GROUND WATER NW¼ NE¼, Sec. 32, Twp 05N, Rge 01E, B.M. ADA County

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	01E	32		3.0															3.0

Total Acres: 3.0

Place of Use: DOMESTIC and STOCKWATER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	01E	32		X															

Conditions of Approval

1. 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 place of use.
2. Domestic use is for 1 homes. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.
3. To prevent injury to prior water rights appropriating water from the Boise River and/or the underlying shallow aquifer tributary to the Boise River, the new well used as a point of diversion for this water right located within the NWNE, Section 32, Township 05N, Range 01E shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 200 feet or more below ground surface.
4. 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.

State of Idaho
Department of Water Resources
Amended Water Right License
Water Right No. 63-33806

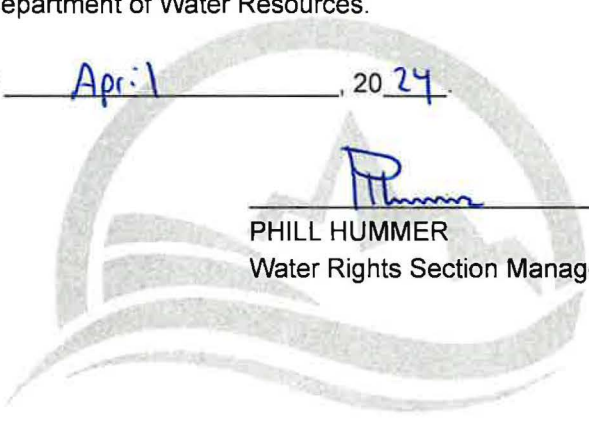
5. After specific notification by the Department, the right holder shall participate in a Department approved ground water monitoring plan.
6. Water bearing zone to be appropriated is 200 to 600 feet.
7. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.

This license is issued pursuant to the provisions of Idaho Code § 42-219. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 16th day of April, 2024.



PHILL HUMMER
Water Rights Section Manager





IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

April 16, 2024

KEITH HORN
ALISON HORN
550 W HEIKES LN
EAGLE ID 83616

RE: Water Right License 63-33806

Dear Water Right Holder:

The Idaho Department of Water Resources (IDWR) has issued the enclosed order amending Water Right License 63-33806. The order is a **preliminary order** issued by IDWR pursuant to Rule 730 of IDWR's Rules of Procedure (IDAPA 37.01.01). The amended water right license issued in connection with the order supersedes the license issued on April 2, 2024. **The preliminary order can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as further described in the enclosed information sheet.**

If you have questions, please contact me at (208) 287-4925.

Sincerely,

Jean Hersley

for
Phill Hummer
Water Rights Section Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of **April, 2024**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (Approved Amended License)** to the person(s) listed below:

Water Right No. 63-33806

**KEITH HORN
550 W HEIKES LN
EAGLE ID 83616**

**ALISON HORN
550 W HEIKES LN
EAGLE ID 83616**



Jean Hersley
Technical Records Specialist II

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.